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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ BAIL APPLN. 206/2024

JATIN GULRAJANI ..... Petitioner

Through: Mr.Sunil Dalal, Sr. Adv. with Mr.Tarun Diwan, Ms.Piyari, Ms.Maanisha Saroha, Mr.Nihil Beniwal, Mr.Manish Bhati and Mr.Vikram Singh Dalal, Advs.

versus

STATE ..... Respondent

Through: Mr. Aman Usman, APP for the State along with Inspector Ravinder, Sec-II, EOW.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% **04.04.2024**

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.) praying for the applicant to be released on bail in FIR No.0091/2020 Police Station: EOW, Delhi under Sections 409/420/120-B of the Indian Penal Code, 1860 (in short, 'IPC').

2. It is the case of the prosecution that a complaint was received against one MTNL Housing Society (in short 'Society'). In the complaint, it was alleged that in August, 2019, the Society had published an advertisement offering flats that were to be constructed. In response to the advertisement, the complainant had booked one BHK flat (550 square feet) for a total consideration of Rs.19,80,000/- and paid Rs.4,51,000/- in three installments towards the cost of land.

No progress was, however, found on the ground, leading to the filing of the said complaint.

3. On investigation, it was found that there were a total of 45 victims who had deposited approximately a sum of Rs.4.62 crores with the said Society. It is further alleged that on investigation, it has been found that the Society had not been issued any license or approval for the housing project nor was it registered under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA Act'). In fact, proceedings have been initiated *suo motu* by the RERA Tribunal against the said Society and other such Societies as well, who had been offering flats without even getting registered under the RERA Act.

4. It is further alleged that the Society had given a hefty commission of around 35% of the total amount received from the victims to one Matrix Enterprises, which is now stated to be performing the work of the land facilitator agency. The alleged Matrix Enterprises through its proprietor, that is, co-accused Raj Kumar, entered into an agreement to sell with the land owner for a sum of Rs.2.25 crores on 13.01.2020, and within one month, that is, on 12.02.2020, the alleged Matrix Enterprises entered into an agreement to sell with the Society for a sum of Rs. 4 crores. Though it had no land, the Society had been making payment to Matrix Enterprises since April, 2019.

5. On analysis of the bank statements, it was further found that approximately a sum of Rs.23 lakhs were transferred from the bank account of Matrix Enterprises to the bank account of one Kiran

Gulrajani, who is the wife of the applicant. It is only after the registration of the FIR that the said amount was allegedly returned by the applicant.

6. Certain incriminating documents are also said to be recovered from the custody of the applicant.

7. Charge-sheet has been filed and now charges under Sections 409/420/120-B of the IPC have been framed against the applicant.

8. Learned senior counsel for the applicant submits that the applicant has been in custody since 06.01.2022. He submits that a total of 46 witnesses have been cited by the Prosecution. The learned Trial Court, at present, has only reached the stage of framing of charges. The trial is, therefore, not likely to conclude very soon. He further submits that the applicant has deep roots in the society and there is no likelihood of his fleeing from the process of law. He further submits that in the present case, the case of the Prosecution is based only on conjectures and surmises and there was no ill-intent of the applicant. In fact, there was no entrustment of the amounts with the applicant paid by any of the victims. He also places reliance on the judgment of this Court in ***Sunder Singh Bhati v. State,*** 2022 SCC OnLine Del 134.

9. On the other hand, learned APP for the State points out that in the present case, the learned Trial Court has found enough material to charge the applicant under Section 409 of the IPC, which is punishable up to life imprisonment.

10. He submits that the applicant has cheated innocent victims into investing huge amount of money by alluring them with offer of flats in

return, while there was no land pooling Scheme of the Delhi Development Authority (DDA); the Society did not have any land with it; and neither was the Society having any permission from the concerned authorities. He submits that the registration of the Society was itself cancelled by the Registrar of Companies.

11. He submits that the land which is purchased by Raj Kumar for a sum of Rs.2.20 crores is alleged to have been sold to the Society for a sum of Rs.4 crores under an agreement to sell. He submits that an amount of Rs.23 lakhs was also transferred by the accused Matrix Enterprises (Raj Kumar) in favour of the wife of the applicant.

12. He submits that the applicant and the co accused Raj Kumar have also been arrayed as accused in another FIR, being FIR No. 479/2020 registered at Police Station: Kirti Nagar, Delhi for offence under Section 448 of the IPC, which shows their complicity and of their acting together at various instances. He also places reliance on the judgment of the Supreme Court in ***Nimmagadda Prasad v. CBI,*** (2013) 7 SCC 466.

13. I have considered the submissions made by the learned counsel for the parties.

14. At this stage, it would not be right for this Court to enter into the detailed discussions on the merits of the allegations that have been made against the applicant.

15. As has been held by the Supreme Court in ***Sanjay Chandra v. CBI,*** (2012) 1 SCC 40, the gravity of the offence cannot be the sole ground to deny bail to the petitioner. Keeping the accused in custody is not to punish the accused, but to ensure his presence at the time of

the trial and to face the punishment, if any that may be awarded to him at the conclusion of the trial.

16. The applicant has been accused of having collected a sum of around Rs.4.75 crores. There is also an agreement to sell that is purported to have been entered into in the name of the Society for the land for a sum of Rs.4 crores. All these contentions which are placed before this Court are to be determined by the learned Trial Court in the course of the trial.

17. The fact remains that the applicant has faced incarceration of a period of more than two years. The trial is yet to begin and only the stage of framing of charges has been achieved so far. There are total of 46 witnesses cited by the Prosecution and the trial is not likely to conclude in the near future. Though, the learned APP submits that many of these witnesses being identical, may be dropped by the Prosecution and there is likelihood of the trial moving fast, at this stage, to keep the applicant behind the bars while the trial is still not likely to conclude any time soon, may not be proper.

18. Accordingly, the applicant is directed to be released on bail in FIR No.0091/2020 registered at Police Station: EOW, Delhi under Sections 409/420/120-B of the IPC, on furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

i. The Applicant shall not move out of National Capital Region without the prior permission of the learned Trial Court.

ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.

iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.

iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.

v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the victim.

7. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

8. The bail application is disposed of in the above terms.

9. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

APRIL 4, 2024/A/ss

Click here to check corrigendum, if any