$~9

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

\+ **BAIL APPLN. 892/2024 & CRL.M.A. 7742/2024**

ANIL GUPTA ..... Applicant

Through: Mr. Madhav Khurana, Mr. Sanjivani Pattjoshi, Mr. Kartikeye Dang and Mr. Anil Gupta, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Mukesh Kumar, APP for the State with Ms. Sonia Gupta and Mr. Anupam Pandey, Advocates with SI Gajender Mathur, PS Punjabi Bagh.

Mr. Samee Dewan, Mr. Prabhat Ranjan Tiwari, Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **07.05.2024**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 8/2023 dated 04.01.2023, registered at Police Station Punjabi Bagh, for offences under Sections 406/420/34 of the Indian Penal Code, 1860.

2. The FIR was registered on a complaint given by the complainant, namely, Rinky Yadav. It is alleged that the husband of the complainant, who is a property investor, came in contact with co-accused Naresh Goel for various projects and investment schemes. It is alleged that co-accused Naresh Goel projected a rosy picture to the complainant that his friends, that is, co-

accused Pramod Goel and the applicant, were developing a project which would yield hefty returns on investments.

3. It is alleged that co-accused Naresh Goel personally assured the complainant that her money was safe and that he will stand as a guarantor in case any loss is incurred by her. It is alleged that the complainant invested a sum of ₹2,30,00,000/- in two projects developed by co-accused Pramod Goel and the applicant, in the name of their company M/s Dream Procon Pvt. Ltd. and M/s. Indira Puram Habitat Centre Pvt. Ltd. It is alleged that the said amount was paid by the applicant to co-accused Naresh Goel, who gave the money to co-accused Pramod Goel and the applicant in the presence of the complainant's husband and his associate, namely, Yogesh Yadav.

4. It is alleged that the agreed properties were not delivered to the complainant and the invested sum was not returned to her either.

5. It is alleged that when the complainant approached the accused persons regarding the slow progress of the projects, they assured her she can encash the post-dated cheques that were given to her against the payments made by her. It is alleged that the concerned cheques bounced on presentation. It is alleged that Allotment letters in respect of the properties against which the payments were made by her were also given to the complainant as assurances, however, the properties are now with NCLT. It is alleged that the accused persons usurped the hard-earned money of the complainant and cheated her.

6. During the course of investigation, it was found that ₹1,70,00,000/- out of ₹2,30,00,000/- were received by co-accused Pramod Goel in his bank account and a sum of

₹30,00,000/- was received by the applicant against booking of the property in the Indirapuram Habitat Center, against which a duly signed cash receipt was also issued by the applicant.

7. During investigation, it was also found that co-accused Pramod and the applicant was in judicial custody since 2019 in FIR No.35/2019, registered at Police Station Mandir Marg, for offences under Sections 409/420/120B of the IPC.

8. The applicant was formally arrested in the present case on 28.11.2023.

9. The learned counsel for the applicant submits that the applicant is not a beneficiary of the offence and has clean antecedents.

10. He submits that the applicant was merely working as a salaried employee in M/s. Indira Puram Habitat Centre Pvt. Ltd and was appointed as a Director only to fulfill the quoram requirements. He submits that the applicant only held a 0.23% shareholding in one of the companies of the main accused Pramod.

11. He submits that the allegations in the present FIR are similar to those that are levelled against the applicant in FIR No. 35/2019 as it arises out of the same project. He submits that a second FIR on similar facts is not maintainable. He submits that the applicant spent almost four years in custody in FIR No.35/2019 and has since been granted bail in the same.

12. He submits that co-accused Pramod in his disclosure statement in FIR No.35/2019 had also stated that the applicant was working as a Director in M/s. Indira Puram Habitat Centre Pvt. Ltd. and that the applicant used to sign the documents,

including, builder buyer agreements, receipts and cheques issued for assured returns, on his instructions.

13. He submits that chargesheet has been filed in the present case and no purpose will be served by subjecting the applicant to undergo further incarceration.

14. The learned counsel for the complainant submits that the applicant was actively involved in the issuance of the post dated cheques to the complainant as an assurance after the investment was made by her.

15. He submits that there is an explicit allegation that ₹30,00,000/- were received directly by the applicant from the complainant.

16. The learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant. He submits that the applicant has five other criminal antecedents of similar nature.

17. He echoes the submissions of the learned counsel for the complainant and submits that that applicant has been specifically named in the FIR and it is alleged that the applicant in connivance with his associates had cheated the investors.

18. He submits that the applicant is the authorized signatory of M/s. Indira Puram Habitat Centre Pvt. Ltd. He further submits that the applicant has signed the property documents seized from the complainant, that is, the builder buyer agreement, allotment letters, payment receipts of ₹1,30,00,000/- and post dated cheques as well.

19. I have heard the learned counsel for the parties and perused the record.

20. The dispute relates to Projects developed by the applicant along with co-accused Pramod in the name of two companies, that is, M/s. Indira Puram Habitat Centre Pvt. Ltd. and M/s Dream Procon Pvt. Ltd.

21. The transactions in the present case are not disputed. Allegations have been levelled by the complainant that she was induced into investing a sum of ₹2,30,00,000/- on the basis of false misrepresentations and assurances by co-accused Naresh and Pramod.

22. It is vehemently argued by the learned counsel for the complainant that the applicant was actively involved in the commission of the offence and is also a beneficiary of the offence. The said averment is contested by the learned counsel for the applicant. At this stage, in the absence of any allegation in the FIR that the applicant induced the complainant to make the investments, whether the applicant was a beneficiary of the offence or actively involved in the offence would be seen during the course of trial.

23. As per the statutory provision, the maximum sentence for the offence punishable under Section 420 of the IPC is seven years. The evidence, at this stage, seems to be documentary in nature, which is already in possession of the Investigating Agency. The Status Report filed before the Trial Court also mentions that the relevant documents with the signatures of the applicant have been seized from complainant.

24. It is pointed out that the applicant is involved in other cases of similar nature. This Court *vide* order dated 02.02.2023 has already granted bail to the applicant in FIR No. 35/2019, that was registered against the applicant regarding the project

developed by M/s. Indira Puram Habitat Centre Pvt. Ltd. Admittedly, the applicant is also on bail in the other cases pending against him.

25. Moreover, it is settled law that criminal antecedents of an accused cannot be a basis for refusal of bail [***Prabhakar Tewari v. State of U.P.*** **: (2020) 11 SCC 648**].

26. The applicant was released on earlier occasions on interim bail. It is not alleged that, while the applicant was on interim bail, he had tried to tamper with the evidence or influence the witnesses.

27. The chargesheet in the present case has already been filed and no investigation in relation to the applicant is pending. It is submitted by the counsel for the applicant that the applicant was arrested more than ten months after the registration of the FIR. Nothing has been placed on record to show that the applicant had been confronted or interrogated in any manner by the State while he was in custody, and that his further custodial interrogation is required.

28. Speedy trial in the present case does not seem to be a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

29. It is pointed out that the applicant is a senior citizen and he suffers from High Blood pressure as well. He is a permanent resident of Delhi and resides here with his family comprising of

his wife, who also admittedly suffers from various ailments. In such circumstances, the apprehension that the accused will abscond on his release on bail or that he is at flight risk are unfounded. Even so, appropriate conditions can be put to allay such apprehensions.

30. In view of the above, this Court is of the opinion that the applicant has established a *prima facie* case for grant of bail.

31. The interim bail granted by this Court to the applicant by order dated 15.03.2024, which was extended subsequently, is confirmed subject to the same terms and conditions.

32. The bail bond and surety furnished by the petitioner on his release on interim bail is directed to be treated as the bail bond and surety for the purpose of bail as well.

33. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

34. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and not be taken as an expression of opinion on the merits of the case.

35. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 7, 2024

'PB'