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

Pronounced on: 03.01.2024

\+ BAIL APPLN. 1564/2021 & CRL.M.A. 14552-53/2023

ANIL KUMAR SHARMA ..... Petitioner

Through: Mr.Pramod Kumar Dubey, Sr. Adv. with Mr. Manoj Singh, Mr. Amit Sinha, Mr. Akshat Sharma, Mr. Kaustabh Chauhan and Mr. Aditya Raaj, Advs.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Aashneet Singh, APP for State.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No 355/2017 under Sections 420/120B IPC registered at PS EOW.

2. *Vide* order dated 10.05.2021, notice was issued in the bail petition of the petitioner and the State was directed to file a Status Report. The State has filed status report, which forms part of the record.

3. The case of the prosecution as borne out from the status report is that the present FIR was initially registered under Section 420 IPC at PS Ranjeet

Nagar on the complaint filed by Ms. Anjana Chauhan (hereinafter referred to as the complainant). The complainant levelled allegations against M/s. Ultra Home Construction Pvt. Ltd., a Amrapalli Group Company and its directors namely, Anil Kumar Sharma (the present petitioner), Shiv Priya, Ajay Kumar and others. Thereafter, the investigation of the present case was transferred to PS EOW on 11.06.2019.

4. The complainant alleged that in the year 2010, the accused company, approached the complainant and induced her to book/purchase a housing unit bearing no. B-G-3Apartment having super area of 4500 sq. Ft., Sector-119, Noida, UP in the project titled as "Amrapali Patel Platinum" for a sum of Rs. 53.30 lakhs by executing an agreement dated 05.08.2010. The said flat was to be handed over to the complainant within a period of 36 months, which period expired in May 2014. Similarly, the husband of the complainant also booked another flat in the same housing project bearing no. Flat No.B-2006 for a total consideration of Rs. 30 lakhs. The consideration totalling Rs. 83.30 lakhs was paid in the year 2010 through banking channels against acknowledgement, however, the flats in question were not offered to the complainant or her husband.

5. On the aforesaid allegations, the present FIR came to be registered and the petitioner was formally arrested in the present case on 12.11.2020 as he was in custody since 28.08.2019 in another matter.

6. It is the further case of the prosecution that during investigation, it was learnt that the land for construction of the group housing project was allotted to Amrapali Patel Platinum Consortium by NOIDA *vide* lease deed dated 01.05.2007. However, the flats which were allotted to the complainant and her husband did not exist.

7. Mr. Pramod Kumar Dubey, learned senior counsel appearing on behalf of the petitioner at the outset submits that the petitioner has not violated the terms of the interim bail which has been granted to the petitioner from time to time. Further, it is pleaded in the bail petition that the petitioner was arrested in 17 (seventeen) cases by the EOW and out of the said 17 cases, the petitioner has been admitted on regular bail in 04 (four) cases on similar facts and allegations. The complete details of the cases, where the petitioner has been enlarged on regular bail/interim bail have been placed at Pg. 23 of the paper-book.

8. He submits that the petitioner is accused of an offence under Section 420 IPC and the maximum punishment which can be imposed upon the petitioner is seven years, whereas, in terms of the Nominal Roll, until 27.07.2023, the petitioner has spent about 02 years and 7 days in custody.

9. On the merits of the case, Mr. Dubey submits that the complainant and her husband namely, Sunil Chauhan in the year 2010 had expressed their desire to make an investment with the accused company. For this purpose, the accused company agreed to receive investment against assured returns and the complainant along with her husband, for security for the investment agreed to receive two 'Flats'. Accordingly, a Flat Buyer Agreement was executed with an option of 'buy back', upon repayment of investment amount. In addition, the complainants also received post-dated cheques as security. In furtherance to the aforesaid, it is submitted that the accused company continued to make payment on account of assured return for a period of 6 years i.e. from 2010-2016 but thereafter, due to financial crunch

being faced by the company, the company was unable to honour its commitment.

10. He submits that failure on the part of the company to honor its commitment towards its investors is due to reasons beyond the control of the company. He, therefore, contends that there has been no willful default on the part of the petitioner in repaying its investors and the present case is that of corporate failure and not of fraud.

11. He submits that due to the financial failure of the company, the NCLT, Principal Bench, New Delhi, upon a petition filed by the Bank of Baroda under Section 7 of the Insolvency and Bankruptcy Code, 2016, imposed a moratorium and accordingly, an IRP came to be appointed who took over the management and control of the accused company. Thereafter, the complainant and her husband have submitted a claim of Rs. 18,63,000/- (Rupees Eighteen Lakhs Sixty Three Thousand only) before the IRP claiming to be operational creditors.

12. He submits that the accused company has returned the entire money which has been collected by the accused. In fact, the complainant has received back a sum of approx. Rs. 1,05,05,000/- against the alleged investment of Rs. 83,30,000/-, through banking channels. He further submits that the necessary ingredients of Section 420 IPC are not made out, in as much as, the allegations and the instances of intentional deception or misrepresentation on part of the petitioner, have not been spelled out either in the FIR or in the charge-sheet filed by the prosecution.

13. He submits that the charge-sheet in the present case has been filed and investigation is complete, therefore, no useful purpose would be served in keeping the petitioner behind bars. He further submits that the charge-sheet

was filed on 23.12.2020 and till date the charges have not been framed by the Trial Court.

14. The attention of the Court is also drawn to the medical health of the petitioner to submit that the petitioner is a chronic patient of High Blood Pressure (Hypertension), Hypothyroidism (Thyroid disorder), Dyslipidemia (deranged lipid profile) predisposing him to heart disease.

15. Lastly, Mr. Dubey submits that the petitioner has deep roots in the society and there is no likelihood of him fleeing the administration of justice.

16. In the backdrop of the aforesaid facts and circumstances, it has been urged by Mr. Dubey that the petitioner be enlarged on bail.

17. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that the present petitioner has been accused of a grave and serious offence, therefore he may not be enlarged on bail.

18. He further submits that the petitioner was the CMD and promoter director of the accused company and was managing the day to day affairs of the company and the intention of the petitioner was dishonest since the very inception as the accused company collected money against a flat/housing unit which was never in existence.

19. It was contended by the learned APP that the process of resolution under the supervision of the Court appointed Receiver which has been initiated by the Hon'ble Supreme Court cannot inure to the benefit of the petitioner as the same was done to bring respite to the homebuyers but the same does not wipe out the criminality on part of the petitioner and other co-accused.

20. The learned APP submits that the petitioner is the authorized signatory in the bank accounts of accused company. He further submits that the petitioner is accused of cheating several other persons by adopting the same *modus operandi* in respect of which different FIRs have been registered.

21. As far as the contention of the complainants lodging their claim with the IRP, is concerned, the learned counsel for the complainants submits that the complainants apart from booking of the flats with accused company, had rendered certain services for which the complainants received commission in the past but some of the bills remained outstanding. He submits that the claims lodged with the IRP pertain to the said outstanding amount. He further submits that the accused company or the petitioner in his personal capacity has not returned any amount, whatsoever, to the complainants.

22. I have heard the learned senior counsel for the petitioner, as well as, the learned APP for the State assisted by the counsel for the complainants and have perused the record.

23. The gravamen of allegations against the present petitioner is that he being the CMD and promoter director of accused company, namely, M/s. Ultra Home Construction Pvt. Ltd. has accepted money from the complainant and her husband against booking of a flat. On the other hand, the case of the petitioner is that the complainants are not homebuyers but were investors in the accused company and the complainants had been receiving assured returns against their investment until 2016, but thereafter, it became financially non-viable for the accused company to honour its commitment of assured return.

24. At this stage, though no finding on the respective stands of the parties could be given, but at the same time, this Court cannot be oblivious of the fact that offence invoked against the petitioner is under Section 420 IPC for which maximum punishment, if found guilty, is imprisonment for a term which may extend to seven years. However, the petitioner is in custody since 12.11.2020 and the nominal roll dated 28.07.2023 shows that the petitioner has spent 2 years and 7 days in custody, which means as on date, the petitioner has spent more than 2 years and 5 months in custody.

25. It is also not in dispute that though the charge-sheet in the present case was filed on 23.12.2020, but till date the charges have not been framed by the Trial Court, which means the conclusion of trial is nowhere in sight. Therefore, the petitioner cannot be kept in custody for indefinite period to await the outcome of trial.

26. It is to be borne in mind that at the pre-conviction stage, there is a presumption of innocence. The purpose of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Detention is not supposed to be punitive or preventive.

27. The stand taken by the petitioner that the amount of the complainant has been returned remains disputed and unverified but it is also trite that a bail application cannot be equated with a civil suit for recovery. Reference in this regard may be had to the decision of the Supreme Court in ***Bimla Tiwari v. State of Bihar***[1],the relevant extract reads thus:

> *"9. **We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own**.*

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[1]2023 SCC OnLine 51

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*10. **We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail**. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and **the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations**. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; **conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment**."*

(Emphasis supplied)

28. At this juncture, it is also apposite to refer to the following observations of the Hon'ble Supreme Court made in *Sanjay Chandra v. CBI, (2012) 1 SCC 40:*

*"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. **The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship**. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of*

any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. ***Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson****.*

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. ***The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required****.*

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46. ***We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI****."*

(Emphasis supplied)

29. In *Satender Kumar Antil v. State of Maharashtra, (2022) 10 SCC 51*, the Supreme Court in the context of economic offences, deprecated the approach of deciding bail applications, strictly contrary to legal principles. The Supreme Court also emphasized the role of criminal courts as guardian angels of liberty:

> *"93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense.* ***Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice****.*
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> *94.* ***Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."***
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> *(Emphasis supplied)*

30. Further, it is a matter of record that the investigation is now complete and the charge-sheet stands filed. The present case is otherwise based on documents and all incriminating documents have already been recovered by the investigating agency and made part of the charge-sheet. Evidently, the custody of the petitioner is no longer required.

31. It is also not the case of the prosecution in the status report that the petitioner has violated the terms of the interim bail which was granted to him on medical/humanitarian grounds and thus the petitioner cannot be deemed to be a flight risk at this stage.

32. It is not the case of the prosecution in the status report that the petitioner may influence the material witnesses in the event he is enlarged on bail. Nonetheless, this aspect otherwise can be taken care of by imposing appropriate conditions.

33. Considering the above-discussed circumstances, keeping in perspective the long incarceration of the petitioner and the law laid by the Hon'ble Supreme Court, I am of the view that the petitioner is entitled to grant of bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/Jail Superintendent, further subject to the following conditions:

a. Petitioner/applicant shall surrender his Passport, if any, before the Trial Court at the time of furnishing bail bond/surety bond.

b. Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.

c. Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.

d. Petitioner/applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case so as to dissuade them from disclosing such facts to the Court or to any other authority.

34. It is made clear that the observations made hereinabove are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

35. The petition stands disposed of.

36. Order *dasti* under the signatures of the Court Master.

37. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JANUARY 03, 2024
N.S. ASWAL