2024:DHC:357

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.01.2024

\+ **BAIL APPLN. 2385/2023**

NEETU SINGH ..... Applicant

versus

STATE NCT OF DELHI & ANR. ..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Jaspreet Singh Rai, Ms. Sukhdeep Kaur Rai, Mr. Ravi Kumar, Mr. Linoy Varghese, Mr. Ankur Singh & Mr. Shwetabh Kumar, Advocates

For the Respondent : Mr. Yudhvir Singh Chauhan, APP for the State with Insp. Yad Ram Yadav, PS EOW.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('**Cr.P.C**') for grant of Regular bail in FIR No. 54/2016, dated 05.05.2016, under Sections 406/420/120B/174A of the Indian Penal Code, 1860 ('**IPC**'), registered at Police Station Economic Offences Wing, Delhi.

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2. The FIR No. 54/2016 was registered at the behest of a joint complaint of ten complainants, Ms. Nidhi Singh and others, alleging that M/s Value Infracon India Private Limited (hereafter '**Company**') had assured the complainants of providing flats in the Meadows Project but on the contrary defrauded the complainants by selling the already allotted flats to different buyers, multiple times. It was also alleged that the company had siphoned approximately ₹10 crores, with regard to the booking of thirty-one flats received from the complainants, to the accounts of its sister concerns.

3. It is alleged that the company, through its Managing Director, Mr. Pramod Kumar Singh, who is the husband of the applicant, and other Directors, launched a housing project namely "Meadows Vistas" situated at Village Morta, Raj Nagar Extension, Ghaziabad. It was assured by the company that the project shall be completed within a period of three years from the date of booking and that the flats were free from all kinds of encumbrances and the title was clear.

4. It is alleged that the Directors, Mr. Pramod Kumar Singh and the applicant, through their representatives, Mr. Ashish Verma, and Mr. Vipin Saroha, approached the potential investors to buy the flats in the said project. Believing the assurances, many investors, including the complainants, booked the flats in the said project vide tripartite agreements executed amongst the complainants, the company and the concerned banks, which extended the loans to the said purchasers.

5. It is alleged that the company made arrangements with the bank officials and sanctioned and disbursed the loans on the already allotted

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flat / units which were sold twice or thrice to different buyers. The complainant, Ms. Nidhi Singh, was shocked to know that the two flats No. A-126 and D-094, allotted to her, were further sold by the company to its sister concern, M/s Niparth Enterprises and Mrs. Vinita Kesarwani, respectively.

6. A total of twenty complaints were received at Economic Offences Wing, against the company, and the present FIR No. 54/2016, dated 05.05.2016, was registered under Sections 406/420/120B/174A of the IPC at Economic Offences Wing, Delhi. All the Directors, including the applicant, were made co-accused in the FIR.

7. The applicant was the director of the company from 30.09.2013 to 21.08.2014 and is also mentioned in the FIR as an accused. The applicant holds 11% of equity in M/s Niparth Enterprises.

8. It is alleged that the applicant and her husband did not join the investigation and were summoned multiple times. On 30.10.2018, the applicant and her husband were declared as proclaimed offenders by the learned CMM, Patiala House Courts, Delhi. Thereafter, on 07.12.2020, the applicant was arrested from her rental premise in C-701, Manish Nagar, 4 Bungalows, Andheri West, Mumbai and is in judicial custody since then.

9. The learned counsel for the applicant submitted that the applicant is a housewife, and mother of two children. She has been in judicial custody for more than 30 months. The applicant is the wife of the main accused, Mr. Pramod Kumar Singh, who deserted the applicant. He states that the two children of the applicant are living with their

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grandmother at the moment and are facing grave hardship because of limited resources, as all the accounts of the applicant are attached.

10. He submitted that the FIR was filed against the company and the applicant was named in the FIR only for the reason that she was the director of the company. She had no role in running the business of the company. She was merely a sleeping Director. He further submitted that the applicant visited the office premises only during some festivals, and never attended any meetings or performed any tasks for the company, and made no representation to any person for purchasing or investing in the "Meadows Vista" Project.

11. He submitted that the applicant and her husband were declared as proclaimed offenders on 30.10.2018. The applicant was never given notice to participate in investigation, the process under Section 82 Code of Criminal Procedure, 1973, was executed at her erstwhile residence in Ghaziabad, which she had already vacated in the year 2015. The said property was seized and auctioned by the bank and the applicant, therefore, was never aware of the issuance of process against her.

12. He further submitted that no allegations have been levelled against the applicant in respect to siphoning of the funds and that she never received any money for the alleged transactions in her personal account.

13. He also submitted that two of the co-accused in the present case, namely Praveen Kumar Singh and Ashish Verma, who were also the Directors of the company, have already been released on bail by the learned Trial Court, and the role attributed to the applicant is not graver

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than the role of two other co-accused persons. He also submitted that all the FIRs registered against the applicant pertains to the same housing project and cannot be a ground to dismiss the present bail application.

14. He submitted that the applicant is the sole caretaker of her aged parents, and also has two children, one of whom is a minor. The applicant is suffering from glaucoma for past 18 months and is aged about 50 years, and is also facing other health issues. He lastly submitted that the applicant has cooperated with the investigation, and her pre-trial incarceration is not necessary as the investigation is now complete and the charge sheet has already been filed.

15. The Learned Additional Public Prosecutor (**APP**) opposed the grant of bail on the ground that the applicant did not cooperate in the investigation and she has not disclosed the present whereabouts of her husband Pramod Kumar Singh. He pointed out that the applicant and her husband were declared as proclaimed offenders, because of their non-appearance in the investigation proceedings. The Learned APP further submitted that the applicant is reported to be involved in 16 other FIRs of similar nature and due to her past conduct and previous antecedents, her chances of fleeing the court proceedings are very high.

16. The Learned APP submitted that the FIR was registered on a joint complaint of 10 complainants, who had invested in the "Meadows Vistas" project. The amount involved in regard to the booking of 31 flats in the project is approximately ₹10 crores, and money trail is under investigation.

17. The learned APP further submitted that the applicant is one of the

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Directors of the said company and also a shareholder of the M/s Niparth Enterprises Private Limited, a company to which the money of the investors was siphoned. The applicant was involved in routing money from one company to another as she was the authorised signatory of the bank account of M/s Niparth Enterprises Private Limited.

Analysis

18. The dispute relates to a Housing Project developed by the company in which the applicant is stated to be a Director for a brief period of time between 30.09.2013 to 21.08.2014. Multiple FIRs are stated to have been registered in relation to the same Housing Project.

19. It is not disputed by the Prosecution that around 400 flats have already been allotted to various investors and the present FIR was lodged on a complaint given by ten complainants alleging that the flats were not allotted to them despite the payment of consideration. It is also an admitted case of the Prosecution that the accounts of the company as well as the applicant have been attached.

20. It is the case of the applicant, and not denied, that the applicant on her own came back to India, on 09.07.2016, clearly showing that there were no intentions to flee.

21. The objection raised by the State that this Court by order dated 20.05.2022 had already dismissed the bail application filed by the applicant and there is no change in circumstance meriting consideration of the present application is unmerited.

22. It is not denied that the charges are yet to be framed and therefore

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there is no likelihood of trial concluding in near future. The applicant after the dismissal of her bail application on 20.05.22 has further spent 19 months in judicial custody without the trial proceeding any further. The Hon'ble Supreme Court by its order dated 29.08.2022, while dismissing the SLP against the order dated 20.05.2022 had specifically granted liberty to the applicant to file fresh bail application. All this while the conduct of the applicant in jail is also not alleged to be unsatisfactory.

23. Even though the applicant is also accused in a number of other FIRs, it is apparent that the same have been registered by home buyers only and the applicant is either on bail or in judicial custody in respect to those FIRs.

24. It is also not alleged that any amount of money has gone into the personal account of the applicant. In any case, all the accounts are stated to have been attached by the Prosecution.

25. Even though, the applicant is stated to be one of the Directors in the accused companies, there is no specific allegation at this stage that she was responsible for the financial matters or in the administration of the companies.

26. In ***Ashok Sikka v. State (2008)*****: 147 DLT 552**, this Court held that it is not sufficient to attract a criminal liability on persons merely for the reason that they were Directors in the company in the absence of any precise roll being assigned to them.

27. It is a settled principle of law that bail is the rule and jail is an exception. The right to speedy trial and justice has been recognised as a

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Fundamental Right by the Hon'ble Supreme Court. In ***Sanjay Chandra v. CBI*: 2012 1 SCC page 40**, it was held as under:

> *"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 is 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.*
> *22. From the earliest times, it was appreciated that 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 this country, 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.*

28. The applicant in the present case is in incarceration since 07.12.2020.

29. The chargesheet in the present case has already been filed and no investigation in relation to the applicant is pending. Nothing has been placed on record to show that the applicant had been confronted or interrogated in any manner by the State while she was in custody, and that her further custodial interrogation is required.

30. The present case is based on documentary evidence which is already in possession of the Prosecution, which led to filing of the

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chargesheet.

31. The learned counsel for the applicant has contended that, even if, the allegations are taken at the highest, no offence under Sections 406/420 IPC is made out. This Court, however, at this stage, does not consider it apposite to adjudicate in that regard.

32. The applicant being a woman is undeniably entitled to special consideration while dealing with the question of bail as enshrined in provisions of Section 437(1) of Cr.P.C. She is also a mother of two children, who are staying with their grandmother at the moment, which is not denied.

33. The incarceration of the applicant cannot be demanded for the reason that the accused Pramod Kumar Singh, who happens to be applicant's husband, is absconding.

34. In view of the above, I find no cogent reason for keeping the applicant in further incarceration.

35. Without commenting further on the merits of the case, the applicant is directed to be released on bail in FIR No. 54/2016 on furnishing a bail bond in the sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court / Duty Metropolitan Magistrate on the following conditions:

a. She shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
b. She shall under no circumstance leave the country without the permission of the Trial Court;

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c. She shall appear before the learned Trial Court as and when directed;

d. She shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times;

36. 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.

37. The applicant would be at liberty to pursue her rights and remedies in the proceedings with respect to the other FIRs which have been or which may be registered against her, and in that event, nothing contained in this judgment shall amount to an expression of opinion on the merits of such proceedings.

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

AMIT MAHAJAN, J

JANUARY 18, 2024
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