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

Judgment delivered on: 21.10.2024

\+ **BAIL APPLN. 2837/2023 & CRL.M.A. 18992/2024**

NITYA SHARMA .....Applicant

versus

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

Advocates who appeared in this case:

For the Applicant	:	Mr. Birendra Kumar Pandey, Mr. U.M. Tripathi, Mr. Tarun Solanki & Mr. Piyush Pathak, Advocates.
For the Respondent	:	Ms. Rupali Bandhopadhya, ASC-CRL for the State with Mr. Abhijeet Kumar, Advocate. Inspector Laxman Kumar (EOW, New Delhi). Mr. Anupam Gupta and Mr. Parth Semwal, Advocates for Complainant (Through V.C.). Mr. Vineet Dhanda, CGSC (For Official Liquidator) & Mr. Ashish Kumar, SDM, Rajouri Garden (For Official Liquidator). Mr. Sunil Kumar & Mr. Bhavishay Dudeja/Victims-in-Person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application was filed under Section 439 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking regular bail in FIR No. 104/2020 dated 21.02.2020, registered at Police Station Paschim Vihar East, for the offence under Section 420 of the Indian Penal Code, 1860 ('**IPC**'). Chargesheet has been filed against the applicant for the offences under Sections 420/406/409/120B of the IPC.

2. The FIR was registered on a complaint made by the complainant, namely, Mr. P K Gautam. It is alleged that the complainant and his wife had booked a 3-bedroom flat in the Skylark Multistate Co-operative Group Housing Society Ltd. (hereafter '**the Society**'), affiliated with Ministry of Agriculture & Farmer Welfare, New Delhi. It is alleged that the complainant and his wife had paid a total sum of Rs. 8,11,000/- to the co-accused Ashok (father of the applicant), who was the Chief Executive of the Society, to meet the provisional land cost as the flats were to be constructed in P-2, Zone Narela, New Delhi. It is alleged that receipts were issued by the Society against the aforesaid payments as well. It is alleged that the complainant's wife had tendered her resignation from the Society, however, despite multiple requests, the amount was not returned. It is further alleged that the co-accused Ashok issued a cheque in the name of the complainant's wife, which was also dishonoured on account of insufficient funds.

3. During the course of investigation, around 75 more complaints were received against the accused persons and it was alleged that the accused persons, including the applicant, had induced the victims to join as member of the Society.

4. The applicant was arrested in the present FIR on 21.12.2021.

5. It is the case of the prosecution that the co-accused Ashok along with the applicant duped and cheated more than 600 members of the Society and issued only post-dated cheques to 5 or 6 members which got dishonoured on account of lack of funds. It is alleged that the accused persons induced the buyers to form the Society in the year 2008. It is alleged that the accused persons misrepresented to the victims that the project was under the land pooling policy of the DDA and managed to usurp their money to the tune of ₹19 crores for the purpose of purchasing the land. It is alleged that the accused persons were illegally taking money from the buyers since the year 2008 itself, even though the DDA policy came in the year 2013. It is further alleged that the accused persons withdrew and siphoned off approximately ₹9 crores for their own benefit.

6. During the investigation, it was found that ₹6.34 crores were withdrawn in cash from bank. The same was shown under the head of land and site development. However, no land was purchased and there was no justification for the cash withdrawal. It was also found that around ₹9 crores were withdrawn from the bank account of the Society without any justification.

7. The learned Trial Court denied bail to the applicant *vide* order dated 20.04.2023.

8. The learned counsel for the applicant submitted that the applicant has clean antecedents and he has been falsely implicated in the present case. He submits that there is no *prima facie* case against the applicant.

9. He further submitted that the applicant was never entrusted with any property of the Society in any capacity. He submitted that the Society was registered under the Multi-State Cooperative Societies Act, 2002 where every member is a stake holder (owner), and it is not a builder driven project. He submitted that the appropriate course of action of the investors would have been to approach the official liquidator as the Society is undergoing liquidation.

10. He submitted that there is no specific allegation against the applicant and the co-accused Ashok has already been granted bail by this Court by order dated 22.07.2024, passed in BAIL APPLN. 2073/2024.

11. He submitted that prior to the arrest, the Society from the year 2017 to December 2021 had taken a loan to refund the amount paid by the members who had withdrawn their membership from the Society which shows that the accused persons had no intention to cheat anyone. He submitted that co-accused Ashok had already paid most of the invested amount to the investors.

12. He submitted that the applicant had also made efforts to collect the money and settle the dispute when he had been

granted interim bail by enquiring into the liquidation activities post the appointment of the liquidator on 09.02.2021.

13. He submitted that the applicant has been in incarceration since 21.12.2021 and he has been suffering on account of delay in trial as even the charges have not been framed yet in the present case. He submitted that the trial will likely take long to conclude and the applicant cannot be made to suffer in incarceration indefinitely.

14. *Per contra*, the learned Additional Public Prosecutor for the State and the learned counsel for the complainants vehemently opposed the grant of any relief to the applicant. They submitted that the present case involved multiple victims who have been cheated by the accused persons.

15. They submitted that specific allegations have been levelled against the applicant. The accused persons illegally collected money from the victims and misrepresented that the project was approved under the land pooling policies of DDA.

16. They submitted that 20 acre land was to be purchased, however, only 2 acre land was placed before DDA in the year 2019, while 7 acres were in dispute and subject to litigation with sellers. They submitted that huge amount was withdrawn and no possession was given to the victims.

17. They further submitted that it is expected that other victims will also come forth in the future.

18. It is relevant to note the factors which are to be taken into consideration while deciding a bail application. The Hon'ble Supreme Court in the case of ***Ram Govind Upadhyay v.***

***Sudarshan Singh And Others* : (2002) 3 SCC 598**, has enunciated the following guiding principles for granting bail:

> *"3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*
> *4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:*
> *(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
> *(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
> *(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
> *(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

19. Chargesheet has been filed and it is alleged that more than 600 people have been cheated in the same manner. It is submitted

that 75 complainants have approached the Police out of the 600 members.

20. It is not in doubt that economic offences are a class apart. The Hon'ble Apex Court in the case of ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation* : (2013) 7 SCC 439** had observed that a different approach has to be adopted while tackling economic offences. The relevant portion of the judgment is reproduced hereunder:

> "***34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.***
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> (emphasis supplied)

21. Further, the Hon'ble Apex Court in the case of ***State of Gujarat v. Mohanlal Jitamalji Porwal* : (1987) 2 SCC 364** observed as under:

> ***"5. ….****The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest……."*

22. The present case involves an economic offence where it is alleged that the applicant and his father conspired to cheat a

substantial number of victims. It is alleged that the accused persons had started taking money from the buyers since the year 2008 itself, when the accused persons had induced the buyers to form the Society. It is alleged that around ₹19 crores were deposited by the flat buyers.

23. The applicant is chargesheeted for offence under Section 409 of the IPC which provides maximum punishment of imprisonment for life. Considering the number of victims who are alleged to have been cheated, the offence alleged is grave in nature.

24. It is the contention of the applicant that around 400 members have settled. The chart was handed over claiming that 250 members have taken their share money and surrendered their membership and another 155 members have settled. It is contended on behalf of the applicant that lot of money from the account of society was spent on repayment to the members.

25. Even as per the case of the prosecution, certain parcels of land were, in fact, purchased in the name of the society which are stated, at this stage, to be in possession of the Official Liquidator. It is also contended on behalf of the applicant that the value of the land, at the moment, would be sufficient to satisfy the claim of all the complainants. Thus, the allegations and the defence is a subject matter of trial.

26. The delay in trial and long period of incarceration is also a factor to be kept in mind at the time of deciding the question of grant or refusal of bail. It is relevant to note that the applicant has been in custody since 21.12.2021 and even after more than two

and a half years, the charges are yet to be framed in the present case. It is stated that the prosecution has cited more than 100 witnesses and the trial is unlikely to conclude in the near future.

27. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb*** **: AIR 2021 SC 712**, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

28. While it cannot be denied that the offence alleged against the applicant is serious in nature, the Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*** **: Crl.A.2787/2024** had reiterated that bail cannot be withheld as a punishment and observed as under:

> *"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*
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> *20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."*

29. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

30. It is also relevant to note that the applicant had been granted interim bail by this Court by order dated 03.05.2024 as he had shown his inclination to settle the matter. Even though the applicant was directed to surrender as he had failed to make any worthy efforts, however, the property documents in relation to property being A-4/276, Paschim Vihar, New Delhi-110063 owned by the mother of the applicant have been deposited with the Registrar General of this Court. The applicant had also surrendered on time.

31. Insofar as any apprehension in relation to the applicant misappropriating the property of the Society is concerned, the statement of Mr. Ashok Kumar, SO to DM(W) was also recorded on 18.07.2024 where he had stated that appropriate action would be taken under the Multi-State Cooperative-Societies Act, 2002 for identifying and taking the possession of the property of the society for the purpose of liquidation. Thereafter, on 22.08.2024, the learned Central Government Standing Counsel had also apprised this Court that certain properties belonging to the Society had been attached and appropriate action would be taken for taking possession of the property of the Society for the purpose of liquidation.

32. The applicant is admittedly a resident of Delhi and he is unlikely to abscond. Even otherwise, appropriate conditions can be imposed to allay any apprehension of the applicant evading trial or intimidating the witnesses. The applicant also stated to have two minor children to be taken care of.

33. In such circumstances, after the chargesheet has already been filed and considerable period has been spent in custody, keeping the applicant in custody will not serve any purpose.

34. In view of the same, without commenting on the merits of the case, this Court is of the opinion that the applicant ought to be enlarged on bail. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The property documents deposited with the Registrar General of this Court shall remain deposited during the pendency of the trial. The applicant shall not alienate or create any encumbrance in relation to the property without the permission of the learned Trial Court;
b. The applicant shall cooperate in any further investigation as and when directed by the concerned IO. The applicant shall also cooperate with the Official Liquidator in the liquidation process;
c. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

d. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

e. The applicant shall appear before the learned Trial Court as and when directed;

f. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

g. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

35. 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.

36. 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 also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

OCTOBER 21, 2024