IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 22nd July, 2024*

\+ **BAIL APPLN. 2073/2024**

ASHOK SHARMA .....Applicant

Versus

STATE OF NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Birendra Kumar Pandey, Mr. U.M. Tripathi, Mr. Piyush Pathak, Mr. Anand Shankar, Ms. Anisha Kaushik, Mr. Rajeev Kaushik, Mr. Himanshu Sharma & Mr. Aditya, Advocates.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State along with Mr. Vinay Kumar, Mr. Tushant, Mr. Rajiv Kumra, Dubey & Mr. Dipanshu Aggarwal, Advocates.
SI Arvind Kumar, Sec.-7/EOW.
Mr. Parth Semwal, Adv. for victim Sunil Kumar.
Victim S.C. Gupta.

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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 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 applicant did not return the said amount. It is further alleged that the applicant issued a cheque in the name of the complainant’s wife, which was also dishonoured on account of insufficient funds.

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

4. It is the case of the prosecution that the applicant along with his son (co-accused Nitya Sharma) 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 property. 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.

5. 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.

6. The learned Trial Court denied bail to the applicant *vide* order dated 04.06.2024.

7. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and that there is no *prima facie* case against the applicant.

8. 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.

9. He further submitted that the Society is undergoing liquidation and as per Clause 117(2) of the Multi-State Cooperative Societies Act, 2002, no suit/legal proceeding can be proceeded against the liquidator/society/any member thereof except by leave of Central Registrar and subject to such terms as may be imposed.

10. 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.

11. 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.

12. He submitted that the applicant has been made a scapegoat for the alleged acts of the Society. He submitted that the applicant is aged about 73 years and he has spent more than 29 months in custody. He submitted that the applicant's wife is suffering from multiple old age-ailments such as problems related to the heart, arthritis and diabetes.

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

14. He submitted that specific allegations have been levelled against the applicant. He submitted that the accused persons illegally

collected money from the victims and misrepresented that the project was approved under the land pooling policies of DDA.

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

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

17. I have heard the counsel for the parties and perused the record.

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

19. 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)

20. 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……."*

21. The present case involves an economic offence where it is alleged that the applicant and his son 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.

22. 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.

23. At the same time, the delay in trial and age of the accused is also a relevant factor which cannot be ignored. The applicant is now admittedly, a senior citizen aged 73 years.

24. It is relevant to note that CrPC provides for special consideration to be accorded to the factors of sickness and infirmity of the accused person while considering the question of grant of bail.

25. While “infirmity” has not been defined in the Code, the Oxford English Dictionary defines the same as not physically strong or healthy; weak or feeble, especially through old age. The Merriam Webster’s Dictionary also defines the same as of poor or deteriorated vitality, especially : feeble from age.

26. It is relevant to note that the applicant and his son have been in custody since 21.12.2021 and 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. A long period of incarceration is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

27. It is also stated that the applicant’s wife suffers from various serious ailments, including, arthritis, diabetes and heart issues.

28. In such circumstances, after the chargesheet has already been filed, keeping the applicant in custody in his old age will not serve any purpose.

29. 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.

30. 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 applicant shall cooperate in any further investigation as and when directed by the concerned IO;
b. 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;
c. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
d. The applicant shall appear before the learned Trial Court as and when directed;
e. 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;
f. 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.

31. 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.

32. 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.

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

AMIT MAHAJAN, J

JULY 22, 2024