2024:DHC:2644

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.04.2024

+ **BAIL APPLN. 3044/2022**

DINESH SHARMA ..... Applicant

versus

STATE NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Vishesh Wadhwa, Mr. Arjun Gupta and Ms. Swadha Gupta, Advs.

For the Respondent : Mr. Utkarsh, APP for the State with SI Rahul Kumar, PS EOW.
Mr. J. R. Mathur and Mr. Amit Kumar, Advs. for complainant.
Ms. Jyoti Verma and Mr. Radhe Sham Rohilla, Advs.

CORAM:
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking grant of regular bail in FIR No. 152/2018 dated 24.07.2018 under Sections 406/409/420/120B of the Indian Penal Code, 1860 ('**IPC**') registered at Police Station Economic Offences Wing.

2. Briefly stated, the facts relevant for the adjudication of the present application are as follows:

2.1 The FIR was registered on the complaint made by Sh. RS Rohilla and 26 other complainants, who alleged that the applicant, who is the Director of M/s Asian Developers Private Limited (‘**the accused company**’), had induced the complainant to book a flat, which he knew all along was not available for sale to the public. The complainants alleged that the land (Plot No. GH-16, Sector-2, Phase-I, IMT Bawal, Distt. Rewari, Haryana) was allotted in the year 2006 to M/s Saera Auto Private Limited from Haryana State Industrial & Infrastructure Development Corporation (‘**HSIIDC**’) for construction of flats conditionally for their employees only.

2.2 As per the agreement dated 16.11.2012 between the accused company and M/s Saera Auto Private Limited, the accused company was to construct flats for M/s Saera Auto Private Limited. The accused company was not authorized/ entitled to sell or to make an agreement to sell of Inventory/Flat/shop of the project at Plot No. GH-16, Sector-2, Phase-I, IMT Bawal, Distt. Rewari, Haryana.

2.3 It is alleged that the applicant sold the flats to complainants despite a prior agreement dated 16.11.2012 with M/s Saera Auto Private Limited for the construction of a group housing complex, namely, “Bawal Residency”.

2.4 It is alleged that M/s Asian Developers Pvt. Ltd. had provided brochures, pamphlets, etc. with regards to the project “Bawal Residency” which allegedly contained false representations that the applicant had the prior approval for the said project from Corporation Bank and Allahabad Bank.

2.5 The complainant further alleged that subsequent to the execution of the Builder/Buyer agreement between M/s Asian Developers and the complainants, the applicant was required to complete the project and deliver the residential flat by 27.10.2015 however, no construction work had been done and the said project was abandoned by the applicant. This led to the registration of the present FIR against the applicant, Nitin Kumar and Deepak Kumar Gussain. The accused persons were directors in the accused company at the relevant time.

2.6 Consequently, the applicant was arrested on 20.03.2022.

2.7 The applicant had earlier preferred his first bail application before the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi after filing of the chargesheet, which was summarily dismissed *vide* order dated 12.07.2022.

3. The learned counsel for the applicant submitted that the chargesheet in the present has already been filed and the investigation *qua* the applicant has been concluded. He submitted that the charges are yet to be framed. Therefore, no useful purpose would be served by keeping the applicant in further incarceration as the trial is likely to take a long time.

4. He submitted that the amount deposited by the complainants was duly returned to them *vide* various settlement agreements dated 30.05.2022 and 27.05.2022.

5. He submitted that the applicant has already shown his *bona fide* by settling the complaints in the present matter and further, without prejudice, the applicant upon his release, is further willing to settle the claims against him.

6. He submitted that the entire evidence in the present matter is documentary in nature, and the seizure has already taken place. Therefore, the apprehension of the applicant tampering with any evidence is unlikely.

7. He further submitted that the applicant has already been enlarged on bail by order dated 06.12.2023 passed by the High Court of Punjab and Haryana in CRM-M-46000-2023 (O&M), arising out of FIR No. 1185/2019.

8. He submitted that multiple FIRs are being registered against the applicant and the applicant is made an accused in as many as seven cases, which are tabulated as under:

S. No.	FIR No.	Police Station
1.	180/2018	EOW, New Delhi
2.	53/2018	Kasola, Rewari, Haryana
3.	1184/2019	Gurgaon, Sadar
4.	1185/2019	Gurgaon, Sadar
5.	1186/2019	Gurgaon, Sadar
6.	07/2019	Kasola, Rewari, Haryana
7.	156/2020	Parliament Street, New Delhi

9. He submitted that the applicant cannot be prosecuted in multiple cases for the same offence being alleged.

10. Lastly, the learned counsel for the applicant submitted that the applicant has deep roots in the society and there is no likelihood of him fleeing from the administration of justice.

11. *Per contra,* the learned Additional Public Prosecutor (**APP**) for the State assisted by the learned counsel for the complainant vehemently opposed the grant of the bail to the applicant and submitted that the allegations against the applicant are serious in nature and he is the perpetrator of the alleged offence. He submitted that the applicant is accused of cheating several other persons by adopting the same *modus operandi* in respect of which different FIRs have been registered against the applicant.

12. The learned APP submitted that there are a total of forty-eight victims /complainants in the present case out of which twenty-five complainants have stated that the matter has been settled with the accused persons and they have received their principal amount. Eleven complainants had expressed that they had settled their matter in respect of cash amount paid to the accused persons but their bank loan amounts were still pending. Further, two complainants did not join the investigation despite notices issued to them and the investigation with respect to ten complainants is still pending.

13. He submitted that the plot bearing No. GH-16, Sector-2, IMT Bawal District, Rewari, Haryana, where the alleged project 'Bawal Residency' of the accused company was being carried out, was not allotted to it, but to M/s Saera Auto India Pvt. Ltd.

14. He submitted that even though from the inception only, the accused company had the knowledge with regard to the agreement dated 16.11.2012 with M/s Saera Auto India Pvt. Ltd., and that the accused company was not authorized/entitled to sell or to make an agreement to sell of inventory / flat / shop of the said project, however, it induced / lured the general public to invest / purchase the flats in the said project and later neither the payment was returned nor the flats were handed over to the complainants within the time as stipulated by the accused company as stipulated in Clause 7 of the above-mentioned agreement.

15. He submitted that the applicant was the director of the accused company during the period from 2012 to 2014 when the alleged offence was committed. He also signed an agreement to sell for the said project for which he and his company were not authorized / entitled. He deliberately evaded the investigation in the present case and was declared proclaimed offender *vide* order dated 07.09.2021 passed by the learned trial Court and the applicant was thereafter apprehended at IGI Airport and was subsequently arrested on 20.03.2022.

16. He further submitted that Clause 3 of the the alleged Memorandum of Understanding executed between M/s Saera Auto India Private Limited and the accused company is completely in contravention to the conditions prescribed by the HSIIDC while allotting the plot to M/s Saera Auto Pvt. Ltd. as the said land was allotted for construction of group housing for its employees only.

ANALYSIS

17. 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.*
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> ***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:*
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> *(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."

18. At the same time, 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. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time and is being delayed due to no fault of the applicant.

19. The gravamen of allegations against the applicant is that he was a director of the accused company and had induced / lured the general public to invest / purchase the flats and later neither the payment was returned nor the flats were handed over to the complainants within the time as stipulated by the accused company.

20. It is a specific case of the prosecution that the applicant was involved in the day-to-day affairs of the accused company and during the investigation, it transpired that neither the accused company had permission to sell nor to enter into an agreement to sell the inventory / flat / shop of the said project, however, it induced / lured the general

public to invest / purchase the flats in the said project and thus, allegedly duped the complainants of their hard-earned money.

21. From the very nature of the offence and the allegations made, the entire incriminating material seems to be documentary in nature and is already in the custody of the investigating agency. Even though it is alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail, the same is only a bald assertion. The same can be taken care of by putting appropriate conditions. As per the statutory provisions, the maximum sentence for the offences punishable under Sections 406/409/420/120B of the IPC is up to seven years.

22. It cannot be alleged that further incarceration of the applicant is required to carry out any further investigation and that the applicant will hamper the investigation in case he is released on bail. The charges are yet to be framed and the trial is unlikely to be completed anytime in the near future.

23. It is not disputed that the applicant has already been granted bail by order dated 06.12.2023 passed by the High Court of Punjab and Haryana in CRM-M-46000-2023 (O&M), arising out of FIR No. 1185/2019 which was registered at the instance of Allahabad Bank. It is also not disputed that the applicant has settled with most of the complainants in the present case *vide* various settlement agreements dated 30.05.2022 and 27.05.2022 to show his *bona fide*.

24. The Division Bench of this Court in ***State v. Khimji Bhai Jadeja*: 2019:DHC:3239-DB** in relation to the complaint being given by the multiple victims being cheated, had held that in case of inducement,

allurement, and cheating of large number of investors / depositors, each deposit by an investor constitutes a separate and individual transaction. It was held that all such transactions cannot be amalgamated and clubbed into a single FIR by showing one investor as a complainant and others as witnesses and it was imperative for the State to register a separate FIR if the complainant discloses a commission of the cognizable offence.

25. It is significant to note that the State had taken a stand that in case of multiple investors being cheated in relation to the same set of allegations, registering a single FIR would suffice. The State has challenged the judgment passed by the Division Bench in ***State v. Khimji Bhai Jadeja*** (*supra*) by filing a Special Leave to Appeal being Special Leave to Appeal (Crl.) No. 9198/2019 which is pending consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order dated 25.11.2019 has stayed the operation of the judgement passed by the Division Bench Court in ***State v. Khimji Bhai Jadeja*** (*supra*). It is, thus, the stand of the State that multiple FIRs ought not to be registered and only one FIR would suffice at the instance of an investor, and the rest of the investors ought to be made witnesses.

26. It is though true that the allegations in each complaint may at times require registration of separate FIRs considering the peculiar facts of each case. However, when the allegations are common as in the present case, that is, the developer has failed to deliver the possession of the flats after taking money from the home buyers, seeking bail in each FIR would become an onerous task and could at times become an

impossibility. The registration of multiple FIRs based on the same set of allegations would render the remedy of seeking bail illusionary.

27. It is contended by the learned counsel for the applicant that the agreement with M/s Saera Auto Private Limited proceeded that in case of non-payment, M/s Asian Developers was at liberty to sell the flats. In terms of Clause 3 of the Memorandum of Understanding dated 16.11.2012 "*the second party (Asian Developers) has a right to sell, allot the flats to the respective buyers on a terms & conditions as agreed between the second party and the allottee and the first party (M/s Saera Auto) has no role therein. And he is not been permitted to obstruct or object the second party to do the same*".

28. Whether the transactions were purely commercial or was there any element of cheating, would be tested at the time of trial and cannot be presumed at this stage.

29. The undertrial prisoners cannot be detained in custody for an indefinite period. It is a settled principle of law that bail is the rule and jail is an exception. The right to a speedy trial and justice has been recognized as a fundamental right by the Hon'ble Apex Court in the catena of judgments. In the case of ***Sanjay Chandra v. Central Bureau of Investigation*** **: (2012) 1 SCC 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."

30. The speedy trial in the present case does not seem 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 especially when the trial is likely to take considerable time.

31. Keeping in mind the facts and circumstances of the case, I am satisfied that the applicant has made out a case for grant of regular bail. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000 with two sureties of the like amount subject to the satisfaction of the learned Trial Court/ Duty/ Metropolitan Magistrate, on the following conditions:

a) The applicant shall deposit his passport with the learned Trial Court and not leave the country without the prior permission of the learned Trial Court;

b) The applicant shall appear before the learned Trial Court as and when directed;

c) The applicant shall join investigation as and when called by the Investigating Officer;

d) The applicant shall provide his mobile number to the concerned Investigation Officer, which shall be kept in working condition at all times and shall not switch it off or change the mobile number without prior intimation to the concerned Investigating Officer;

e) The applicant shall provide his permanent address to the concerned Investigating Officer and shall not change his address without intimating the concerned Investigating Officer;

f) The applicant shall not indulge in any criminal activity and shall not communicate or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.

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

33. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications 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.

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

AMIT MAHAJAN, J

APRIL 3, 2024
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