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

\+ BAIL APPLN. 2619/2024

RASHMI RATHI .....Petitioner

Through: Mr. Shri Singh, Mr. Rohan Wadhwa, Mr. Arun Kanwa, Mr. Yuvraj Bansal, Mr. Baibhav, Mr. Aakash, Advs.

versus

STATE OF N.C.T. OF DELHI .....Respondent

Through: Ms. Priyanka Dalal, APP for State and Insp. Mehrab Alam, PS Section-II/EOW.
Mr. Rahul Sharma, Mr. Kshitij Goel, Advs. for complainant.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **20.08.2024**

1. The present application has been filed under Section 439 Cr.P.C. for an on behalf of the applicant/accused namely Rashmi Rathi seeking regular bail in case FIR No. 132/2022 dated 07.09.2022 lodged at PS EOW under Sections 420/406/467/468/471/120B IPC.
2. The status report has been filed. Let it be brought on record.
3. Briefly stated the case of the prosecution is that the present case was registered on the statement of Smt. Neeti Behl w/o Sh. Achal Behl for offence punishable under Sections 420/406/467/468/471/120B IPC registered at PS EOW. The prosecution has alleged that this is a multi victim case in which there are around 55 victims. The complainant has alleged that on 01.01.2021 she has purchased a flat bearing No. B-201, MAX HEIGHTS DREAM HOMES, KUNDLI, SECTOR-61,

SONIPAT, HARYANA-131023 and made the payment through RTGS. The possession was duly delivered to her and the flat was registered n her name. The complainant wanted to buy another flat bearing No. B-201 in the same society for which the payment was made to the present petitioner on directions of Sh. Arun Rathi and Sh. Pratik Rathi who were the authorized representatives of the builder/developer. The complainant allegedly paid Rs. 12 Lakhs in cash and Rs. 5 Lakhs were transferred through RTGS. The complainant alleged that the keys of the flat was handed over to her but the receipt of payment had the documents regarding the ownership rights were not executed. The complainant alleged that the present petitioner has cheated and many other people with similar modus operandi.

4. Learned APP for the State has submitted that in fact the modus operandi of the present petitioner was that she while being employed with the builder/developer namely Maxheights Dream Homes and looking after day to day affairs of the company, sold the flats which have already been allotted to the original allottees. Ms. Rashmi Rathi used to receive the payment in cash and through RTGS from the innocent victims, but never delivered the ownership documents. Allegedly, Ms. Rashmi Rathi also returned the money to the complainant Sunil Kumar on being pressurized.

5. The sum and substance of the case of the prosecution is that petitioner who is authorized representative and who was looking after day to day affairs of the builder/developer of Maxheight Dream Homes allotted the flats to the victims and received payment from them, whereas such flats had already been allotted to the original allottees. Allegedly the

petitioner cheated a sum of around Rs. 5 crores which was transferred in her personal account or in the account of her husband Mr. Shailesh Rathi. Such ill gotten money was also allegedly transferred into the bank account of M/s Vaibahv Foods and M/s Manoj Enterprises of which the petitioner and her husband were the proprietors respectively.

6. Sh. Shri Singh, learned counsel for the petitioner submits that initially the FIR was lodged on behalf of the developer/builder in Sonipat, Haryana bearing FIR No. 29/2022 registered at PS Kundli, Haryana dated 17.01.2022 in which the petitioner was arrested on 18.01.2022. learned counsel for the petitioner further submits that in that FIR the builder/developer had alleged that the petitioner while working with them had reallotted the flats and received the money against the flats which were already allotted to the original allottees.

7. Sh. Shri Singh, learned counsel for the petitioner submits that the petitioner remained in custody in the case registered at PS Kundli, Haryana for around ten months and has now been being released on bail. Learned counsel submit that now the charge-sheet has been filed in that matter and the matter is pending consideration before the jurisdictional court.

8. Sh. Shri Singh, learned counsel for the petitioner further submits that while the petitioner was in custody in the PS Kundli case, the present FIR was lodged and the petitioner was formarly arrested in this case also. Learned counsel submits that the sum and substance of the present case also that the petitioner who was working with the building/developer received the money against the allotment of the flats which were initially allotted to the original allottees. Learned counsel

submits that in fact in both the FIR the matter to be investigated is identical in nature. Learned counsel submits that the petitioner is in custody for the last 7-8 months, out of which for one month she was granted interim bail. Learned counsel further submits that the charge-sheet qua the petitioner in the present FIR has also been filed and therefore the petitioner may be admitted to bail.

9. Learned APP for the State has vehemently opposed the bail application. Learned APP submits that it is a case of multi victims and the petitioner has cheated various innocent people and the money so cheated was found in the bank account of the petitioner and her husband's bank account. Learned APP submits that the role of the other alleged persons is also under investigation. It has been submitted that the role of company and its directors is also being verified and the remaining investigation is being conducted and if required supplementary charge-sheet shall be filed. Learned APP has also submitted that since the charge-sheet has also been filed under Section 409/467 IPC which entails life imprisonment and therefore the case is of serious in nature.

10. Learned APP has opposed the bail application on the ground that the petitioner is the kingpin/mastermind of the present case and by taking advantage of her position she has cheated various people and in that process also she has forged and fabricated the documents. Learned APP submits that if the petitioner is released on bail, she may not attend the trial.

11. Learned counsel for the complainant has also opposed the application for grant of bail on the ground that it is serious case where around 55 people have been cheated and if the petitioner is released on bail she

may not attend the trial. Learned counsel also submits that the petitioner was granted interim bail for the purpose of settlement with the victims. Learned counsel submits that in fact developers/builders were settling the matter on behalf of the petitioner.

12. The Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr***. JT 2004 (3) SC 442, *inter alia* held that granting bail requires the court to exercise discretion judiciously, not automatically. While a detailed examination of evidence isn't necessary, the court must provide reasons for granting bail, especially in serious offenses. The decision should consider the nature of the accusation, severity of potential punishment, and the strength of the evidence. Additionally, the court must assess the likelihood of witness tampering or threats to the complainant. The prima facie support for the charge should also be evaluated before granting bail.

13. Furthermore in ***Sanjay Chandra v. CBI*** (2012) 1 SCC 40 the Supreme Court *inter alia* held that bail is the rule and jail is the exception. The deprivation of liberty should be considered only when it is required in the interest of justice. The severity of the crime and the nature of the allegations must be weighed against the presumption of innocence.

14. It goes without saying that the facts are serious in nature. It is a case where around 55 people have allegedly been cheated. The role of the builder/developer is still under investigation. The court does not want to make any comment about the possible role of such people as it may prejudice the investigation. However, the detention during the period of investigation/trial is only for the purpose of securing the attendance of the accused person during the trial. It cannot be termed as punitive

detention. A person is considered to be innocent till he/she is proved guilty. The court at the stage of bail cannot go into the meticulous examination of the material on record. The accounts in which the alleged amount has gone has already been seized. The petitioner is in custody for the last 7-8 months. Charge-sheet has already been filed qua the present petitioner. The petitioner cannot be kept in custody for an indefinite period. The evidence is mostly documentary in nature. It is also pertinent to mention that petitioner is a woman.

15. Taking into account the facts and circumstances, the petitioner is admitted to regular bail on furnishing a personal bond of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of Ld. Trial Court subject to the following conditions:

    i. the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
    ii. the petitioner shall appear before IO every Friday at 04:00 P.M.
    iii. the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
    iv. the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
    v. the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
    vi. In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

16. In view of the above, the present application stands disposed of.

17. Copy of this order be sent to concerned Jail Superintendent.

DINESH KUMAR SHARMA, J

AUGUST 20, 2024/AR/NA..