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

% ***Date of decision:16th July, 2024***

\+ **BAIL APPLN. 4048/2023**

MUKESH KUMAR SINGH .....Petitioner

Through: Mr. Harshit Jain, Mr. Murari Tiwari, Mr. Shubham Singh, Mr. Deepak Kumar, Mr. Humant Uppal & Mr. Prawesh Sharma, Advocates.
Mr. Rakesh, brother of petitioner through VC.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Amit Ahlawat, APP for State.
Mr. Varun Singh, Mr. Akshay Dev, Mohd. Atif Ahmad, Advocates for complainant.
S.I. Nikhil Singh, PS EOW.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. The present Bail Application under Section 439 of the Code of Criminal Procedure (*hereinafter referred to as "Cr.PC, 1973")* has been filed on behalf of the petitioner for grant of Regular Bail in FIR No. 55/2020 under Sections 420/406/409/423/411/120-B of the Indian Penal Code *(hereinafter referred to as "IPC"),* registered at Police Station, Economic Offences Wing ('EOW').

2. Briefly stated, the "*Eminent Officers Welfare Society*" ('EOWS') was

registered in the year 2015 wherein 11 Government Employee became the members at the time of registration. Thereafter, other members were invited by organizing membership drives by claiming that the Society is managed by Group 'A' Officers of the Central Government that would offer affordable 2/3/4 BHK apartments in the name of DDA Land Pooling Policy in L-Zone of Delhi.

3. The Executive Members of the Society, namely, Mr. Vimal Kumar (Secretary) and Mr. Pardeep Kumar Thakur (Treasurer) contacted the petitioner, in the month of August, 2015 and they had 2-3 meetings in the month of August-September, 2015, whereby a Memorandum of Understanding (MOU) was signed between the two parties *herein* i.e. members of EOWs and *M/s Khushi Properties Developers Pvt. Ltd.* ('Khushi Properties') in the month of October, 2015. The applicant/petitioner is the Director of the Khushi Properties.

4. Pursuant to this MOU, Khushi Properties were given Rs.6.43 Crores approximately by EOWS till 06.05.2016, for the purchase of Land measuring 5 Acres in L-Zone of Delhi. Out of Rs.6.43 Crores, a sum of Rs.4.31 Crores has already been paid to the Land Owners for acquiring 1.91 Acres of Land, by Khushi Properties and the purchased land was registered in the name of EOW Society on 23.05.2016. Mutation of the said land has also been completed and an Iron Board installed depicting the name of the Society as the owner of the said land. The possession of the land has been handed over to Mr. Vimal Kumar and Mr. Pardeep Kumar Thakur, the office bearers of EOWS.

5. The petitioner has further claimed that in order to purchase the remaining 5 Acres of land, in terms of the MOU, he paid Rs.20,00,000/- to

the land owners namely Mr. Gajraj & others, through cheque/Bank Transfer as advance for acquiring additional 1.3 Acres of Land, which was to be registered in the name of the Society. Due to insufficiency of funds on the part of the EOWS, the land could not be registered in the name of the Society.

6. The petitioner has claimed that with consistent efforts made by him, the land was registered in the name of the complainant Society and an Indemnity Bond dated 21.12.2019, was given by the accused with the commitment of getting the balance land, registered in the name of the Society. The accused/petitioner on behalf of the Khushi Properties, gave three Cheques amounting to Rs.11.85 Crores and one Cheque of Rs.11.85 Crores as security, as per the Indemnity Bond. It is claimed that the Society, without prior intimation to the accused, presented the Cheques in the Bank for encashment, which got dishonoured for insufficient funds. Because of the dishonour of these cheques, a false Complaint was filed by the Society, demanding Rs.23.70 Crores, which was never paid to the accused. A Complaint case bearing No. 14379/2020, titled *'Eminent Officers Welfare Society vs. Vimal Kumar and Ors',* is pending before the learned MM (NI Act)-05, South-West District, Dwarka Courts, New Delhi wherein the present petitioner has been arraigned as an accused.

7. It is claimed by the petitioner that the Society has violated the terms and conditions mentioned in the Indemnity Bond dated 21.12.2019, by filing a false Complaint on 29.01.2020, before the Deputy Commissioner of Police, Economic Offences Wing, P.S. Mandir Marg, New Delhi. They have mentioned in the Complaint that about Rs.12 Crores (approximately) has been misappropriated by their own former Executive Members of the

Governing Body, in connivance with the petitioner.

8. On the Complaint before the EOW Cell, an FIR No. 55/2020 was registered under Sections 420/406/120B of the IPC at Police Station Economic Offences Wing (EOW) on 05.06.2020, against the accused and other members of the Governing Body of the Complainant Society, after a gap of more than four months.

9. The petitioner has submitted that he has been arrested after about two and a half months of Registration of the FIR, on 18.08.2020. The investigations have been completed and the Charge-Sheet has been submitted on 14.11.2020. A Supplementary Charge-Sheet has been filed on 03.03.2022 but till date, the Charges have not been framed.

10. It is submitted that the complainant has filed an Application for further investigations on 22.03.2022, which is pending decision because of which Charges have not been framed.

11. A Supplementary Charge-Sheet has been filed against Mr. Vimal Kumar, Mr. Pardeep Kumar Thakur, Mr. Ashok Kharya and Mr. Abhishek Sinha, under Sections 409/406/420/120B of IPC. Pertinently, the named accused had not been arrested and have been granted Regular Bail by the learned CMM, South-West District, Dwarka Court, New Delhi, *vide* Order dated 27.06.2023.

12. The petitioner's Regular Bail under Section 439 of CrPC, has been dismissed *vide* Order dated 10.11.2023.

13. The petitioner has thus, sought Regular Bail on the ground that the allegations of misappropriation of land are totally false, against the accused. He in fact, had bought the land and the same has been registered in the name of the Society. It is further submitted that the post-dated Cheques issued by

the Khushi Properties, got dishonoured only because of the Society not having sufficient funds to pay for the land.

14. The petitioner has further negotiated for purchase of 1.3 Acres of land for the Society and had also paid Rs.20,00,000/- in advance but the deal could not go through because of the shortage of the funds. The petitioner has further submitted that he had taken Home Loan for purchase of his house bearing No. Flat No. A-603, Ircon Apartment, Plot No. 14, Sector 18A, Dwarka, New Delhi-110078 where he has been residing with his wife and children. He was paying for the EMIs of the Home Loan through his sole proprietorship business in the name of M/s Hindustan Tea Company. However, because of the arrest of the accused, the petitioner's business got shut on 18.08.2020, making it impossible for him to pay the Home Loans. Because of non-payment, the Loan Account has been declared as an NPA vide Letter dated 17.05.2023 and the proceedings under Section 14 of the SARFAESI Act, have been commenced. It is claimed that there would be irreparable damage caused to the petitioner if he is evicted and his entire family is severely traumatised. The petitioner's family would be rendered homeless if this Application for Bail, is not allowed.

15. The petitioner has further submitted that he is not a flight risk; if he had to flee would have done so, before his arrest. The petitioner before his arrest, had joined the investigation, pursuant to the Notices served upon him. There were no allegations against the petitioner of either having tampered with the evidence or having threatened any witness between 05.06.2020 to 18.08.2020, when he was arrested.

16. The petitioner has claimed that the investigation is complete and the Charge-Sheet has been filed. However, there is an inordinate delay in

commencement of the trial, which is not attributable to the applicant. His conduct during incarceration has been satisfactory. Hence, he has sought Regular Bail.

17. The petitioner in support of his case, has relied on *'Ashok Sagar vs. State'*, 2018 SCC OnLine Delhi 9548; *'Sanjay Chandra vs. CBI'*, (2012) 1 SCC 40; *'Union of India vs. K.A. Najeeb'*, (2021) 3 SCC 713; '*Malvinder Mohan Singh vs. State'*, Bail Application No. 2810/2021, decided on 02.06.2023; *'Amit Goel vs. State'*, Bail Appl. No. 1176/2021, decided on 05.10.2021, *'Prabhakar Tewari vs. State of U.P. & Anr.'*, Criminal Appeal Nos. 152/2020, *Malvinder Mohan Singh v. State of NCT of Delhi* 2023:DHC:4007, *Anand Swaroop Arora v. State* 2016 (1) JCC 468, *Navendu Babbar v. State of NCT of Delhi* 2020 SCC OnLine Del 2345, *Amarjeet Sharma v. SFIO* SLP (CRL.) 3140/2023 and *Ramesh Kumar v. State of NCT of Delhi* (2023) 7 SCC 461.

18. The Bail is opposed on behalf of the State on the grounds that innocent persons who had invested their hard earned money in the hope of getting a house, have been cheated and huge accounts have been siphoned off by the petitioner. It is argued that this is not a fit case for grant of bail.

19. **Submissions heard.**

20. Essentially, the complainant Society entered into an MOU with Khushi Properties of which the petitioner is a Director, for purchasing 05 Acres of land, to enable the Society to build houses for its members. Pursuant to this Memorandum of Understanding, Rs. 6.43 Crores were handed over to the petitioner. He purchased 1.91 Acres of land, which got registered in the name of the Society on 23.05.2016. However, though the petitioner did enter into the deals for further acquisition of land but for

varied reasons, the transaction could not go through.

21. The allegations against the petitioner, are that despite having been given 6.43 Crores, he has failed to discharge his obligations for purchasing the total land, which he had agreed to purchase for the Society. There are also allegations that the petitioner had conspired with some of the Executive Members of the Society and together they have failed to discharge the obligations under MOU.

22. It is essentially a case, where the money has been taken by the petitioner, on the pretext of acquiring land for the Society but he has subsequently failed to discharge his obligations and has taken away the money. The accused is in judicial custody since 18.08.2020. The Charge Sheet and a Supplementary Charge-Sheet have been filed. Further investigations are still in progress. The Charges are yet to be framed. No fruitful purpose would be served by keeping the petitioner in jail; rather it is only if he comes out that he may be able to generate money or be able to return the money or purchase the land, in terms of MOU. The Co-ordinate Bench in the Case of '*Jatin Gulrajani vs. State*', Bail Appln. No. 206/2024, decided on 04.04.2024 has granted the bail, in similar factual situation.

23. In the light of the above discussion, the petitioner is admitted to Regular Bail, on the following terms and conditions:-

a) The petitioner/accused shall furnish a personal bond of Rs.1,00,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.

b) The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.

c) The petitioner/accused shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.

d) The petitioner/accused shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

e) The petitioner/accused shall not leave the country, without permission of this Court.

f) The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.

24. The Petition is disposed of accordingly.

25. A copy of this Order be sent to the Jail Superintendent for information and necessary compliance.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 16, 2024/RS