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

Date of decision: 6th FEBRUARY, 2025

IN THE MATTER OF:

+ **BAIL APPLN. 776/2024**

MAJ. (RETD.) SURENDRA KUMAR HOODAPetitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Akshat Gupta, Ms. Sakshi Tikmany, Mr. Aarush Bhatia, Mr. Subhankar Sen Gupta, Advocates.

versus

STATE

.....Respondent

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advocates.
Mr. Tanvir Ahmed Mir and Ms. Smriti Maheshwari, Advocates for the Complainant.
Ms. Simran Gill, Advocate for the Complainant.
Mr. Manu Prabhakar, Advocate for Complainant (Spire Woods Resident Association).
Insp. Kamal Kishor, PS EOW

+ **BAIL APPLN. 777/2024**

MAJ. (RETD.) SURENDRA KUMAR HOODAPetitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Akshat Gupta, Ms. Sakshi Tikmany, Mr. Aarush Bhatia, Mr. Subhankar Sen Gupta, Advocates.

versus



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Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advocates.

Mr. Tanvir Ahmed Mir and Ms. Smriti Maheshwari, Advocates for the Complainant.

Mr. Manu Prabhakar, Advocate for Complainant (Spirewoods Resident Association).

Insp. Kamal Kishor, PS EOW

+ **BAIL APPLN. 778/2024**

MAJ. (RETD.) SURENDRA KUMAR HOODA

.....Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Akshat Gupta, Ms. Sakshi Tikmany, Mr. Aarush Bhatia, Mr. Subhankar Sen Gupta, Advocates.

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CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT**



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1. BAIL APPLN.776/2024 has been filed by the Petitioner seeking bail in FIR No.64/2016, dated 23.05.2016, registered at Police Station Economic Offences Wing for offences under Sections 406/409/420/120B IPC.
2. BAIL APPLN.778/2024 has been filed by the Petitioner seeking bail in FIR No.116/2016, dated 05.03.2016, registered at Police Station Sarita Vihar for offences under Sections 406/420/34 IPC.
3. BAIL APPLN.777/2024 has been filed by the Petitioner seeking bail in FIR No.114/2016, dated 04.03.2016, registered at Police Station Sarita Vihar for offences under Sections 420/34 IPC.
4. Since all the three bail applications arises from a common set of facts, with the consent of the parties, all the three bail applications are being decided by this common order.
5. The facts, in brief, leading to the present Bail Applications are as under:
 - a) On 16.12.2005 a company called - A.N. Buildwell (*hereinafter referred to as "ANB"*) was incorporated with three shareholders, namely, Schleicher Intec Pvt. Ltd., having 40% shareholding; M/s B.S. Buildwell Pvt. Ltd., having 40% shareholding and Sunil Gandhi, having 20% shareholding.
 - b) Material on record indicates that ANB purchased a Plot measuring about 10 Acres in Sector 8, Manesar. It is stated that since ANB did not have enough experience in construction, it entered into a Joint Venture with M/s Millennium Spire Ltd. Singapore (*hereinafter referred to as "the MSL"*) which is a Singapore based Company. It is pertinent to mention that 50% of the shares of MSL was with Millennium (which is growth fund in the UK) and 45%



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shares were owned by Ashish Bhalla and his brother and the rest 5% shares were owned by others. Ashish Bhalla was the Managing Director of MSL.

c) Material on record further indicates that a Term Sheet dated 16.08.2007 was entered into between ANB and MSL and the Term Sheet was signed by the Sunil Gandhi and Ashish Bhalla. In the Term Sheet it was stated that MSL will infuse Rs. 76.53 Crores against 50% shares and 43% voting rights in ANB. It is stated that the investment of Rs. 76.53 crores which was to be made by MSL had to be infused in two tranches of approximately Rs. 38 crores each. It is stated that the share capital of ANB was increased to accommodate the extra amount of money which was to be infused by the MSL for which a Share Subscription cum Shareholders Agreement dated 13.12.2007 was entered into between MSL, ANB and other shareholders. It is stated that out of Rs.38 crores of the first tranche only Rs.28 crores were infused by the MSL. It is stated that the shares and voting rights of ANB were transferred to the MSL on assurance from MSL that the remaining amount will be deposited with interest at a later stage. It is stated that Ashish Bhalla took charge of ANB and was in complete control of ANB.

d) It is stated that in 2008 a commercial project called "Spire Edge" was launched by the ANB at Manesar. It is stated that under the said project, a Scheme was brought out by Ashish Bhalla wherein investors were lured that they would be getting assured returns under the Lease-Guarantee Model till investors are put in possession. Material on record indicates that there were total five



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towers, namely, A, B, C, D & E and by October 2011, three Towers namely B, C & D were completed and out of 1041 allottees, 1040 allottees took possession. It is stated that out of the towers A & E, the structure of Tower E was completed till the 5th floor out of total 7 floors and was sold to 153 allottees and the structure of Tower A was also completed and out of 3.25 L sq. ft. of Tower A about 18500 sq. ft. was sold to 34 allottees.

e) It is stated that when the construction of Spire Edge was going on, ANB wanted to go on expansion mode and for this purpose two parcels of land, one measuring about 11.5 Acres in Sector 103, Gurgaon and another measuring 8 Acres in Sector 113, Gurgaon, were bought. It is stated that the portion of land admeasuring 8 Acres in Sector 113 was sold at a profit of about Rs. 40 Cr. and out of the profit of 40 Cr., Rs. 18.6 Cr. was moved to Charmwood Realtech from ANB between 15.01.2011 to 29.01.2011 under the signatures of Petitioner herein and Sanjiv Chhabra (employee of Ashish Bhalla) for purchasing land at Badshahpur. The fact as to whether the profits made by ANB by selling the land in Sector 113 should have been invested for the investors in Spire Edge is a matter of trial and this Court, at this juncture, it not going into this question.

f) It is stated that the land at Sector 103, Gurgaon admeasuring 11.5 Acres was used for the second project named "Spire Woods" which was a residential project. It is stated that in 2013, there was a fallout between Millennium and the Bhalla brothers on the allegations of misappropriation of funds by Bhalla brothers. It is stated that ANB was only informed about this in September' 2013 by



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MSL. It is stated that because of the fallout, Ashish Bhalla abandoned ANB and its projects and took away all the main staff, computers drawings and data thus causing financial crunch and management vacuum.

g) It is stated that on 12.12.2014, the Sunil Gandhi resigned from the ANB. It is stated that in September 2015, Ashish Bhalla again approached the Sunil Gandhi and the Petitioner herein stating that he will take the responsibility of completing the Projects and convince MSL to bring back the remaining amount of Rs.48 crores with the condition that two of his employees be named as the directors of ANB. It is stated that, thereafter, Rakesh Nagpal and Arun were brought in the company as directors and the Petitioner herein resigned from the Directorship on 11.09.2015.

h) It is stated that in October 2014, 52 investors of Spire Edge filed a company Petition, being Company Petition No. 704/2014, with this Court seeking winding up in relation to the lease guarantee charges amounting to Rs. 1.5 crores, which ANB had to pay them in accordance with the Lease guarantee model. The Company Court ordered ANB to deposit Rs. 75L which was not deposited. Thereafter, an official liquidator was appointed by this Court vide Order dated 08.03.2016. The assets of ANB were then taken over by the Official Liquidator, including towers B, C & D, in which out of 1041 flats, possession of 1040 was given and for 730 flats, sale deeds were also executed, and occupation certificates were given.

i) The present FIRs were registered by the complainants against the Petitioner herein and other co-accused persons, including Sunil



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Gandhi and Ashish Bhalla.

j) It is stated that in July 2016, the Petitioner herein and Sunil Gandhi filed a Revival Scheme to revive ANB and complete the real estate projects, namely Spire Edge Project (Commercial) and Spire Woods Project (Residential). It is stated that two associations, namely, Spire Woods Buyers Association and Federation of Spire Edge Customers Association, were formed. The Revival Scheme brought by the Petitioner herein and Sunil Gandhi was approved by this Court vide Order dated on 17.02.2020 in CO.PET. No. 6/2019. It is stated that an RWA, in form of a Company named Spire Edge Management and Lease Facilitating Company ("SELFEC"), was created and handed over to the investors. The investors/flat allottees, through SELFEC, filed a company petition No. 2082/2016 seeking possession of their flats back from the official liquidator and also to inspect the building for maintenance. Another application, being Application No. 450/2018, was also filed by the SELFEC seeking return of the Towers B, C & D and their bifurcation from the rest of the Towers. It is stated that on 31.10.2019 the Company Court allowed SELFEC to take possession of the towers B, C, & D.

k) Petitioner herein was arrested on 20.09.2017 in FIR No. 114/2016 while he was admitted in the hospital as he recently suffered a brain stroke. Subsequently, in FIR No. 116 and 64/2016, the Petitioner herein surrendered on 17.10.2017 and was formally arrested on 31.10.2017. It is stated that the first chargesheet in FIR no. 114/2016 was filed on 19.12.2017. Thereafter vide Order dt. 29.12.2017, the Petitioner was granted regular bail by the Ld. ASJ.



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The said order was challenged and vide Order dt. 26.07.2018, this court set aside the Order dated 29.12.2017 stating that it was unreasoned and remanded the matter back for fresh consideration and interim protection was also granted until the fresh adjudication. Vide Order dt. 09.10.2018, the Petitioner's application for regular bail was dismissed, granting him 7 days to surrender.

l) It is stated that vide Orders dated 15.10.2018, 22.10.2018 and 19.11.2018, this court granted interim protection to the Petitioner by extending the time for surrendering before the Trial Court. However, this Court vide Order dated 04.04.2019, looking at the enormity of the offence and the fact that the financial crunch was created intentionally, dismissed Petitioner's application seeking regular bail. While dismissing the bail applications, this Court was also of the opinion that the revival scheme is only an eyewash.

m) Order dated 04.04.2019 was challenged by the Petitioner herein before the Apex Court by filing Petition(s) for Special Leave to Appeal (Crl.) No(s). 3497/2019, 3500/2019 & 3501/2019. The Apex Court granted interim protection to the Petitioner herein vide Order dated 24.04.2019 and *vide* Order dated 04.10.2023, the Apex Court dismissed the SLPs by granting eight weeks' time to the Petitioner herein to surrender before the Trial Court. It was also stated in the Order dated 04.10.2023, that the Petitioner herein shall be at liberty to apply for bail afresh before the Court concerned on the basis of change of circumstances

n) Thereafter, in terms of the liberty granted by the Supreme Court vide Order dated 04.10.2023, the Petitioner applied afresh for regular



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bail, twice, which was dismissed vide Orders dated 30.10.2023 and 01.11.2023 on the technical ground that the Petitioner has not explicitly surrendered before the court in terms of the Apex Court's Order dated 04.10.2023.

o) Vide Orders dt. 29.11.2023, 05.12.2023. 08.01.2024 and 10.01.2024, this court granted interim protection to the Petitioner by way of extension of time to surrender. The Order dated. 05.12.2023 was challenged by one complainant before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide Order dated 12.01.2024 directed the Petitioner herein to surrender before the Trial Court in terms of the Order dated 04.10.2024. The Petitioner surrendered before the Trial Court on 19.01.2024

p) The Petitioner herein then filed interim bail application before this court on medical grounds. This Court vide Order dated 05.02.2024 disposed of the interim bail application by observing that the appropriate remedy would be to approach the trial court. The bail applications of the Petitioner herein were then dismissed by the Trial Court on 15.02.2024 and 26.02.2024 on the ground that there is no change in circumstances.

q) It is stated that the Petitioner was then granted interim bail by this Court vide Order date 19.03.2024 on medical grounds

r) The Petitioner has, thereafter, approached this Court by filing the present Petitions.

6. It is stated by the learned Senior Counsel appearing for the Petitioner that the Petitioner herein has already gone under 141 days of pre-trial incarceration. It is stated that the facts of the case do not indicate any



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criminal intention on the part of the Petitioner to siphon off money which are anyways matters to be decided at the stage of trial. He further states that the Petitioner is now 82 years of age and has suffered a brain stroke and has undergone surgery. It is stated that when this Court vide Order dated 04.04.2019 dismissed the Regular bail Application of the Petitioner only the first chargesheet in FIR No. 114/2026 had been filed. The Ld. Counsel states that now two supplementary chargesheets have been filed in FIR No. 114/2016 dated 15.12.2020 and 28.06.2024 respectively. He states for the other two FIRs bearing No. 64/2016 and 116/2016, first chargesheet has been filed on 15.12.2020 and a supplementary chargesheet has been filed on 28.06.2024 and further states that the entire blame is on Ashish Bhalla because of whom the company had to face acute liquidity crunch which resulted in the chaos. Learned Counsel for the Petitioner also states that it cannot be said that the revival scheme is a complete sham because about Rs.24 crores of money had been invested by the Petitioner herein to revive the company. Learned Counsel for the Petitioner also states that disputes have arisen between various investor groups, who have formed various Associations. He states that the investigation is complete, charge-sheet has been filed and no useful purpose would be served in arresting the Petitioner.

7. *Per contra*, learned ASC for the State submits that the custody of the Petitioner is required to bring back the funds that have been diverted by the Petitioner to various shell companies. He has taken this Court through various status reports to show as to how monies have been siphoned off by the Petitioner herein. He states that the revival scheme is only a ruse and had the funds of ANB not wasted in buying separate pieces of lands and utilized only for completion of Spire Edge project. He has also taken this Court



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through various transactions to show that most of the transactions are without proper bills showing defalcation of money. He states that though Supplementary Charge-sheet has been filed but they have been filed only on the basis of available material. He has taken this Court through various photographs of Spire Edge and Spire Wood. The Photographs of Spire Wood shows that even construction of structure is not complete.

8. Arguments have also been advanced by the Advocates representing different Associations and Complainants.

9. Heard the learned Counsels and perused the material on record.

10. Undoubtedly, the material on record indicates a complete chaos in both the projects of ANB, i.e. the Spire Edge and Spire Woods. Undoubtedly substantial amount of money has been taken from the investors and the projects have not been completed.

11. Instead of getting embroiled into the disputes between various Associations and the question as to whether the revival scheme is working or not, this Court is only looking into the question as to whether the Petitioner herein should be given the benefit of regular bail or not.

12. Section 437 of the Code of Criminal Procedure (CrPC) does provide special conditions for granting bail to children, allowing a court to release a person under the age of sixteen on bail in cases where the offense is considered non-bailable, provided the court deems it just and proper to do so based on the circumstances; essentially giving special consideration to children when deciding on bail applications. The Petitioner herein is a senior citizen, aged about 82 years. The State has not made any substantial arguments challenging the correctness or otherwise of the medical condition of the Petitioner. The Petitioner was arrested when he was in the hospital. It



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is stated by the learned Counsel for the Petitioner that the Petitioner has suffered brain hemorrhage and has been operated for the same and keeping the Petitioner in custody will endanger his life. This Court is of the opinion that with the present medical condition, the Petition is not a flight risk and would be available for the purpose of investigation. The Petitioner was taken in custody and has already undergone 141 days incarceration. Unlike, Sunil Gandhi and Ashish Bhalla, the Petitioner here was available for the purpose of investigation. The information that was to be taken from the Petitioner herein would have already been taken by the Investigating Agencies and only for the purpose of confrontation, the Petitioner need not be kept in custody and the Petitioner can be directed to co-operate with the investigation and if he does not co-operate with the investigation at the time of confrontation, then it is always open for the State to approach this Court for cancellation of bail of the Petitioner.

13. The case of the Petitioner herein is distinguishable from the case of other accused, namely, Sunil Gandhi and Ashish Bhalla, on the ground of medical condition as well as on the ground that Sunil Gandhi and Ashish Bhalla have never been taken into custody for the purpose of investigation while the Petitioner has already undergone 141 days of incarceration. In the absence of any challenge to the medical condition of the Petitioner and also in view of the fact that the case of the Petitioner is distinguishable from other accused, this Court is inclined to grant bail to the Petitioner on the Petitioner furnishing a personal bond in the sum of Rs.10,00,000/- with two sureties of the like amount to the satisfaction of the SHO/Duty Magistrate and further subject to the following conditions:



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- a) The Petitioner shall surrender his passport with the Investigation Officer.
- b) The Petitioner shall not leave NCT of Delhi without prior permission of the concerned Court.
- c) The Petitioner is directed to attend all the proceedings before the Trial Court.
- d) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- e) The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- f) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

14. With these directions, the Bail Applications are disposed of along, with the pending applications, if any.

15. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2025

Rahul