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

Date of decision: 6th FEBRUARY, 2025

IN THE MATTER OF:

\+ **BAIL APPLN. 1004/2019 & CRL.M.A. 8466/2019, CRL.M.A. 2114/2022, CRL.M.A. 13031/2022 & CRL.M.A. 34841/2023**

ASHISH BHALLA .....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Siddharth Yadav, Mr. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Mr. Dishant Tiwari, Mr. Syed Murtuza Ahmed, Mr. Fuzail Mansuri and Mr. Faizan Ansari, Advocates.
Mr. Shaunak Kashyap, Ms. Nistha Gupta, Ms. Muskan Yadav, Mr. Ahmar Shad and Mr. Anuj Panwar, Advocates.

versus

STATE .....Respondent

Through: Ms. Nandita Rao, ASC for the State with Mr. Amit Peswani, Advocate.
Mr. Manu Prabhakar, Advocate for Complainant (Spirewoods Resident Association).
Mr. Tanvir Ahmed Mir and Ms. Smriti Maheshwari, Advocates for the Complainant.
Mr. Satya Prakash Yadav, Advocate for the Complainant with Mr. Sunil Kumar Thakur.
Insp. Kamal Kishor, PS EOW.

\+ **BAIL APPLN. 1005/2019 & CRL.M.A. 8468/2019**

ASHISH BHALLA .....Petitioner

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Siddharth Yadav, Mr. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Mr. Dishant Tiwari, Mr. Syed Murtuza Ahmed, Mr. Fuzail Mansuri and Mr. Faizan Ansari, Advocates.
Mr. Shaunak Kashyap, Ms. Nistha Gupta, Ms. Muskan Yadav, Mr. Ahmar Shad and Mr. Anuj Panwar, Advocates.

versus

STATE .....Respondent

Through: Ms. Nandita Rao, ASC for the State with Mr. Amit Peswani, Advocate.
Mr. Tanvir Ahmed Mir and Ms. Smriti Maheshwari, Advocates for the Complainant.
Mr. Manu Prabhakar, Advocate for Complainant (Spirewoods Resident Association).
Mr. Satya Prakash Yadav, Advocate for the Complainant (Vishvendra Singh)
Insp. Kamal Kishor, PS EOW

\+ **BAIL APPLN. 1007/2019 & CRL.M.A. 8477/2019**

ASHISH BHALLA .....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Siddharth Yadav, Mr. Punya Rekha Angara, Mr. Sharian Mukherji, Mr. Aman Akhtar, Mr. Dishant Tiwari, Mr. Syed Murtuza Ahmed, Mr. Fuzail Mansuri and Mr. Faizan Ansari, Advocates.
Mr. Shaunak Kashyap, Ms. Nistha

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

Gupta, Ms. Muskan Yadav, Mr. Ahmar Shad and Mr. Anuj Panwar, Advocates.

versus

STATE .....Respondent

Through: Ms. Nandita Rao, ASC for the State with Mr. Amit Peswani, Advocate.
Mr. Tanvir Ahmed Mir and Ms. Smriti Maheshwari, Advocates for the Complainant.
Mr. Manu Prabhakar, Advocate for Complainant (Spirewoods Resident Association).
Mr. Satya Prakash Yadav, Advocate for the Complainant (Vishvendra Singh).
Insp. Kamal Kishor, PS EOW

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. BAIL APPLN.1004/2019 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.

2. BAIL APPLN.1005/2019 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.

3. BAIL APPLN.1007/2019 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.

4. Since all the three bail applications arise from a common set of facts, with the consent of the parties, all the three bail applications are being

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

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 "MSL"*) which is a Singapore based Company. It is pertinent to mention that 50% of the shares of MSL was with Millennium (which is a growth fund in the UK) and 45% shares were owned by the Petitioner herein and his brother and, the rest 5% shares were owned by others. The Petitioner herein 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 Petitioner herein and Sunil Gandhi. 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

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

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 the Petitioner herein 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 the Petitioner herein 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 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 5^{th} 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,

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

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 Sunil Gandhi and Sanjiv Chhabra (employee of the Petitioner herein) 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, is 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 Petitioner herein on the allegations of misappropriation of funds by the Petitioner herein and his brother. It is stated that ANB was only informed about this in September' 2013 by MSL. It is stated that because of the fallout, the Petitioner herein 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, Sunil Gandhi resigned from ANB. It is stated that in September 2015, the Petitioner herein again approached Sunil Gandhi and S.K. Hooda 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

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

company as directors and S.K. Hooda 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 S.K. Hooda and Sunil Gandhi.

j) It is stated that in July 2016, the Sunil Gandhi and S.K. Hooda 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 Sunil Gandhi and Surender Hooda 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 Maintenance and Lease Facilitating Company ("SELFC"), was created and handed

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

over to the investors. The investors/flat allottees, through SELFC, 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 SELFC to take possession of the towers B, C, & D.

k) The fact remains that neither Spire Edge, which is a commercial project, nor Spire Woods, which is a residential project, were fully completed by ANB. The photographs, which have been produced in this Court, shows that even after 14 years of initiation of the Spire Edge project, it has not been fully completed and only three towers out of a total five towers have been completed and even they are not in a position to be occupied by the investors. The photographs also show that even the structure of Spire Woods project could not be completed by the Company even after Nine years of starting the project.

l) The facts of the case further reveals that the Petitioner herein approached the learned ASJ, South-East Saket Courts by filing a Bail Application, being B.A. No.1612/2017, seeking bail in the event of arrest. The learned ASJ *vide* Order dated 27.09.2017 granted interim protection to the Petitioner. However, vide Order dated 11.10.2017, the bail application of the Petitioner herein was dismissed by the learned ASJ.

m) The Petitioner, thereafter, approached this Court by filing BAIL

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

APPLN.2101/2017, 2102/2017 & 2088/2017 seeking bail in the event of arrest in the present FIRs. This Court vide Order dated 23.10.2017 granted interim protection to the Petitioner subject to the Petitioner not leaving the city of Delhi and joining investigation as and when required. In the meantime chargesheet in FIR No.114/2016 was filed and the Petitioner herein withdrew BAIL APPLN. 2101/2017 from this Court on 05.02.2018.

n) It is stated that even though the Petitioner did not surrender, the Petitioner moved a regular bail application before the learned Duty MM, South-East Saket Courts, in the present FIRs and *vide* Order dated 10.02.2018 the learned Duty MM granted bail to the Petitioner herein.

o) The Order dated 10.02.2018, granting bail to the Petitioner, was challenged by the complainants before the learned ASJ, South-East Saket Courts, by filing Bail Applications No.358/2018, 1176/2018, 1177/2018, 1178/2018 & 1936/2018 seeking cancellation of the bail granted to the Petitioner herein. The learned ASJ vide Order dated 16.04.2019 allowed the Applications filed by the complainants and cancelled the bail granted to the Petitioner herein on the ground that there were serious allegations against the Petitioner herein. The learned ASJ also held that the fact that the anticipatory bail application filed by the Petitioner before the Sessions Court was dismissed by the Sessions Court *vide* Order dated 11.10.2017 was concealed by the Petitioner before the Duty MM.

p) The Petitioner has, thereafter, approached this Court by filing the present Petitions. This Court *vide* Order dated 23.04.2019

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

granted interim protection to the Petitioner on the ground that settlement talks are going on between the Petitioner and other investors.

6. Since the Bail Applications of all the three prime accused persons, namely, the Petitioner herein, Sunil Gandhi and S. K. Hooda, were heard together, arguments have been advanced by the learned Counsels appearing for other accused persons and the Counsels appearing for the Complainants and the Residents Welfare Associations. It is stated by the learned Counsels appearing for S.K. Hooda and Sunil Gandhi that revival schemes have been brought out by S.K. Hooda and Sunil Gandhi for revival of Spire Edge and Spire Wood. It is stated that Spire Wood has been given to a fresh Developer which has been chosen by the RWA for its construction and development and as far as the Spire Edge protect is concerned, three out of five towers of Spire Edge are complete and allottees of Tower A have been given possession in Towers B, C & D and Rs. 24 Crores have been invested by S.K. Hooda and Sunil Gandhi in the revival of Spire Edge and Rs.7.38 Crores have been given by them to the RWA for the maintenance of the Towers. This Court, at this juncture, is not going into these issues while considering the question of Bail as far as the Petitioner herein is concerned.

7. Learned Counsel for the Petitioner contends that the Petitioner is neither a Promoter nor a full time Director of ANB and was merely associated with ANB only as an "employee of asset manager". He states that the role of the Petitioner was only limited to monitoring the project of the ANB, including inspecting the books and records of the Company as provided in the Shareholder Agreement of ANB. He states that there is nothing on record to show that the Petitioner's statement that he was not a

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

part of the Promoters Group and Investor Group is patently false and, therefore, the Order dated 16.04.2019 by which the learned ASJ cancelled the bail granted to the Petitioner herein, cannot be sustained as there was no material before the learned ASJ to affirm that the Petitioner is a Promoter or a full time Director or a shareholder of ANB. He states that as far as the reasoning given by the learned ASJ while cancelling the bail of the Petitioner herein that the Petitioner has concealed the order dated 11.10.2017, whereby learned Sessions Court had rejected his application for anticipatory bail, is concerned, the learned Duty MM while granting bail to the Petitioner had referred to the order dated 11.10.2017 and, therefore, it cannot be said that the learned Duty MM was not aware of the fact that the Petitioner's Application for anticipatory bail had been rejected by the Sessions Court. He, therefore, states that there was no material suppression on the part of the Petitioner. Learned Counsel for the Petitioner also contends that the investigation was going on in a haphazard manner and it was the Petitioner who filed a Writ Petition for the purpose of forensic audit of ANB to help the investigation. He states that out of Rs.25 crores which were transferred from the account of ANB to the accounts of different companies, namely, M/s Athena Cityscapes Pvt. Ltd., Blue River Infrastructure Pvt. Ltd., M/s Spire Techpark, M/s Fountain Head, M/s Viridian Development Management, etc. Rs.22 crores have been brought back to ANB. Learned Counsel for the Petitioner further states that all the evidence in the present matter is documentary in nature and the EoW is already in possession of all the documents of the ANB and, therefore, there is no apprehension that the Petitioner can tamper with evidence. He further states that the Petitioner has joined investigation as and when he has been

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

directed to do so. He states that investigation is complete and Charge-sheets have been filed and, therefore, no purpose would be served in arresting the Petitioner.

8. *Per contra*, learned ASC for the State has drawn the attention of this Court to various Status Reports filed by the State. She states that the Petitioner is the king-pin of the entire operation and he was running ANB. She states that the Petitioner has transferred money which was meant for Spire Edge and Spire Woods Project to various companies which were either owned/controlled by the Petitioner directly or through his associates. Learned ASC for the State submits that the Petitioner has siphoned off substantial amount of money and his custody is required to get the money back to the ANB. Learned ASC for the State has also drawn the attention of this Court to the relevant portion of the Status Report dated 20.05.2019 which shows the role of the Petitioner herein in managing the bank accounts of ANB and the same reads as under:

> "*E. ROLE OF ACCUSED ASHISH BHALLA IN MANAGING THE BANK ACCOUNTS OF M/S A.N. BUILDWELL PVT. LTD.*
>
> *During investigation 14 Bank Accounts maintained in the name of the accused company were found and frozen. It has been found that the accused Ashish Bhalla was one of the authorized signatories in most of the bank accounts of AN Buildwell Pvt. Ltd. Details of some of these bank accounts are as follows:*

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

Sl. No.	A/c No.	Bank
1.	051-518249-002	HSBC Bank
2.	910020037043490	Axis Bank
3.	912020015676696	Axis Bank
4.	910020037043856	Axis Bank
5.	910020047559105	Axis Bank
6.	650550053375	State Bank India
7.	4615002100001459	PNB

Scrutiny of the statements of bank accounts/books of accounts revealed that more than Rs. 25 Crores were transferred from the account of AN Buildwell Pvt. Ltd. to the accounts of different companies namely M/s Abaxial Architect Pvt. Ltd., M/s Viridian Development Management, M/s Spire Techpark, M/s Fountain Head, M/s Athena City Scapes Pvt. Ltd., M/s Spire Developers M/s Blue River Infrastructures Pvt. Ltd. These Companies are either owned/controlled by the accused Ashish Bhalla directly or through his associates and he is authorized signatory in the bank accounts of these companies. It is pertinent to mention here that vide cheque No. 213822 dt. 27.08.09 an amount of Rs. 12 Crore was transferred from the bank amount of AN Buildwell Pvt. Ltd. maintained with HSBC Bank, Barakhamba Road to the bank amount of M/s Blue River Infrastructure Pvt. Ltd., controlled by accused Ashish Bhalla. This cheque was jointly signed by accused Ashish Bhalla with co-accused persons namely Surender Kumar Hooda and Sunil Gandhi. Further, an amount Rs. 23,82,480/- and Rs. 619775/- were also found transferred in favour M/s Fountain Head Advisory Pvt. Ltd. (controlled by Ashish Bhalla) through cheques bearing signature of Ashish Bhalla, as joint signatory. Copies of these three cheques are

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

enclosed herewith as Annexure H.

F. ROLE OF ACCUSED ASHISH BHALLA IN DIVERSION/SIPHONING OF THE FUNDS

During investigation, notice was also sent to the accused company s Auditor namely M/s Deloitte seeking documents related to the accused company namely M/s A. N Buildwell Pvt. Ltd. Documents/Balance Sheets till 2013-14 have been received and scrutiny thereof revealed that the accused Ashish Bhalla alongwith co-accused persons (promoter/director namely S.K. Hooda and Sunil Gandhi) were involved in siphoning off/diversion of funds from the company in the name of Land Development Agreements. The details are as follows:

Name of accused	Money diverted	Money returned
Ashish Bhalla	• Rs. 12 Crore was transferred to M/s Blue River India Pvt. Ltd. in August 2009. • Rs. 10 Crore was transferred to M/s Athena City Scapes Pvt. Ltd. in January 2011.	• This amount was returned between May-August 2011 • This amount was returned in June 2013.

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

S.K. Hooda	• Rs. 8.40 Crore was transferred to M/s Inspire Infrastructure Pvt. Ltd. in January 2011	• On 01.10.17 by the Arbitral Tribunal, it was held that against this amount, a Land approx. 1.6 acres will be transferred to ANB (under liquidation since 2016) by Inspire Infrastructure P Ltd. But, till date neither land nor money has been transferred.
	• Rs. 4 Crore was transferred to M/s Green Edge Infrastructure Pvt. Ltd. in March 2010.	• Amount has been found to be transferred to ANB in December 2013-Jan-14 through an associated company.

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

	• Rs. 3 Crore was transferred to M/s JSMS Holdings Pvt. Ltd. in March 2010 which was returned in March 2011.	• This amount has also been found transferred to ANB in March-2011
Sunil Gandhi	In January 2011. Rs. 18.60 Crore was transferred to M/s Charmwood Realtech Pvt. Ltd.	This amount has not been returned in the company.

Though the above amount diverted in two companies owned directly/indirectly by accused Ashish Bhalla has been returned back to the company but these funds of investors were required to be used for the construction as well as for completion of projects. However, the same were diverted to gain wrongfully by the accused persons.

Further, there are allegations that in 2015-16, an amount of Rs. 12.85 Crore (Approx.) was transferred from bank account of M/s AN Buildwell Pvt. Ltd. to the bank account of M/s Nalanda Realtech Pvt. Ltd. (controlled by accused S.K. Hooda).

It is also important to mention here that none of these main three accused persons namely S.K. Hooda, Sunil Gandhi and Ashish Bhalla could give satisfactory reply as to why these funds were diverted to their companies on the pretext of Land Development Agreements. These

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

diverted funds/money of the investors were illegally used by the accused persons through their companies and got wrongful financial benefit/gain.

During investigation the record collected from the HDFC Bank Ltd. regarding bank accounts of M/s Athena Cityscapes Pvt. Ltd. and M/s Blue River Infrastructure Pvt.Ltd. revealed that accused Ashish Bhalla is managing affairs of these companies being Authorized Signatory of bank accounts and thereby having financial control over the companies. Further, he is having beneficial ownership of the above companies, as admitted in the present petition."

9. Learned ASC for the State has also drawn the attention of this Court to the role of the Petitioner in influencing the witnesses. She draws the attention of this Court to the Status Report to state that the Chartered Accountants appointed to assist the investigation were approached by the Petitioner herein. Learned ASC for the State has also taken this Court through various cheques signed by the Petitioner herein. She also states that questionnaires were given to the Petitioner herein seeking answers but the same have not been satisfactorily answered by the Petitioner. Learned ASC for the State has also taken this Court through the analysis of various financial statements to content that payments have been made by the Petitioner herein for ANB without proper receipts. She states that the total amount received against the project sale was Rs.683.38 crores out of which the cost of construction was Rs.371.16 crores. She states that out of Rs.371.16 crores which was utilized for construction purpose, about Rs.118 crores were paid against bills amounting to Rs.10 lakhs and above for which there are proper receipts, however, the balance amount of Rs.253 crores was

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

paid against bills amounting to below Rs.10 lakhs for which there were no proper receipts. She, therefore, states that the custody of the Petitioner is required to unearth as to where this amount was spent by the Petitioner. She states that the Petitioner was actually running the ANB and was handling the entire accounts of ANB. Learned ASC for the State also draws the attention of this Court to the findings of the forensic audit which shows diversion of money. Certain portions of the charge-sheet filed by the State in FIR No.64/2016 are being reproduced and the same reads as under:

Ashish Bhalla:-

During the course of investigation, the accused Ashish Bhalla moved surrender application in all the 3 cases before Ld. Court. The accused Ashish Bhalla was arrested in the Ld. Court. Thereafter, an application for PC remand was moved and the accused Ashish Bhalla was granted bail in all the 3 cases i.e. FIR No. 64/16 PS EOW, 116/16 PS Sarita Vihar and 114/16 PS Sarita Vihar, New Delhi through common order dated 16.02.18 of Ld. MM. The said order was challenged before Ld. ASJ and the appeal was allowed. However, the Hon'ble Delhi High Court stayed the impugned order of Ld. ASJ.

During course of investigation of this case, it was revealed that the accused Ashish Bhalla was the Alternate Director of the accused company since 30.01.08 to 30.03.09 which reflects that the accused was having administrative control over the affairs of the accused company. The accused Ashish Bhalla is also authorized signatories in 7 out of 13 bank accounts.

On perusal of documents received during the investigation from other sources and as per the Balance Sheet of the alleged company for the period 01.04.2013 to 31.03.2014, the petitioner is shown as one of the "Key Management Person" till 10.10.2013 and as per Section 2(51) of the Companies Act 2013, Key Managerial Personnel, in relation to a company, means the Chief Executive Officer or the Managing Director or Manager, the Company Secretary, the Whole Time Director, the Chief Financial Officer and such other officer as may be prescribed. It has also been mentioned in the Audit Report for the year 2012-2013 of the accused company that the present applicant was holding Key Managerial post in the accused company.

During investigation it has been revealed that the Land development Advance of Rs. 10.00 Crores was given to his associate company namely M/s Athena Cityscapes Pvt. Ltd vide agreement dated 24th Jan 2011. However, he did not acquire any land for company and had been returned through settlement agreement dated 21st June 2013 vide DD No 018287 dt 24.06.2013 for Rs. 10.00 crores without interest and the same has been reflected in Balance Sheet for FY 2013-2014.

The accused also diverted company's fund of Rs. 12.00 Crores for the purpose of Land development through another company called M/s Blue Rive Infrastructure Pvt. Ltd. On scrutiny of the ROC records it was revealed that Blue River Infrastructure Pvt. Ltd. owned/Controlled by Ashish Bhalla through SSR Holdings Pvt. Ltd.(50%) and Viridian Advisors Pvt. Ltd. (10%) Sunil Gandhi is also 25% shareholder through Kapivar Finlease Pvt. Ltd. and Manipura Commercial Pvt. Ltd. (15%). The cheque vide which amount of Rs. 12 crores was transferred is bearing signature of Ashish Bhalla, Sunil Gandhi and Surendra Kumar Hooda. No Land Development Agreement was executed. However, vide letter dated 19.08.09, Blue River requested for Land Advance. Accused

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

Sunil Gandhi and Ashish Bhalla were holding the shares of this Company through their other associate companies and later this amount was also returned back to AN Buildwell Pvt. Ltd without interest.

The accused Ashish Bhalla get engaged his other companies through written agreements with M/s A.N. Buildwell Pvt. Ltd such as (a) Abaxial Architects Pvt. Ltd. (b) Viridian Development Managers Pvt. Ltd. (c) Spire Techpark Pvt. Ltd, (d) M/s Fountain Head despite knowing that the related party transactions were bar as per the Shareholders Agreement executed between promoters and Millennium Spire Ltd (Now Sphare Invest Viridian India Property Fund Ltd). In the Shares Subscription Cum Shareholders Agreement dated 13.12.07 in Clause 20 executed between promoters and Millennium Spire Limited, it was categorically mentioned that "the parties were prohibited /bar to enter into related parties transaction and it shall require prior written consent of the other party to this agreement".

The documents with respect to above companies has been given to Forensic Auditor M/s V. Malik & Associates for analysis and the outcome of the same will be filed through supplementary charge sheet in respect of these companies.

During the course of investigation, the accused Ashish Bhalla filed several representation and he stated that he had introduced the foreign Singapore based Company M/s Millennium Spire Ltd known as "Investor's Group" which was represented by its Director M.B. Collins, and as per the Share Holding Agreement signed with M/s A.N. Buildwell Pvt. Ltd dated 13th Dec 2007 wherein the provision to engage Asset Manager / Investment Advisor was agreed upon to monitor and take care of the Investor's Money and interest in the Project Company i.e. M/s A.N. Buildwell Pvt. Ltd and other investment in Indian Real Estate. Accordingly through an agreement dated 14th Dec 2006 M/s Millennium Spire Asset Management Pvt. Ltd, Singapore Based Company was appointed as Asset Manager Company with an authority to engage Millennium Spire India Management Pvt. Ltd as an advisor to the Fund. He further stated that he was the employee / Managing Director of this Investment advisor Company i.e. Millennium Spire India Management Pvt. Ltd later changed to SI Viridian India Management Pvt. Ltd and in this capacity he was associated and represented Investor's Group in the accused Company till Sept 2013 when his services contract was terminated by the Investor's Group. He replied that he had the association with M/s AN Buildwell Pvt. Limited through written Common Consultancy Service Engagement signed between M/s Fountainhead Advisory Pvt. Ltd (later changed to Viridian Development Managers Pvt. Ltd) and accused Company for a fixed tenure of 15 months signed on 01.04.2011 with Scope of Work to provide specialized professional services in the domain of Legal & Compliance, Sales & Marketing, HR & administration and other advisory services and the same shall be provided by the experts / professional hired/engaged by the FAPL for the purpose. He further submitted that he has filed writ petition before Hon'ble Delhi High Court for transfer of investigation as no money from the accused company M/s AN Buildwell Pvt. Limited or any other related company/ person has come in his personal account. "

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

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

12. Material on record further reveals that Ashish Bhalla was the man who was responsible for the conduct of the company, he was responsible for making payments, signing cheques. The fact that the Petitioner has brought in Rs.22 crores back to the ANB will not absolve the Petitioner from defalcation. In fact, the act of the Petitioner bringing back a sum of Rs.22 crores back to ANB shows that when things were getting tight for the Petitioner he ensured that the money which he siphoned off to his sister concerns came back to ANB.

13. The investigation is going on at a slow pace because the main accused were never taken in custody and vital information regarding the chain of money through which money has been taken out of ANB were never traced by the investigating authorities. In the matters involving huge amount of defalcation, custodial interrogation of the decision making authority in the company is necessary. The investigation in the present case is proceeding at a slow pace because the decision making authority, which in the present case is the Petitioner herein, was never taken into custody to help the

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

investigating authorities unearth the evidence and trace the money back to the company. Material on record reveals substantial amount of defalcation, diversion of funds of ANB, which was meant for completion of Spire Edge and Spire Woods projects, by the Petitioner herein to his various sister concerns. The Petitioner herein was the authorized signatory of the ANB and he was the decision making authority for ANB. In fact, it is now well settled that in matters like the case at hand, unless the key person is not in custody he will continue to mislead the investigating agencies. Material on record indicates that the Petitioner herein has siphoned off money of ANB for personal gains.

14. The Apex Court in P. Chidambaram v. CBI, **(2020) 13 SCC 337**, while considering the question of grant of bail has observed as under:

> "***21***. *The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*
>
> *(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
>
> *(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
>
> *(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
>
> *(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the*

Signature Not Verified
Digitally Signed By:RAHUL SINGH
Signing Date:07.02.2025 14:48:41

accused;

(v) larger interest of the public or the State and similar other considerations.

[Vide Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] .]

***22**. There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straitjacket formula so as to deny bail to the one who is before the court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.*

***23**. In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , it was held as under : (SCC pp. 535-36, para 11)*

> *"11. The law in regard to grant or refusal of bail is very well-settled. The court granting bail should exercise its discretion in a judicious*

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

***24**. Referring to the factors to be taken into consideration for grant of bail, in Jayendra Saraswathi Swamigal v. State of T.N. [Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 : 2005 SCC (Cri) 481] , it was held as under : (SCC pp. 21-22, para 16)*

"16. … The considerations which normally weigh

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh [State v. Jagjit Singh, AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

***25**. After referring to para 11 of Kalyan Chandra Sarkar [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] , in State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , it was held as under : (Amarmani Tripathi case [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , SCC p. 31, para 18)*

"18. It is well-settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger,

Signature Not Verified
Digitally Signed By:RAHUL SINGH
Signing Date:07.02.2025 14:48:41

of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118 : 1978 SCC (Cri) 41]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused." (emphasis in original)

26*. In the light of the above well-settled principles, let us consider the present case. At the outset, it is to be pointed out that in the impugned judgment, the High Court mainly focussed on the nature of the allegations and the merits of the case; but the High Court did not keep in view the well-settled principles for grant or refusal to grant bail."*

15. The Petitioner has not been in custody for a single day. The custodial interrogation of the Petitioner would be required to unearth the evidence, trace the money back to the company and for conclusion of the investigation at a faster pace. This Court is aware that personal liberty is the hallmark of the criminal jurisprudence and this Court is also aware of the fact that this Court is directing for the custody of the Petitioner at a late stage when investigation is more or less complete. Since custody of the Petitioner might be required for ascertaining the money trail and finding out as to how the money was taken out of the company this Court is not inclined to grant bail to the Petitioner. This Court deems it fit to direct the Investigating Agencies

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41

to conclude the investigation at the earliest and not later than three months from today.

16. This Court is not making any observations on the arguments raised by the Counsels appearing for various Associations as their arguments are not necessary for the purpose of grant or denial of bail. The Order dated 16.04.2019, passed by the learned Additional Sessions Judge cancelling the bail of the Petitioner, has also been challenged in the present Petitions by the Petitioner. The said Order is also not being interfered with for the reasons stated in the said Order.

17. With these observations, Petitions are dismissed along with all the pending application(s), if any.

18. It is made clear that this Court has not expressed any opinion on the merits of the case.

SUBRAMONIUM PRASAD, J

FEBRUARY 06, 2025
Rahul

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:07.02.2025
14:48:41