



2025:DHC:754



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

Date of decision: 6<sup>th</sup> FEBRUARY, 2025

IN THE MATTER OF:

+ **BAIL APPLN. 3975/2023 & CRL.M.A. 32190/2023**

SUNIL GANDHI

.....Petitioner

Through: Mr. N. Hariharan, Senior Advocate,  
Mr. Puneet Jain, Senior Advocate,  
Mr. Om Sudhir Vidyarthi, Ms. Akriti  
Sharma, Advocates.

Mr. Vaibhav Sharma, Ms. Urvashi  
Sharma, Mr. Surender Singh, Mr.  
Chandrepal, Ms. Akshita Mishra, Mr.  
Kamal Sharma, Mr. Rishabh Attri,  
Mr. K.G Tyagi and Mr. Abhinandan,  
Advocates.

Mr. N. Hariharan, 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.

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.

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

Insp. Kamal Kishor, PS EOW

+ **BAIL APPLN. 3977/2023 & CRL.M.A. 32202/2023**



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SUNIL GANDHI

.....Petitioner

Through: Mr. Vaibhav Sharma, Ms. Urvashi Sharma, Mr. Surender Singh, Mr. Chandrepal, Ms. Akshita Mishra, Mr. Kamal Sharma, Mr. Rishabh Attri, Mr. K.G Tyagi and Mr. Abhinandan, Advocates.

Mr. N. Hariharan, 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.

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.

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

Insp. Kamal Kishor, PS EOW

+ **BAIL APPLN. 3986/2023 & CRL.M.A. 32236/2023, CRL.M.A. 2514/2024**

SUNIL GANDHI

.....Petitioner

Through: Mr. N. Hariharan, 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



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Ansari, 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.  
Mr. Manu Prabhakar, Advocate for  
Complainant (Spirewoods Resident  
Association).  
Insp. Kamal Kishor, PS EOW

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. BAIL APPLN.3975/2023 has been filed by the Petitioner seeking bail in the event of arrest 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.3977/2023 has been filed by the Petitioner seeking bail in the event of arrest 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.3986/2023 has been filed by the Petitioner seeking bail in the event of arrest 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.



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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 "the 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, i.e. the Petitioner herein, having 20% shareholding. It is pertinent to mention here that the Petitioner herein also holds 10% shares in M/s B.S. Buildwell Pvt. Ltd.
- 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% 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 Petitioner herein 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



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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 of 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<sup>th</sup> 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



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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 Surender Hooda 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 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 Petitioner herein resigned from the ANB. It is stated that in September 2015, Ashish Bhalla again approached the Petitioner herein 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 company as directors and S.K. Hooda resigned from the Directorship on 11.09.2015.



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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 Ashish Bhalla.

j) It is stated that in July 2016, the Petitioner herein 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 the Petitioner herein 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 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



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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 filed Bail Applications, being Bail APPLN.903/2018, 905/2018 & 913/2018, before this Court seeking bail in the event of arrest in the present FIRs. Before this Court it was contended that the intention of the Petitioner herein was never to cheat. It was contended that before this Court that the financial crunch came because the money which was promised to be invested by MSL through Ashish Bhalla was never invested in ANB. It was also stated that efforts are being made to revive ANB. 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 the bail applications. While dismissing the bail applications, this Court was also of the opinion that the revival scheme is only an eyewash.

l) 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). 3601/2019, 3604/2019 & 3653/2019. The Apex Court granted interim protection to the Petitioner herein in 2019 and vide Order dated 04.10.2023, the Apex Court dismissed the SLPs by granting eight weeks' time to the Petitioner herein to approach this Court by filing fresh bail applications.

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



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6. It is stated by the learned Counsel appearing for the Petitioner that the facts of the case do not indicate any criminal intention on the part of the Petitioner to siphon off money. He states that the entire blame is on Ashish Bhalla because of whom the company had to face acute liquidity crunch which resulted in chaos. He states that at best the case against the Petitioner can only be of faulty investment planning on behalf of the Petitioner herein. 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.

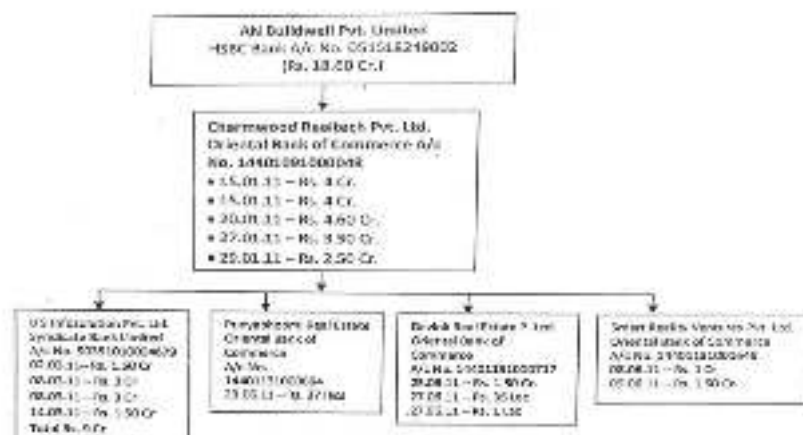
7. *Per contra*, learned ASC for the State submits that the custody of the Petitioner is required to bring back the funds that have been diverted by the Petitioner to various shell companies. He has taken this Court through various status reports to show as to how monies have been siphoned off by the Petitioner herein. He states that the revival scheme is only a ruse and the funds of ANB have been siphoned away by the accused. He has also taken this Court 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 showing the construction of Spire Edge and Spire Wood. The Photographs of Spire Wood shows that even construction of structure is not complete. 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



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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. 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:



During course of investigation and after analysis of the documents and statement of account of accused company namely M/s A N Buildwell Pvt. Ltd., it has been found that the following amounts were transferred from A/c No. 051-518240-002, HSBC Bank, Connaught Place in to the bank account of M/s Charmwood Realtech Pvt. Ltd.

| Sl. No. | Date       | Cheque No. | Amount in Rs. |
|---------|------------|------------|---------------|
| 1.      | 18.01.2011 | 444004     | 4,00,00,000/- |
| 2.      | 19.01.2011 | 444005     | 4,00,00,000/- |
| 3.      | 21.01.2011 | 444006     | 4,60,00,000/- |
| 4.      | 01.02.2011 | 444024     | 3,50,00,000/- |
| 5.      | 01.02.2011 | 444025     | 2,50,00,000/- |

Subsequently information about M/s Charmwood Realtech Pvt. Ltd. have been taken from the website of Ministry of Corporate Affairs, Govt. of India and as per the records available on the website of, M/s Charmwood Realtech Private Limited was incorporated on 03.01.11 by at 93, Pocket - II, Jasola, New Delhi and details of Directors are as under:



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| Year          | Regd. Address                                  | Office | Directors                                                         | Shareholders                                            |
|---------------|------------------------------------------------|--------|-------------------------------------------------------------------|---------------------------------------------------------|
| Incorporation | 93, Pocket - II, Jasola, New Delhi             |        | 1. K.P. Krishnan<br>2. Umesh Kr. Malhotra<br>3. Naresh Kr. Bansal | 1. Kanumathil Pullara Krishnan<br>2. Umesh Kr. Malhotra |
| FY 2010-2011  | 93, Pocket - II, Jasola, New Delhi             |        | 1. K.P. Krishnan<br>2. Umesh Kr. Malhotra<br>3. Naresh Kr. Bansal | 1. Umesh Kr. Malhotra<br>2. Naresh Kr. Bansal           |
| FY 2019-2020  | 347, Gali No. 27-D, Chhattarpur, New Delhi-74. |        | 1. Naresh Kr. Bansal<br>2. Prashant Sharma                        | 1. Radhey Shyam Yadav<br>2. Naresh Kr. Bansal           |

The authorized signatory of the account of M/s Charmwood Realtech Pvt. Limited bearing No. 14401091000048 at OBC Bank, Jasola Branch, New Delhi was accused Sunil Gandhi as per Board Minutes dated 12.01.11 of company attached in the records of bank.

During investigation it has been found that from M/s Charmwood Realtech Pvt. Ltd. money was siphoned off to the following companies:

- a. **M/s B. S. Infosolutions Pvt. Ltd.**- An amount of Rs. 9 Cr. approx has been found to have been transferred from the account of M/s Charmwood Realtech Private Limited into the account of M/s B. S. Infosolutions Pvt. Ltd. This company is also registered at the address of Sunil Gandhi and he was the shareholder and Director of the company at the relevant time. Subsequently information about M/s B. S. Infosolutions Pvt. Ltd have been taken from the website of Ministry of Corporate Affairs, Govt. of India and as per the records available on the website of, M/s B. S. Infosolutions Pvt. Ltd was incorporated on 07.09.05 at B-14, Lajpat Nagar-III, New Delhi-24 and details of Directors/shareholders are as under:

| Year          | Regd. Address                        | Office | Directors                                                         | Shareholders                                   |
|---------------|--------------------------------------|--------|-------------------------------------------------------------------|------------------------------------------------|
| Incorporation | B-14, Lajpat Nagar-III, New Delhi-24 |        | 1. Sunil Gandhi<br>2. Arun Bhatia                                 | 1. Sunil Gandhi<br>2. Arun Bhatia              |
| FY 2010-2011  | 41, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Rajesh Kr. Sukhwani<br>3. Shafique UL Hasan | 1. Sunil Gandhi<br>2. Banyan Estate Pvt. Ltd.  |
| FY 2019-2020  | 41, Pocket-II, Jasola, New Delhi-25. |        | 1. Bapi Karmakar<br>2. Kajol Gosh<br>3. Shafique Ul Hasan         | 1. Banyan Estate Pvt. Ltd.<br>2. Bapi Karmakar |

The authorized signatory of the account of M/s B.S. Infosolutions Pvt. Limited bearing No. 90351010004679 at Syndicate Bank, Defense Colony Branch, New Delhi was accused Sunil Gandhi and Rajesh Kumar Sukhwani as per reply of the bank.



- b. **M/s Punyabhoomi Real Estate Pvt. Ltd.**:- An amount of Rs. 37 lacs approx. has been found to have been siphoned off from the account of M/s Charmwood Realtech Private Limited into the account of this company. This company is 50% owned by another company namely M/s Kapivar Finlease Pvt. Ltd. which is 100% owned by the family of accused Sunil Gandhi. Shareholders of M/s Kapivar Finlease Pvt. Ltd. are accused Sunil Gandhi, his wife Seema Gandhi and his son Shivangel Gandhi. As per the records available on the website of Ministry of Corporate Affairs, M/s Punyabhoomi Real Estate Private Limited was incorporated on 24/03/2011 at 93, Pocket - II, Jasola, New Delhi and Sunil Gandhi and Arun Bhatia as the Shareholders of 50% each. The details of Directors are as under:

| Year          | Regd. Address                        | Office | Directors                           | Shareholders                                                                                                     |
|---------------|--------------------------------------|--------|-------------------------------------|------------------------------------------------------------------------------------------------------------------|
| Incorporation | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Arun Bhatia   | 1. Sunil Gandhi<br>2. Arun Bhatia                                                                                |
| FY 2010-2011  | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Arun Bhatia   | 1. Sunil Gandhi<br>2. Arun Bhatia                                                                                |
| FY 2019-2020  | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Umesh Chandra | 1. Kapivar Finlease Pvt. Ltd.<br>2. Himgiri Finvest Pvt. Ltd.<br>3. Tashee Buildcon Pvt. Ltd.<br>4. Sunil Gandhi |

The authorized signatory of the account of M/s Punyabhoomi Real Estate Pvt. Limited bearing No. 14401131000694 at OBC Bank, Jasola Branch, New Delhi was accused Sunil Gandhi as per reply of the bank.

However, as per reply dated 02.05.19 furnished by Authorized Signatory of M/s Punyabhoomi Real Estate Pvt. Ltd disclosed that the amount to the tune of Rs. 2,59,50,000/- received from M/s Charmwood Realtech Private Limited.

- c. **M/s Devlok Real Estate Pvt. Ltd.**:- From scrutiny of records, it has been found that an amount of Rs. 1.86 Cr. approx. has been siphoned off from the account of M/s Charmwood Realtech Private Limited into the account of this company. As per the records available on the website of Ministry of Corporate Affairs, M/s Devlok Real Estates Private Limited was incorporated on 17/03/2011 at 93, Pocket - II, Jasola, New Delhi and Sunil Gandhi and Arun Bhatia as the Shareholders of 50% each. Later



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on Sunil Gandhi and Arun Bhatia transferred the shareholding to himself as Sunil Gandhi HUF, M/s Kapivar Finlease Pvt. Ltd., wherein accused Sunil Gandhi and his son Shivangel Gandhi are the shareholders, M/s Himgiri Finvest Pvt. Ltd. and M/s Tashee Buildcon Pvt. Ltd. The details of Directors are as under:

| Year          | Regd. Address                        | Office | Directors                         | Shareholders                                                                                                     |
|---------------|--------------------------------------|--------|-----------------------------------|------------------------------------------------------------------------------------------------------------------|
| Incorporation | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Arun Bhatia | 1. Sunil Gandhi<br>2. Arun Bhatia                                                                                |
| FY 2010-2011  | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Umesh Chand | 1. Sunil Gandhi<br>2. Tashee Buildcon Pvt. Ltd.                                                                  |
| FY 2019-2020  | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Sunil Gandhi<br>2. Umesh Chand | 1. Kapivar Finlease Pvt. Ltd.<br>2. Himgiri Finvest Pvt. Ltd.<br>3. Tashee Buildcon Pvt. Ltd.<br>4. Sunil Gandhi |

The authorized signatory of the account of M/s Devlok Real Estate Pvt. Limited bearing No. 114401131000717 at OBC Bank, Jasola Branch, New Delhi was accused Sunil Gandhi as per reply of the bank.

However, as per reply dated 02.05.19 furnished by Authorized Signatory of M/s Devlok Real Estate Pvt. Ltd. disclosed that the amount to the tune of Rs. 2,13,00,000/- received from M/s Charmwood Realtech Private Limited.

- d. **M/s Smart Reality Ventures Pvt. Ltd.** – From scrutiny of records, it has been found that an amount of Rs. 2.50 Cr. has been siphoned off from the account of into the account of this company. As per the records available on the website of Ministry of Corporate Affairs, M/s Smart Reality Ventures Private Limited was incorporated on 21/03/2011 at 93, Pocket – II, Jasola, New Delhi and Tashee Buildcon Pvt. Limited and Kapivar Finlease Pvt. Limited as the Shareholders of 50% each. It is pertinent to mention here that in M/s Kapivar Finlease Pvt. Ltd., wherein accused Sunil Gandhi and his son Shivangel Gandhi are the shareholders, M/s Himgiri Finvest Pvt. Ltd. and M/s Tashee Buildcon Pvt. Ltd. The details of Directors are as under:

| Year          | Regd. Address                        | Office | Directors                                     | Shareholders                                  |
|---------------|--------------------------------------|--------|-----------------------------------------------|-----------------------------------------------|
| Incorporation | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Naresh Kr. Bansal<br>2. Umesh Kr. Malhotra | 1. Naresh Kr. Bansal<br>2. Umesh Kr. Malhotra |
| FY 2010-2011  | 93, Pocket-II, Jasola, New Delhi-25. |        | 1. Naresh Kr. Bansal<br>2. Umesh Kr. Malhotra | 1. Naresh Kr. Bansal<br>2. Umesh Kr. Malhotra |



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|              |                                      |                                               |                                                                                                                  |
|--------------|--------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------|
|              | 25.                                  |                                               |                                                                                                                  |
| FY 2019-2020 | 93, Pocket-II, Jasola, New Delhi-25. | 1. Naresh Kr. Bansal<br>2. Umesh Kr. Malhotra | 1. Kapivar Finlease Pvt. Ltd.<br>2. Himgiri Finvest Pvt. Ltd.<br>3. Tashee Buildcon Pvt. Ltd.<br>4. Sunil Gandhi |

The authorized signatory of the account of M/s Smart Reality Ventures Pvt. Limited bearing No. 14401131000649 at OBC Bank, Jasola Branch, New Delhi was accused Sunil Gandhi as per reply of the bank.

However, as per reply dated 02.05.19 furnished by Authorized Signatory of M/s Smart Reality Ventures Pvt. Ltd. disclosed that the amount to the tune of Rs. 4,19,00,000/- received from M/s Charmwood Realtech Private Limited.

All above facts confirmed that all of the above named companies in which the money has further been siphoned off from M/s Charmwood Realtech Pvt. Ltd. were incorporated by Sunil Gandhi or his accomplice at his address 93, Pocket - II, Jasola, New Delhi to siphon off and embezzle the amount collected from the investors of the project. The date of incorporation of all these shell companies also important as they were incorporated to accommodate the money diverted from the accused company in January itself. It has been further confirmed from the extracts of minutes of M/s Charmwood Realtech Private Limited dated 12.01.11 (in KYC documents provided by OBC Bank) through which the accused Sunil Gandhi was appointed as authorized signatory of the A/c No. 14401091000048 at OBC Bank, Jasola, New Delhi in which the amount to the tune of Rs. 18.60 crores was diverted. Moreover, the KYC documents of the shell companies in which the money has been diverted/siphoned off are operated by accused Sunil Gandhi in the capacity of authorized signatory.

During the course of investigation, it was revealed that from the A/c No. 910020037043490 at Axis Bank of M/s AN Buildwell Pvt. Limited an amount of Rs. 6.25 crores was transferred to M/s Nalanda Realtech Pvt. Ltd. The further investigation revealed that out of the said amount Rs. 5.50 Crore was found to be transferred in the account of A-one Trading Co. and Rs. 49,20,500/- was found to be transferred in the name of M/s Cutthru Integrated Service Pvt. Ltd. As per Ledger details provided by Dalip Bhola, Director of M/s Nalanda Realtech Pvt. Ltd, Rs. 5,87,34,707/- is still outstanding. As per Account Opening Form of Nalanda Realtech, M/s AN Buildwell Pvt. Ltd. is the introducer of M/s Nalanda Realtech Pvt. Ltd. to the bank. As per Dalip Bhola, this

Signature Not Verified

Digitally Signed  
By: RAHUL SINGH  
Signing Date: 07.02.2025  
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amount was transferred under subvention scheme and transferred in the account of various individuals (through A One Trading Co.), who had purchased flats in Spire Woods on finance and through this channel amount returned back to AN Buildwell Pvt. Ltd. However, the amount of Rs. 5.87 Crore is still outstanding and is to be recovered from Nalanda Realtech Pvt. Ltd. As per ROC records the detail of share holders and directors of Nalanda Realtech Pvt. Ltd is as under:

| Year          | Regd. Address                                                       | Office | Directors                                                        | Shareholders                                                     |
|---------------|---------------------------------------------------------------------|--------|------------------------------------------------------------------|------------------------------------------------------------------|
| Incorporation | 10/135, First Floor, Malviya Nagar, Delhi-17.                       |        | 1. Kashyap Parimal<br>2. Naseem Ahmad Khan<br>3. Vivek Kumar Jha | 1. Kashyap Parimal<br>2. Naseem Ahmad Khan<br>3. Vivek Kumar Jha |
| FY 2014-15    | Plto No. 17, H. No. 88, Harjan Basti Vill. Bedusarai, New Delhi-43. |        | 1. Dilip Kumar Bhola<br>2. Devinder Kr. Verma                    | 1. Dilip Kumar Bhola<br>2. Devinder Kr. Verma                    |

Further investigation is being carried out to identify the persons who booked the flats and outcome of the same and culpability of Dilip Bhola and other directors will be filed through supplementary charge sheet. Beside this, further entries were also identified which has been transferred in the account of Dilip Bhola in the year 2015 which are being examined.

#### **Sunil Gandhi:-**

The accused Sunil Gandhi was not arrested. The bail application of accused Sunil Gandhi in all three cases was dismissed by Hon'ble Justice Sh. R.K. Gauba, Delhi High Court vide order dated 04.04.19. However, the Hon'ble Supreme Court granted interim protection vide order dated 25.04.19 to both the accused persons.

During course of investigation, records about the accused company and its Directors and other officials were taken from ROC and according to their record the accused Sunil Gandhi was the Promoter and Director of the accused company from 25.11.2005 to 12.12.2014. He was present in almost all Meetings of Board of Directors of the alleged company and all the important administrative and financial decisions were taken by board of directors & others. He was also authorized to sign Annual Return, Director's Report and Balance Sheet of the alleged company. He was further authorized to sign Form 20 B, 23 AC and 23 ACA with the ROC. He was also authorized to borrow money from financial institutions and sign the related documents and also authorized to make investments of amount not exceeding Rs. 45 Crore on behalf of the alleged company. This shows that he alongwith other directors had also full control over the affairs of the alleged company.

The company M/s Charmwood Realtech Pvt. Limited was found registered at the address of Sunil Gandhi i.e. 93, Pocket-II, Jasola, Delhi. Rs. 18.60 Crore was transferred between 15.01.11 to 29.01.11 from AN Buildwell Pvt. Ltd. under the signature of Surendra Kumar Hooda and Sanjiv Chhabra. In this regard, a Development Agreement was executed on 20.12.2011. This amount was credited in QBC, Jasola in which Sunil Gandhi was authorized signatory. As per Sunil Gandhi, this amount was further transferred to M/s Smart Realty Ventures Pvt. Ltd., Devlok Real Estate Pvt. Ltd., Punya Bhoomi Real Estate Pvt. Ltd., KNS Realtors Pvt. Ltd. and Tashee Buildtech Pvt. Ltd. and was utilized



for acquiring land in Village Badshahpur, Gurugram through the above companies.

The accused Sunil Gandhi is directly/indirectly controlling the shell companies which were created under the pretext of land development and the amount to the tune of Rs. 18.60 crores was diverted from the company M/s AN Buildwell Pvt. Limited and misappropriated. The mala fide intent of accused Sunil Gandhi is apparent from the fact that the money has been siphoned /diverted from the company M/s AN Buildwell Pvt. Limited through creation of web of shell entities. These entities were created to conceal the transaction so that nobody can detect the real purpose of transfer of funds as in the shares subscription cum shareholders agreement dated 13.12.07 in Clause 20, 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". There is no justification/explanation as there was no requirement to transfer the amount from one company to the another through circuitous transactions through land development agreements when the accused company M/s AN Buildwell Pvt. Limited itself can execute the agreement with the farmers for land aggrandized and even Charmwood Realtech Pvt Limited did not execute the agreement and further transferred to other companies which were created in January itself. The accused Sunil Gandhi became the authorized signatory in the account of Charmwood Realtech Pvt. Limited as well as other entities in which money has been further created and directors of the said companies were different just to conceal the transaction from the auditors that it does not come under the purview of related party transaction.

During the course of investigation, it was revealed that till date neither any land was transferred nor the amount of Rs. 18.60 Crores was returned to AN Buildwell Pvt. Ltd. thus causing wrongful loss to the victims who had invested their money for the project. Being a chartered accountant, the accused Sunil Gandhi was well appointed with the financial transactions and to divert the amount the layering of the companies was done in such a manner so that the final destination of the diverted/misappropriated amount could not be ascertained.

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 and a substantial amount of money has been taken from the investors and the projects have not been completed.
11. The charge-sheet indicates that the Petitioner herein was controlling

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shell companies which were created under the pretext of land development and substantial amount of money has been diverted from ANB to these shell companies. A web of shell companies was created for misappropriation and siphoning off of funds. Material on record also indicates that these shell companies were created to conceal the transactions so that nobody can detect the transfer of funds.

12. 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 matters involving huge amount of defalcation, custodial interrogation of the decision making authority of the company is necessary. The decision making authority in ANB is the Petitioner herein, who was never taken into custody for unearthing 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 its sister concern. 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. The fact that the revival scheme formulated by the Petitioner herein has been accepted by this Court for revival of the project does not change the position that funds have been diverted & siphoned off by the Petitioner and homebuyers/investors were not given the units as they were promised and if such funds, which were diverted/siphoned off, would have been used for the completion of the projects then no such revival schemes would be required and, therefore, the revival scheme is nothing but a ruse.



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13. 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 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*



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*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 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.*



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*(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 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



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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, 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.”*

14. In view of the above, this Court is of the opinion that custodial interrogation of the Petitioner would be required to unearth the evidence,



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trace the money back to the company and for conclusion of the investigation at a faster pace. Undoubtedly, personal liberty is the hallmark of the criminal jurisprudence and this Court is aware of that this Court is dismissing the anticipatory bail of the Petitioner at a late stage when investigation is more or less complete. This Court is of the opinion that to trace the money trail and to find out as to how the money was taken out of the company and where all the money has been passed, the custody of the Petitioner might be necessary and grant of anticipatory bail can have the effect of impeding an effective investigation. Since the investigation is more less complete, this Court deems it fit to direct the Investigating Agencies to conclude the investigation at the earliest and not later than three months from today. It is made clear that dismissal of anticipatory bail does not mean that the Petitioner ought to be arrested. It is for the Investigating Authority to come to a decision as to whether the custody of the Petitioner is necessary or not.

15. 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.

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

17. 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*