



IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 09.09.2022

Order delivered on: 28.09.2022

+ BAIL APPLN. 2240/2021
AJAY KUMAR

..... Petitioner

Through: Mr. Rajesh Anand, Mr.
Anshuman Vashistha, Mr.
Harleen Kaur and Mr. Gaurav
Adlakha, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Laksh Khanna, APP for
State. Inspector Anand Pratap
from PS EOW.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. An application has been preferred on behalf of the petitioner under Section 439 Cr.P.C. for grant of regular bail in FIR No. 06/2018, under Sections 406/420/120B IPC, registered at Police Station EOW.

2. In brief, as per the case of prosecution, the present case was registered against M/s Amrapali Dream Valley Pvt. Ltd. on the joint complaint of Sh. Chandra Kant Singh and seven other victims/home buyers who had booked their housing units in group housing projects. During investigation, more than 450 victims filed complaints, who had also booked their housing units in the group housing projects M/s Amrapali Dream Valley-I and M/s Amrapali Dream Valley-II alleging similar nature of grievances. The



aforesaid projects were proposed to be developed at Plot No. GH-09, Tech Zone-IV, Greater Noida, Gautam Budh Nagar, U.P.

3. It is further the case of prosecution that the allotment-cum-Flat Buyer Agreements were executed in favour of home buyers during 2011 to 2013 and the possession of the flats/Villas was to be delivered during the period 2014 to 2016. However, neither the possession was delivered nor construction/development activities were being carried at the project site.

The Plot No. GH-09, Tech Zone-IV, Greater Noida, Gautam Budh Nagar, U.P. was leased to accused company vide lease deed dated 25.02.2011 and the building plan stood approved on 13.06.2011. The revised layout plan was further approved vide letter dated 05.08.2014. The projects were to be constructed in phases having approximately 9000 flats alongwith some shops and the partial delivery of flats under M/s Amrapali Dream Valley-I had to be given before construction of M/s Amrapali Dream Valley-II.

4. As per status report filed by the prosecution, the structure of project M/s Amrapali Dream Valley-I is mostly completed and in M/s Amrapali Dream Valley-II, the structure is halfway and the villa part of Green Valley is completed 70% approximately. Thereafter, the site was found abandoned.

5. During the course of investigation, it was also revealed that the audited balance sheet for 2015-2016 was filed by the accused company with ROC, but no further balance sheets were filed thereafter. The balance sheet for the financial year 2015-2016 reflected that short term loan and advances had been given by the company to the tune of approximately Rs. 563 Crores collected from the victims/buyers. Thus, there was a diversion of huge



amount and the project could not be completed. The petitioner alongwith Anil Kumar Sharma and Shiv Priya are stated to be the directors of M/s Amrapali Dream Valley Pvt. Ltd. during the relevant period and were also the authorised signatory in bank account of the company. The documents of the company were further seized by the forensic auditor vide order dated 10.10.2018 in writ petition no.940/2017 filed in the Hon'ble Supreme Court of India.

6. Learned counsel for the petitioner presses the application for bail on following grounds:-

(i) That the petitioner is in judicial custody since 26.04.2019 and the matter is still pending at the stage of arguments on charge, owing to COVID-19 pandemic.

(ii) That the petitioner is one of the directors of the holding company of Amrapali Group of companies M/s Ultra Home Construction Pvt. Ltd. with the meagre shareholding of 3.2% with no executive powers and was not a part of the day-to-day management and the affairs of the company. The petitioner was part of the team, looking after the construction activities of the projects. It is further claimed that the petitioner became the Director only on 05.07.2013 and remained till 20.12.2016. Further, M/s Ultra Home Construction Pvt. Ltd. which is the holding company of Amrapali Group of Companies delivered housing projects undertaken by them on time such as Amrapali Village, Amrapali Castle, Amrapali Royal etc.

(iii) Some of the subsequent projects including the project involving the present FIR could not be completed due to some challenges/problems but



there was no fraudulent intention in this regard since about 100% and 70% of the respective phases were completed.

(iv) The assets of the company including the directors have already been attached after the Hon'ble Supreme Court of India ordered a forensic audit vide order dated 23.07.2019 in WP(C) no. 940 of 2017 titled Bikram Chaterji versus Union of India and Ors. The petitioner and two other directors namely Anil Sharma and Shiv Priya have been arrested in the present FIR and five other FIRs and investigation is complete in all the matters. Reference is also made to the various FIRs which stand registered against the petitioner and it is claimed that in substantial number of FIRs, the petitioner has been granted bail/anticipatory bail. It is urged that each case needs to be seen in the light of the construction undertaken in the respective projects.

(v) The petitioner is stated to have been made authorized signatory along with others in Amrapali Dream Valley Pvt. Ltd. in terms of the board resolution of the company with a mandate to act in terms of the instructions given and had no role to play beyond the authorization and limits. It is further submitted that the petitioner was not a Director in Amrapali Dream Valley Pvt. Ltd. when the complainant booked his flat and was a Director merely for the period from 05.07.2013 to 20.12.2016.

(vi) Reliance is also placed upon the following judgments in support of the contentions:-

(a) ***Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.*** in Special Leave Petition (Crl.) No. 5191/2021 decided on 11.07.2022;



- (b) ***Jayant Kumar Jain Vs. State*** in Bail Application No. 2442/2020 decided on 14.09.2020;
- (c) ***Unti Navendu Babbar Vs. State*** in Bail Application No. 913/2020 decided on 18.06.2020;
- (d) ***Awanish Kumar Mishra Vs. State*** in Bail Application No. 1947/2021 decided on 25.10.2021;
- (e) ***Garima Gupta Vs. State*** in Bail Application No.712/2019 decided on 01.09.2021;
- (f) ***Sunder Singh Bhati Vs. The State*** in Bail Application No. 3750/2021 decided on 17.01.2022;
- (g) ***Ashok Sikka Vs. State*** 147 (2008) DLT 552;
- (h) ***Sushil Sethi and Another Vs. The State of Arunachal Pradesh & Others*** in Criminal Appeal No. 125/2020 & SLP (Crl.) No. 590/2019; and
- (i) ***Nancy Gill Vs. State*** in Bail Application No. 2557/2018 decided on 08.02.2022.

7. On the other hand, the application has been vehemently opposed by the learned APP for the State. It is submitted that the accused was Director/Promoter of Amrapali Dream Valley Pvt. Ltd. and the company diverted an amount of Rs.563 Crores obtained from the investors/buyers in the subsidiary companies without any authorization. The amount was siphoned off by unauthorized diversion of funds due to which the projects could not be completed within the stipulated period and are pending since 2016. The money is stated to have been transferred by the company to



multiple personal accounts as well as for acquisition of other properties, contrary to the mandate of law. The buyers were induced by attractive advertisements for investment in the projects without any intention to deliver the flats. Reference is also made to part of the forensic audit report dated 25.03.2019. Reliance is also placed upon *State of Gujarat Vs. Mohanlal Jitamalji Porwal & Others* (1987) 2 SCC 364 and *Nimagadda Prasad Vs. CBI* (2013) 7 SCC 466.

8. I have given considered thought to the contentions raised and perused the record.

At the outset, it may be observed that more than 450 victims await for the possession of the housing units, which were agreed to be delivered within a period of 36 months along with an additional grace period of 6 months since 2014 to 2016. It is important to keep in perspective as to the reasons for the non-construction/development activities not being undertaken at the project sites to evaluate the role of the petitioner despite approval of the building plans by the competent authority in 2011 and approval of revised layout plan in 2014. Mere partial completion of the projects cannot absolve the functionaries as it cannot be ignored that the site was ultimately abandoned on account of illegal diversion of funds, which were required to be used for the purpose of completion of projects. The period during which the alleged diversion of funds was made includes the period during which the petitioner was a Director, leaving the innocent buyers in lurch. Merely because the petitioner may not have been a Director at the relevant time when the bookings were made, as claimed, does not absolve the petitioner of his responsibility as the funds were diverted with his active role and were



within his knowledge. The fact that the accused has been in custody since 26.04.2019 and the trial is likely to take some time cannot be the sole governing factors for releasing the accused on bail, at this stage.

It has been pointed out by the learned APP for the State that as per the forensic audit, the petitioner had been a Director in the company and had held the shares since 07.04.2003. Further, the petitioner was the authorized signatory in the present company as well as in the subsidiary companies in which the funds were siphoned off by way of short term loans and advances. The petitioner in the light of the evidence on record cannot claim that he was unaware of the transactions and was not responsible for the affairs of the company at the relevant time and, as such, it does not appear to be a case of vicarious liability, as claimed by the learned counsel for the petitioner. Learned APP for the State has also pointed out that though only a part of the forensic audit has been referred by the learned counsel for the petitioner to claim that the petitioner was responsible for only construction and coordination but it has been concealed that the forensic audit states that the petitioner received funds from Amrapali Group of Companies, which were used for acquiring personal properties.

9. The principles for grant of bail as referred in the judgments relied by learned counsel for the petitioner are well settled. However, it has been held in ***Nimagadda Prasad Vs. CBI (2013) 7 SCC 466***, that economic offences constitute a class apart which need to be visited with a different approach in the matter of bail. The relevant observations may be quoted as under:-

"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public



funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

Also, the observations in ***State of Gujarat Vs. Mohanlal Jitmalji Porwal & Others (1987) 2 SCC 364*** are apt to be noticed:-

"5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

10. Considering the nature of evidence on record, grave allegations of siphoning of funds and the fact that the innocent home buyers stand duped, the case is not fit for grant of bail, at this stage. The possibility of the accused jumping the bail also cannot be ruled out.

Nothing stated herein shall tantamount to expression of opinion on the merits of the case.

The application is accordingly dismissed.

(ANOOP KUMAR MENDIRATTA)
JUDGE

September 28, 2022/A