(2022) 05 DEL CK 0077

In the Delhi High Court

Case No : Bail Application No. 3630 Of 2021

Ajay Kumar APPELLANT

Vs

State Of Nct Of Delhi RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 406, 409, 420

Citation : (2022) 05 DEL CK 0077

Hon'ble Judges : Anoop Kumar Mendiratta, J

Bench : Single Bench

Advocate : Rajesh Anand, Gaurav Adlakha, K.K. Ghei, Mayank Sharma

Final Decision : Dismissed

Judgement

Anoop Kumar Mendiratta, J

1. This is an application for regular bail under Section 439 of Cr.PC filed on behalf of the petitioner in FIR No.201/2016 under Sections 406/409/420/120-B of IPC, Police Station EOW, New Delhi.

2. In brief, as per the case of prosecution, the FIR was registered on the complaint of Anubhav Jain against M/s Amrapali Silicon City Pvt. Ltd. and its directors/officials. Complainant alleged that in the month of November, 2011, the directors of M/s Amrapali Silicon City Pvt. Ltd. approached him and represented that they shall hand over the vacant physical possession of 26 fully furnished flats in Tower G-1 in the project “Amrapali Silicon City” proposed to be developed at plot No. GH-1A, Sector 76, Noida by September, 2013. Being induced by the accused persons, the complainant agreed to invest in the said project and made full and final payment of Rs.6.60 crores against the said flats in November, 2011. On 11.08.2012, a Memorandum of Understanding (MOU) was also executed between the complainant and the accused company, wherein it was assured by the company that possession of the flats will be handed over by 30.09.2013. It

was also agreed that on expiry of nine months from 13.08.2012, the investor (complainant) shall have the option either to continue with the booking or to take refund of the sum paid by the investor and 26 cheques of the principal amount were also handed over to the complainant, as security. Till then, the builder further agreed to compensate the investor by way of assured return of Rs.19,55,000/- per month and also handed over the 18 cheques for 9 months. The cheques of the principal amount given as security were dishonoured upon presentation in bank. Later on, it was revealed that Tower G-1 did not exist and was not even sanctioned in the project.

3. During the course of investigation, it was revealed that payments made by the complainant to accused company have been verified and found credited in the account M/s Amrapali Silicon City Pvt. Ltd. in which Ajay Kumar/petitioner is one of the authorized signatory. It was also revealed that as per MOU dated 11.08.2012, the accused has handed over 9 cheques of Rs.17,30,000/- of Bank of Maharashtra, Sector-62, Noida for the period from 13.08.2012 to 13.04.2013 and 9 cheques of Rs.2,25,000/- of Axis Bank, Indirapuram (totaling Rs.1,75,95,000/-) of assured return for the above said period. The investigation conducted from the above banks revealed that account maintained with Bank of Maharashtra, was already inactive/closed on 14.06.2012 and account maintained with Axis Bank had also been closed on 21.11.2012. Despite knowing this fact, the accused persons issued PDCs for assured return of a closed bank account.

4. It has also been pointed out by the learned APP for the State that accused persons were in the custody of Hon'ble Supreme Court of India, vide order dated 11.10.2018 in W.P.(C) No.940/2017 titled Bikram Chatterji and Ors. vs. Union of India. Further, the State (EOW) had filed I.A. seeking their custody in the present case. The Hon'ble Supreme Court vide order dated 28.02.2019 had given the custody of the three accused persons and also directed that "Let the police investigate the entire gamut of the scenario of the various projects, as projected in this case and various orders passed and investigate the entire matter. Prima facie, we find that the case required serious investigation in the facts projected by the Directors, CFO and statutory auditors. The police is investigate the role of Mr. Anil Mittal, Statutory Auditor and Mr. Chander Wadhwa, CFO as well. The police may interrogate them and find out their criminality, if any, in the matter. Let, various order-sheets of this Court as well as the affidavits of Mr. Chander Wadhwa and Mr. Anil Mittal and Directors of Amrapali Group of Companies indicating the operational methods of diversion of funds and creation of company be also furnished to the Deputy Commissioner forthwith."

5. On the other hand, learned counsel for the petitioner submits that evidently, the FIR was registered against co-accused and CMD of M/s Amrapali Dream Valley Pvt. Ltd. and not against the petitioner. It is urged that in the forensic audit report, the role of the petitioner in Amrapali Group of companies has to be established. The petitioner is stated to be no more required for the purpose of investigation. It is also contended that the petitioner was not a Director of M/s

Amrapali Silicon City Pvt. Ltd., when the complainant booked his flats. Reference is also made to the charge-sheet to contend that the complainant has admitted Rs.3,73,29,5000/- as assured return till April, 2016. Further, M/s Moon Buildtech Pvt. Ltd. is stated to be an investor and not a home buyer. Nothing incriminating is stated to have been recovered from the house search of the applicant/ petitioner. It was also submitted that the petitioner is in custody for 3 years and 2 months and there is no possibility of influencing the witnesses. It is urged that the conclusion of trial is likely to take considerable time, considering the number of witnesses.

Reliance is also placed upon the judgments passed by this Court in Jayant Kumar Jain vs. State in Bail Application No.2442/2020 decided on 14.09.2020, Nevendu Babbar vs. State in Bail Application No.913/2020 decided on 18.06.2020, Awanish Kumar Mishra vs. State in Bail Application No. 1947/2021 decided on 25.10.2021, Garima Gupta vs. State in Bail Application No. 712/2019 decided on 01.09.2021, Sunder Singh Bhati vs. State in Bail Application No. 3750/2021 decided on 17.01.2022, Ashok Sikka vs. State 147 (2008) DLT 552 and judgments passed by Hon’ble Supreme Court in the matter of Sushil Sethi & Another vs. The State of Arunachal Pradesh & Others in Criminal Appeal No.125/2020 & SLP (Crl.) No.590/2019 and Bikram Chatterji & Ors. vs. Union of India & Ors. in W.P. (C) No. 940/2017 decided on 02.11.2020.

6. On the other hand, the application has been vehemently opposed by the learned APP for the State. It is submitted that there was a mis-representation with regard to the project to the complainant and payments were received despite the fact that no permission/approval/license was granted to M/s Amrapali Silicon City Pvt. Ltd. It is submitted that inducement was on the pretext of payment of assured return but subsequently the same had been stopped and no flat-buyer agreement was executed despite full and final payment against 26 flats. The PDCs issued after settling the matter before the Mediation Centre are also stated to have been dishonoured.

7. I have given considered thought to the contentions raised. The case of the prosecution is that Tower G-1 in the above said project was never sanctioned by the Noida Authority and the accused persons in a criminal conspiracy had sold/ allotted the 26 flats to the complainant in the said tower. It may be further observed that petitioner is one of the authorized signatories in the bank accounts of M/s Amrapali Silicon City Pvt. Ltd. and is also one of the shareholders and directors in parent company M/s Ultra Home Constructions Pvt. Ltd. The petitioner is further stated to be the authorized signatory in bank accounts and had signed the assured returns and principal amount cheques in favour of M/s Moon Buildtech Pvt. Ltd. It may be difficult to presume that the petitioner was unaware about the investment of M/s Moon Buildtech Pvt. Ltd. and allotment of 26 flats in Tower G-1, Silicon City despite the fact that Tower G-1 was never sanctioned by Noida Authority. At this stage, it also cannot be accepted that the petitioner was not involved in day to day affairs of M/s Amrapali Silicon City Pvt.

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8. Considering the nature of offence whereby not only the investors and home buyers stand duped but the economy of the entire sector gets affected leaving the registered buyers without any effective remedy. The possibility of the accused jumping the bail also cannot be ruled out. In the facts and circumstances of the case, I am of the considered opinion that no grounds for bail are made out.

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

The application is accordingly dismissed.

