

SATINDER SINGH BHASIN

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v.

GOVERNMENT OF NCT OF DELHI & ORS.

(Writ Petition (Criminal) No. 242 of 2019)

NOVEMBER 06, 2019

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[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Constitution of India:

Art. 32 – FIRs lodged in the State of U.P. and in the State of NCT of Delhi – Writ petition u/Art. 32 of Constitution – Seeking writ of Mandamus directing CBI to take over investigation of all the FIRs – In the alternative sought consolidation of all the FIRs and entrustment thereof to one agency – Petitioner also sought interim relief of bail in all the FIRs and stay of the proceedings in the FIRs – Held: Transfer of FIRs to CBI and consolidation of all the FIRs do not merit consideration in the facts of the case – In overall view of the matter, the petitioner is granted bail in all the matters subject to certain conditions – As regards the relief of stay of proceeding is concerned, it is granted only in respect of the FIRs registered in the State of NCT of Delhi – The proceedings in the FIRs lodged in the State of U.P. need not be stayed as all the FIRs are being investigated by one agency i.e. SIT constituted by the State – Bail – Interim Injunction.

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Narinderjit Singh Sahni & Anr. v. Union of India & Ors. (2002) 2 SCC 210 : [2001] 4 Suppl. SCR 114 ; State of Punjab & Anr. v. Rajesh Syal (2002) 8 SCC : [2002] 3 Suppl. SCR 124 ; Surinder Singh Alagh v. Union of India & Ors. (2019) 10 SCC 807 – referred to.

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<u>Case Law Reference</u>		
[2001] 4 Suppl. SCR 114	referred to	Para 3
[2002] 3 Suppl. SCR 124	referred to	Para 3
(2019) 10 SCC 807	referred to	Para 5

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A CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 242 of 2019.

[Under Article 32 of the Constitution of India]

- Mukul Rohtagi, Sr. Adv., Sameer Rohtagi, Nikhil Bhalla, Lokesh Bhola, Abhimanyu Bhandari, Ms. Nupur Kumar, Mr. Sanchit Gauri, B Shivendra Singh, Aarush Bhatia, Ms. Priyansha Indra Sharma, Sunil Fernandes, Advs. for the Petitioner.
- K. M. Natraj, ASG, Ms. Aishwarya Bhati, AAG for U.P., Ms. Geeta Luthra, Siddharth Dave, Sr. Advs., Chirag M. Shroff, Ms. Mahima C. Shroff, Ms. Yashika Verma, Ms. Riya Thomas, Sarvesh C Singh Baghel, Pranav Kashyap, Ms. Divya Sharma, Gopal Jha, Gopal Prasad, Ms. Shalya Agarwal, Arv Kapoor, Parijat Kishore, Ms. Prerna Singh, Guntur Pramod Kumar, Ms. Avni Sharma, Rakesh Kr. Singh, Vijay Pratap Singh, Prem Prakash, Sumeer Sodhi, Ravinder Kumar Yadav, Vinay Mohan Sharma, Vinayak Sharma, Ms. Shreya Sharma, D Jainendra Kumar Ojha, Suchi Singh, Sanjay Kumar Dubey, Ms. Nidhi, Kumar Shashank, Shagufa Salim, Nivesh Kumar, V.V. Gautam, Prashant Kr. Dubey, Shree Pal Singh, Ms. Gauri Rishi, Pranav Gupta, Avinash Sharma, Manoj K. Mishra, Umesh Dubey, Ms. Jyoti Mishra, Sukumar, S.S. Ghagra, Diptabrata Batabyal, Dr. Amardeep Gaur, M/S. V. Maheshwari & Co., Sanjay Kumar Tyagi, Ms. Manju Jetley, Ankit Goel, E Raghvendra Kumar, S. K. Verma, Ms. Asmita Narula, Vishal Prasad, Shree Prakash Sinha, Rakesh Mishra, Ms. Mohna Sinha, Narendra Kr., Ms. Marina Wheeler, Shekhar Kumar, Mukesh Kumar, Ms. Aparna Trivedi, Ashutosh Mohan, Raghavendra Mohan Bajaj, Mrs. Garima Bajaj, Mrs. Swarupama Chaturvedi, O.P. Bhadani, Arpit Maheshwari, F Ms. Ranjan Narayan, Shailesh Madiyal, Kartik Anand, Sudhanshu Prakash, Chandra Shekhar, Prashant Shekhar, Sanjay Kr. Tyagi, Manish Malhotra, Advs. for the Respondents.

The following Order of the Court was passed:

O R D E R

- G 1. By this order, we propose to dispose of the prayer for interim reliefs in terms of prayer clauses (c) and (d) of this writ petition. In terms of prayer clause (c), the petitioner has prayed for grant of bail in respect of FIRs mentioned therein registered at Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh and Police Station

Economic Offences Wing and at Parliament Street, New Delhi and all other FIRs that have been lodged against the petitioner in the State of Uttar Pradesh and State of NCT of Delhi but are not within the knowledge of the petitioner and any other FIRs that come to the knowledge of this Court or the petitioner during the pendency of the writ petition. In terms of prayer clause (d), the petitioner has sought relief of stay of proceedings emanating from the concerned FIRs mentioned therein registered at Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh and FIR registered at Police Station Economic Offences Wing and at Parliament Street, New Delhi and all other FIRs that have been lodged against the petitioner in the State of Uttar Pradesh and State of NCT of Delhi but are not within the knowledge of the petitioner and any other FIRs that come to the knowledge of this Court or the petitioner during the pendency of the writ petition.

2. The substantive relief claimed in the writ petition, by invoking Article 32 of the Constitution of India for violation of fundamental rights of the petitioner under Articles 14, 19(1)(d) and 21 of the Constitution of India, is to issue mandamus directing CBI to take over investigation of all the FIRs registered against the petitioner in the State of UP and the State of NCT of Delhi respectively in connection with the project by the name "Grand Venice" in the National Capital Region in particular Mall and a Commercial Tower thereof and in respect of which by separate agreements, the company of which the petitioner is the Director, had agreed to sell units in the stated Mall and Commercial Tower as the case may be, to the concerned party. In the alternative, it is prayed that the FIRs filed against the petitioner at different points of time in the State of UP or the State of NCT of Delhi be consolidated and the investigation be entrusted to one agency so that criminal action against the petitioner can proceed at one place.

3. As regards transfer of investigation of all the FIRs to the CBI, in our opinion, the facts of the case do not warrant such a relief. Similarly, the first part of the alternative relief claimed by the petitioner to consolidate all FIRs, *prima facie*, in our opinion, do not merit consideration. However, the second part of the alternative relief may require deeper consideration in light of the submissions made across the Bar by both the parties and the learned counsel for the State of Uttar Pradesh and State of NCT of Delhi. *Prima facie*, the decision pressed into service to oppose even

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- A that relief in the case of *Narinderjit Singh Sahni & Anr. vs. Union of India & Ors.*¹ does not completely rule out the possibility of entrusting the investigation of all the FIRs to one agency in one State by transfer of FIRs and investigation thereof from one State to another State. That appears to be a debatable issue. Our attention has also been drawn to another three-Judge Bench decision in the *State of Punjab & Anr. vs. Rajesh Syal*². As aforesaid, the second part of the alternative substantive prayer being a debatable issue, can be considered at the appropriate stage.
- 4. Reverting to the interim relief claimed especially in terms of prayer clause (c), the same reads, thus :-
- C “Grant bail to the Petitioner herein in FIR No.140/2019, FIR No.273/2019, FIR No.249/2019, FIR No.275/2019, FIR No.248/2019, FIR No.252/2019, FIR No.274/2019, FIR No.262/2019, FIR No.244/2019, FIR No.276/2019, FIR No.278/2019, FIR No.245/2019, 257/2019, FIR No. FIR No.313/2019, FIR No.309/2019,
- D FIR No.258/2019, FIR No.251/2019, 272/2019 all at P.S. Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh; all other FIRs that have been lodged against the Petitioner but are not within the knowledge of the Petitioner and any other FIRs that come to the knowledge of this Hon’ble Court or the Petitioner during the pendency of this Writ Petition; subject to such conditions as this Hon’ble Court may deem fit and proper irrespective of any order made or proceedings or applications pending in any of the courts other than this Hon’ble Court.”
- 5. It is noticed from the pleadings and the affidavits filed on record, that the petitioner’s application for grant of bail in respect of 17 FIRs registered at Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh have already been rejected by the concerned Court. Those orders have not been assailed. But in the writ petition, it is urged that instead of asking the petitioner to file separate bail applications, this court in exercise of its writ jurisdiction, may entertain a common prayer in that
- G regard and grant bail to the petitioner as recently granted in similar situation by another Bench of this Court in *Surinder Singh Alagh vs. Union of India & Ors.*³.

¹ (2002) 2 SCC 210

² (2002) 8 SCC 158

³ Writ Petition (Criminal) No.196 of 2019 and connected matters (Order dated 02.08.2019)

6. It is noticed from the affidavit filed on behalf of the State of Uttar Pradesh that in all the 17 cases where bail applications have been rejected, and, in another case, where the bail application is pending before the concerned Court, charge sheets have already been filed in the concerned Court. It is also noticed that out of 37 cases registered at Police Station Kasna, Gautam Budh Nagar, Greater NOIDA, Uttar Pradesh, the petitioner has been granted bail in 11 cases and eight cases are still under investigation. Similarly, five FIRs are registered in the State of NCT of Delhi-three at Police Station Parliament Street and two with the Economic Offences Wing, New Delhi. In those FIRs the petitioner has been granted bail in three cases by the concerned Court.

7. It is also noticed from the allegations in all the separate FIRs filed before the concerned Police Stations that the same are virtually similar if not identical or stereo type; and essentially making grievance about the non-delivery of possession of the units to the concerned complainant/allottee(s) including the assured lease rental/assured returns in respect of the concerned units. The other common aspects in the separate FIRs is about the non-completion of the project as assured and about siphoning of funds raised for the completion of project in question. The common allegation is also about the legality or impropriety in allotment of land to the company by the officials of Uttar Pradesh State Industrial Development Corporation (UPSIDC). The latter allegation, however, is common only in the FIRs registered in the State of Uttar Pradesh. Notably, the investigation of FIRs registered at Police Station Kasna has been entrusted to a Special Investigation Team (SIT) constituted by the State of Uttar Pradesh. To that extent, all the 37 FIRs registered in the State of Uttar Pradesh are being investigated by one agency and that agency has filed charge sheet(s) in almost 28 cases thus far.

8. We have also noticed that out of five cases registered in the State of NCT of Delhi, with similar allegations, 72 out of 91 informants in the Kasna FIRs are also informants in the FIRs registered with the Economic Offences Wing at Delhi. Indeed, the common informants have offered explanation as to the circumstances in which they became party/complainant in the FIRs registered at Kasna Police Station. For the time being, it is not necessary for us to examine that controversy.

9. It is also relevant to mention that bail granted by the Court of competent jurisdiction at Delhi (CMM/ND/Patiala House Court) has imposed onerous conditions to be observed by the petitioner, as noticed

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- A from the order dated 15th May, 2019. It is a different matter that the petitioner has not been able to avail of any of the bail and is in custody since 12th February, 2019 because of the successive FIRs registered at different places and custody warrants issued at the instance of different police stations from time to time.
- B 10. The petitioner, on the other hand, would contend that the allegation that the project, in particular, Mall and Commercial Tower in respect of which the stated FIRs have been registered being incomplete, is not correct. For, the UPSIDC has already issued completion certificate on 16th April, 2015 as well as the occupancy certificate on 3rd March, 2017 with retrospective date of issuance of completion certificate in respect of the Mall and Commercial Tower portion, i.e., the entire project except the hotel portion. The FIRs referred to in the writ petition in prayer clause (c) are limited to the units in Mall and Commercial Tower of the project in respect of which occupancy certificate has been obtained. The petitioner asserts that the petitioner has handed over possession to
- C 77 allottees in the Mall and 245 allottees in the Commercial Tower. The Mall and the Commercial Tower are fully functional and have been occupied by the brands such as Cine Appeals, Big Bazar, Burger King, H&M etc. The case of the petitioner is that the allottees who have rushed to register FIRs are unwilling to take possession of their unit(s) and are refusing to make payment of the balance consideration amount.
- D In other words, the allottees are not discharging their part of the contractual obligation. Whereas, the petitioner and the company are facing multiple proceedings including before Company Judge [High Court/ National Company Law Tribunal (NCLT)] and also before the concerned forum under Consumer Protection Act for the same subject matter.
- E 11. It is not necessary for us to examine the correctness of the allegations made against the petitioner or the response filed by the petitioner thereto. Suffice it to observe that the project is situated in the National Capital Region and within the territorial jurisdiction of Kasna Police Station (State of Uttar Pradesh). Majority of the cases are registered with the said police station and the concerned police station is inviting further complaints from similarly placed aggrieved persons as a result of which new cases are being registered and investigated by the U.P. State constituted SIT. The SIT of the State of Uttar Pradesh is investigating into a new angle which had cropped up during the course of investigation, about the possibility of collusive and collaborative acts
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of commission and omission of the officials of the UPSIDC. All this is being investigated by the SIT constituted by the State of Uttar Pradesh which, in turn, has filed charge sheet(s) in as many as 28 FIRs thus far.

12. Taking overall view of the matter, therefore, we are inclined to grant interim relief claimed by the petitioner to release him on bail directly by this Court in connection with all the FIRs mentioned in prayer clause (c) and other FIRs that have been or likely to be registered against the petitioner in connection with the project, namely, "Grand Venice", in particular, Mall and Commercial Tower thereof, at Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh or any other Police Station within the territory of the State of Uttar Pradesh and, in the same manner, the FIRs registered at the Police Stations in the State of NCT of Delhi at Police Station Parliament Street and by the Economic Offences Wing New Delhi or otherwise.

13. As regards, interim relief of stay of proceedings against the petitioner emanating from the FIRs mentioned in prayer clause (d), that relief can be considered only in respect of FIRs registered in the State of NCT of Delhi, be it with the Economic Offences Wing or Police Station Parliament Street, New Delhi. The question of granting stay of proceedings pending against the petitioner in connection with the FIRs registered at Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh does not arise as the same are being investigated by one investigating agency, namely, the SIT constituted by the State of Uttar Pradesh. In case any FIR is already registered within the State of Uttar Pradesh in Police Station other than Police Station Kasna, we have no manner of doubt that the SIT will take necessary steps to take over the investigation of all such FIRs registered within the State of Uttar Pradesh.

14. Be it noted that we are inclined to stay further proceedings only arising from the FIRs registered at New Delhi because the substratum of the allegations in the FIRs filed at Delhi are similar and, more so, as aforementioned, 72 complainants are common at both the places. We may, however, permit the remaining informants/complainants in FIRs registered at New Delhi to register their complaint with the Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh if so advised, which can also be investigated by the SIT constituted by the State of Uttar Pradesh.

15. We are conscious of the fact that out of five cases registered within the State of NCT of Delhi brought to the notice of this Court,

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- A charge sheet has been filed in one of the FIRs. However, until the entire issue is debated and considered by this Court, to meet the ends of justice, it would be expedient to stay the further proceedings in connection with all the FIRs registered or to be registered hereinafter in the State of NCT of Delhi.
- B 16. In view of the above, we dispose of the prayers for interim relief, in terms of the prayer clauses (c) and (d) of the writ petition on the following basis :-
- C A. The petitioner is granted bail in respect of all the FIRs referred to in prayer clause (c) in respect of the project by name "Grand Venice" in NCR, in particular, Mall and Commercial Tower thereof, on the following conditions: -
- (i) That the petitioner shall not commit any offence of similar type of which he has been accused.
- D (ii) The petitioner shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to denude such person from disclosing such facts to any Police Station or tamper with the evidence.
- E (iii) The petitioner shall join further investigation as and when called upon to do so by the Investigating Officer or by the SIT constituted by the State of Uttar Pradesh.
- F (iv) The petitioner shall deposit his passport with the Registry of this Court within a period of two weeks from today. If it is with the Police Station at Kasna or any Police Station in the State of NCT of Delhi, the concerned Police Station shall cause to deposit petitioner's passport in the Registry of this Court within the same time.
- G (v) The petitioner shall report to the Investigating Officer nominated by SIT, constituted by the State of Uttar Pradesh on every Monday between 11 A.M. to 12 Noon and shall also appear before the concerned Court as and when called upon to do so.
- H (vi) The petitioner shall deposit an aggregate amount of Rs.50,00,00,000/- (Rupees fifty crore only) before the Registry of this Court as a pre-condition for grant of bail. On deposit of

such amount, authenticated copy of the receipt issued by this Court be produced before the concerned Court/Investigating Officer. The amount so deposited by the petitioner in the Registry, be invested in an appropriate interest bearing deposit scheme in a nationalized bank until further orders including to renew the deposit from time to time. A

(vii) The petitioner shall furnish personal bail bond of Rs.5,00,000/- (Rupees five lac only) with one surety in the like amount in connection with each FIR independently. B

(viii) After being released on bail in terms of this order, the petitioner shall make every possible attempt to settle the claims of the concerned complainant(s)/informant(s) as far as possible within six to eight months as ordered by the Court of the Chief Judicial Magistrate, Patiala House Courts while granting bail to the petitioner in FIR No.38/2018 registered with the Economic Offences Wing, New Delhi vide order dated 15th May, 2019. C

(ix) If the petitioner fails to abide by any of the above conditions intentionally and if it is so established before this Court, no less than 50% of the amount deposited by him in this Court in terms of this order [Clause (vi) above] shall stand forfeited. D

(x) The petitioner shall extend full cooperation to the concerned Court as and when necessary for early disposal of the cases. E

B. All further proceedings emanating from FIRs registered at Police Station Parliament Street, New Delhi or Economic Offence Wing, New Delhi or any other FIR already lodged or to be lodged hereafter in State of NCT of Delhi against the petitioner in connection with the project named “Grand Venice”, in particular, units in Mall and Commercial Tower thereof, shall remain stayed until further orders. F

17. Let the writ petition be notified for further hearing on 15th January, 2020. All concerned shall file reply affidavits/rejoinder affidavits in the main writ petition, in the meantime if so advised. G