

Ajay Kumar vs State (Nct Of Delhi) on 11 July, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1296/2022

AJAY KUMAR

..... Peti
Through: Mr.Rajesh Anand, Advocate

versus

STATE (NCT OF DELHI)

..... Re
Through: Ms.Kusum Dhalla, APP for St
with Inspector Raj Kumar Pa

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 11.07.2022

1. The status report of the State is on the record.

2. The applicant vide the present petition seeks the grant of regular bail in terms of Section 439 of the Cr.P.C., 1973 in relation to FIR No. 178/2017 Police Station EOW under Sections 420/406/409/120B of the Indian Penal Code, 1860, submitting to the effect that he has no role whatsoever to play, that he joined as a Director of the company concerned in the year 2013, that there is not a single statement under Section 161 of the Cr.P.C., 1973, of any of the home buyers incriminating the applicant and that his role as per his profile was only in relation to construction and that he was not involved in receiving any amount from any of the home buyers. Inter alia, it has been submitted on behalf of the applicant that the charge sheet in the matter has already been filed in the year 2019 and that the applicant is not required for any further investigation and has been incarcerated for about 3 years and 3 months.

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3. Inter alia, a catena of verdicts has been relied upon on behalf of the applicant to contend to the effect that the mere magnitude of the alleged commission of the offence per se would be insufficient to incarcerate the applicant in custody and that the applicant be released on bail and he would be available to face trial. The verdicts relied upon on behalf of the petitioner are under:

Jayant Kumar Jain V. State (Bail Apln. No. 2442/2020, decided on 14.9.20220, Delhi High Court) Navendu babbar V. State (Bail Appln. No. 913/2020 decided on 18.6.2020, Delhi High Court) Awanish Kumar Mishra V. State (Bail Appln. No. 1947/2021 decided on 25.10.2021, Delhi High Court) Garima Gupta V. State (Bail Appln. No 712/2019 decided on 1.9.2021, Delhi High Court) Sunder Singh Bhati V. The State (Bail Appln. No. 3750/2021 decided on 17.1.2022, Delhi High Court) Ashok Sikka V. State, (147 (2008) DLT 552, Delhi High Court) Sushil Sethi & Another V. The State of Arunachal Pradesh & Others (arising out of Crl.Appeal No. 125/2020 & SLP(Crl.) No. 590/2019 of the Hon'ble Supreme Court) Nancy Gill V.State (Bail Appln. No. 2557/2018 decided on 8.2.2022, Delhi High Court)

4. It is also inter alia submitted on behalf of the applicant that no vicarious liability can be attributed against the applicant qua the alleged commission of the offences in the instant case when he had joined the company in question only in the year 2013 and reliance is also sought to be placed on behalf of the applicant on the verdict of this Court in Ashok Sikka V. State in Crl.M.C. No. 1608/2000 a verdict dated 7.2.2008 ; 147(2008) DLT 552 (DELHI) to contend to the effect that even criminal proceedings against the Directors in that case were held to be unsustainable in law and Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the FIR bearing No. 972/1998 Police Station Connaught Place under Sections 406/409/420/120B of the Indian Penal Code, 1860 was quashed.

5. On behalf of the State, the learned APP for the State has vehemently opposed the prayer made by the applicant seeking the grant of bail submitting to the effect that the applicant was fully involved in the alleged commission of offences punishable under Section 406/409/420/120B of the Indian Penal Code, 1860 even if he joined the company in question only in the year 2013 in as much as it has been submitted through the status report dated 20.5.2022 by the State that as per the audit report of S.N Dhawan & Company for the financial year 2013-14 and 2014-15 it is indicated that a total of 4608 people had booked their flats with M/s Amrapali Smart City Developers Pvt. Ltd., as per report for the year ending 2013-14 and 2014-15 and the company had received Rs.7,012,102,336/- i.e., Rs. Seven Hundred Crores approximately for the year ending 31.3.2014 from 4608 home buyers and as per this report during the year the company had issued Optional Convertible debentures (OCDs) amounting to Rs.150,00,00,000/- to Aditiya Birla Real Estate Fund (Investor) and that the company had hypothecated its receivables as security in favour of the investors by way of second charge for repayment of secured obligations and 49% of the securities (including any securities allotted in future) held by the share holders in the company were pledged in favour of the investor. As per this report it was also indicated that despite the regular follow up, the company had not provided draft financial statements for audit and thus the audit for the year ending 2015-16 never got started. It is also indicated to have been stated through this audit report that Rs.1,448,443,833/- (Rs. One hundred Forty-Four Crores, Eighty Four Lakhs Forty Three Thousand Eight Hundred Thirty Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Three) was given to the group companies through Inter Corporate deposits as loans which are interest free and prejudicial to the interest of the company.

6. The specific role attributed against the applicant by the State through the status report is to the effect that as per the reply of the ROC, the applicant along with Anil Kumar Sharma and Shiv Priya (are the main accused), directors of the company M/s Amrapali Smart City Developers Pvt. Ltd. to whom Plot GH-02, Sector-04, Greater Noida, District Gautam Budh Nagar, U. P. was allotted by the Greater Noida Authority, as per the reply from the Greater Noida Authority, the company M/s Amrapali Smart City Developers Pvt. Ltd. had to pay a total amount of Rs.400.38 crores including interest in instalments as per the lease deed dated 14.9.2010 and only Rs.53.62 crores was deposited and the amount payable including penal interest is Rs.660.36 crores. as on the date of reply i.e.,20.5.2022 with it having been submitted on behalf of the State thus that the applicant had even stopped making the payment to the Greater Noida Authority and diverted the amount received from the home buyers to other companies as a consequence of which the Greater Noida Authority could not issue the completion certificate to the builder nor is it in a position to execute the tripartite sub-lease agreement between the Home Buyer, Builder and the Greater Noida Authority as the full payment was not made as per the lease agreement. It has thus been submitted by the State that the builder has created a vicious circle for the innocent home buyers and has taken their hard earned money on one hand and had deprived them of possession of their homes.

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7. The State further submits that the as per the reply from the banks the applicant is one of the authorized persons to operate the bank accounts in the name of M/s Amrapali Smart City Developers Pvt. Ltd and in these accounts majority of the home buyers money was credited.

8. The State has further submitted through the status report that in order to further extort money from the home buyers, all the accused persons (apparently inclusive of the applicant) had launched Mission Completion Scheme in the year 2016 (when apparently the applicant was already part and parcel of M/s Amrapali Smart City Developers Pvt. Ltd. having been joined as director thereof in the year 2013), and collected additional Rs.2 lacs to Rs.2.5 lacs from each of the home buyers and even after taking the additional money from the Home Buyers, the accused persons had not started any work and as per the company records no audit of books of accounts was carried out in the year 2016 and the money was misappropriated by all the accused directors.

9. Inter alia, the State submits that the accused persons in connivance with each other had launched Subvention Scheme in which they had promised to deliver the flat within a short period and had taken 10% as booking amount and 80% as one-time payment at the signing of the Builder- Buyer Agreement and remaining 10% at the time of the possession but that the accused persons had failed to deliver the flats on time as promised and further misappropriated the amount for their own use or in other group companies instead of investing in construction of flats.

10. Inter alia, the State submits that as per the report of the Statutory Auditor for the year ending 2013-14 and 2014-15, the company had received Rs.7,012,102, 336/- for the year ending 31.3.2014 from 4608 Home Buyers Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Rs.9,775,945,106/- for the year ending 31.3.2015 and as per the reply dated 27.2.2018, despite the regular follow up, the company did not provide the draft financial statements for audit and that the petitioner/applicant had signed the audited balance sheet for the year 2013-14 and 2014-15 which shows that he was aware of the financial affairs of the company and the factum of diversion of funds was very well within his knowledge. However it is submitted on behalf of the applicant qua this aspect that the signing of the audited balance sheet was only the part of the duty and that does not incriminate the applicant in any manner qua the alleged commission of offences.

11. It has further been submitted by the State through the status report that qua the sum of Rs. 1,448,443,833/- which was given to the group companies through Inter Corporate deposits as loans, which are interest free and prejudicial to the interest of the company and the report of the statutory auditor there is no further information of the subsequent utilization of the amount. The State has further submitted to the effect that the contention raised by the applicant that he had joined M/s Amrapali Smart City Developers Pvt. Ltd only on 5.7.2013 and thus was not involved in the alleged cheating of the home buyers and the misappropriation of the accounts or any act of breach of trust, are wholly erroneous, submitting to the effect that as per the investigation, the main flagship company of Amrapali Group namely M/s Ultra Homes Construction Private Limited has 49% to 50% shareholding in the years 2011, 2012 and 2013, that M/s Ultra Homes Construction Private Limited had 99.93% shareholding in the year 2014 and 2015 in this company, i.e., M/s Amrapali Smart City Developers Pvt. Ltd and that in M/s Ultra Homes Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Construction Private Limited the applicant herein was the director from the date 7.4.2003 till the said company was taken over by the Court Receiver and that the applicant became a director of M/s Amrapali Smart City Developers Pvt. Ltd on 5.7.2013 and remained as such till the company was taken over by the Court Receiver with it having been submitted by the State that these documents suggest that the applicant was very much involved in the day to day affairs of M/s Amrapali Smart City Developers Pvt. Ltd right from the beginning and was equally responsible for the affairs of company along with other directors.

12. A submission was made on behalf of the applicant that M/s Ultra Homes Construction Private Limited has delivered several projects and that thus merely because the applicant had been a part & parcel of M/s Ultra Homes Construction Private Limited, from the year 2003, the acts conducted allegedly by M/s Amrapali Smart City Developers Pvt. Ltd till when the applicant became a director thereof on 5.7.2013 cannot be attributed against him. The State has further submitted that there are total 56 cases registered against Amrapali and its group /associate companies including cases received from Noida, that the petitioner has been arrested in 19 cases so far, and that he was charge sheeted in 2 cases without arrest and in one case he was kept in column No.12 and in 19 cases

pending investigation his role is still under probe, but that in 10 cases which are pending trial, no role has been attributed to him.

13. The State has further submitted through the status report qua which a submission has also been made on behalf of the applicant that in pursuance to order dated 23.6.2019 of the Hon'ble Supreme Court , the Court Receiver Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

having been appointed, the remaining construction work is to be completed by NBCC under the control of the Court Receiver.

14. The applicant thus submits that in as much as the Court Receiver has already been appointed and the construction activity is to be completed with the home buyers to receive the flats in question, no useful purpose would be served by the further incarceration of the applicant in custody.

15. On a consideration of the submissions that have been made on behalf of either side without any observations on the merits or demerits of the trial that is in progress and also taking into account the submissions made on behalf of the appellant that even the charges in the matter have not yet been framed even without any observations on the merits or demerits of the charges that may or may not be framed, it is considered essential to observe that through the status report that the State has put forth, the alleged involvement of the applicant in 19 cases in which he has been arrested, chargesheeted in two cases without arrest, kept in column No.12 in one case with his role being under investigation in 19 cases, are aspects which cannot be overlooked. Undoubtedly, it has been submitted on behalf of the applicant that in cases the bail applications are pending with the applicant having been granted anticipatory bail in FIR 309/2018, Police Station EOW registered under Sections 420/.406/120B of the Indian Penal Code, 1860, regular bail in FIR 354/2017 Police Station Anand Vihar, FIR No. 510/2017 Police Station Saket now EOW, FIR No. 582/2017 Police Station Saket now EOW, FIR No. 512/2017 of Police Station Saket now EOW, FIR No. 511/2017 Police Station Saket now EOW, FIR No. 583/2017 Police Station Saket Now EOW; Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

with cognizance having not been taken in FIR Nos. 355/17 Police Station Ranjit Nagar under Section 420 of the Indian Penal Code, 1860, FIR No.317/2018 Police Station Prashant Vihar under Section 406/420/120B of the Indian Penal Code, 1860, FIR No. 520/2017 Police Station Anand Vihar under Section420/406/34 of the Indian Penal Code, 1860 , FIR No.33/2019 Police Station EOW under Sections 406/420/120B of the Indian Penal Code, 1860 and FIR No. 10/2019 Police Station EOW under Sections 406/420/120B of the Indian Penal Code, 1860 ;

with the applicant having been neither arrested nor charge sheeted in FIRs No. 138/2019 Police Station EOW under Sections 420/406/34 of the Indian Penal Code, 1860 and;

FIR No. 270/2019 Police Station EOW registered under Sections 406/420/120B of the Indian Penal Code, 1860 with closure reports stated to have been filed:

FIR No. 598/17, Police Station Anand Vihar U/s 420/406/120B IPC FIR No. 146/17, Police Station EOW U/s 420/406/120B IPC FIR No. 309/17, Police Station Anand Vihar U/s 420/406/120B IPC with it having been submitted that the applicant was neither arrested nor called to join the investigation by the Investigating Officer in:

FIR No. 41/17, PS Anand Vihar U/s 406/420 IPC FIR No. 164/19, PS EOW U/s 409/420/120B IPC FIR No. 186/19, PS Anand Vihar U/s 420/406/471/120B IPC FIR No. 186/19, PS Anand Vihar U/s 420/406/471/120B IPC FIR No. 42/19, PS EOW U/s 406/420 120B IPC FIR No. 43/19, PS Anand Vihar U/s 406/420 IPC FIR No. 141/19, PS EOW U/s 420/406/409/120B IPC FIR No. 144/19, PS EOW U/s 406/420/120B IPC FIR No. 191/16, PS EOW U/s 420/406/409/120B IPC Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

FIR No. 57/20, PS EOW U/s 406/420/120B IPC FIR No. 58/20, PS EOW U/s 406/420/120B IPC FIR No. 333/18, PS Sarita Vihar U/s 420/406/34 IPC FIR No. 265/19, PS EOW U/s 420/406/34 IPC FIR No. 216/18, PS EOW U/s 420/406/409 IPC FIR No. 139/18, PS EOW U/s 420/406/34 IPC with other alleged involvements of the applicant in the cases transferred from Gautam Budh Nagar, Uttar Pradesh to EOW Delhi vide order dated 4.3.2021 No.27679 of 2021 (Vol.I-167); I.A. Nos.60324 and 60396 of 2020 (Vol.I-116); I.A. No.115285 of 2020 (Vol.I-151); and, Document Vol.No.R-

FIR No. 42/18, PS Bisrakh U/s 406/420 IPC FIR No. 153/18, PS Bisrakh U/s 406/420 IPC FIR No. 1625/18, PS Phase-3 U/s 104/420/ 467/468/ 471/ 504/ 506 IPC FIR No. 1228/19, PS Surajpur U/s 406/420/467//468/471 IPC FIR No. 239/19, PS Sector-58 U/s 406/420/467/468/471/ 120B IPC FIR No. 86/20, PS Sector-58 U/s 406/420/323/352/504 IPC FIR No. 83/20, PS Sector-58 U/s 406/420/323/352/504 IPC FIR No. 152/18, U/s 64 Indian Stamp Act, 1899, Police Station-Sec 49, Noida FIR No. 153/18, U/s 64 Indian Stamp Act, 1899, Police Station-Sec 49, Noida FIR No. 434/19, PS Sector-58 Noida U/s 406/420/504/ 506 IPC FIR No. 123/18, PS Sector-49 Noida U/s 406/420/ 467/468/ 120B/323/ 352/ 504/506 IPC FIR No.52/19, PS Phase-3 Noida U/s 406/ 420/ 467/ 468/471/504/506 IPC FIR No. 562/17, PS Bisrakh U/s 406/420 IPC Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

FIR No. 767/17, PS Sector-49 Noida U/s 406/420/ 120B IPC, in which there was no investigation pending and in FIR No. 273/17, PS Bisrakh U/s 406/420 IPC FIR No. 198/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 559/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 560/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 561/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 563/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 565/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 566/17, PS- .Bisrakh U/s 406/420 IPC FIR No. 300/18, PS- .Bisrakh U/s 406/420/504/506 IPC FIR No. 219/18, PS- .Sector-39 Noida U/s 64 Indian Stamp Act FIR No. 415/19, PS- .Bisrakh U/s 406/420/120B IPC where was no arrest of the applicant and in ECIR No.06/LKZO/019/LD(RKM)/2305, U/s 3 & 4 of

PMLA, However the averments made through the status report that even after the applicant had joined the M/s Amrapali Smart City Developers Pvt. Ltd on 5.7.2013, the financial audit of the year 2013-14, 2014-15 of M/s Amrapali Smart City Developers Pvt. Ltd indicated issuance of Optional Convertible Debentures amounting to Rs.150, 00,00, 000/- to Aditiya Birla Real Estate Fund (Investor) with hypothecation of receivables as security in favour of investors by way of second charge for repayment of secured obligations and interest free Inter Corporate Deposits made to the tune of Rs.1,448,443,833/- for the year ending 2015-16 and the launching of the Mission Completion Scheme in the year 2016 by way of a collection of additional Rs.2 lacs to Rs.2.5 lacs from each of the home buyers despite which no construction activity was started and no audit of books of accounts carried out in the year 2016 with a launch of the Subvention Scheme also after the applicant Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.

allegedly joined the M/s Amrapali Smart City Developers Pvt. Ltd whereby 10% was taken as booking amount, 80% as onetime payment at the time of signing of the Builder-Buyer Agreement with remaining 10% at the time of possession with no delivery made of the flats in question, the alleged complicity of the applicant in the commission of the offences alleged against him under Sections 406/409/420/120B of the Indian Penal Code, 1860 despite his having joined the M/s Amrapali Smart City Developers Pvt. Ltd on 5.7.2013, cannot presently be overlooked.

16. In the circumstances, the Court does not consider it appropriate to grant bail to the applicant. The application is thus rejected.

Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial, if any.

ANU MALHOTRA, J JULY 11, 2022/SV Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:18.07.2022 16:28:32 This file is digitally signed by PS to HMJ ANU MALHOTRA.