

(2025) ibclaw.in 194 HC

IN THE HIGH COURT OF PATNA

Alok Kumar

v.

The State of Bihar and Ors.

Criminal Writ Jurisdiction Case No.1523 of 2023

Decided on 07-Feb-25

Mr. Justice Bibek Chaudhuri

Add. Info:

For Appellant(s): Mr. Lalit Kishore, Sr. Advocate, Mr. Ajay Kumar Prasad, Mr. Deepak Kumar, Advocate, Mr. Kamal Kishor Kumar, Advocate, Mr. Ayush Kumar, Advocate.

For Respondent(s): Mr. Dr. K.N. Singh (A.S.G.), Mr. Manoj Kr. Singh, Advocate, Mr. Ankit Kr. Singh, Advocate, Mr. Kumar Rakesh Chandra, Advocate, Mr. Vishwanath Prasad Sinha, Sr. Advocate, Ms. Soni Shrivastava, Advocate, Mr. Jainandra Kumar, Advocate.

Judgment/Order:

CAV JUDGMENT

Date : 07-02-2025

1. The petitioner has invoked the constitutional writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India with a prayer to quash multiple FIRs instituted against him on the ground that the said FIRs of complaints are baseless and filed only to harass the petitioner, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence under Sections 420, 467, 468 and 471 of the IPC.

2. It is admitted at the outset by the petitioner that at best an offence under Section 406 of the IPC might be registered on the basis of the said FIRs/complaints case. The complaints mostly alleged that the petitioner and his company misappropriated money advanced by the intending purchaser of flats/apartments promised to be constructed by the petitioner's company. As per writ petition as many as 61 FIRs were filed in different police stations.

3. At the time of hearing, it is submitted by the learned Senior Counsel on behalf of the petitioner that as many as 70 FIRs were filed against the petitioner.

4. It is necessary, at the outset, to state certain facts involved in the case which led the petitioner to file the instant writ petition.

5. The petitioner is Managing Director of Agrani Homes, a company incorporated under the

Companies Act. The said company is engaged in real estate development business. It constructs apartment, commercial places and markets and sale them to public at large.

6. It is further stated that Indian Overseas Bank Association with the vision of construction of a residential block under the name and style of IOB Nagar in Patna, Bihar and Varanasi in the State of Uttar Pradesh, collaborated with the petitioner's company. The residential blocks in Patna was proposed to be constructed at Danapur. The land of the project was clear in a phased manner by way of direct purchase or under development with the agreement of the respective land lords. The development of the project was carried out in a phased manner in blocks. Blocks G to J was developed under one plan as a part of the IOB Township Project whereas K and L are part of the plan. From the other blocks to be constructed such as Blocks C2, PG-1 and PG-2. Blocks G to J of IOB Nagar was constructed over 18 Kathas of land under development agreement with the land-lord.

7. At this juncture, the petitioner received a notice from RERA and took step for registration of the project under Section 3 on 30th of April, 2018. The completion date for the said project was mentioned on 31st of December, 2019. However, the RERA did not register the said project for a further period of 8 months and it was only on 17th of December, 2018 that the said project came to be registered. Due to non registration of the project, no construction/development work could be undertaken by the company/Agrani Homes over the said project. Accordingly, the company applied for extension of the date of completion of the project on 13th of March, 2020 and the completion date was fixed on 31st of March, 2021. Again the petitioner's company made an application with RERA to extend the completion date on 5th of August, 2020 but it was denied. In the meantime, some intending purchasers/allottees of flats in blocks G, H, I, K and L filed complaints before RERA which was registered as Complaint Case No. CC/306/2019 along with other analogous cases. During the pendency of those cases, the company assured RERA that the proceeds of the sale of flats would be utilised towards amount who wish to take the refund of the amount paid by them. During the pendency of the said complaint cases, RERA directed the intending buyers of the Patliputra Land i.e., Ruban Hospital to be appeared in the complaint cases. In the year 2020, another Complaint Case No. 548 (C) of 2020 dated 28th of July, 2020 under Sections 406 and 420 of the IPC and 138 of the N.I. Act was filed against the petitioner before the learned Judicial Magistrate 1st Class at Danapur.

8. Subsequent to the said complaint, series of other complaints were filed against the petitioner. Simultaneously, order were passed by RERA directing the petitioner's company to deposit huge amount of money to different intending purchasers including Ruban Hospital. It is stated by the petitioner that even prior to the intervention of the RERA, the petitioner was in the process of refunding the principal amount along with interest to the allottees of the various flats who had demanded refund from the petitioner. In the said process, the Agrani Homes had already made payments of an amount of Rs. 2 Crore and after intervention of RERA, the petitioner has paid approximately a sum of Rs. 38 Crores which, according to the petitioner shows the *bona fide* that the petitioner had no intention to misappropriate or commit cheating of the booking money of the intending purchasers with dishonest and fraudulent intention. However, the petitioner suffered series of criminal cases in the year 2021, 2022 and 2023.

9. The petitioner had filed a criminal writ petition bearing WP (Crl.) No. 261 of 2023 before the Hon'ble Supreme Court for clubbing and transferring the FIR (cases) which are filed at various police stations of Patna, Gaya in the State of Bihar and Varanasi in the State of Uttar Pradesh.

10. Hon'ble Supreme Court vide an order dated 21st of July, 2023 passed an order rejecting the application filed by the petitioner under Article 32 of the Constitution of India. However, given liberty to the petitioner to move before the High Court for appropriate relief for clubbing of the cases before one Court.

11. By filing the instant writ petition, the petitioner has prayed for quashing of all the FIRs as contents of the complaints attached with all individual FIRs, disclose only a civil dispute relating to non-performance of agreement for sale.

12. It is submitted by Mr. Lalit Kishore, the learned Senior Counsel on behalf of the petitioner that the contents of all the FIRs filed against the petitioner are verbatim similar. The multiple FIRs/complaints are designed in a way to criminalize the civil dispute between the petitioner and the home buyers/complainants. It is a fact that the petitioner is involved in real estate business, agreements were made with the intending purchasers that the petitioner would construct residential flat/apartments/hospital/commercial place/markets etc., and collect a booking money from the intending purchasers. However, the petitioner never had any intention to misappropriate or commit cheating in respect of the said money collected by him. Initially, petitioner did not obtain permission from RERA for construction. Subsequently, considerable numbers of flats were constructed and those were handed over to the intending purchasers. The petitioner wants to settle the dispute with the intending purchasers either by delivery of flats or by payment of money with interest. As he is in custody, it is not possible for him to negotiate with the intending purchasers. Therefore, the subsequent act and conduct of the petitioner clearly shows that he had no intention to misappropriate any money or commit cheating by inducing the intending purchaser to part with their property with dishonest, fraudulent or deceptive inducement.

13. In support of his contention, the learned Senior Counsel for the petitioner refers to the decision of the Apex Court in ***Gian Singh v. State of Punjab & Anr.***, reported in **(2012) 10 SCC 303**.

14. It is also contended by the learned Senior Counsel on behalf of the petitioner that there is absolutely no ingredient of offence under Sections 467, 468 and 471 of the IPC against the petitioner. Since the FIRs did not attribute to any criminal liability of the petitioner, all the FIRs are liable to be quashed relying on the decision in the case of ***State of Haryana v. Ch. Bhajan Lal & Ors.*** reported in **AIR 1992 SC 604**.

15. An alternative argument has been made by the learned Senior Counsel on behalf of the petitioner, stating, *inter alia*, that the allegations made in various FIRs are parts/series of one transaction and therefore it is necessary to quash all the FIR except the first one and club them together in single FIR. On the self-same allegation, there cannot be more than one FIR against the petitioner.

16. On this score, learned Senior Counsel refers to the decision in ***T.T. Antony v. State of Kerala & Ors.***, reported in **(2001) 6 SCC 181**, Paragraph Nos. 20 and 27 of the said decision is relevant and quoted below:

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation

on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

17. The same principle is laid down by the Hon'ble Supreme Court in ***Arnab Ranjan Goswami v. Union of India & Ors.***, reported in ***(2020) 14 SCC 51.***

18. On the same point, the learned Senior Counsel on behalf of the petitioner refers to the following decisions of the Hon'ble Supreme Court :- ***BabuBhai v. State of Gujarat & Ors.***, reported in ***2010 (12) SCC 254*** and ***Amish Devgan v. Union of India & Ors.***, reported in ***(2021) 3 SCC 306.***

19. On 4th of November, 2023, Respondent No. 7, Deputy Superintendent of Police, Economic Offence Unit, Bihar has filed a counter affidavit denying all allegations made out by the petitioner in the instant writ petition. The contesting respondent refers to an order dated 25th of September, 2023 passed by this Court in the instant case where the Court has quoted the submission made by the learned Senior Counsel for the petitioner to the effect that he is not pressing for quashing of the FIRs at present. However, the learned counsel submits that he is pressing the prayer for clubbing all the cases before the agency. It is submitted by Respondent No. 7 in its counter affidavit that in Cr. WJC No. 1150 of 2021, this Court passed an order on 2nd of August, 2023 with respect to Agrani Group of Companies/builder and its investors in order to protect the interest of the intending purchaser of flats in Paragraph No. 34 directing the Director General of Police, Bihar, Patna to take a view on the complaints and on the issue of transferring all the FIRs to the Economic Offence Unit Police Station and Economic Offence Unit was directed to take charge of all the investigation and to apply its best resources and expertise.

20. Cr. WJC No. 98 of 2023 filed by one Shalini Thakur and Ors. v. The Union of India and Ors., this Court passed certain directions on 10th of October, 2023 and on the basis of the above-mentioned directions, the Economic Offence Unit, Bihar, Patna has received internal orders of Director General of Police dated 17th of October, 2023 for taking appropriate action in the matter against the petitioner. Upon receipt of such direction, the S.P., Economic Office Unit, Bihar, Patna, directed all S.Ps in all police districts in the State of Bihar to submit report with respect to the criminal cases instituted against Agrani Group of Companies. On the basis of such requisition, the S.S.P., Gaya informed that Rampur P.S. Case No. 139 of 2022 is pending for investigation against the petitioner within the jurisdiction of Gaya District and as many as 44 criminal cases are pending within the jurisdiction of Patna Police District. The investigation of those cases were taken up by the Economic Offence Unit.

21. The Assistant Director, ED, Zonal Office at Patna filed a counter affidavit on 5th of January, 2024, stating, inter alia that investigation of scheduled offences under Sections 406, 420, 467, 468 and 471 of the IPC suggested that M/s Agrani Homes Real Marketing Pvt. Ltd. had illegally diverted the deposits/investment made by the home buyers and purchased property in his personal name at Patliputra Colony, Patna and thereby diverted money obtained by the petitioner as proceeds of crime. Based on the material and information available with the respondent department, searches were carried out under Section 17 of the PMLA and the premises of the petitioner and his company, resulted in recovery of physical documents and misappropriation of huge amount of money for which the bank accounts of the petitioner were frozen.

22. The S.S.P., attached to the office / RERA, Bihar, Patna has filed another counter affidavit on 29th of March, 2024, stating, inter alia, that the intending home buyers being aggrieved person filed complaint under Section 31 of the RERA Act. More than 1500 complaints have been filed against the petitioner, orders were passed by the authority and when the petitioner failed to comply with the order of the authority under Section 40 (1) & (2) of the RERA Act read with Rule 25 of the RERA Rules, 2017, the matters were sent to the District Magistrate for recovery of the amount under the provision of Bihar & Orissa Public Demand Recovery Act.

23. It is contended on behalf of the Respondent No. 5 that the petitioner's company collected hundreds of crores of rupees from the allottees/complainants on promise of giving flats/plot since 2010 to 2019, but has miserably failed in every aspect.

24. The initiation of 28 suo-motu cases by the authorities, the respondent company had applied for 34 registration of their projects out of which only 11 projects have been approved by the authority and 24 projects have been withdrawn/rejected but, in spite of the said approval of the 11 projects, the petitioner's company failed to complete the same. The petitioner has admitted that they have taken money from the intending purchasers for around 50 projects and from the records of the authority and the cases filed by the authority it also appears that the petitioner in the name of Agrani have taken money for around 50 projects. From the application for registration of the petitioner's company, the company himself admit that the total cost of the said projects comes to Rs. 71,209 Lakhs. After the commencement of the RERA Act, the authority has been flooded with approximately 1500 complaints cases wherein 90 per cent of the allottees/complaints are demanding their paid amount with interest. Thus, there was huge defalcation of money for which the petitioner is not entitled to get any relief.

25. The issue involved in the instant writ petition was elaborately discussed by this Court while disposing of I.A. No. 2 of 2023 and I.A. No. 3 of 2023 filed in the instant writ petition. Observation of this Court in Paragraph No. 4 onwards, i.e., 4 to 22 of the order dated 22nd of April, 2024 is relevant and quoted below:

"4. In order to appreciate the above mentioned applications and submissions made by the learned Sr. Counsel for the petitioner, it is necessary to narrate the following facts:

The petitioner has filed the above numbered writ petition praying for quashing of multiple F.I.R.s filed against him on the ground that if the submissions made in the F.I.R., instituted against the petitioner, are taken at their face value and accepted in their entirety, they do not prima facie constitute any offence under Sections 420/ 467 / 468 / 471 of the Indian Penal Code.

It is, however, admitted on behalf of the petitioner that allegations made out by the Informants in several complaints made, constitute an offence under Section 406 of the Indian Penal Code only.

It is stated by the petitioner that he is the Managing Director of Agrani Homes Private Limited and Agrani Homes Real Marketing Private Limited. They undertook various development projects in the field of infrastructure and Housing development in the Districts of Patna and Gaya. The petitioner's companies were engaged in construction of residential flats in different localities, towns and cities in the Districts of Patna and Gaya and declared that they would sell out the said flats to the intending purchasers at a price of Rs. 15,00,000/- Advertisements made by the above-named companies of the petitioner attracted thousands of people and the above-named companies accepted consideration money from the intending purchasers and executed agreements for sale of residential units with each of the intending purchasers. It is alleged by the de facto complainants that in spite of acceptance of consideration money, the petitioner failed to deliver residential units to the complainants and misappropriated the consideration money which the intending purchasers / complainants paid to him and committed cheating. In some of such cases, there are allegations of forgery of the agreements executed by and between the intending purchasers and the petitioner for the purpose of cheating and using such forged documents as genuine in spite of petitioner's specific knowledge that such documents were forged.

It is submitted by the petitioner by way of amendment of the writ petition that as many as 69 numbers of cases have been registered against the petitioner and the same is pending in different Courts.

5. *The learned Sr. Counsel appearing on behalf of the petitioner submits that the petitioner has also filed application for clubbing together all 69 cases and commence trial as a single case against him. However, the learned Sr. Counsel appearing on behalf of the petitioner candidly submits that he is not going to press the said application for clubbing all the cases together at this stage. The applications for interim as well as regular bail of the petitioner are moved by the learned Sr. Counsel appearing on behalf of the petitioner.*

6. *It is submitted by the learned Sr. Counsel appearing on behalf of the petitioner that when a person is implicated in a criminal case for the offence of criminal breach of trust, he cannot be,*

at the same time, implicated in an offence punishable under Section 420 of the Indian Penal Code for cheating.

7. According to the learned Sr. Counsel on behalf of the petitioner, mere breach of promise, agreement or contract, does not, *ipso facto*, constitute offence of criminal breach of trust under Section 405 of the I.P.C. without there being clear case of inducement. The difference between criminal breach of trust and cheating would depend upon the fraudulent inducement and mens rea. To support the charge of criminal breach of trust and cheating, existence of fraudulent or dishonest intention right at the beginning of transaction with mens rea must be shown. Breach of contractual obligations which are accompanied by fraudulent, dishonest or deceptive inducements, resulting in involuntary and inefficient transfer stands criminalized under Section 415 of the Indian Penal Code.

8. It is submitted by the learned Sr. Counsel on behalf of the petitioner that the petitioner had no such fraudulent, dishonest or deceptive intention to induce the intending purchasers to pay consideration price for the flats to be constructed from the very beginning. Practically, the petitioner's company constructed approximately 1150 flats and duly handed over the possession of 850 flats to the allottees. Unfortunately, the project could not be completed for various reasons as Real Estate Regulatory Authority (RERA), Bihar did not grant approval for the projects within the statutory period of 30 days as per Section 3 of the Bihar RERA Act and Rules and had kept the matter pending for years together and finally rejected the petitioner's prayer for approval.

9. It is also submitted on behalf of the petitioner that his company has already returned consideration price, amounting to 38 crores to 651 allottees. In all, the petitioner returned 98 crores to the intending purchasers to whom the petitioner failed to deliver the possession of residential unit. He also completed 65 to 70 per cent of the construction work at the sites which were previously approved by RERA, Bihar. The petitioner has detailed out the manners of payment in page 10 to 13 of the rejoinder affidavit to the reply in counter affidavit filed by the Respondent No. 2 and Respondent No. 6.

10. It is also submitted by learned Sr. Counsel on behalf of the petitioner that the petitioner is in custody for 18 months. Offence under Section 406 of the Indian Penal Code prescribes punishment, which may extend to three years or with fine or with both. Thus, the petitioner is in custody for more than one-half of the maximum punishment, which may be imposed upon him for the offence punishable under Section 406 of the Indian Penal Code.

11. It is submitted by the learned Sr. Counsel on behalf of the petitioner that this Court in exercise of the extraordinary jurisdiction under Article 226 of the Constitution can pass an order granting interim bail to the petitioner under the facts and circumstances of the case. That in all, as per the allegation made by the Economic Offence Unit, the petitioner is involved in misappropriation of funds of Rs. 152 crores approximately. Out of the said money, the petitioner has already paid Rs. 98 crores to the allottees. Secondly, the petitioner already constructed and handed over possession of 850 flats. He settled the dispute with 651 allottees. There is though element of cheating in the allegation made against the petitioner by the *de facto* complainant, if the petitioner is released on bail, he would be able to further settle the dispute with the remaining intending purchasers of residential units. Moreover, it is not

possible for the petitioner to pray separately for interim bail in 69 numbers of cases pending in different Courts and different jurisdiction.

12. The learned Sr. Counsel, on the other hand, submits that petitioner realized money from different persons, not in respect of one or two projects, but he almost, at the same time, demonstrated that he was going to construct as many as hundreds of projects.

13. It is submitted by Mr. V.N.P. Sinha, learned Sr. Counsel on behalf of the Economic Offence Unit (EOU) that the petitioner's application under Article 226 of the Constitution for quashing of F.I.R. is not fit to be entertained on the ground that on the earlier occasion, the petitioner moved as many as 10 writ petitions in this Court for identical reliefs. The said applications were either dismissed or withdrawn or allowed to be dismissed for default or remained unattended. Thus, it is contended on behalf of the EOU that when the petitioner is not entitled to get main relief for quashing of the F.I.R., he cannot pray for interim relief by filing applications, which is not connected with the main relief. In support of his contention, he draws my attention to the prayer made by the petitioner in the instant writ petition, which is as follows:

"The instant writ petition has been filed by the Petitioner seeking quashing of multiple F.I.R.s on merits where the allegations made in the First Information Reports or the complaints are baseless and just to trump up the charges against the Petitioner, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence under Sections 420, 467, 468 and 471 but utmost attract Section 406 of the Indian Penal Code, 1860 in as much as the F.I.R.s registered against the Petitioner are technically instituted to unleash pressure against the Agrani Homes and to harass him."

14. It is contended by the learned Sr. Counsel that in the writ petition itself, the petitioner has not made any prayer in the form of interim relief for bail on the principle of Section 438 or 439 of the Cr.P.C. read with Section 482 of the Cr.P.C.

15. It is also submitted by the learned Sr. Counsel that the decision of Hon'ble Supreme Court in the case of **Satinder Singh Bhasin v. Government of NCT at Delhi & Ors.**, was passed by the Hon'ble Supreme Court under Article 142 of the Constitution of India read with Article 32 of the Constitution. It is recorded in the order passed by the Hon'ble Supreme Court in **Satinder Singh Bhasin v. Government of NCT at Delhi & Ors., Writ Petition (Criminal) No. 242 of 2019**, in paragraph no. 1 that in the writ petition itself, the petitioner prayed for grant of bail in respect of F.I.R.s 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 F.I.R.s. that have been lodged against the petitioner in the State of Uttar Pradesh and State of NCT of Delhi.

16. In the instant writ petition, no such prayer has been made by the petitioner. Thus, the learned Sr. Counsel for the EOU raised a question as to whether the Interlocutory Applications filed on behalf of the petitioner can be entertained or not.

17. The learned Sr. Counsel appearing on behalf of EOU next refers to an unreported decision of the High Court of Kerala in **W.P. (Crl.) No. 381 of 2023, dated 25th of August, 2023**. In

the above mentioned writ petition, the petitioner sought for a direction to club together all the crimes registered against him as well as a declaration that he is entitled to be enlarged on bail in all cases registered against him, in view of the decision in **Abhishek Singh Chauhan v. Union of India**, reported in **2022 SCC OnLine SC 1936**. In the afore-mentioned case, a Coordinate Bench of Kerala High Court refers to another decision of the Hon'ble Supreme Court in **Anubhav Mittal & Ors. v. State of Uttar Pradesh & Ors.**, reported in **(2022 LiveLaw (SC) 980)**. The Hon'ble Supreme Court found in **Anubhav Mittal** that offence of cheating, forgery and fabrication of valuable documents had occurred at different places of the country and each victim having a right to prosecute his complaint through the law enforcement agency. Therefore, the Hon'ble Supreme Court held that the accused cannot demand conduct of investigation only with respect to a particular offence. It was observed that the accused, who had mobilised offence from different parts of the country could not plead his inconvenience of having to defend the case in multiple jurisdictions.

18. In **Narinderjit Singh Sahni v. Union of India**, reported in **(2002) 2 SCC 210**, it is held by the Hon'ble Supreme Court that:

"As regards the issue of a single offence, we are afraid that the fact situation of the matters under consideration would not permit to lend any credence to such a submission. Each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence."

19. Thus, it is submitted by the learned Sr. Counsel on behalf of EOU that each individual agreement of sale of residential units and acceptance of consideration money constitutes separate and identical case. The incidents took place at different places under the different jurisdictions of different Courts. Therefore, the complaints cannot be clubbed together and this Court under its extraordinary jurisdiction under Article 226 of the Constitution cannot grant an order of bail in connection with all the cases pending against the petitioner at different stage of investigation, enquiry or trial.

20. It is also submitted by the learned Sr. Counsel on behalf of EOU (Respondent No. 7) that amongst the cases pending against the petitioner, there are some cases registered on police report, some cases were registered on the basis of a complaint in the respective jurisdictional Courts of the learned Magistrates. In view of the provisions contained in Section 210 of the Code of Criminal Procedure, the cases instituted on police report and the complaint cases cannot be clubbed together. Therefore, the petitioner cannot be released on bail in respect of the case instituted on police report and the complaint case. In fine, the learned Sr. Counsel appearing on behalf of Respondent No. 7 submits that before the cases being clubbed together, the applications for bail filed on behalf of the petitioner is pre-mature.

21. The learned Additional Solicitor General submits that the Enforcement Directorate has already taken up the case for investigation regarding money-trail made by the petitioner in favour of different Shell Companies by the petitioner. The learned Additional Solicitor General

refers to page 26 of the counter affidavit filed on behalf of RERA and submits that the petitioner and his family members and close associates have constituted as many as 24 Shell Companies and the money collected from different buyers has already been transferred or channelized in those companies. The learned ASG further while referring to page 26 of the counter affidavit filed on behalf of the Respondent No. 5, shows the number of fake companies constituted by the petitioner. Therefore, it is submitted by the learned Advocate for the Enforcement Directorate that the petitioner is not entitled to bail in connection with a case instituted under the Prevention of Money Laundering Act (PMLA). In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.**, reported in **2022 SCC OnLine SC 929**.

22. In reply, it is submitted by the learned Sr. Counsel on behalf of the petitioner that Section 420 of the Indian Penal Code is predicate offence under PMLA. He refers to his previous argument to contend that allegation under Section 420 of the I.P.C. is not applicable against the petitioner. Therefore, RCIR referred to by the Enforcement Directorate does not have any reason to be registered."

26. Section 406 of the IPC is the penal provision over criminal breach of trust. Criminal breach of trust is defined in Section 405 of the IPC. The provision runs thus:

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[Explanation 1].—A person, being an employer 3 [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

27. In order to constitute an offence of criminal breach of trust it is to be looked into as to whether

(i) there was any entrustment of the property in favour of the accused;

(ii) whether the property was dishonestly misappropriated or converted to his own use or dishonestly disposed of by the accused in violation of any direction of law prescribing mode in which such trust may be discharged.

28. In the instant case, it is the case of the prosecution that the petitioner collected huge amount of money from the intending purchasers without even purchasing the plots of land for construction of flats. The intending purchasers paid their money entrusting the petitioner that they would get their home but said money was misappropriated. Even from the investigation made by the ED, it is revealed that with the help of the money collected from the market, the petitioner purchased flats on his own money.

29. Collection of money without the permission of RERA and purchasing and identifying the plot *prima facie* suggests that from the very beginning of transaction, the petitioner had a dishonest intention of deception and false inducement on the basis of which money was collected.

30. In view of the above ingredients available on record, I do not find any reason to quash the FIRs instituted against the petitioner. As a result, the instant writ petition is dismissed on contest.

31. However, there shall be no order as to costs.

32. With the disposal of the instant petition, the Interlocutory Applications, if any, are treated to be disposed of.

(Bibek Chaudhuri, J)

Original judgment copy is available [here](#).

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