

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14547 of 2022

Applicant :- Anil Rai

Opposite Party :- State Of U.P. Thru. Prin. Secy. Civil Sectt. Lko.

Counsel for Applicant :- Vivek Kumar Rai, Ajai Kumar, Mrs. Suniti Sachan

Counsel for Opposite Party :- G.A., Romit Seth

Hon'ble Dinesh Kumar Singh, J.

1. Heard Mr. Amarendra Nath Singh, learned Senior Advocate, assisted by Smt. Suniti Sachan and Mr. Vivek Kumar Rai, Advocates, for the accused-applicant, Mr. Rao Narendra Singh, learned Additional Government Advocate, for the State, as well as Mr. Romit Seth, Advocate for the complainant.

2. By way of this **2nd application**, the accused-applicant seeks bail in Crime/FIR No.0160 of 2020, under Sections 406, 419, 420, 467, 468, 471 and 120-B IPC read with Sections 7(a) and 8(1)(i) of Prevention of Corruption Act, 1988 lodged at Police Station Hazratganj, District Lucknow.

3. This Court had rejected the earlier bail application of the accused-applicant, being Bail No.8688 of 2020, vide detailed judgment and order dated 29.01.2021.

4. The accused-applicant had approached the Supreme Court by filing Special Leave to Appeal (Crl.) No.2522 of 2021, and the Supreme Court has rejected the bail application of the accused-applicant vide judgment and order dated 16.09.2021, considering the allegation and involvement of the accused-applicant in commission of the offence. The Supreme Court has, however, granted liberty to the accused-applicant to renew his prayer for bail after six months before the trial Court.

5. Thereafter, the trial Court has rejected the bail application of the accused-applicant vide judgment and order dated 15.10.2022 passed in Bail Application No.8195 of 2022 and, thus, the present bail application has been filed before this Court.

6. The detailed facts of the case have been noted by this Court in its order dated 29.01.2021, while rejecting the first bail application of the accused-applicant and other accused. Those facts are important for deciding the present application and, therefore, the same are extracted hereunder:-

1. The present applications under Section 439 Cr.P.C. have been filed seeking bail in FIR No.160 of 2020, under Sections 419, 471, 120-B, 406, 420, 467, 468 IPC, Police Station Hazratganj, District Lucknow.

2. The startling facts of the case could be a script of a bollywood block-buster movie full of suspense.

Facts of the case

3. As per allegations in the FIR, the complainant is resident of Bunglow No.4, 25 Purneeta Colony, Bichauli Hapsy, Indore, Madhya Pradesh. It is alleged that in the month of April, 2018, Mr. Vaibhav Shukla, resident of Indore and, Santosh Sharma met the complainant and enquired about the turn over of his Flour Mill. Vaibhav Shukla is a bosom friend of the younger brother of the complainant and belongs to a big respected family of Indore. The complainant told him the turn over of his mill. Thereafter, Vaibhav Shukla and Santosh Sharma came to the office of the complainant and took the profile of the company of the complainant and the returns of some previous years. Vaibhav Shukla again came to the office of the complainant and told the complainant that he and Santosh Sharma had met Sri S.K. Mittal, Deputy Director, Animal Husbandry at Lucknow, who told them that he was very close to the Minister of the department. Vaibhav Shukla told the complainant that Sri S.K. Mittal told him that he wanted to give supply order to the complainant for wheat, sugar, flour and pulses in the party's interest. The complainant was further told that he would have to pay 3% in advance of the total value of the supply order and supply order would be for Rs.292.14 crores. The supply would be required to be completed within a period of one year. The complainant told Santosh Sharma and Vaibhav Shukla that to complete the work order of this

magnitude, he would require more time period, then Santosh Sharma said that they would get the time limit extended by another one year. Santosh Sharma said that this would be his responsibility. He further said that on getting the work order for supply, 60% of the profit would go to the complainant and 40% would go to his company.

4. Believing in representation of Santosh Sharma and Vaibhav Shukla and their bona fide, the complainant gave turn over of his company and profile of his company to Santosh Sharma. After some days, Santosh Sharma and Vaibhav Shukla came to the office of the complainant with a tender form, which was allegedly issued by the department of Animal Husbandry, Government of Uttar Pradesh. Santosh Sharma asked the complainant and his wife to put their signatures on the tender form. The complainant and his wife put their signatures. Santosh Sharma informed them that several tenders would be submitted by many persons. He said that after comparing the rates of other tenderers, Sri S.K. Mittal would fill the rate in tender of the complainant, so that the complainant should get the contract for supply. Santosh Sharma asked the complainant to keep 3% of the tender value ready to be paid as advance and asked him to pay 1% forthwith. Believing in Vaibhav Shukla and Santosh Sharma, the complainant paid Rs.50 Lakhs on 3.5.2018 and thereafter, Rs.50 Lakhs on 18.6.2018 and, another Rs.50 Lakhs on 7.7.2018, which was allegedly given by them to Sri S.K. Mittal. Thereafter, the complainant paid Rs.2 Crores on 27.7.2018 to Vaibhav Shukla, which was allegedly given by them to accused Amit Mishra on 27.7.2018 on asking of said Sri S.K. Mittal. Vaibhav Shukla informed the complainant that tender had been allotted in his favour and asked him to reach Lucknow immediately because Sri S.K. Mittal, wanted to meet the complainant and he would like the complainant to meet the Minister as well.

5. On 31.8.2018, the complainant came to Lucknow where he met Vaibhav Shukla and Santosh Sharma. He along with Vaibhav Shukla and Santosh Sharma reached VVIP Guest House at Lucknow and after hiring a taxi reached at Gate No.9 of the Vidhan Sabha as was told by Sri S.K. Mittal. One peon present at the Gate, got the pass issued for them at Gate No.9. He took them inside the Secretariat and guided them to a big room where on the table, nameplate of Sri S.K. Mittal was displayed. Person sitting on the Chair introduced himself as S.K. Mittal. After exchanging pleasantries, the said S.K. Mittal asked the peon to bring the receiving register and the work order. Peon brought one work order and the register. The complainant was asked to sign on the receiving register and,

work order was issued in his favour. The said S.K. Mittal asked the complainant to pay the remaining amount of 3% as he agreed with Vaibhav Shukla and Santosh Sharma. After completing the formalities, the complainant, Santosh Sharma, Vaibhav Shukla and said S.K. Mittal went for tea outside in a Coffee Shop. The complainant asked the said S.K. Mittal that the time period of the work order was very less. Work order was given to the complainant on 31.8.2018. However, the date on the work order was mentioned as 12.6.2018. He told S.K. Mittal that to make such a big supply, he would require to take loan from the bank and because of the festivals, there was a problem of labour etc. However, said S.K. Mittal assured him that everything was in his hands and, he would keep on extending the time limit by imposing minimum fine. He also told the complainant that since on the said date i.e. 31.8.2018, there was a cabinet meeting, therefore, meeting with the Minister was not possible, otherwise he would have ensured his meeting with the Minister as well. He told the complainant that the Minister was very happy with him because the complainant had fulfilled his commitment and asked the complainant to send the remaining amount soon. Thereafter, said S.K. Mittal left the coffee shop and went in a Safari car.

6. After this meeting, the complainant got assured about the genuineness of the transaction and, thereafter, he paid Rs.5.5 Crores in a few installments to the said S.K. Mittal through Vaibhav Shukla and Santosh Sharma. After a few days, Santosh Sharma telephoned the complainant and the said that for effecting such a big supply, a godown would be required and for this purpose Mittal Saheb told him to take a godown from R.K. Traders, U.P. on rent. The complainant was asked to deposit Rs.72 Lakhs in the account of R.K. Traders. The complainant deposited Rs.66,000/- on 25.9.2018, Rs.21.46 lakhs on 6.10.2018 and, Rs.50 Lakhs on 16.10.2018 in the account of R.K. Traders through RTGS as was asked by Santosh Sharma.

7. The total amount thus allegedly paid to said S.K. Mittal was Rs.9,72,12,000/- The complainant checked his tender online, but it was not found anywhere, then he contacted Vaibhav Shukla and Santosh Sharma over the phone and told them that his tender was not being shown. He also asked the date for starting the supply and he should be immediately informed about all these. Both Vaibhav Shukla and Santosh Sharma told the complainant that they would meet said S.K. Mittal and then would inform him accordingly regarding the real status. The complainant was told by Vaibhav Shukla and Santosh Sharma that some complaints had been received in respect of tendering

process and CBCID was conducting an enquiry. The complainant was assured that he should not be worried at all. After some days, Vaibhav Shukla and Santosh Sharma came to Indore and met the complainant and told him that tender process was being enquired by S.K. Mittal himself and he would be required to go to the office of the CBCID, Lucknow on 22.11.2018. It was said that S.K. Mittal would manage everything and, there was nothing which should bother the complainant.

8. The complainant on 22.11.2018 reached to the office of the CBCID, Lucknow where he was asked to make his entry in the register and one Constable took him to the Superintendent of Police in the office of CBCID. The Superintendent of Police asked him whether the work order was given to the complainant and whether he had made supply. When the complainant told the Superintendent of Police that he has not made any supply, then the Superintendent of Police scolded him badly and said that he had made the supply. Thereafter, he dictated something to the complainant and asked him to put his signatures on the paper and kept the paper with him. The complainant came out of the office of the CBCID, where the said S.K. Mittal was waiting for him. He asked the complainant whether verification was done. The complainant nodded his head and told him that Superintendent of Police had told him that supply had been made and he dictated regarding this and made the complainant to sign it and, the said paper had been kept by the Superintendent of Police. S.K. Mittal asked the complainant to go to Indore and he would tell everything to Vaibhav Shukla and Santosh Sharma. The complainant came back to Indore on the same day.

9. On 26.12.2018, the complainant again met the said S.K. Mittal with Vaibhav Shukla and Santosh Sharma and requested him to issue order for making supply immediately. Then the said S.K. Mittal asked him to give original copy of the order, bill book, which was without any date and the affidavit of supply to be signed by both the partners and thereafter, only order would be issued for making supply. When the complainant objected to do this, S.K. Mittal told him that it was his responsibility to look after everything and the complainant should not be worried about anything.

10. Thereafter, Vaibhav Shukla and Santosh Sharma came to Indore and met the complainant and told him that the said S.K. Mittal had asked them to bring the original order, number of all the vehicles from which supply would be made, name of the drivers with details of bills and the bills should be without date. Mittal would fill the date as per the requirement. The

complainant sent the original work order, affidavit of supply, bills of vouchers, empty bill book through his employee, Lavendra with Santosh Sharma to Lucknow. These persons met S.K. Mittal on 11.1.2019. The said S.K. Mittal kept the affidavit and bill vouchers with him and sent Lavendra and Santosh Sharma with original work order to the office of the CBCID to meet Superintendent of Police, who turned out to be accused Arvind Sen, a police officer of DIG rank. The said Superintendent of Police kept the original work order with him and sent these persons and told them that after completing the enquiry, he would call the complainant on the next date.

11. Since the complainant had paid Rs.9,72,12,000/- therefore, the complainant was pressing for making supply and contacted many times Santosh Sharma and Vaibhav Shukla and the said S.K. Mittal. The said S.K. Mittal asked them to come to Lucknow on 30.3.2019. The complainant with Santosh Sharma and Vaibhav Shukla and his employee, Lavendra reached Lucknow on 30.3.2019 and stayed in Oyo rooms behind Piccadilly Hotel and they kept on contacting S.K. Mittal over the telephone. S.K. Mittal kept on assuring Santosh Shamra for two days that he would make payment through RTGS. On 31.3.2019, when the said S.K. Mittal was again contacted, he asked them to reach in front of Phoenix Mall. Thereafter, the complainant, Vaibhav Shukla, Santosh Sharma and accused, Rakesh Porwal, friend of Santosh Sharma reached in front of the Phoenix Mall. As soon as they reached at Phoenix Mall, police in three vehicles came there and forcibly made them to sit in the police vehicles. The complainant was threatened that if he would speak, he would be shot dead. The police took them to the Police Station Naka Hindola and they were brought before the Police Inspector, where they were threatened by the Police Inspector. Their ID proofs were taken and the complainant was threatened that if he would be seen again in Lucknow, he would be killed in an encounter. Thereafter, these persons were allowed to go. It was said that the complainant along with his employee, Lavendra came back to Indore on the same day by catching a flight to Indore. After this, the complainant belief got confirmed that he had been cheated and duped in a big way in furtherance of a huge conspiracy. He was fearing for his life as he was threatened to be killed in an encounter. He could not understand what to do next.

12. It was said that the person who met him as S.K. Mittal, was the accused Ashish Rai. The complainant came to know and lodged the FIR alleging that he had been cheated of Rs.9,72,12,000/- in a criminal conspiracy hatched by Ashish Rai, Monte Gurjar, resident of Jaipur, Rajasthan, Rupak Rai,

resident of Azamgarh, Santosh Mishra, Journalist, resident of Vikas Khand, Gomti Nagar, Lucknow, A.K. Rajeev, Journalist, resident of Gomti Nagar, Lucknow, Amit Mishra, resident of Faridabad, permanent resident of Amethi, Uma Shanker Tiwari, resident of Kanpur Nagar, Rajneesh Dixit, resident of Lucknow, D.B. Singh, resident of Lucknow, Arun Rai, Editor of News Channel 18, Dheeraj Kumar, Private Secretary to the Minister, Animal Husbandry, Umesh Mishra and other officers/employees. They had prepared forged and fabricated documents on the basis of which, they had cheated him of Rs.9,72,12,000/-.

13. On the basis of this complaint, FIR No.160 of 2020, under Sections 419, 471, 120-B, 406, 420, 467, 468 IPC and Section 7/13 Prevention of Corruption Act, Police Station Hazratganj, District Lucknow came to be registered.

Bail No.10051 of 2020.

14. Heard Sri Atul Verma, learned counsel for the accused-applicant, Sri V.K. Shahi, learned Additional Advocate General assisted by Sri Rao Narendra Singh, learned AGA and Mr. Romit Seth, Ms. Varsha Sharma, learned counsels for the complainant.

15. The Investigating officer of the case after investigating the offence, has filed charge sheet against the accused, Ashish Rai, Dhereaj Kumar Dev under Sections 406, 419, 420, 467, 468, 471, 120-B, 170 IPC and Section 7A/8(1)(i) of Prevention of Corruption Act. Charge sheets have also been filed against accused Umashanker Tiwari, Akhilesh Kumar alias A.K., Anil Rai, Rupak Rai, Rajneesh Dixit, Raghubeer Prasad, Tripuresh Pandey alias Rinku and Sachin Verma under Sections 406, 419, 420, 467, 468, 471, 120-B IPC and Section 7A/8(1)(i) of Prevention of Corruption Act. It has been said in the affidavit filed on behalf of the State that investigation is on against accused Amit Mishra, Arun Rai, Suneel Gurjar alias Monte Gurjar, Dilbahar Yadav alias D.B. Singh, Umesh Mishra and Arvind Sen, Deputy Inspector General of Police.

16. The present accused-applicant was arrested only on 19.9.2020 and the charge sheet has been filed against him under Sections 406, 419, 420, 467, 468, 471 120-B IPC and Section 7/8 of Prevention of Corruption Act. At present, the investigation is still being carried out against accused Amit Mishra, Arun Rai, Sunil Gurjar alias Monte Gurjar, Dilbahar Yadav alias D.B. Singh, Umesh Mishra and Arvind Sen. On 8.11.2020, accused Sunil Gurjar has been arrested.

17. Learned counsel for the accused-applicant submits that allegedly amount of Rs.9,72,12,000/- was given to other accused persons and the applicant's name does not figure in any manner regarding any allurements or promise given to the complainant. He had not given any assurance to the complainant for procuring the said tender to him. The accused-applicant has not impersonated and, there is no allegation of cheating against him. Offences under Sections 467, 468, 471 IPC are not made out against the accused-applicant as he has not forged any document. There is no breach of trust by the accused-applicant and, he has not misappropriated any sum of money by alluring the complainant. The offence under Section 7/13 Prevention of Corruption Act is also not made out against the accused-applicant. It has been said that only allegation against the accused-applicant is that he had assured the co-accused to manage his troubles in which co-accused, Ashish Rai was getting embroiled. The alleged conversation recorded by the police between the present accused-applicant and co-accused, Ashish Rai could not invite the penalty under the provisions of Sections 419, 420, 467, 406, 468, 471 IPC and, Section 7/13 Prevention of Corruption Act. There is no direct evidence of causing any wrongful loss to the complainant or any other person by the accused-applicant. Mr. Vaibhav Shukla and Santosh Sharma who have turned approvers in their statements given to the police, did not take the name of the accused-applicant. He has further submitted that even in the alleged confessional statement of Ashish Rai, nothing incriminating has been said about the present accused-applicant. It is further submitted that only on the basis of some money being transferred in the account of the accused-applicant by accused Ashish Rai through his servant, the accused-applicant has been implicated in the commission of the offence. He has further submitted that the accused-applicant is innocent and, he has not committed any offence and, therefore, he is liable to be enlarged on bail.

18. On the other hand, Sri V.K. Shahi, learned Additional Advocate General for the State assisted by Sri Rao Narendra Singh, learned AGA has opposed the bail application and submitted that the accused-applicant has been fully involved in the criminal conspiracy of such an extent hatched with other accused to cheat the complainant of Rs.9,72,12,000/-. He further submits that one of the prime accused, Arvind Sen, who is Deputy Director General of Police, has surrendered after his anticipatory bail application got rejected and, some of the accused have not yet been arrested and, investigation against them is still on. Even the investigation against the accused-applicant has not yet been completed. After collecting further

evidence, if any, against the accused-applicant and other co-accused, supplementary charge sheet(s) may be filed against him/them. It has further been submitted that if the accused-applicant is released on bail at this stage, it is likely that he would try to influence the investigation and tamper with evidence. It is further submitted that the accused-applicant has been a very close friend of accused, Ashish Rai since 2012. Ashish Rai in connivance with his friends/accused in the State Government's Secretariat and Delhi, used to hatch conspiracies for cheating people and he and other accused had earned crores of rupees by committing serious and grave offences. The present accused-applicant would assist him in managing the complaint/case against Ashish Rai for which Ashish Rai would pay him in cash as well as in his bank account.

19. After the present case was registered, Ashish Rai to save himself paid money to Santosh Sharma, the present accused-applicant, which is evident from the transcript of conversation recorded between the accused-applicant and accused, Ashish Rai and this transcript is part of the case diary. The applicant had been paid money by Ashish Rai through Rupak Rai out of the booty they received by committing offences in active co-operation and connivance with other accused, which is evident from the account statements of Ashish Rai, Rupak Rai and the present accused-applicant. Besides the transfer in the account, the accused-applicant had taken money in cash from the amount, which was cheated from the complainant. This fact is evident from the statement of the suspect, Rupak Rai and his statement is part of the case diary. The accused-applicant himself in his statement had said that accused Ashish Rai got him the post of Uttar Pradesh Head, in the News Word India from accused Anil Rai. Visiting cards of the accused-applicant as Head, News Word India were recovered from Ashish Rai. From the transcript and the role played by the accused-applicant, Ashish Rai and Anil Rai it is fully established that they had hatched the criminal conspiracy and he had received the money from the booty. There is sufficient evidence available against the accused-applicant on record. Ashish Rai would pay cut/part of the money he would receive by defrauding innocent people to the accused-applicant to manage the complaint/case against him. The present accused-applicant has been misusing his position as journalist and in active connivance with other accused, he has been indulging in offences, including the present one in furtherance of the criminal conspiracy. There is sufficient evidence available on record to show the involvement of the accused-applicant in the conspiracy and, he was fully aware of the conspiracy of cheating the complainant. In the FIR, the role played by the accused-applicant was not possible

to explain, however, during the course of investigation, the role played by the accused-applicant has been fully established in the conspiracy and commission of offence. The present accused-applicant in active connivance and in furtherance of criminal conspiracy with other accused had defrauded the complainant of Rs.9,72,12,000/- and the case against him is fully established. It is further submitted that the case is still being investigated and at this stage the accused-applicant should not be enlarged on bail, otherwise it would effect the ongoing investigation and, there is likelihood of destruction of the evidence by him by misusing his position as journalist.

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20. Learned counsel for the accused-applicant has submitted that the incident of making Rs.9.62 crores for a tender in Animal Husbandry Department, Government of Uttar Pradesh took place in the year 2018 and for two years, no complaint or FIR was lodged by the informant. He has further submitted that there is no explanation for delay in lodging the FIR. He has also submitted that there is no allegation about taking money or otherwise against the accused-applicant. It has been submitted that allegedly the accused-applicant gave entire money to witnesses, Vaibhav Shukla and Santosh Sharma, to be given to one Mr. S.K. Mittal. The accused-applicant has no concern with the transactions of giving or taking money. it has been also submitted that the accused- applicant is a Government employee and he has no previous criminal history. He has been in jail since 14.06.2020. Entire cause of action has arisen in Indore, Madhya Pradesh, however, the FIR has been lodged in Lucknow. No offence under Sections 406, 419, 420, 467, 468, 471, 120-B, 170 IPC and 7A, 8 (1)(i) Prevention of Corruption Act is made out against the accused applicant. The police has falsely implicated the accused-applicant. There is no evidence against him.

21. On the other hand, Mr.V.K.Sahi, learned A.A.G. and Mr. Rao Narendra Singh, learned A.G.A. for the State have submitted that the accused-applicant was not holding any post in the Secretariat. During the course of investigation, the accused-applicant has said that he was a contract employee. The accused-applicant was fully involved in the conspiracy with accused-Ashish Rai, Rajnish Dixit, Private Secretary of the Minister. It has further been found in the investigation that no person by name of Dhiraj Kumar Dev was appointed with the Minister of Animal Husbandry, Government of U.P. The accused-applicant in active conspiracy with Rajnish Dixit, Private Secretary of the Minister of Animal Husbandry Department, Government of U.P. had got a forged identity card

issued in favour of the accused-applicant as Assistant Review Officer. Office of the District Magistrate had affirmed on the recommendation letter dated 31st March, 2020 of accused-Rajnish Dixit, the Secretary of the Minister of Animal Husbandry Department, Government of Uttar Pradesh. The office of the District Magistrate issued Staff Pass No.2138 dated 31st March, 2020 to present accused-applicant as Review Officer during pandemic Corona Lockdown. Aforesaid pass was also recovered from the possession of accused-applicant. One vehicle pass was also issued in his favour. The accused-applicant would use the aforesaid pass to enter the Secretariat. Accused-Rajnish Dixit, had introduced the present accused-applicant as Review Officer; however, the accused-applicant was not a Government servant neither he was the Review Officer.

22. The accused-applicant has been working with co-accused, Rajnish Dixit since 20.11.2012. The accused-applicant would accompany accused-Rajnish Dixit in his office and he is one of the architects of the criminal conspiracy along with accused-Rajnish Dixit and other co-accused. The accused-applicant would take money in his account and in cash and thereafter, transfer the amount to accused-Rajnish Dixit. The accused-applicant and the kingpin of the present case, accused-Ashish Rai were friends. Accused-Ashish Rai in connivance with his friends would bring businessmen from Delhi and other places to Lucknow on the pretext of assisting them to get large Government contracts and, he would introduce these persons outside the Secretariat to different accused with different names. Inside the Vidhan Sabha compound, the present accused-applicant and co-accused, Rajnish Dixit, Umesh Mishra, Raghuveer Prasad would introduce accused-Ashish Rai as officer of the relevant department. In the end of year 2017, accused-Amit Mishra and Uma Shankar Tiwari, who are the members of the gang of accused-Ashish Rai, met witness, Santosh Sharma and established friendship with him. These people told witness, Santosh Sharma that a big tender regarding supply of wheat, flour, pulses, rice etc., was coming in the Government of U.P. These accused also said that there is one Sri S.K.Mittal who is Deputy Director in Animal Husbandry Department and entire tendering process was under him. Said Sri S.K.Mittal would ensure that a tender would be given to the recommended persons.

23. Thereafter, these two accused i.e. Amit Mishra and Uma Shankar Tiwari took Santosh Sharma inside the Secretariat to meet with said Sri S.K. Mittal, the so called Deputy Director. Accused-Ashish Rai was sitting on the chair in the room of

State Minister of the Animal Husbandry Department. In organizing this meeting, accused-Ashish Rai, the accused-applicant, Rajnish Dixit and home-guard-Raghuveer Prasad made entire arrangements. Witness-Santosh Sharma got satisfied with the recommendation made by the accused and told about his meeting with said Sri S.K. Mittal to his friend, Vaibhav Shukla. Vaibhav Shukla and Santosh Sharma to again ensure this genuineness came to Lucknow and as earlier, accused-Amit Mishra and Uma Shankar Tiwari took them again inside Vidhan Sabha Compound and in the same manner organized their meeting with said Sri.S.K.Mittal who was sitting on the chair of the State Minister of Animal Husbandry Department with nameplate "S.K. Mittal". These two witnesses got fully satisfied after meeting said Sri S.K.Mittal inside the Vidhan Sabha Compound, a very sensitive place with security point of view being legislative assembly of the State. These accused would ensure the entry of the witnesses and other persons from back room of the Minister's room when the Minister was not present in his chamber and put the name plate of S.K. Mittal, Deputy Director Animal Husbandry Department. Thereafter, witnesses-Vaibhav Shukla and Santosh Sharma got fully convinced with genuineness of officer, the said Sri S.K. Mittal. He along with his friend Vaibhav Shukla came to Lucknow and with same modus operandi his meeting was also organized with said S.K.Mittal (Ashish Rai). Thereafter, the complainant paid the money to Vaibhav Shukla and Santosh Sharma to be delivered to said Sri S.K. Mittal (Ashish Rai). The complainant was called Lucknow where he met, witnesses Vaibhav Shukla and Santosh Sharma and said Sri S.K. Mittal gave a false, forged and fabricated tender and work order in active connivance of the accused-applicant and other accused in furtherance of a well planned and executed conspiracy. The complainant received tender and work order by signature of said S.K. Mittal (Ashish Rai) for which he was paid total amount of Rs.9,72,12000/-. The accused-applicant had received thereafter several lacs of rupees in cash and in his account.

24. Independent witness -Dhananjay Maurya in his statement recorded under Section 161 Cr.P.C. has said that he has been working as Review Officer in the office of State of Uttar Pradesh, Animal Husbandry Department for quite some time. He was astonished to know that accused-Rajnish Dixit, Principal Private Secretary of the Minister of Animal Husbandry Department, the accused-applicant and his bosom friend, Ashish Rai have been arrested and sent to Jail in a case of cheating, fraud, forgery etc. He further said that when the Minister was not present, his Private Secretary would look after his entire work. The accused-applicant, accused-Umesh

Mishra, Assistant Review Officer and home-guard, Raghuveer were members of a group. Accused-Ashish Rai would come and meet with these people and when the Minister was not present in his office, all these persons would go inside his room and close the door. The witness has said that he would not know anything after the door would get closed and he could come to know about the incident only after, it was reported in newspaper that these persons got arrested.

25. Similar statement under Section 161 CrPC was also given by another independent witness, Kailash Chandra, Private Secretary.

26. Accused-Raghuvir Prasad in his statement (CD No.49) has said that he has been working in the Secretariat for last 10 years on the recommendation of Rajnish Dixit, Private Secretary of the Minister and Dhiraj Kumar Dev. After present Government came to power, the said Rajnish Dixit, P.S. and Dhiraj Kumar Dev, present accused-applicant came in the office of the State Minister of Animal Husbandry. The accused-Ashish Rai would visit Secretariat to meet Rajnish Dixit and the accused-applicant. In absence of the Minister, accused- Rajnish Dixit, P.S., the accused-applicant and accused-Umesh Mishra, Review Officer appointed in the office would sit with accused-Ashish Rai in the room of the Minister and whosoever come to meet Ashish Rai, accused- Raghuveer Prasad would go to the gate to bring him. He would go to the gate in the Secretariat car and bring the person to meet accused-Ashish Rai in the room of the Minister. The accused-applicant, Rajnish Dixit and Umesh Mishra got the number plates of S.K.Mittal, A.K.Kanaujia etc., prepared through him. Seals were also prepared in different names through him by these accused. Accused-Ashish Rai would sit on the chair of the Minister in presence of the accused-applicant, accused-Umesh Mishra and Rajnish Dixit with the name plate got prepared by accused-Raghuveer Prasad. Accused-Raghuveer Prasad used to arrange tea etc. He has also said that the complainant, Manjeet Bhatia and his friends had come to meet Ashish Rai in the room of the Minister twice. Accused-Raghuveer Prasad brought them from Gate No.9 and took them to the Minister's office where accused-Ashish Rai was sitting on the chair with name plate "S.K. Mittal". It has also been found from the perusal of the bank account statement of Rajnish Dixit that on 27.06.2018, Rs.6,00,000/- was transferred into account of the wife of the accused-applicant.

27. On 04.04.2019, Rs.2,00,000/- were given through cheque in the account of the accused-applicant and on 08.06.2020, Rs.1,00,000/- was transferred in the account of wife of the

accused-applicant. It has further been found that the main architect of the case, Ashish Rai used to give money in cash to accused-Rajnish Dixit and other accused. This fact is proved from perusal of the bank statements of accused-Rajnish Dixit, Priti Dev, wife of the accused-applicant and the account of the accused-applicant. In the account of Preeti Dev, wife of the accused-applicant, cash has also been transferred.

28. The accused-applicant has bought three Innova cars and several lacs of rupees are available in the account of his wife. Accused-Rajnish Dixit in his statement had said that the accused-applicant was his driver on a monthly salary of Rs.10,000/-.

29. Evidence so far collected fully establish that the accused-Rajnish Dixit, P.S. of the Minister has kept the accused-applicant for architecting criminal conspiracies of cheating, fraud, forgery to earn crores of rupees. The accused have misused and violated the sanctity of institution like Vidhan Sabha. The accused-applicant along with other accused has committed very serious and heinous offence which would shake the confidence of the people in the governance, therefore, he is not entitled to be enlarged on bail."

7. The accused-applicant is one of the main architects of the crime. Co-accused, Ashish Rai and the present accused-applicant are friends. They are known to each other for several years. Co-accused, Ashish Rai got in touch with several bureaucrats, holding high posts in the Government Secretariat through the present accused-applicant. He used to be a journalist of 'News-18'. The present accused-applicant, while working as journalist in New World India, co-accused, Ashish Rai got him posted as Head of the New World India, Uttar Pradesh. Identity card of the said position was recovered from possession of co-accused, Ashish Rai. The accused-applicant would introduce co-accused, Ashish Rai and himself as big journalists to influence the Government functionaries. The call-detail and the conversation between them, which has been brought on record, would fully establish the role of the accused-applicant in commission of the offence.

8. The accused-applicant had received Rs. 2.8 Crores out of Rs. 9,72,12,000/- paid by the complainant to co-accused, Ashish Rai and other accused. Out of this amount, the accused-applicant had booked an office-space for Rs. 1.79 Crores with ATS Builders, Noida. He had paid Rs.65 Lacs and rest of the amount he is alleged to have paid in black as he has not taken any loan for making the payment to the ATS Builders. He had long conversation with co-accused, Ashish Rai and Dheeraj Kumar Dev regarding money transactions and to manage the Government machinery. The conversation between the accused could get recorded by the Special Task Force (STF) of the Uttar Pradesh Police. There are several money transactions from the account of co-accused, Ashish Rai, and account of the accused-applicant and his wife, Ms. Charu Rai.

9. Copies of I.T.Rs filed by the accused-applicant with this bail application suggest that he had received Rs. 1 Crore 90 Lacs from co-accused, Ashish Rai in the year 2018-19. The money transactions would vary from few thousands to 20 Lacs 50 thousand etc. This itself shows that the accused-applicant had received a substantial chunk of booty of Rs. 9,72,12,000/- cheated from the complainant.

10. So far as the question of enlarging some of the accused on bail is concerned, their roles were not as grave as of the accused-applicant in commission of the offence. Further, this Court has enlarged some of the accused, who had paid back the entire amount, which was credited in their bank-accounts from co-accused, Ashish Rai. Role of the accused-applicant is different from those accused, and he cannot claim parity with them to enlarge him also on bail. The accused-applicant has been allegedly involved throughout in execution of the criminal conspiracy to cheat the complainant of his money of Rs. 9,72,12,000/- and, therefore, I find no substance in this second application to enlarge him on bail on the ground of parity.

11. It is well settled that economic offence constitutes a class apart, and is to be visited with different approach in the matter of bail. While considering the bail plea, the Court has to keep in kind the nature of accusation, magnitude and gravity of offence and, nature of evidence in support of the accusation. The Supreme Court in the case reported in **(2013) 7 SCC 439 (Y.S. Jagan Mohan Reddy v. CBI)** in paragraphs 34 and 35 has opined as under:-

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

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations"

12. In the case reported in **(2017) 13 SCC 751 (State of Bihar and another Vs. Amit Kuma alias Bachcha Rai)** in paragraphs 9 and 13, while considering the bail-plea of an accused, involved in an economic offence of huge magnitude, the Supreme Court has held as under:-

9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students,

letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.

13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] . Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously."

13. In the case reported in **(2018) 11 SCC 46 (Rohit Tandaon Vs. Directorate of Enforcement)** the Supreme Court has again reiterated the consistent view that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences, affecting the economy of the country as a whole. Paragraphs-21 and 22, which are relevant, are extracted hereunder:-

"21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.
22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no

more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."

14. Again, in the case reported in **(2019) 9 SCC 165 (Serious Fraud Investigation Office Vs. Nittin Johari and another)**, the Supreme Court has held that stringent view should be taken by the Court towards grant of bail with respect to economic offences. Paragraphs 24, 25, 26 and 27 of Serious Fraud Investigation Office Vs. Nitin Johari and another's case (supra) are extracted hereunder:-

" 24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect to economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35) "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement* [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] and *State of Bihar v. Amit Kumar* [State of Bihar v. Amit Kumar, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771] . Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

25. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent 1 both prior and subsequent to the filing of the investigation report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

26. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent 1 by observing that bail was justified on the "broad probabilities" of the case.

27. In our considered opinion, this vague observation demonstrates non-application of mind on the part of the Court even under Section 439 CrPC, even if we keep aside the

question of satisfaction of the mandatory requirements under Section 212(6)(ii) of the Companies Act."

15. Mere languishing in jail, during trial, cannot be a ground for granting bail, if the conspiracy and fraud is of very high magnitude. The Supreme Court in the case of *State of Bihar and another Vs. Amit Kumar alias Bachcha Rai* (supra) in paragraph-8 has held as under:-

"8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar."

16. It is well settled that when the gravity of offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in near future cannot jointly entitle the accused-applicant to be enlarged on bail. The Supreme Court in the case reported in **(2007) 1 SCC 242 (Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and another)** in paragraph-16 has held as under:-

"16. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or Section 24 of MCOCA. What is to be seen is whether there is a reasonable ground for believing that the appellant is not guilty of the two offences, he has been charged with, and further that he is not likely to commit an offence under MCOCA while on bail. As noted above, the circumstance which has weighed with the High Court to conclude that the appellant had the knowledge of the organised crime syndicate of Telgi, printing fake stamps, etc. and these were being sold under the protection of the appellant and hence he had abetted an organised crime, is the alleged conversation between him and Telgi in January 1998, after the kidnapping incident. In our view, the alleged conversation may show the appellant's acquaintance with Telgi but may not per se be sufficient to prove the appellant's direct role with the commission of an organised crime by Telgi, to bring home an offence of abetment

in the commission of organised crime falling within the ambit of Section 3(2) of MCOCA and/or that he had rendered any help or support in the commission of an organised crime whether before or after the commission of such offence by a member of an organised crime syndicate or had abstained from taking lawful measures under MCOCA, thus, falling within the purview of Section 24 of MCOCA. It is true that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail."

17. The Court is required to balance the individual interest viz.a.viz the interest of the society while considering the bail plea. No right is an absolute right and reasonable restriction can be placed on them. Mere long incarceration in jail as under-trial is not sufficient ground to enlarge an accused on bail if the facts & circumstances of the case and interest of the society do not warrant for enlarging the accused-applicant on bail. The Supreme Court in the case reported in **(2004) 7 SCC 528 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and another)** has held that three years incarceration would not itself entitle the accused-applicant to be released on bail nor the fact that the trial is not likelihood to be concluded in near future would be sufficient for enlarging the accused-applicant on bail considering the gravity of offence. Paragraph-14 of the said judgment, which is relevant, is extracted hereunder:-

"14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No. 745 of 2001 dated 25-7-2001 [Rajesh Ranjan v. State of Bihar, (2000) 9 SCC 222] . While cancelling the said

bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

18. Considering the role, involvement, evidence on record and nature of magnitude of the offence, this Court does not find any ground to enlarge the accused-applicant on bail and, therefore, this bail application is hereby also **rejected at this stage**.

19. The accused-applicant may revive the plea of bail once the witnesses of fact get examined. The trial Court is directed to proceed with the trial and examine the witnesses of fact expeditiously.

[D. K. SINGH, J.]

Order Date :- 22.05.2023

MVS/-