* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: 9th February, 2016*

\+ **BAIL APPLN. 791/2013**

SHASHI GOIL & ANR ..... Petitioners
Through Mr.R.N. Mittal, Sr. Adv. with Mr.Gurpreet Singh and Mr.Jatin S. Sethi, Advs.

versus

STATE GOVT. OF NCT OF DELHI & ANR. ..... Respondents
Through Mr.Hirein Sharma, APP for the State along with SI Nitin Kumar, P.S. EOW in person.
Mr.Sunil K. Mittal, Adv. with Mr.Ramakant Sharma & Mr.Anshul Mittal, Advs. for R-2/complainant.

\+ **CRL.M.C. 1621/2013**

PRAMOD GOIL ..... Petitioner
Through Mr.R.N. Mittal, Sr. Adv. with Mr.Gurpreet Singh and Mr.Jatin S. Sethi, Advs.

versus

STATE GOVT. OF NCT OF DELHI & ANR. ..... Respondents
Through Mr.Hirein Sharma, APP for the State along with SI Nitin Kumar, P.S. EOW in person.
Mr.Sunil K. Mittal, Adv. with Mr.Ramakant Sharma & Mr.Anshul Mittal, Advs. for R-2/complainant.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

<u>MANMOHAN SINGH,</u> J.

1. Pramod Goil, petitioner in Crl.M.C. No.1621/2013 has filed the petition under Section 482 of Cr.P.C. seeking quashing of the order dated 22nd April, 2013 passed by Additional Sessions Judge, Patiala House Courts, New Delhi whereby the bail granted to the petitioner was cancelled in FIR No.268/2009 dated 26th December, 2009 registered with PS EOW, under Section 406/420/467/468/471/120-B IPC.

2. Another petition is filed by Smt. Shashi Goil and her son, Ritesh Goil, both are wife and son of Mr. Pramod Goil who have filed the second anticipatory bail application under Section 438 of Cr.P.C. for grant of anticipatory bail in the same FIR.

3. Lalit Aggarwal, is the complainant and Pramod Goil is his brother in law. Both matters are arising from the same FIR and due to many common facts, the petitions are being decided by a single order.

4. Status reports have been filed in both the matters from time to time. The relevant facts as per the status report dated 4th July, 2013 are as under:

> "The complainant Sh. Lalit Aggarwal, one of the director of M/s Shree Bihari Forging P. Ltd. A-50, Sec. 2, Noida, UP had alleged in his complaint that he and his brother-in-law

Mr. Pramod Goil, who is another director in the said company, were engaged in the business of manufacturing and dealing with metal forging etc. During the last about 4/5 years, certain disputes arose between them regarding the management and working of the said company and as a result, the proceedings before the Company Law Board were initiated against each other. The cases were filed before the Company Law Board in the year of 2007 and matter are still pending there. The complainant received information from various banks and other financial institutions regarding loans taken by Pramod Goil in the name of M/s Shree Bihari Forging Pvt. Ltd. in which his name was given as a guarantor/applicant. Thereafter, on enquiry he found that his brother-in-law Mr. Pramod Goil and his family members took loan of Rs. 1.25 Crore from following Banks and Financial Institutions after forging his signature and fabricated the documents in the name of M/s Shree Bihari Forgings Pvt. Ltd.

1. Bajaj Finance, Jagannath Dudhadhra Complex, Opp. Maharaja Agrasen Hospital, Rohtak Road, New Delhi - Loan Amount Rs. 15 Lacs.
2. India Bulls Financial Services Ltd., A-1, FF, Hamilton House, Connaught Place, New Delhi - Loan Amount Rs. 25 Lacs.
3. Megama Finance, A-1/93, Basement, Okhla Indl. Area, Phase-I, New Delhi - Loan Amount Rs. 15 Lacs.
4. Kotak Mahindra Bank, Amba Deep Building, Kasturba Gandhi Marg, New Delhi - Loan Amount Rs. 15 Lacs.
5. Standard Chartered Bank, 10, Sansad Marg, Jeevan Deep Building, New Delhi - Loan Amount Rs. 25 Lacs.
6. ABN Amro Bank, 15, Barakhamba Road, Con. Place, New Delhi - Loan Amount Rs. 20 Lacs.
7. Religare Finvest Ltd., 1/7, East Patel Nagar, Near 178, Metro Pillar New Delhi - Loan amount Rs. 20 Lacs.

During investigation the loan application forms alongwith the supporting documents have been taken from the above mentioned banks and financial institutions. The concerned officials of bank/financial institutions were examined. They stated that accused Pramod Goil took loan from their banks/financial institutions.

The Chartered Accountant of the company Mr. Mahesh Gupta was examined, who stated that he worked as a statutory auditor for the company of Shree Bihari Forgings Pvt. Ltd. for the financial year 2004-05 to 2006-07. After that he has not signed any balance sheet. The balance sheet of 2007-2008 is forged as he has not signed the same.

Specimen signatures of the accused persons taken after the approval of Ld. Trial Court, specimen signature of accused, Chartered Accountant, admitted signature and specimen signatures of complainant alongwith all original documents collected from banks and financial institutions were deposited in GEQD for expert opinion. The FSL result has been received and as per the opinion of the FSL, signatures of Lalit Aggarwal and Sh. Mahesh Gupta Chartered Accountant used on loan applications to obtain loan from different Banks and Financial Institutions in the name of M/s Shri Bihari Forging Pvt. Ltd were forged. The signatures of accused Mr. Pramod Goil, Mrs. Shashi Goil, Mr. Ritesh Kumar and Mayur Goil on the loan documents were genuine. Thus the accused have availed the above mentioned loans on the basis of forged documents.

The accused Pramod Goil took the loan on the behalf of the company M/s Shree Bihari Forgings Pvt. Ltd. on the basis of forged documents. The applicants/accused Smt. Shashi Goil and Ritesh Goil were the guarantors against the above loans and also they were share holders of the company. Their signatures on the loan application forms are genuine. The accused Pramod Goil director of the company M/s Shree Bihari Forgings Pvt. Ltd. was arrested in the above said case on 21.08.12 and he was granted bail on same day by the court of Ld. ACMM, Patiala House Court, New Delhi on the ground that they are negotiating for the settlement, but the accused Pramod Goil has not settled the matter as submitted in the trial court while obtaining the bail.

In this way accused Pramod Goil, Shashi Goil and Ritesh Goyal in connivance with the other accused persons obtained the loan from the above mentioned banks and financial institutions on the basis of documents containing the forged signature of complainant and Chartered Accountant."

5. The relevant extracts of the status report dated 12th September, 2013 reads as under:-

"It is further submitted that the DSA M/s Perfect Finance of Bajaj Finance and Kotak Mahindra Bank, Mr. Ashwani Sabharwal has been examined. It has been stated by him that Mr. Vijay Bhutani ex-employee of then ABN AMRO Bank approached the accused Pramod Kumar Goel and the documents pertaining to the loan being availed by Shree Behari Forgings Pvt. Ltd. were provided to him by accused Pramod Goel. The said documents were verified from the original in the office of DSA M/s Perfect Finance. The balance sheet for financial year 2007 to 2008 was also shown and the balance sheet was verified by Surender Kumar, the employee of M/s Perfect Finance from the original.

Mr. Vinit Mittal, the Regional Sales Head, SME, Megma Finance Ltd. has been examined and it was stated by him that the loan proposal of M/s Shree Behari Forgings Pvt. Ltd. was processed through their source Vijay Bhutani (free lancer). The officials of Megma Finance Ltd. only verified the credential and financial of the applicant by spot verification. Mr. Udit Goel & Ritesh Goel (shareholders) provided the details of the company on the instruction of Pramod Goel. After satisfaction the loan amount of Rs.15,00,000 was sanctioned.

The official of Bajaj Finance has been examined. It has been stated that accused Pramod Goel, Mayur Goel, Shashi Goel and Ritesh Goel were co applicant of the loan and they have signed the promissory note and loan term sheet. No personal guarantee was taken by Bajaj Finance at the time of sanctioning of loan amount of Rs.15 Lacs.

Mr. Pawan Kumar Bansal, Vice President, Kotak Mahindra Bank, KG Marg, Delhi stated that accused Pramod Goel had approached the bank for the loan on behalf of the company Shree Behari Forgings Pvt. Ltd. and as per the procedure the loan application was processed and sanctioned. Accused Pramod Goel has submitted documents including the board resolution dt. 18.05.09 of the company Shree Behari Forgings Pvt. Ltd. bearing the signature of directors.

Mr. Hemant Gupta, Assistant Manager, Standard Chartered Bank was also examined. It has been stated that the loan file the Shree Behari Forgings Pvt. Ltd. was received from Mr. Vijay Bhutani. The loan application was processed by him. He visited the office of Shree Behari Forgings Pvt. Ltd. and verified the documents from the original document shown by the accused Pramod Goil and Ritesh Goil including the balance sheet of the relevant period and board resolution dt.25.03.09.

Mr. Vijay Bhutani was also examined and it has been stated by him that he was working with Ashwani Sabbarwal on commission basis. He contacted accused Pramod Goil for loan and visited his office several time for collecting the requisite documents for availing loan from various bank as he was looking for a loan of Rs.1.25 crs. He never met Lalit Agrawal, the complaint and never obtained any signature from him. All the documentation has been provided by accused Pramod Goil at his office.

Mr. Sachin Khurana, the Assistant Vice President Sales of M/s Religare Finvest Ltd. has been examined. It has been stated by him that a loan of Rs.20 lacs was sanctioned by M/s Religare Finvest Ltd. to Shree Bihari Forgings Pvt. Ltd. The loan application was processed through DSA the Best Solutions. Accused Pramod Goil had approached the bank on behalf of the borrower company. All the documentation required for the loan processing was provided by Pramod Goil to the DSA Best Solutions. In due procedure of sanctioning the loan he has visited the factory and office premises of the borrower company where accused Pramod Goil and Ritesh Goil were present for verification.

The details of the officials of ABN Amro Bank, Barakhamba Road and India Bulls Financial Services Ltd. Noida, the DSAs of the financing institutions/bank are yet to be examined. The matter is being pursued with the concerned agencies to obtain the same expeditiously

Accused Pramod Goil was arrested on 21st August, 2012 and he was granted bail on the same day on the ground of settlement. No police custody remand was granted for the sustained interrogation in order to ascertain the authorship of the forged documents and to unearth the whole conspiracy. The custodial interrogation of the other accused persons. Ritesh Goil and Shashi Goil is required to unearth the whole conspiracy.

Further investigation is in progress."

6. It appears from the reports that the matters are under investigation. The statements of many witnesses have already been recorded by the Police.

7. The operative part of the impugned order dated 22nd April, 2013 is reproduced here as under :

> "I have seen the application, reply, judgments cited and all the documents on record and my inference is that application of applicant/complainant under Section 439 (2) be allowed and bail granted to the accused Pramod Goil vide order dated 21.08.2012 by the Ld. ACMM be cancelled on the following grounds:-
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> Firstly, the para-meters of Section 437(5) Cr.P.C. and Section 439(2) Cr.P.C. are different, while Section 437 (5) Cr.P.C. gives power to the Trial Court to grant bail, Section 439(2) Cr.P.C gives power to Court of Hon'ble High Court or Sessions to set aside the order of bail under this Section. Merely because application for cancellation of bail was filed under Section 437 (5) Cr.P.C. is no bar to disposal of application under Section 439 (2) Cr.P.C., the arguments of Ld. Counsel for the accused/respondent that application is not maintainable is not well founded.
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> Secondly, at the time of granting of bail on 21.08.2012 accused had given the following undertaking:-
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> > "Both the parties have submitted that they are negotiating a settlement and the accused person has agreed with to part with the 50% of the vacant land at Bikuha District Hapur, Ghaziabad to the complainant and complainant has agreed to resign as Director from both the companies and transfer his shareholding in the companies in favour of the accused. The parties seek three days time to draw an MOU between them in this regard with intervention of their respective lawyers. In these facts and circumstances of the case, the accused Pramod Goil is admitted to bail, on furnishing Personal Bond and Surety Bond in the sum of Rs.30,000/-."

Despite taking so many dates, the aforesaid undertaking has not been, fulfilled. Hence, undertaking has been given by the accused without intention to perform the same. Since the undertaking has not been complied and the bail has been granted on the basis of aforesaid undertaking, the accused lost his right to remain on bail.

Thirdly, subsequent proceedings after date of hearing 21.08.2012 shows that accused adopted delaying tactics, sometime he appeared, sometime he did not appear and sometime his counsel has not appeared and he always taking dates. This shows that accused is playing fraud with the Court after taking bail on 21.08.2012.

Fourthly, the total amount of Rs.1 crore 35 lacs is involved and it is the allegation of the complainant that accused has committed fraud of Rs. 1 crore 35 lacs. This amount is too much and the order of Hon'ble Mr. Justice P.K. Bhasin dated 27.08.2012 (Supra) is squarely applicable in the present case.

Fifthly, on the face of it, accused appears to have misused his liberty after being released on bail on 21.08.2012 by not complying his undertaking given on 21.08.2012.

In view of above, the present application for cancellation of bail under Section 439(2) is allowed and the bail granted to the accused on 21.08.2012 is cancelled. Accused is directed to surrender before the concerned PS/Ld. MM within 3 days of this order. Dasti."

8. The accused parties and the complainant are in relation. Many cross FIRs are pending against each other in various courts in Delhi and in Uttar Pradesh. Pramod Goil is already on regular bail in the said matter. In the present FIR his bail was cancelled by the impugned order dated 22nd April, 2013, which has been challenged

by him in Crl.M.C. No.1621/2013. At the first date itself, the Court had passed the following orders in Crl.M.C. No.1621/2013.

> "By this petition filed under Section 482 Cr.P.C. the petitioner seeks to challenge the order dated 22.4.2013 passed by the learned Additional Sessions Judge thereby cancelling the bail of the petitioner under Section 439 (2) Cr.P.C. and directing the petitioner to surrender before the concerned PS/learned M.M. within a period of three days.
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> Arguing the present petition counsel submits that the petitioner has always been ready and willing to settle the dispute with the complainant. It is the complainant who did not come forward to transfer his share holding in the said company in favour of the petitioner after receiving the same from the said company. Counsel also submits that so far the petitioner is concerned he had agreed to part with 50% of the vacant land at Bikuha District Hapur, Ghaziabad to the complainant and the petitioner is willing to deposit the title deeds of the said property with this Court to show bona fide on his part.
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> I have heard learned counsel for the petitioner.
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> Notice.
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> Mr. Navin Sharma, APP for the State accepts notice on behalf of the State. Notice now be sent to respondent No.2, returnable on 30th August, 2013.
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> Let original title deeds of the said vacant land at Bikuha District Hapur, Ghaziabad be deposited by the petitioner with this Court within a period of one week and on the deposit of the same the Registry shall keep the said title deeds in the sealed cover. Subject to deposit of the said title deeds by the petitioner the impugned order shall stand stayed till the next date.
>
> Dasti."

9. The case of the petitioners is that the sole objective and intention of the complainant is to harass them and to put undue pressure with a malafide intention to take control of the company namely M/s Shree Bihari Forgings Pvt. Ltd. which was incorporated in the year of 2004 by the petitioners and the complainant.

10. In the year 2004, a private company namely M/s Shree Bihari Forgings Pvt. Ltd. was duly registered with the registrar of the companies, Delhi and Haryana under Companies Act, 1956. The petitioner, Pramod Goil and the complainant are the founder Directors of the said company. Both i.e. Shri Pramod Goil and Shri Lalit Aggarwal, the complainant were authorised to operate the said bank account. A piece of land situated in Pilakhuwa, Distt. Ghaziabad, U.P. on Dholana road was purchased in the name of the said company and in the year of 2005, a manufacturing unit was established for manufacturing iron ingots. The said petitioner and the complainant had 5000 shares each initially and authorized capital of the company was increased to Rs. 1 lac, which was subsequently increased to Rs. 2 lacs, again to Rs. 1 crore and further increased to Rs.1.5 crores. The said petitioner was having 70% shares and the complainant was having 30% shares only in the said company. The complainant did not show any interest in the business of the company and never co-operated with the petitioner in the managing the business affairs of the company. It was the said petitioner who had put his hard labour and worked day and night to run the affairs of the company.

The intention of the complainant became dishonest. The complainant with the active collusion and connivance of his Chartered Accountant with intention to increase his share holdings and to take control of the factory/manufacturing unit/company fraudulently converted the unsecured loans amounting to Rs. 74 lacs approx. into share capital by allotting shares on different dates in December, 2007 in an illegal manner by misusing the digital signatures of the said petitioner. The digital signatures of the said petitioner were in possession of the Chartered accountant in good faith and trust. Thereafter, the said petitioner started checking the accounts and record of the company and he came to know that the complainant had siphoned a huge amount approx. Rs.1.80 crores of the company without the knowledge and notice of the said petitioner from the account/bank of the company by issuing and using cheques duly signed by the complainant from the cheque book which was already in his possession.

10.1 Pramod Goil filed a company petition bearing No. ND15/2008 in Company Law Board under Section 397/398 of the Companies Act, 1956, against the complainant and vide order dated 8th May, 2008 the complainant was restrained by the Company Law Board from operating the said bank account of the company till further orders.

As a counter blast, the complainant filed a counter company petition under Section 397/398/402/403 read with Section 237B and Section 408 of the Companies Act, 1956 before the Company Law Board bearing petition No. 47ND/2008. Both the petitions are pending.

10.2 The complainant also filed a company petition under Section 397/398/402/403 of the Companies Act, 1956 before the Company Law Board bearing petition No. 103 (ND) / 2009 with respect to working of the company - M/s BSL Buildcon Pvt. Ltd. The FIR No. 599/2009 under Sections 408/420/467/468/120B IPC at PS Shakarpur registered on the complaint of Shri Lalit Aggarwal, the complainant wherein the same allegations were made as in the FIR No. 268 of 2009, Police Station EOW. The complainant forged the signature of his wife Smt. Seema Aggarwal who was made petitioner No. 2 in the company petition. The petitioner reported the matter to SHO Police Station, Parliament Street, Delhi and FIR No. 189/2009 under Section 465/468/467/471/120B IPC was registered against the complainant.

10.3 The said petitioner also filed a complaint against the complainant and his Chartered Accountant at Police Station, Shakarpur, Delhi, about their misdeeds and criminal acts of forgery, criminal breach of trust, criminal conspiracy etc. and FIR No. 787/2009 under Section 409/465/467/471/120/34 I.P.C was registered and the case is pending for further investigation as stated in the order dated 10th October, 2012.

10.4 The complainant sold the property of company namely M/s BSL Buildcon Pvt. Ltd. in which the said petitioner is one of the Director. The property of the company was sold in a fraudulent manner without the knowledge and notice of the petitioner and the complainant prepared and created false and fabricated board resolutions and siphoned the huge money and used for his personal gain causing huge wrongful loss to the company. FIR No. 241/2011 under Section 406/409/420/467/468/471/120B/34 IPC was registered at PS-EOW on the complaint of Shri Pramod Goil against the complainant and others in connection with sale of the property of M/s BSL Buildcon Pvt. Ltd. As a counter blast with the sole objective to pressurize, embarrass and harass the petitioner and others, the complainant got registered the present F.I.R. No. 268/2009 under Sections 406/420/467/468/471/120-B IPC at P.S. - Economic Offence Wing by making false and frivolous allegations against the petitioner and others. Earlier also FIR No. 599/2009 dated 15th October, 2009 under Section 408/420/467/468/120B IPC at PS-Shakarpur (in which Closure Report has been filed by the IO in the concerned court) was registered on the same/similar allegations as in the present FIR.

11. The allegations in the present FIR are that various loan applications for and on behalf of M/s Shree Bihari Forging Pvt. Ltd. have been submitted for obtaining loan from various banks without any board resolution as the complainant was not in talking terms with another director/accused namely Pramod Goil and no such board meetings for taking such loans were ever held. It is further alleged that the accused persons have forged the signatures of the complainant on various loan application forms which were processed by M/s Perfect Finance, Jhandewalan, Delhi and an amount more than Rs.1.25 crores loan has been obtained and the accused persons have thus caused wrongful loss to the complainant and to the company as such sums have been siphoned.

12. The petitioners in both the matters have submitted that no forgery has been committed by the accused/petitioners in the loan applications as alleged by the complainant. The loans were obtained by the company for its need in day to day business requirements. Loan applications were processed through the agent namely; M/s Perfect Finance and documentation was completed by the said agent under advice and guidance from the bank. Hence, there is no question of the accused/petitioners having committed any forgery as alleged. The loan application forms, etc. were got signed from the complainant by the agent and the same were submitted by him to the bank after collecting other requisite documents from the complainant like copy of passport, pan card etc. Admittedly, verifications were made from the complainant about such loans as mentioned in the FIR. The accused/petitioners are not at all involved in the acts of forgery, if any, as alleged by the complainant.

12.1 It is stated that the loans have been obtained in a legitimate manner by the Company for its business and day to day need and the total loan amount of Rs. 1.35 crores has since been paid. The outstanding loan amounts have been repaid in accordance with the terms of the loan. Statements of accounts have been furnished to the IO who had cross checked the same and had found that no funds have been diverted to the accounts of the accused/petitioners and as such the accused/petitioners are not the beneficiaries. The No Dues Certificates/Statement of Accounts issued by various banks about repayment of loans by the Company has been filed.

12.2 No offence of cheating, forgery, criminal breach of trust, etc. have been committed by the accused/petitioners and as per the records of the Company the loan amount obtained from various banks by the Company as well as loan amount repaid to such banks has been correctly reflected in the balance sheets as on 31st March, 2009 and 31st March, 2010 and such balance sheets duly audited by the qualified auditor have been submitted to the Income Tax department along with the income tax returns filed by the Company.

12.3 Before the Company Law Board in hearing of the petition bearing No. 103 (ND) / 2009 with respect to working of the company - M/s BSL Buildcon Pvt. Ltd., the complainant made a statement that Minutes Book of the said company is in his possession and the Board suspecting some foul play directed the Bench Officer to visit the Registered Office with the petitioner for taking in possession the Minutes Book. By the order dated 19th July, 2012 the Company Law Board recorded the malafide intention of the complainant as the complainant on 18th July, 2012 made a statement that all the statutory records of the Company - M/s BSL Buildcon Pvt. Ltd. are with the complainant (petitioner therein) and when the Bench Officer visited the registered office of the Company with the complainant, the registered office was locked and when the Bench Officer tried to put another lock on the door so that the records are not manipulated, two muscle men stopped him and the Board recorded that "*The conduct of the petitioner smells foul play and shows malafide and serious adverse inference need to be drawn against the petitioner.*" The copies of the orders dated 18th July, 2012 and 19th July, 2012 passed by the Company Law Board in the petition bearing No. 103 (ND) / 2009 with respect to working of the company - M/s BSL Buildcon Pvt. Ltd. has been filed.

13. On 26th July, 2012 the said petitioner was arrested in the FIR No. 290/2011 under Section 420/467/468/471 IPC at PS-Sector-20, Noida and thereafter he surrendered himself before the court in FIR No. 405/2011 under Section 408/465/468/471/477A IPC at PS-Kotwali, Ghaziabad. On 21st August, 2013 the petitioner was in custody in the above two FIRs and in terms of the Production Warrant issued in the present FIR No. 268 of 2009, Police Station - EOW by ACMM, Patiala House Courts, the petitioner was produced before ACMM - 01, Patiala House Courts, New Delhi.

14. The petitioner moved the bail application before the court and the petitioner was granted bail and further was sent to Dasna Jail with respect to other FIRs.

15. The petitioner was granted bail by the High Court of Allahabad vide the order dated 28th September, 2012 in FIR No. 290/2011 under Section 420/467/468/471 IPC at PS-Sector-20, Noida.

16. The complainant filed an application under Section 437 (5) Cr.P.C. for cancellation of bail before the ACMM, Patiala House Courts, New Delhi on the ground that the petitioner after taking bail was not coming forward for compromise.

On 18th October, 2012, ACMM vide the order dated 18th October, 2012 dismissed the application under Section 437 (5) Cr.P.C. of the complainant.

17. The petitioner was granted bail by the High Court of Allahabad vide the order dated 18th October, 2012 in FIR No. 405/2011 under Section 408/465/468/471/477A IPC at PS-Kotwali, Ghaziabad and released from jail on 19th October, 2012.

18. The complainant filed an application under Section 439 (2) Cr.P. C. before the Session Judge for cancellation of bail of the petitioner.

19. The allegations of the complainant in the FIR No. 268 of 2009 is that the accused persons applied for the loan on his false signatures and manipulated the accounts of the Company - M/s Shree Bihari Forgings Pvt. Ltd. The Company dealing with the same allegations in the Company Petition 47 (ND)/2008, by the order dated 8th March, 2013 the Court appointed independent Chartered Accountant for inspecting the records of the Company and the complainant was authorized to negotiate with the independent Chartered Accountant and to bring him to the registered office of the Company.

20. It is a matter of fact that by order dated 17th April, 2012 passed by ASJ, Patiala House Court, New Delhi had dismissed the anticipatory bail application of co-accused Ms. Shashi Goil and Mr. Ritesh Goil thereafter, thus again moved second anticipatory bail on the ground of change of circumstances which was again dismissed by the aforesaid Court by order dated 10th May, 2012.

21. They also filed an application for anticipatory bail before this Court on the ground of change of circumstances by stating that the

Pramod Goil had deposited the title documents of the property and now the complainant had to resign from the directorship, which was dismissed by this Court by its order dated 15th March, 2013. On 21st August, 2012 the petitioner/accused Pramod Goil was brought from the Dasna Jail though production warrant as he was under judicial custody in two other cases before the MM, Patiala House Court, New Delhi.

22. According to Mr. Sunil Mittal, Advocate who argued that Metropolitan Magistrate granted conditional bail to the Pramod Goil by order dated 21st August, 2012 as both the parties were negotiating a settlement/compromise. Therefore, he was released on bail. But, despite of various dates granted by the Court on 29th August, 2012, 1st September, 2012, 4th September, 2012, 5th September, 2012, 12th September, 2012, 17th September, 2012, 24th September, 2012 and 10th October, 2012 the accused did not complete the formalities.

23. He admits that the complainant earlier moved an application under Section 437(5) of Cr.P.C. before Trial Court for cancellation of bail and the MM dismissed the said application of the petitioner by order dated 19th October, 2012 and subsequently the complainant filed an application under Section 439(2) Cr.P.C. before the ASJ 01, Patiala House Court, New Delhi for cancellation of bail granted to the petitioner. On 22nd April, 2013 ASJ cancelled the bail granted to the petitioner vide order dated 21st August, 2012 with the direction that the petitioner shall surrender before the concerned Police Station/ Metropolitan Magistrate within three days. The trial court in the impugned order was justified in cancelling his bail order.

24. Mr. Sunil Mittal states that the title deeds of the property papers which are deposited before this Court are already mortgaged before the Department of Commercial Tax, Government of India, even the said fact was not disclosed before Court. There is also a restraint order passed by this Court in Ex.P.No.201 of 2014 titled as 'Goodluck Capital Pvt. Ltd. v. Shree Bihari Forgings Pvt. Ltd.' for creating any third party interest or selling the said property in question. The said execution has now been transferred by this Court to the District Judge, Hapur for execution of the judgment and decree dated 26th March, 2014.

25. The Court on various occasions i.e. on 5th September, 2012 and 20th February, 2013, referred the matter to the Delhi High Court Mediation Centre for settlement of the parties. The complainant showed his willingness but the petitioners did not appear several times before the Mediator. Therefore, the mediation proceeding failed and no amicable settlement could be arrived at between the parties. Therefore, Pramod Goil is not serious about the settlement with the complainant. He is adopting hide and seek policy.

26. It is also informed by Mr. Mittal that on 31st August, 2015, the Administrator, appointed by the Company Judge who directed Pramod Goil to produce the books of accounts on the next date of hearing i.e., 16th September, 2015 at 17.00 hrs. On 4th September, 2015 this Court ordered Pramod Goil to produce all financials and other relevant record of the company to the Administrator in order to conduct smooth comprehensive audit of the company. On 16th

September, 2015, the counsel on behalf of Pramod Goil also gave undertaking to deposit the records of the company on the same date i.e., 16th September, 2015. The Court vide order dated 16th September, 2015 directed the petitioner Pramod Goil to deposit all the records of the company with the Administrator. Inspite of the directions given by Administrator on 31st August, 2015 and also directions by this Court by order dated 4th September, 2015 to produce all the records of the company with the Administrator, Pramod Kumar Goil did not produce the same. It is submitted that car which was driven by Mr. Ritish Goil, carrying the books of accounts and other relevant documents have caught fire and all the records for the period 2007-2008 to 2014-2015 has been destroyed.

27. It is informed by Mr. Mittal that Pramod Goil locked the office and the factory premises and broke the earlier locks of the premises in order to take all the assets and other assets like tables, chairs and other furniture from the office of the Company. On 21st November, 2015, on the false averments by Pramod Goil for not producing the books of accounts and other relevant documents to the Administrator, an FIR No.0652/2015, under Sections 193/203/204/426/477A/120-B/477/465/435/409/420 IPC, PS Pilkuwa, Distt. Hapur was filed by complainant. The Administrator vide letter dated 18th November, 2015 authorized complainant to file criminal cases against Mr. Pramod Goil or any other person who have removed the tangible assets of the company.

28. On 3rd December, 2015, Pramod Goil sent resignation letter. On 21st December, 2015, order passed by the Administrator in the

proceeding that he would not take back the documents of Shree Bihari Forgings Pvt. Ltd. from the Registrar of this Court unless the orders passed by this Court.

29. The matter has been argued by Sh. R.N. Mittal, learned Senior counsel appearing on behalf of the petitioners submitted that the statement made by him to transfer 50% share at the time of granting the bail by the trial court would not bind him to get the bail at all in case of non-compliance. However, counsel has assured that the Pramod Goil is still ready and willing to comply with the order as per the statement made in the trial court and before this Court but at the same time, the complainant is also to perform his duty. The petitioner's counsel on many occasions has discussed the said aspect and given his suggestion in order to transfer the 50% shares in favour of the complainant. Learned Senior counsel however submits that no undertaking was given by his client in this regard; but he was merely ready for negotiating a settlement as referred in the order when bail was granted. However, in the impugned order it was wrongly recorded about the undertaking. Thus, the said order is not sustainable.

30. However, counsel for the petitioners has not denied the fact that as per the order passed by this Court, it was agreed by his client i.e. Pramod Goil would transfer the 50% of the vacant lan*d at* Bikuha District Hapur, Ghaziabad as per statement made by him in the trial court and on the basis of the same, this Court issued the notice and passed the interim protection.

31. Learned Senior counsel submits that Pramod Goil was and is ready and willing to transfer the 50% of the land when the property is released. His client has no objection if after clearing the liabilities, the entire property be sold and its half value on the date of settlement be given to the complainant. If any left, his client would be entitled for the remaining amount. At present, his client is not in a position to pay the said value as demanded by the complainant due to money crunch.

32. It is argued on behalf of the petitioners that it is the complainant who is unwilling to settle as they had to relinquish their rights, from both the company but the complainant is not coming forward to give any records of the company M/s BSL Buildcon Pvt. Ltd. The conduct of the complainant in regards of the records of the company is very much shown from the orders passed by the Company Law Board dated 18th July, 2012, 19th July, 2012 and 20th July, 2012 where the complainant had misbehaved with the bench officer and two muscle flexing young person had stopped him to put a lock at the registered office.

There was also a loan of Rs 3.6 Cr which was taken in the year 2004 - 2005 by the Company for which there is no allegation against the said petitioner in the present FIR but the same was also re-paid by him from its own efforts.

In the BSL Buildcon Pvt. Ltd. where both Pramod Goil and complainant are directors and the complainant Lalit Aggarwal had sold the Company property without any consent, which is worth Rs. 10 Crores at a meager amount which was purchased by the Company for Rs.4.21 Crores. But the complainant had sold the same as shown in the sale deed for a value of Rs. 1.45 Crores. And the fund was used by the complainant for his personal purposes. In the said case FIR is lodged by the said petitioner bearing FIR No.241/11 PS. EOW which is pending investigation.

33. Pramod Goil had admittedly deposited the title deeds of the suit property before this Court. He has also resigned from the company. It is not possible at present to sell the said property. The Company Court has appointed the Administrator to look into the entire business accounts, profit and loss or any money siphoned by the Pramod Goil; the said proceedings are also pending.

34. The following judgments are relied upon by the learned Senior Counsel for the petitioner :-

(i) ***Dolat Ram v. State of Haryana,*** 1995 SCC(Cri) 237.

(ii) ***Subhendu Mishra v. Subrat Kumar Mishra and Another***, 2000 SCC (Cri) 1508.

(iii) ***Hazari Lai Das v. State of West Bengal & Another,*** 2009 (10) SCC 652.

(iv) ***Samarendra Nath Bhattacharjee v. State of West Bengal and Another***, 2004 (11) SCC 165.

(v) ***Nityanand Rai v. State of Bihar and Another,*** (2005) 4 SCC 178.

(vi) ***Devender Kumar v. State of Haryana*** 2010 (6) SCC 753.

(vii) ***Suresh Chand v. State NCT of Delhi,*** 2013 (2) JCC 952.

(viii) ***Rajan Mahajan and Anr. v. State and Another***, (2002) 97 DLT 253

(ix) ***CBI v. Akhand Pratap Singh,*** (2008) 146 DLT 93

(x) ***Bhuvaneshwar Yadav v. State of Bihar***, (2008) 15 SCC 467

(xi) ***Madhu Garg v. State & Ors.,*** 2009 Cri LJ 1067

(xii) ***Trinity Global Enterprises Ltd. v. Raj Hiremath & Anr.,*** 2013 (1) JCC 391.

35. As far as Bail Application No.791/2013 is concerned, no doubt there is a change in the circumstances which gives rise for the cause of action for filing the present second bail application as the loan taken by the company has now been repaid to their respective bankers. This Court has also appoined the Adminstrator to look into the entire matter and at the same time, undertaking is also being given by Mr. Pramod Goil that custody is not required in order to complete the remaining investigation left, if any, as they undertake to produce themselves before police as and when required and also to produce all documents which are in their power and possession. Even otherwise, the petitioner No.1 Shashi Goil is a house wife and she is not involved in the day-to-day affairs of the company in any manner and there is no allegation regarding the role of the petitioner No. 1 in the alleged transaction(s). Ritesh Goil, the petitioner No. 2 is a young person aged about 32 years and has two very young children: one daughter aged 8 yrs old and one son aged 5 years old. They have already joined investigation and have furnished their specimen signatures and submitted documents. They have signed on the loan application forms as guarantor but they are not the beneficiaries who have never taken any loan from the banks. Hence, they deserve the relief as prayed for. In case of arrest by the police they be granted bail accordingly, as no custodial investigation is required.

36. It is asserted on behalf of Pramod Goil that the loan application forms, etc. were got signed from the complainant by the agent and same were submitted by him to the bank after collecting other requisite documents from the complainant like copy of passport, pan card etc. He is not at all involved in the acts of forgery. The author of the alleged forgery has neither been named nor established. The CFSL report is not decisive and binding upon him. No loss has been caused to the complainant and/or to the company and/or to the banks in any manner. The entire loan amount has been paid. He has deep roots in the society. There is no chance of him fleeing away from the process of law. He undertakes to appear before the concerned court during the course of trial on the time, date and place fixed for trial.

37. It is a settled law that the grant of bail ought not to be denied only on the perceived apprehension by the Court that the petitioner, if restored to liberty, will tamper with the evidence. There must be some prima facie evidence on record or reasonable and justifiable grounds to believe that in case the benefit of bail is extended to an accused, he is going to misuse his liberty or he would create conditions which are not conducive to hold a fair trial. The Supreme Court in various judgments has confirmed that "Bail is the rule and jail is an exception. The object of bail is neither punitive nor preventive but is meant to secure presence of the accused during the trial.

38. The Supreme Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation***, (2012) 1 Supreme Court Cases 40 in paras 21, 22, 23, 24, 40, 45, 46 after recording the facts and law has held as under:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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45. In *Bihar Fodder Scam* (*Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372*) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail

> for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.
>
> **46.** We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

39. However, in the facts of the present case, certain terms are necessary to be imposed against Pramod Goil in view of his conduct, who has been changing its stand from time to time. He is neither co-operating with the Administrator appointed by this court nor he has fulfilled the condition of settlement offered even at that point of time when the property was not attached. The 50% share of entire property at that time could have been transferred in favour of complainant but it was not happened due to cleverness of Pramod Goil. Even during the course of hearing, learned counsel appearing on his behalf has not denied the fact that the value of the property is more than Rs.3 crores, however, it could not be disposed of as his client had no buyer. But factually, the decree of recovery has already been passed in the suit filed by the third party.

40. As far as the anticipatory bail to the petitioners i.e. Shashi Goil and Riteish Goil in Bail Appl. No. 791/2013 is concerned, it is directed that in the event of their arrest, the petitioners shall be released on bail subject to their furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Investigating Officer (IO) and further subject to the following conditions:-

(i) that they will appear as and when directed by the IO and continue to cooperate in the investigation;

(ii) that they will furnish his present address and contact number to the IO and will not shift from the said address or change the contact number, without prior permission of the IO;

(iii) that they will surrender their passport to the IO and will not leave the country without permission of the Court.

In case of violation of any of the conditions above, it will be open to the State to apply for cancellation of the bail.

41. Therefore, under these circumstances, it would be appropriate to put the conditions while granting bail to Mr. Pramod Goil. The bail is granted but subject to the following conditions:

i) Trial in the matter is expedited;

ii) Pramod Goil as well as other petitioners in bail application shall join the investigation and produce all relevant documents which are required by the police which are in their power and possession;

iii) The petitioner shall not dispose of Company's property without the permission of the Court if the said property at any point of time is released from the attachment;

iv) The petitioners shall not approach any witness and tamper the record of the Company and shall not leave the country without the permission of the Court;

v) The petitioners shall fully cooperate with the Administrator appointed by this Court and shall produce the entire record available with them; and

vi) Without prejudice, Mr. Pramod Goil shall also deposit a sum of Rs.50 lac with the trial court by way of bank draft as a security as despite of statement made by him for settlement from time to time, he failed in his commitment. The said amount shall be deposited within eight weeks. On deposit, the trial court shall invest the said amount in fixed deposit initially for the period of one year.

42. The bail is being granted subject to the abovementioned conditions.

43. The impugned order dated 22nd April, 2013 passed by the ASJ, Patiala House Courts, New Delhi is hereby set aside and order dated 21st August, 2012 passed by ACMM, Patiala House Courts, New Delhi is upheld.

44. Both the petitions are accordingly disposed of.

45. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 9, 2016