$~33

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

\+ **BAIL APPLN. 2439/2017**

SANDIP JHUNJHUNWALA ..... Petitioner

Through: Mr. Saket Sikri, Mr. Abhimanyu Bhandari, Ms. Kartika Sharma, Mr. Shivam Takiar, Mr. Somesh Tiwari, Mr. Ajay Pal Singh and Mr.Junaid H. Nahvi, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Narender Mann, Special Public Prosecutor with Mr. Manoj Pant, Advocate for CBI with Inspector K.N. Bajpai, BS&FC/CBI.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 21.12.2017

1. The petitioner seeks bail in FIR No.RC.BD1/2015/E/0011 dated 26.10.2015 registered at Police Station CBI (BS&FC), New Delhi, for the offences punishable under section 120-B read with sections 420/467/468/471 IPC. The petitioner has been in incarceration since 04.05.2017. He is accused of having cheated and defrauded a consortium of Banks for an amount of Rs.3871 crores. The bail application is opposed on the ground that if the petitioner is released, he could well influence the witnesses and the trial of the case.

2. It is the petitioner’s case that he is the Managing Director in M/s REI Agro Limited, which had business transactions with the complainant Banks since 1994 and has had regular loans from them, which were duly serviced.

Indeed, the Banks having a lien over the assets of the borrowing company are expected and indeed did carry out regular audits. It is stated that the Banks sometimes carried out quarterly audits also. It is the petitioner's case that an Official Liquidator has been appointed for the company and all the assets of the company were seized by him.

3. The learned counsel for the petitioner submits that the case relates to a complaint dated 13.10.2015 primarily regarding non-servicing of loans made by the Banks, who are secured creditors. The latter then appointed a Chartered Accountant to do forensic audit and on the basis of the said report, the CBI has registered the FIR.

4. It is the petitioner's case that the chargesheet has been filed. No further investigation is to be done. About 177 witnesses have to be examined. Seven months have gone by and nothing has happened in the interim. Since there was no complaint between the parties insofar as the business relationship is concerned for almost 20 years i.e. from 1994 to 2014, the conspiracy against the sole petitioner cannot be alleged because the Banks on each occasion had verified the relevant documents.

5. Mr. Mann, the learned counsel for the CBI, submits that the incriminating evidence is available against the petitioner especially in view of the fact that the employees of the company i.e. M/s REI Agro Limited have stated that false billings were done to inflate the sales figures, both the export and local sales, to show an inflated turnover, which would then led to an erroneous basis for application for higher working capital loan but such monies loaned by the complainants were directed to the sister companies of M/s REI Agro Limited. It is stated that about Rs.650 crores were sent to the one company and Rs.515 crores were sent to another company.

6. It is the petitioner's case that prolonged incarceration after the chargesheet having been filed would serve no purpose because the case has to be proved on the basis of the documents since it pertains primarily to the economic offence. His contentions are as under:-

(i) Bail should be granted despite of the fact that the economic offence is of huge magnitude essentially because the investigating agency has already completed investigations and a chargesheet has been filed. He relies on the case of ***Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 SCC 40***, whereby it was held that:-

> *"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.*
>
> *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 jeopardize 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."*

(ii) The time spent in custody is a relevant factor for grant of bail (***State of Kerala vs. Raneef, (2011) 1 SCC 784)***;

(iii) Various other factors such as the a) the nature of accusation and the severity of punishment in cases of convictions and the nature of supporting evidence b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant c) prima facie satisfaction of the court in support of the charge etc. need to be considered for the grant of bail. (***Lt. Col. Prasad Shrikant Purohit vs. State of Maharashtra; 2017 SCC OnLine SC 962)***;

(iv) Gravity of offence cannot be the sole decisive ground to deny bail ***(Jitender Kumar vs. Govt. of NCT of Delhi, 2016 SCC OnLine Del 1170)***;

(vi) Time spent in the custody and health of an accused to be taken in consideration while granting bail (***H.B. Chaturvedi vs. C.B.I., (2010) 171 DLT 223)***;

(vii) Distinction between the mere breach of contract and offence of cheating; depends upon intention at the time of inducement, which may be judged by subsequent conduct, however the same is not the sole test (***Hridaya Ranjan Prasad Verma & Ors. vs. State of Bihar & Anr., (2000) 4 SCC 168)***;

(viii) Every breach of contract will not give rise to an offence of cheating. It would amount to cheating only where deception was played at the very inception(***Vesa Holdings Private Limited & Anr. vs. State of Kerala & Ors., (2015) 8 SCC 293)***.

7. ***Vesa Holdings Private Limited*** (*supra*) pertain to monies taken by the builders from the individual investors, who were unsecured and the

properties were not delivered to them.

8. The bail is also opposed by Mr. Mann, the learned counsel for the respondent, on the ground that if the petitioner is released on bail, he would be a threat to the witnesses and he could well destroy the forged invoices and other records. However, at this stage, the said apprehension is unfounded because an Official Liquidator has already been appointed, and has the custody of the records of the company, to which the petitioner cannot possibly have any excess. He relies upon the dicta of ***Rohit Tondon vs. Enforcement Directorate, 2017 SCC OnLine SC 1304***, which *inter alia* held:-

> *"22. ....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....."*

9. Mr. Mann has also relied upon the other judgments like ***Neeru Yadav vs. State of Uttar Pradesh & Anr. (2014) 16 SCC 508, Y.S. Jagan Mohan Reddy vs. Central Burerau of Investigation (2013) 7 SCC 439, State of Gujrat vs. Mohanlal Jitamalji Porwal & Anr. (1987) 2 SCC 364, Vinod Bhandari vs. State of Madhya Pradesh, (2015)11 SCC 503, Mukesh Kain Vs. CBI (2010) 88 AC 319*** and ***Sunil Grover vs. State 2012 SCC OnLine Del 3539***. He also relied upon the judgments of this Court in Bail Appl. No.1212/2016, 1221/2016 and 1222/2016, titled as ***'Sunil Dahiya vs. State (Govt. of NCT of Delhi)'***, decided on 18.10.2016 and Bail Appl. No.1707/2016, titled as ***'Gurmeet Singh & Anr. Vs. Central Bureau of***

Investigation', decided on 06.30.2017, which are on similar lines.

10. The Court would note that ***Rohit Tandon*** (*supra*) dealt with the charges of money laundering, which is not the circumstance in the present case.

11. In view of the aforesaid discussion and the facts that the allegations relate to an economic offence; the complainants are the secured creditors; the chargesheet has been filed; the evidence would be led primarily on the basis of the documents; the assets have been seized; the records of the company are in the custody of the Official Liquidator, over which the petitioner cannot have any excess, the Court is of the view that no purpose would be served in keeping the petitioner behind bars.

12. In the circumstances, the petitioner is enlarged on bail on his furnishing a personal bond in the sum of Rs.10 lacs with one surety of the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions:-

(i) the petitioner will regularly appear on each and every date of hearing to be fixed by the Trial Court;

(ii) the petitioner will not try to influence, contact or meet the complainant and prosecution witnesses in any manner;

(iii) the petitioner will not leave the country without prior permission of the Court and the passport, if held by the petitioner, shall be deposited with the Trial Court concerned; and

(iv) In case of change the petitioner will promptly intimate his new address and contact number to the SHO/IO of the case (in case of change) under intimation to the Trial Court.

13. The petition stands disposed off in the above terms

14. Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

15. The Registry is directed to send a copy of this order to the Jail Superintendent, concerned for information.

16. A copy of the order be given *dasti* to the learned counsel for the parties under the signatures of the Court Master.

NAJMI WAZIRI, J.

DECEMBER 21, 2017

sb