IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.5425 of 2019 (O&M)
Date of Decision: 20.03.2019

Vinay Kumar Kumpawat ...Petitioner

Versus

Union of India and another ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Kartik Dabas, Advocate
for the petitioner.

Mr.Alok Kumar Jain, Sr.Standing Counsel for UOI.

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HARINDER SINGH SIDHU, J.

In exercise of powers conferred under Section 212 (1)(c) of the Companies Act, 2013 read with 43(2)(3)(c)(i) of the Limited Liability Partnership Act, 2008 the Central Government vide order dated 20.06.2018 ordered investigation into the affairs of 120 Companies and 05 Limited Liability Partnerships (LLPs) (the list of entities were enclosed as Annexure-1 thereto). The investigation was assigned to the Serious Fraud Investigation Office (SFIO).

Apprehending his arrest, the petitioner has filed the present petition for anticipatory bail.

Learned counsel for the petitioner contends that the respondents are investigating accused Mukesh Modi, Rahul Modi and Vivek Harivyasi who in connivance with other people are alleged to have been involved in diverting huge sums amounting to 200-250 crores fraudulently leading to the investigation for violation of Section 447 of the Companies Act through 22 CUIs of Adarsh Group of Companies. The main accused Mukesh Modi, Rahul Modi and Vivek Harivyasi were arrested on 10.12.2018. However, Mukesh Modi and Rahul Modi were released on interim bail pursuant to the orders dated 20.12.2018 of the Delhi High Court passed in Writ Petition (Criminal) No.3842/2018 "Rahul Modi vs. Union of India and others".

It is the case of the petitioner that he was introduced to Mukesh Modi in the year 2007 and he joined the latter's business. The investments and accounts pertaining to the business were made and handled by Mukesh Modi via Abhey K. Shah (Chartered Accountant). The petitioner was only rendering his services on incentive/commission based remuneration. His work was principally to apply for projects, prepare the layout plans for acquisition of land and supervise over the ongoing and future projects. In 2015, he was removed from the Group without any notice or intimation and thereafter he has had no concern with the companies of the said Group. He is now only a name sake Director in few Companies of Adarsh Group of Companies and LLPs. The alleged fraud under investigation took place nearly 3 years after the petitioner had been removed as Director of the Adarsh Group of Companies. The petitioner has joined investigation on numerous occasions and has been cooperating with the investigating agency. Hence, there is no requirement for his arrest. He is a diabetic aged about 44 years, is a respectable member of Society and there are no chances of his absconding.

In the reply filed on behalf of the respondents, it has been stated that vide order dated 20.06.2018 the Central Government has ordered investigation into the affairs of the Adarsh Group of Companies and LLPs through Serious Fraud Investigation Office. Pursuant thereto the Director SFIO has constituted a team of officers as Inspectors for carrying out the Investigation. Vide order dated 20.06.2018 the investigation was to be completed within three months. The time has now been extended upto 30.06.2019. The investigation is going on.

Regarding the petitioner, it has been stated that during investigation, it has been revealed that Adarsh Credit Cooperative Society Limited, Ahmedabad ("ACCSL"), which is an entity controlled by Mukesh Modi and Rahul Modi accepts deposits from public. ACCSL accepted deposits from 22 Lakh depositors of ACCSL. The outstanding balance due to the depositors upward of Rs.10,000 Crores was siphoned/mis-utilized through companies controlled by Mukesh Modi, Rahul Modi and Vivek Harivyasi in concert with others. The funds collected from the public in ACCSL through deposits were given as loans to the newly incorporated CUIs based on unsubstantiated, questionable projected balance sheets and financials. Being under common control of Mukesh Modi and others, the said process did not involve any due diligence or arm's length processes. The CUIs, therefore, transferred the public deposits received by ACCSL as loans on the directions of Mukesh Modi. Further, it has been revealed that Mukesh Modi, Rahul Modi, Vivek Harivyasi in concert with present petitioner and others also siphoned off funds of the 22 CUIs amounting to Rs.66.61Cr in the form of Share Application Money ("SAM"), belonging to the public deposits of ACCSL. This amount may even go up to Rs.223 Crore. The present petitioner's role in the above siphoning is also under investigation.

It has been further stated that the petitioner has been a Director in the flagship company Adarsh Buildestate Limited (ABL) till 30/09/2015 and is still holding the post of Director in various CUIs. He was handling the business of group companies in Jaipur, Gurgaon and Jammu regions during the period when misappropriation and other irregularities took place in the CUIs.

It has been asserted that the petitioner is not cooperating in the investigation as he has not disclosed the relevant information and modus operandi by which crores of rupees have been siphoned off.

Reference has also been made to Section 212(6) of the Companies Act 2013 which is as follows:

> ***"212. Investigation into affairs of Company by Serious Fraud Investigation Office.***—
>
> *(1) xxx xxx xxx*
>
> *(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), [offence covered under Section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—*
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> > *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
> >
> > *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:"*

It is thus clear that the matter under investigation pertains to siphoning /mis-utilization of huge amounts collected from over 22 lakh depositors. The petitioner is alleged to have a role in the said siphoning/ mis- utilization.

Thus, it is not a fit case where the petitioner can be granted anticipatory bail.

Dismissed.

March 20, 2019 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No