$~7 to 9 *(common order)*

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

\+ **BAIL APPLN. 1379/2019 and Crl. M (Bail) 1004/2019**

RAVI KUMAR SINGHAL ..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Madhukar Pandey, Mr. Punya Garg, Mr. Tushar Agarwal, Ms. Ruchika Wadhwan, Mr. Sumer Singh Boparai, Mr. Pranesh Misra, & Mr. Umesh Kumar Singh, Advocates

versus

SFIO & ANR ..... Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Ajay Digpaul, CGSC, Mr. Hari Kishan, Ms. Natasha Sarkar, PP-SFIO, Mr. Sahil Sood, Mr. Viplav ACharya, Mr. Harshul Choudhary, MR. Prashant Singh, Advocates with Ms. Harpreet Kaur, AD, SFIO. for R-1

Mr. Kewal Singh Ahuja, APP for State

\+ **BAIL APPLN. 1380/2019 and Crl. M(B) 1005/2019**

YOGESH GUPTA ..... Petitioner

Through: Mr. Madhukar Pandey, Mr. Pranesh Misra, & Mr. Umesh Kumar Singh, Advocates

versus

SFIO & ANR ..... Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Ajay Digpaul, CGSC, Mr. Hari Kishan, Ms. Natasha Sarkar, PP-SFIO, Mr. Sahil Sood, Mr. Viplav ACharya, Mr. Harshul Choudhary, MR. Prashant Singh, Advocates with Ms. Harpreet Kaur, AD, SFIO. for R-1

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Mr. Kewal Singh Ahuja, APP for State

\+ **BAIL APPLN. 1381/2019 and Crl. M. (B) 1006/2019**

SANJAYA GARG ..... Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with Mr. Madhukar Pandey, Mr. Pranesh Misra, & Mr. Umesh Kumar Singh, Mr. Siddharth S. Yadav, Mr. Sharang Dhulia, Ms. Mallika Chabh, Mr. ADitya Singh, Ms. Rekha Angara, & Mr. Prateek Bhalla, Advocates

versus

SFIO & ANR ..... Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Ajay Digpaul, CGSC, Mr. Hari Kishan, Ms. Natasha Sarkar, PP-SFIO, Mr. Sahil Sood, Mr. Viplav ACharya, Mr. Harshul Choudhary, MR. Prashant Singh, Advocates with Ms. Harpreet Kaur, AD, SFIO. for R-1

Mr. Kewal Singh Ahuja, APP for State

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **30.05.2019**

Crl. M.A. 11767-11768/2019 (exemption) in BAIL APPLN. 1379/2019
Crl. M.A. 11769-11700/2019 (exemption) in BAIL APPLN. 1380/2019
Crl. M.A. 11780-11781/2019 (exemption) in BAIL APPLN. 1381/2019

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

BAIL APPLN. 1379/2019
BAIL APPLN. 1380/2019
BAIL APPLN. 1381/2019

On the criminal complaint (No.720/2017) of Serious Fraud Investigation Office (SFIO), an agency under the Ministry of Corporate Affairs of Govt. Of India, the Special Judge (Companies Act), by his order dated 24.01.2019, took cognizance and issued process summoning, in all, 177 persons as accused (93 individuals and 84 companies), the array including these three petitioners *viz.*, Yogesh Gupta (A-57), Ravi Kumar Singhal (A-65) and Sanjay Garg (A-66), certain role having been attributed to them in the larger conspiracy alleged to have been hatched by one Mohd. Iqbal (A-1). The petitioners herein are stated to be the promoter/directors of a company in the name and style of Gyan Kailash Education and Recreation Limited (A-140). As per the summoning order these three petitioners have been called upon to answer accusations as to their complicity for various offences including those punishable under sections 420/468/471/477A/120-B of the Indian Penal Code, 1860 (IPC), sections 211/297/299/301/628/629A of the Companies Act, 1956 and under sections 129/184/188/189/447/448 of the Companies Act, 2013.

These petitioners were called upon by the Special Judge to appear on 05.04.2019 and 06.04.2019. It appears that on account of their non-appearance, non-bailable warrants were subsequently issued against them to secure their presence. Apprehending arrest in the wake of said orders, these petitions have been filed invoking jurisdiction of this court under section 438 read with section 482 of the Code of Criminal Procedure, 1973

(Cr.P.C.).

Though the learned Additional Solicitor General (ASG) raised doubts as to maintainability of the anticipatory bail applications placing reliance, *inter alia,* on *Sushila Aggarwal & Ors. vs. State (NCT of Delhi) and Anr., (2018) 7 SCC 731,* it cannot be ignored that law is well settled that such applications can be entertained if arrest is apprehended after process is issued upon cognizance of offence is taken by the jurisdictions criminal court. [*Ravindra Saxena vs. State of Rajasthan, (2010) 1 SCC 684; Bharat Chaudhary & Anr. Vs. State of Bihar, (2003) 8 SCC 77; P.V. Narsimha Rao & Anr. vs. State (CBI), 1997 SCC OnLine Del 19;* and *P.V. Narsimha Rao vs. State (CBI) ILR (1997) 1 Delhi 507].*

The gravamen of the allegations against the petitioners are set out in the complaint at table 4.69 (internal page 232), the same reading thus:-

S. No.	Name of the Company	Nature	Details	Period of Default (FY)
1	Gyan Kalash & Recreation Ltd.	Financial Statements	Company has given guarantee to Syndicate Bank of Maharaja Agrasain Education Society for Rs.164 lakh in 2005. The charges against the company are still open. Financial statements of the company do not reflect that company has given any guarantee.	2006-07 to 14-15
		Financial Statements	Financial Statements for FY 2011-12 & FY 2013-14 revealed that company has security premium of Rs.26.25 lakh but company omitted to	2012-13

	–		reflect the security premium amount in the financial statements & corresponding entry was not passed.	
		Form 20B	Company has not furnished the transfer details in the annual return for FY 2005-06 to FY 2008-09. Share holding details furnished revealed change in shareholding but transfer details were not furnished in 20B.	2005-06 to 08-009

Broadly speaking, the case of the respondent (SFIO) is that pursuant to a criminal conspiracy hatched by prime accused Mohd. Iqbal (A-1), who allegedly has been engaged in illegal sand-mining operations in the State of Uttar Pradesh, certain lands were purchased in and around district Saharanpur, during 2009-2010 to 2013-2014, and for purposes of laundering the ill-gotten money so as the same to be projected as legitimate assets, a number of companies were fraudulently taken over by their shares being purchased at diluted prices, the companies generally being shell or dummy companies, the company in question (of the petitioners) being one of them, its activities as per the investigation report, falling in cluster-IV.

The petitioners have shown, by documents, that they have been promoter/directors since incorporation of the company in April, 2004. They have also shown from documents that in January, 2006, one of the original promoter/director had resigned and one Nisha Garg was inducted as additional director. She along with two others, namely, Vipin Garg and

Sushil Kumar Gupta statedly resigned in April, 2009, their shares (collectively representing 50% of the share capital) having been purchased by Mohd. Wajid (A-6), Mohd. Javed (A-7) and Mohd. Naseem (A-10), the three persons, as per the case of SFIO, representing the interest of Mohd. Iqbal (A-1), their entry intended to use the company for their illicit purposes.

It is the argument of the petitioners that they had no way of blocking the entry of the abovesaid three individuals as shareholders of the company, they having directly purchased the stock of Nisha Garg, Vipin Garg and Sushil Kumar Gupta. The petitioners seek to argue and show by documents they have submitted, and which they claim to have shared with the investigating agency (SIFO) during its probe that the allegations on the basis of which they are sought to be prosecuted are unfounded.

It is shown *prima facie* by documents that the loan of Rs.164 lakh which had been taken from Syndicate Bank by Maharaja Agrasain Education Society, to whom the responsibility to run a school on the land of the company had been entrusted, such land having been legitimately purchased for consideration much prior to impugned activities, was duly reflected in the returns, the company having earlier stood guarantee for the said loan, the said loan itself having been repaid and the liability liquidated in the year 2012, such events also having been duly mentioned in the returns, the charge having been closed.

The petitioners also seek to show from documents that the security premium of Rs.26.25 lacs was duly reflected in the financial statements of the financial years 2011-2012 and 2013-2014. At the hearing, the learned

ASG sought to point out that two returns were submitted for the financial year 2012-2013, the capital reserves of Rs.26.25 lakhs not having been reflected in one of them. It was, however, sought to be explained by the learned senior counsel for the petitioners that this was an inadvertent omission and that suitable correction was made later, the said capital reserves having been duly shown in the return for the following financial year, *i.e.,* 2013-2014.

The petitioners also submit that the allegations vis-a-vis Form 20-B are not correct, their claim being that the share holding details were duly reflected in the returns for the corresponding financial years, some documents in this regard filed with the petitions *prima facie* confirming the plea.

In the above facts and circumstances, in the considered view of this court, the petitioners do deserve interim protection. It is directed that in the event of they being arrested, the petitioners shall be released on bail on they furnishing personal bonds in the sum of Rs. One lakh each with one surety in the like amount each, to the satisfaction of the arresting officer.

The petitioners shall be obliged to appear in person, with counsel of their choice, before the Special Judge on the date fixed, *i.e.,* 01.07.2019 and move proper application for regular bail. The anticipatory bail order hereby granted shall enure to their benefit till 01.07.2019 or if application for regular bail is moved till decision is taken thereupon by the Special Judge and if the prayer for release on regular bail is declined by the said court for a further period of seven days thereafter.

Needless to add, while considering the application for regular bail, the Special Judge will not feel bound by the view taken by this court and shall have the liberty to take a decision uninfluenced by any observations made herein.

The petitions and the applications filed therewith are disposed of in above terms.

Dasti under the signatures of Court Master.

R.K.GAUBA, J.

MAY 30, 2019
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