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

\+ BAIL APPLN. 1434/2019 and Crl. M.A. 12124/2019

BRIJ BHUSHAN SHARMA ..... Petitioner

Through: Mr. Jitender Sethi, Mr. Abhay, Mr. Naveen Kumar and Mr. A. Rohen Singh, Advocates

versus

STATE ..... Respondent

Through: Ms. Maninder Acharya, ASG with Mr. Ajay Digpaul, CGSC and Mr. Prashant Singh, Mr. Souman, Mr. Sayed Hussain and Mr. Vidur Weidi, Advocates

\+ BAIL APPLN. 1467/2019 and Crl. M (B) 1063/2019 and Crl. M.A. 12432-12433/2019

BIMLA GUPTA ..... Petitioner

Through: Mr. K.K. Patra and Mr. Rabindra Nanda, Advocates

versus

SFIO & ANR ..... Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Anurag Ahluwalia, CGSC for R-1

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

<u>O R D E R</u>

% **31.05.2019**

Since these petitions arise out of the same case as concerned

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Bail Appln. 1430/2019 of Ashish Agarwal, which has been allowed by a separate order of even date, the crucial issue being common, it will be of advantage to extract here the order passed in the said matter, it reading thus :-

> *"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 the petitioner, he being shown as A-91, certain role having been attributed to him in the larger conspiracy alleged to have been hatched by one Mohd. Iqbal (A-1).*
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> *As per the impugned order, the appellant has been summoned to answer accusations for offences under Sections 418, 477A, 120B IPC, u/s. 211, 297, 299, 301, 628, 629A of the Companies Act, 1956 and u/s. 129, 184, 188, 189, 447, 448 of the Companies Act, 2013.*
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> *The offence under Section 447 of the Companies Act, 2013 is the most serious offence, it being cognizable and non-bailable subject, inter alia, to the restrictions contained in Section 212 (6) of the Companies Act, 2013. All other offences concededly are bailable.*
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> *The petitioner in compliance with the summoning order had appeared before the special judge on 08.04.2019 and thereafter again on 24.05.2019 on which date he was taken in custody, he being in judicial custody ever since. He has come up with the petition at hand invoking the jurisdiction of this court under Section 439 of the Code of Criminal Procedure, 1973 submitting that the accusations against him are unfounded.*
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> *As per the case of the SFIO, the petitioner was a statutory auditor of a company named Canyon Financial Services Ltd. (A-93) for the period 2003-2004 to 2007-*

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2008. Concededly, last audit report issued by him relates to the financial year ending with 31.03.2008. It is alleged that the analysis of the documents pertaining to the said company for the period 2003-2004 to 2007-2008, seen against the light of his statement recorded during the probe, reveal that he had not fulfilled his duties as statutory auditor and had facilitated in enhancement of net worth of the company with fictitious entries in the financial statements, which was sold to the Group led by Mohd. Iqqal (A1), who utilized certain entries of fictitious share capital, fictitious investments, loans, advances, etc. for liquidation of bogus investments and to infuse their illicit money, the petitioner having certified the financial statements without verifying the books of accounts and without following the basic guidelines of auditing prescribed by Institute of Chartered Accountants of India.

The learned senior counsel, pointed out from the investigation report which, in terms of Section 212(15) of the Companies Act, 2013, is to be treated as report of investigation under Section 173 Cr. PC that accusations against the petitioner relate to the period only upto 31.03.2008, the audit report issued by him pertaining to the financial year thereby ending, there being no act of commission or omission attributed for any subsequent period. Though certain other contentions were also raised, what is crucial in the above mentioned submission is that on basis of such acts of commission or omission anterior to 31.03.2008, it is highly doubtful if the offence under Section 447 of the Companies Act, 2013 can be subject matter of accusations against the petitioner, this for the simple reason the said penal clause had come into force with effect from 01.03.2014 only.

In the foregoing facts and circumstances, the prayer for release on bail is granted. It is directed that upon he furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lakh) with one surety in like amount to the *satisfaction of the Special Judge (Companies Act), the petitioner shall be released on bail pending further proceedings in the criminal case.*

The petitions is disposed of in above terms."

The petitioner of Bail Appln. 1434/2019, Brij Bhushan Sharma (A-90) and the petitioner of Bail Appln. 1467/2019, Bimla Gupta (A-77) are amongst those who have been summoned in the aforementioned case by order dated 24.01.2019 of the Special Judge (Companies Act). While the first said petitioner, Brij Bhushan Sharma (A-90) is described as a chartered accountant, *inter alia,* of two companies viz. Mastiff Industries Pvt. Ltd. (A-95) and Netagro Foods Pvt. Ltd. (A-97) controlled by co-accused Suresh Kumar Gupta (A-80), the second petitioner Bimla Gupta is described as shareholder in Namrata Marketing Pvt. Ltd. (A-96) and also director in some of the companies (also accused) of said Suresh Kumar Gupta. The first petitioner Brij Bhushan Sharma (A-90) has been summoned to answer accusations for offences under Sections 418, 477A, 120B IPC, under 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. The second petitioner Bimla Gupta (A-77) has been similarly summoned to answer accusations for offences under Sections 418, 477A, 120B IPC, under 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.

It was fairly conceded by the learned Additional Solicitor

General that the accusations against both the petitioners pertain to the period prior to coming into effect (i.e. 01.03.2014) of the penal clause contained in Section 447 of the Companies Act, 2013 this rendering the case against these petitioners to that extent doubtful.

It may be mentioned that three other persons, also summoned by the same order in the above mentioned case, they being Ravi Kumar Singhal (A-65), Yogesh Gupta (A-57) and Sanjay Garg (A-66) had also moved applications for anticipatory bail – Bail Applications no.1379-1381/2019 – which were granted by a common order passed on 30.05.2019. On parity with Ashish Agarwal (Bail Appln. 1430/2019) and the three said others i.e. Ravi Kumar Singhal (A-65), Yogesh Gupta (A-57) and Sanjay Garg (A-66) (Bail Applications nos.1379-81/2019), the petitioners herein deserve similar protection. It is directed that in the event of they being arrested in aforesaid case, 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 31, 2019
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