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

+ BAIL APPLN. 1589/2019 and Crl. M (Bail) 1127/2019 and
Crl. M.A. 12826/2019

SUJATA KHANDELIA

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr.
Sandeep Bisht, Mr. Anuj Tiwari, Mr. Avnish
Kumar, Mr. Shikhar Srivastava, Mr. Tushar
Agarwal, Ms. Ruchika Wadhawa and Mr. Sumer
Singh Buparai, Advocates

versus

SERIOUS FRAUD INVESTIGATION
OFFICE

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC with Mr.
Kartikeya Rastogi, Advocate and Mr. Hari
Krishan, prosecutor

+ BAIL APPLN. 1590/2019 and Crl. M. (Bail) 1133/2019 and Crl.
M.A. 12835/2019

SHASHI SHARMA

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr.
Sandeep Bisht, Mr. Anuj Tiwari, Mr. Avnish
Kumar, Mr. Shikhar Srivastava, Mr. Tushar
Agarwal, Ms. Ruchika Wadhawa and Mr. Sumer
Singh Buparai, Advocates

versus

SERIOUS FRAUD INVESTIGATION OFFICE Respondent

Through: Mr. Anurag Ahluwalia, CGSC with Mr.
Kartikeya Rastogi, Advocate and Mr. Hari
Krishan, prosecutor

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

ORDER
% **02.07.2019**

The petitioners in both these matters were taken in judicial custody on 20.05.2019 but initially released on interim bail on their applications, which were eventually dismissed on 25.05.2019, by a common order in the course of proceedings arising out of complaint case (no.720/2017) of the respondent – Serious Fraud Investigation Office (SFIO) by the court of Additional Sessions Judge-03 at Dwarka Courts Complex for South-west district, the said court also being the court of Special Judge for purpose of Companies Act, 2013.

The first petitioner Sujata Khandelia (A38) and the second petitioner - Shashi Sharma (A41) have been summoned by the said court by order dated 24.01.2019 to answer the accusations for offences punishable under Sections 420, 468, 471, 477A, 120B of Indian Penal Code, 1860 (IPC), Sections 211, 297, 299, 301, 628, 629A of the Companies Act, 1956 and Sections 129, 184, 188, 189, 447, 448 of the Companies Act, 2013. The case involves as many as 177 accused persons including a number of companies. The petitioners are stated to have been directors of some of the said company accused during certain period.

While rejecting the applications for release on regular bail, the special judge has referred to a challenge that was brought to this court against the summoning order, the petition to that effect having been

dismissed by this court by order dated 06.02.2019, a special leave petition brought there- against statedly having been dismissed by the Supreme court on 08.03.2019. It is, however, pointed out by the learned senior counsel for the petitioners that the said petition challenging the summoning order was not preferred by the petitioners and the contentions urged by them for seeking release on bail, pleading innocence, are entirely distinct from those which were taken up and considered in the said previous round qua the summoning order.

It is noted that the learned special judge has referred to the inhibition against release on bail particularly in the context of the offence under Section 447 of the Companies Act, 2013, by virtue of the provision contained in Section 212 (6)(ii). But, it is also noted that the trial court has not subjected the material on record to scrutiny specifically with regard to the two petitioners so as to reach a satisfaction as to whether or not reasonable grounds exist for believing that they are guilty of such offence under Section 447 of the Companies Act, 2013.

In the above facts and circumstances, this court finds the scrutiny of the applications for release on bail to be deficient. In all fairness, when contentions are raised by an accused that he or she is not covered by the above-mentioned penal provision so as to take him or her out of the rigor of the provision contained in Section 212 (6) of the Companies Act, 2013, it is the obligation of the criminal court to examine the material from such perspective and record its opinion

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on that score. General observations which may govern the case involving such large number of accused may be misleading, mis-directed and unfair approach.

In the above facts and circumstances, it will be proper to set aside the order dated 25.05.2019 of the special judge whereby the applications of the petitioners were dismissed and instead remit the matter in that regard to the special judge for fresh consideration and appropriate orders to be passed thereupon in accordance with law. Ordered accordingly. Given the fact that the petitioners are women, they also pleading certain domestic constraints, compulsions and difficulties and, of course, the grounds set out in the petitions, it will be proper that their applications for release on regular bail receive expeditious attention of the special judge. In this view of the matter, it is directed that the applications shall be taken up by the said court on 04.07.2019 and decided within a week thereof. Both parties shall be duty bound to appear accordingly and be ready to assist the said court on 04.07.2019 itself. The contentions urged in the present applications may also be raised before the special judge.

Dasti under the signatures of the Court Master.


R.K. GAUBA, J

JULY 02, 2019

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