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

\+ BAIL APPL. No.1706/2019

Judgment reserved on :13.09.2019
Date of decision :20.12.2019

SACHIN JAIN ..... Appellant

Through: Mr. Deepak Sharma, Advocate.

versus

SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

Through: Mr. Ajay Digpaul, CGSC with Ms. Sakshi Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant Sachin Jain who is in custody since 20.05.2019 is arrayed as accused No.28 in the complaint filed by the Serious Fraud Investigation Office (hereinafter referred to as SFIO) which complaint was filed on 18.09.2017 by the SFIO against 177 accused persons, submits that through the complaint filed by the SFIO through its Assistant Director before the Special Judge (Companies Act) qua the offences punishable under Sections 418/477A/120B of the IPC and Sections 211/297/301/628/629A of the Companies Act, 1956 and offences punishable under Sections 129/184/188/189/447/448 of the Companies Act, 2013, the applicant/petitioner is cited as a Director of following companies:-

"a. M/s Sampat Financials Planners Private Limited

b. M/s Subhiksha Securities & Consultants Private Limited

c. M/s Shadilal Marketing Private Limited

d. M/s Sanchit Infrabuild Private Limited."

and it is submitted by the petitioner that as per the said complaint of the SFIO, the aforesaid four companies had caused a loss to the State by hatching a conspiracy with one co-accused Md. Iqbal. The petitioner submits that he was summoned vide order dated 24.01.2019 on cognizance being taken by the Special Judge (Companies Act), Dwarka and appeared before the Court on 20.05.2019 and was taken into custody by the Court. The petitioner submits that his application seeking grant of bail was rejected vide order dated 07.06.2019 of the Special Judge (Companies Act) and further submits that he is not well educated and has not passed Standard X and worked as a salesman in a shoe shop company and is not connected with any of the four companies aforementioned and that he had not even been served with the summons by the SFIO for joining the investigation at any stage.

2. The petitioner further submits that the requirements of Section 212(6) of the Companies Act, 2013 for institution of a complaint under Section 447 of the said enactment has not been complied with, in as much as, the complaint was not filed by the Director of the SFIO nor by any other officer authorized in that behalf by the Central Government and has rather been filed by the Senior Assistant Director of the SFIO (Dheeraj Kumar) who was neither a Director of the SFIO nor was he specifically authorized under Section 212(6)of the

Companies Act, 2013 to file the complaint in relation to a cognizable offence.

3. The petitioner further submits that the stringent conditions of Section 212(6) of the Cr.P.C., 1973 do not apply where bail is sought after the completion of investigation and filing of the final report in criminal complaint and is applicable only during the course of investigation. The petitioner further submits that Section 447 of the Companies Act, 2013 has come into force only on 01.03.2014 and thus, does not apply to the petitioner who in any event is a stranger to all those four companies i.e. M/s Sampat Financials Planners Private Limited, M/s Subhiksha Securities & Consultants Private Limited, M/s Shadilal Marketing Private Limited and M/s Sanchit Infrabuild Private Limited wherein he was shown as a Director. The petitioner further submits that though the prosecution has relied on the Memorandum of Association, Resolution, Resignation Letters and share certificates of the four companies i.e. M/s Sampat Financials Planners Private Limited, M/s Subhiksha Securities & Consultants Private Limited, M/s Shadilal Marketing Private Limited and M/s Sanchit Infrabuild Private Limited as having been signed by the petitioner, the petitioner has never signed nor executed any of the said documents and submitted that the same are forged and fabricated bearing his forged signatures. The petitioner submits that there is no document that has been filed by the SFIO to show that the SFIO is a beneficiary of the transactions done by the companies.

4. The petitioner further submits that the offences punishable under Sections 447 of the Companies Act, 1872 and the offences

punishable under Sections 418/120B of the Indian Penal Code, 1860 are not made out against the petitioner and that the law in force at the time of the commission of the alleged act, was the substantive law under which the petitioner could have been prosecuted and that the petitioner cannot be prosecuted under the Companies Act, 2013 which was not in force in the year 2011. Inter alia the applicant submits that he has clean antecedents and that there has been no recovery effected from him and that he has deep roots in society and he is the only bread earner of his family and that he ought to be released on bail. Inter alia the petitioner submits that there are no chances of his tampering with the evidence.

5. The applicant further submits that in as much as the investigation in the matter is complete and the charge sheet has been filed, no purpose would be served by keeping him in custody. A catena of verdicts is relied upon on behalf of the petitioner to contend to the effect that the applicant ought to be released on bail, in as much as the investigation in the matter is complete and that he is not likely to tamper with the evidence. The verdicts relied upon on behalf of the petitioner are as under:-

"I. "Court on its own Motion Vs. CBI" [(2006) 4 RCR (CRL.) 206]

II. "H.B Chaturvedi Vs. C.B.I" 171 (2010) DLT 223

III. "Ashok Kumar Vs. State" 231(2016) DLT 32(CN)

IV. "Sanjay Chandra Vs. C.B.I" VII (2011) SLT 428

V. "Suresh Kalmadi Vs. C.B.I" 187(2012) DLT 575

VI. "Anup Prakash Garg VS. Enforcement Department" BAIL APP. NO. 1061/2018 passed by Delhi High Court on 06.08.2018

VII. "Yogesh Gupta Vs. State of NCT of Delhi" Bail Appl.No. 1613/2018 passed by Delhi High Court on 17.08.2018.

VIII. "Data Ram Singh Vs. State of UP" [(2018) 3 SCC 22]"

6. The SFIO through its status report has put forth the genesis of the investigation conducted stating to the effect that the investigation commenced pursuant to order dated 14.12.2015 of the Hon'ble Supreme Court in W.P.(C) No.818/2015 wherein it had been alleged that Mohd. Iqbal, a resident of Saharanpur had:-

- **Amassed disproportionate assets;**
- **Incorporated a number of sham companies under the Companies Act, 1956, many of which have dummy directors or fictitious shareholders.**
- **Acquired lands & buildings in the names of these companies, using laundered money earned from illegal mining through contracts taken in the names of Companies/partnership firms owned by his family members."**,

and thus, the respondents to that petition through the learned ASG were called upon to inquire into the matter to find out that whether it was a fit case to initiate any inquiry with it having been observed to the effect that the proceedings in W.P.(C) No.818/2015, would not act as an impediment for any legal action being taken against such persons.

7. Vide order dated 08.01.2016, the Ministry of Corporate Affairs in compliance of order dated 14.12.2015 of the Hon'ble Supreme Court ordered the SFIO to investigate into the affairs of six companies allegedly owned by Md. Iqbal. Vide order dated 07.06.2019 vide

which the second bail application of the applicant was declined by the Trial Court, it was observed vide paragraphs 5 & 6 to the effect:-

> ***"5. In Cluster-IV companies, there are around 47 companies which were acquired by the Group of A-1 to purchase land and fraudulent use of money for acquiring the land was shown to have been required by these companies in the form of loans and advances and mostly they are unidentified identities. Further it was found that majority of transactions made by these companies were outside the banking channels and most companies even did not maintain any account. Investigation has further revealed that these companies have no business since incorporation and they have acquired 175.65 hectares of land for worth Rs. 1896.94 lakhs and further these groups acquired the land through these clusters of companies 10 circumvent the Land Ceiling Act and A-28 Sachin Jain is the Director of four such companies.***
>
> ***6. It is pertinent to mention that the case of SFIO is that a criminal conspiracy was hatched by the prime accused A-1 Mohd. Iqbal who allegedly has been engaged in illegal sand mining operation in the State of Uttar Pradesh and in/ around District Saharanpur for the purpose of laundering the ill-gotten money so as the same to be projected as legitimate assets and therefore, a number of companies were fraudulently taken over by their shares being purchased at diluted prices and the companies were the shell companies/dummy companies and few of such companies are under directorship of A-28. Allegations against accused persons also covered Section 447 of Companies Act read with Section 212 (6)(ii) of Companies Act.",***

significantly, vide paragraph 7 of the said order, it was observed to the effect:-

"7. Arguments Heard. Investigation file record perused. IO of SFIO has shown me investigation file (which is confidential in nature)."

8. The SFIO submits that in as much as the Hon'ble Supreme Court vide order dated 08.02.2016 had observed regarding extending the investigation to other companies, the MCA vide its order dated 23/24.02.2016 under Section 212(1)(c) directed the SFIO to investigate into the affairs of additional 104 companies and one LLP. The said status report of the SFIO submits that on investigation being carried out, the report was submitted to the Central Government under Section 212(12) of the Companies Act, 2013 concluding that Md. Iqbal in conspiracy with 111 accused entities and his family members/ key associates had committed a fraud as defined under Section 447 of the Companies Act, 2013 with the ultimate objective of camouflaging ill-gotten money and of amassing real estate properties whilst violating various provisions of the Companies Act, 2013 and the Companies Act, 1956 and had further committed offences punishable under the Indian Penal Code, 1860 and had caused a loss of Rs.610 crores approximately to the exchequer. The SFIO further submits that the investigation had revealed that the entire network of EUIs i.e. the Entities Under Investigation had been created with a single objective of creating/acquiring legal assets out of the wealth amassed through illicit sand mining activities and that to achieve this goal, Md.Iqbal group (accused no.1 to 9) created/used a complex grid of EUIs to camouflage the source of funds and fictitious assets acquired through accommodation entry operators were liquidated to create real assets.

The status report of the SFIO further states that a set of dummy/ ghost shareholders and Directors were used as a front to facilitate the liquidation and acquisition of assets and that the group had indulged in large scale falsification of the books of accounts and that the pliable auditors and accounting professionals, including the present applicant had totally disregarded the fundamental principles of accounting to please the kingpin of the group. The SFIO has further submitted that the investigation had revealed that amongst many illegal acts committed by the group, it included stockpiling of the unaccounted money and large scale money laundering for legitimizing the proceeds of crime. The SFIO has further submitted that on the investigation report being submitted before the Hon'ble Supreme Court vide order dated 31.07.2017, the MCA was directed to take into consideration the investigation report of the SFIO to take a conscious decision whether or not to sanction prosecution and the MCA whilst exercising power under Section 212(14) of the Companies Act, 2013 issued instructions and sanction to initiate prosecution for the violations in the offences committed under the various provisions of the Companies Act, 1956 and the Companies Act, 2013 as well as under the Indian Penal Code, 1860 against 176 accused persons including the present petitioner and that the order directing the initiation of prosecution was placed before the Hon'ble Supreme Court, whereafter it was observed by the Hon'ble Supreme Court that there was nothing that survived in the matter and the petition was disposed of and as a consequence, a criminal complaint was filed before the Trial Court on 18.09.2017.

9. *Inter alia* the SFIO submits that the applicant has been summoned by the learned Trial Court for the offences punishable under Sections 418/420/468/471/477A/120B of the Indian Penal Code, 1860, under Sections 211/279/299/301/628/629A of the Companies Act, 1956 and under Sections 129/184/188/189/447/448 of the Companies Act, 2013 and for the offences punishable under Sections 447/448 of the Companies Act, 2013 and offences punishable under Sections 424/468 of the Indian Penal Code, 1860 are non-bailable. The SFIO further submits that the Trial Court vide its detailed orders dated 20.05.2019 and 07.06.2019 has dismissed the regular bail application filed by the applicant.

10. The SFIO has further submitted that the applicant was detailed in Cluster-IV of the complaint and that the investigation revealed that the group in furtherance of a larger conspiracy, used Cluster-I accused companies i.e. Mastiff Industries Private Limited, Net Agrofoods Private Limited, V.K. Health Solutions Private Limited to acquire shareholding in 47 other accused companies, which were then used to acquire huge parcels of land in the State of U.P. to circumvent the land ceiling laws in the State and in this manner, they first used their unaccounted money and high net worth of the accused companies to acquire the said 47 companies and then purchased huge land in the name of the said 47 companies and that the acquisition of 47 companies and purchasing of parcels of land took place from the period 2009-2014 and that the investigation revealed that the group acquired the said four companies as under:-

- Sanchit Infrabuild Private Limited- 20.1.11

- Sampat Financials Planners Private Limited- 25.9.10
- Shadilal Marketing Private Limited- 31.3.11
- Subhiksha Securities & Consultants Private Limited- 20.9.11

and that the applicant was a Director in four of the aforesaid accused companies i.e. from 2010 to 13.08.2013 i.e. Sanchit Infrabuild Private Limited, Sampat Financials Planners Private Limited, Shadilal Marketing Private Limited & Subhiksha Securities & Consultants Private Limited.

11. The SFIO further submits that the applicant remained as a Director in Sanchit Infrabuild Limited till 13.08.2013 i.e. even after its acquisition by the Group and thus contended that this clearly showed that he was a participatory to the conspiracy hatched by the Group and he being the Director in the aforesaid companies, committed fraudulent acts in furtherance to the said conspiracy, whereby the Group was able to acquire Rs.36.91, 53.66 & 178.90 lacs worth of land parcels with the money infused in said companies by the Cluster-I companies of the Group and that the investigation revealed that before acquisition by the Group, these companies were having negligible cash/net worth and did not have any business transaction in the past and that they were with the help of the applicant and other accused, used by the Group to commit fraudulent acts.

12. *Inter alia* the SFIO has submitted that the investigation of 111 EUIs and associated entities revealed a design by Mohd. Iqbal, his family members, close associates of the family and professionals to launder the illicit gains from the rampant illegal sand mining

undertaken by the group through a series of contracts awarded to the entities controlled by the conglomerate and that most of the entities incorporated or acquired off the shelf through self-acknowledged entry operators did not carry out any commercial or economic activity and that the sole purpose of having multiple set of companies and partnership firms was to use them as a front for converting the unaccounted money into legal assets, mainly agriculture land and later on in real estate and construction sector. It was further submitted by the SFIO that the facts which had come forth during the investigation showed that the entire network was created with a single objective of creating/ acquiring legal assets out of the wealth amassed through illicit sand mining activities and that to achieve this goal, the group created a complex grid of business entities to camouflage the source of funds and fictitious assets acquired through accommodation entry operators were liquidated to create real assets. The SFIO has further submitted that a set of dummy/ghost shareholders and directors were used as a front to facilitate the liquidation and acquisition of assets and that the group had indulged in large scale falsification of the books of accounts.

13. Reliance was placed on behalf of the SFIO on the verdict of this Court in ***"Amit Ranjan Vs. Narcotics Control Bureau" 2019 SCC OnLine Del 9104*** to contend to the effect that the provisions of Section 37 of the NDPS Act, 1985 were in *pari materia* to the provisions of Section 212(6) and Section 212(7) of the Companies Act, 2013.

14. Section 212(6) and Section 212(7) of the Companies Act, 2013 read to the effect:-

> ***"212. Investigation into affairs of Company by Serious Fraud Investigation Office.***
>
> ***(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [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—***
> ***(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:***
> ***Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—***
>
> ***(i)the Director, Serious Fraud Investigation Office; or***
>
> ***(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.***
>
> ***(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.",***

and that in as much as the case of the applicant falls under the provisions of Section 212(6)(ii) of the Companies Act, 2013 and as Section 212(6) of the Companies Act, 2013 starts with a non-obstante clause and the provisions stipulated under Section 212(6)(ii) of the Companies Act, 2013 are mandatory in nature, in the facts and circumstances of the instant case, the applicant is not entitled to be released on bail.

15. The SFIO places reliance also on the verdict of the Hon'ble Supreme Court in ***"Satpal Singh Vs. The State Of Punjab" AIR 2018 SC 2011*** whereby on a prayer seeking grant of anticipatory bail under the NDPS Act, 1985 it was held that the twin conditions of bail under the NDPS Act, 1985 are applicable in a case of anticipatory bail also and it was submitted thus, on behalf of the SFIO that the provisions of Section 37 of the NDPS Act, 1985 being akin to Section 212(6) of the Companies Act, 2013, the limitations prescribed under Section 212(6) r/w Section 212(7) of the Companies Act, 2013 are applicable in the instant case.

16. It is thus, submitted on behalf of the SFIO that the orders under Section 439 of the Cr.P.C., 1973 as sought by the petitioner herein, cannot be granted without reference to the provisions of Section 212(6) and 212(7) of the Companies Act, 2013 without entering a finding on the required level of satisfaction of the Court that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged to have been committed by him and that the petitioner is not likely to commit any offence while on bail.

17. The SFIO further submits that as laid down by the Hon'ble Supreme Court in ***"Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation" 2013 (7) SCC 439,*** economic offences constituted a class apart and need to be visited with a different approach in the

matter of bail and that the economic offences have deep rooted conspiracies and involved huge loss of public funds and thus, needed to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, in as much as, they tend to seriously prejudice/ destroy the economy of a country and thus, caused immense irreversible damage to the larger public interest.

18. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in ***"Rohit Tandon Vs. Directorate of Enforcement" (2018) 11 SCC 46*** to contend to similar effect. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in ***"State of Gujarat V. Mohanlal Jitamalji Porwal" (1987) 2 SCC 364*** wherein, it was observed vide para 5 to the effect:-

> ***"……5. ……The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest. ……"***

19. During the course of the submissions that were made on behalf of the petitioner, reliance was sought to be placed on the investigation

report dated 26.07.2017 that was submitted to be shared to the Chairman, CBDT for an appropriate action to contend that the offence punishable under Section 447 of the Companies Act, 2013, was not even adverted to therein qua the present petitioner arrayed as accused No.28. The petitioner has further sought to submit that several other accused in the complaint case No.720/2017 pending before the Special Judge, Companies Act i.e. Ashish Aggarwal A-91, Vijay Kumar Sharma A-86, Kumari Shiriti A-89, Bimla Gupta A-77, Vinod Kumar Mittal A-34, Arvind Kaneri A-92, Sujata Khandelia A-38, Shashi Sharma A-41 have been released on bail and Ravi Kumar Singhal A-65, Yogesh GuptaA-57, Sanjay Garg A-66, Pawan Kumar Aggarwal A-81, Dharmender Gupta, Rakesh Sharma, Suman Sharma, Amitabh Singh, Abhijit Kanth A-58, Suresh Kumar Gupta, Mohit Kumar and Ritika Agnihotri have been granted interim protection by this Court on the basis of the order dated 11.07.2019 in Bail Appl. No.1615/2019 and even Mohd. Iqbal the stated kingpin vide order dated 29.05.2019 of the Hon'ble High Court of Allahabad whilst declining the prayer for quashing of the summoning order in the said complaint case i.e. CC No.720/2017 dated 24.01.2019 of the Special Judge, Companies Act, Dwarka, was released on bail in terms of the directions therein to the effect:-

> *"Heard learned counsel for the parties and perused the record.*
>
> *This application under Section 482 Cr.P.C. has been filed for quashing the entire proceeding in Complaint Case No.720 of 2017, Serious Fraud Investigation Office Vs. Mohammad Iqbal and others, under Sections 420, 468, 471,*

120B I.P.C., and Sections 211, 297, 299, 301, 678, 629-A of the Companies Act, 1956 and Sections 129, 184, 188, 189, 447 and 448 of the Companies Act, 2013, Police Station Gomti Nagar, District Lucknow, pending in the court of the Additional Sessions Judge, Court No.3 and Special Judge, (Companis Act), Dwarka, District Court/ Delhi and quashing of the summoning order dated 24.01.2019 passed by Additional Sessions Judge, Court No.3 and Special Judge, (Companies Act), Dwarka, District Court/ Delhi.

At the very outset, objection has been raised by learned counsel appearing for opposite party no.2 regarding maintainability of this application under Section 482 Cr.P.C. before this Court, however, he conceded that in this case, point of maintainability has been considered exhaustively and decide by this Court in Application U/S 482 No.-18806 of 2019 Mohammad Wajid and 3 others Vs. State of U.P. and another, on 10.05.2019, copy whereof has been brought vide annexure no.6 to the affidavit filed in support of this application.

Learned counsel for the applicant has submitted that in the identical matter, this Court vide order dated 10.05.2019 in Application U/S 482 No.-18806 of 2019 has allowed the applicants to move discharge application before the court below. Therefore, the same relief may be given to the applicant in this case for moving discharge application before the court concerned.

Considered the submission so raised.

On meritorial aspects of the case, it cannot be said that prima facie evidence is lacking for summoning the applicant.

Consequently, the summoning order dated 24.01.2019 passed by the court below is sustained. No good ground is made out for quashment of the impugned summoning order is refused.

However, under facts and circumstances of the case, it is provided that in case the applicant moves an appropriate

application personally or through counsel before the trial Court seeking discharge within five weeks from today, the same shall be considered and decided on its merit by speaking order after affording opportunity of hearing to both the sides.

In the first instance, no coercive action shall be taken against the applicant till the period of five weeks from today or till presentation of the application, whichever is earlier and in case the discharge application is moved within aforesaid stipulated period, then no coercive action shall be taken against the applicant till disposal of discharge application.

However, it is made clear that in the event no such application is moved within the time prescribed above, this order will be of no avail to the applicant."

20. The applications of Mohd. Naseem and 18 others in the said complaint case i.e. CC No.720/2017 were likewise disposed of vide order dated 29.05.2019 of the Hon'ble High Court of Allahabad.

21. On behalf of the applicant, has been submitted a copy of a complaint sent through speed post made by the applicant herein on 19.07.2019 to the SHO, PS Shakarpur seeking the registration of the FIR under Sections 420/468/471/120B/34 of the Indian Penal Code, 1860 against the following persons:-

(i) Sanat Kumar Jain R/o 62, Vijay Block, Laxmi Nagar, Delhi-92.
(ii) Director/Managing Director of Sampat Financials Planners Private Limited, Add:25, Chauhan Market, Samaspur Jagir, Delhi-110091.
(iii) Director/Managing Director of Subhiksha Securities & Consultants Private Limited, Add:25, Chauhan Market, Samaspur Jagir, Delhi-110091.

(iv) Director/Managing Director of Shadilal Marketing Private Limited, Add: 59/5, Emco Complex, Vijay Block, Laxmi Nagar, Delhi-110092.

(v) Director/Managing Director of SanchitInfrabuild Private Limited, Add: 59/5, Emco Complex, Vijay Block, Laxmi Nagar, Delhi-110092.

22. *Inter alia* it was sought to be submitted through the said complaint of the petitioner that he works as a salesman in a shoe shop company and that unfortunately on 13.02.2019, a notice was issued by the Court at Dwarka in his name and on his appearing before the Court, he was taken into custody by the Court whilst apprising him that he was a Director of M/s Sampat Financials Planners Private Limited, M/s Subhiksha Securities & Consultants Private Limited, M/s Shadilal Marketing Private Limited & M/s Sanchit Infrabuild Private Limited and that the said companies had committed a serious fraud and had caused loss to the State. The petitioner submits that he was also supplied the complete set of the charge sheet along with a pen drive and that after going through the same, he was shocked to see the documents i.e. MOA & AOA of the above mentioned companies deposited with ROC with FORM-1, Resignation letter attached with FORM-32/FORM DIR-12 filled with ROC by the above mentioned companies and Board Resolution attached with the account opening form of M/s Sanchit Infrabuild Private Limited, which were filed with the charge sheet on which the petitioner submits that it bore his forged and fabricated signatures.

23. The petitioner submits that in the month of March 2010, he met one Sanat Kumar Jain A-87 for getting a job and Sanat Kumar Jain

promised to provide him a job of a peon as he had not passed Standard X and that Sh.Sanat Kumar Jain asked the petitioner to submit his voter identity card. The petitioner further submits that the said Sanat Kumar Jain gave him no job and did not contact him till the date of his complaint and rather forged and fabricated his signatures on the documents referred to herein above as submitted with the charge sheet by stating that he was a Director of the companies i.e. M/s Sampat Financials Planners Private Limited, M/s Subhiksha Securities & Consultants Private Limited, M/s Shadilal Marketing Private Limited and M/s Sanchit Infrabuild Private Limited.

24. The petitioner has further submitted that because of this act of Sanat Kumar Jain and other accused persons, he has been falsely implicated in CC No.720/2017 without any accusation and has been languishing in jail since 20.05.2019. Inter alia the petitioner has submitted the copy of his account opening form bearing his signatures submitting that the same could be compared with the signatures on the documents that had been filed with the charge sheet in order to unearth the forgery done by the other accused persons. The petitioner submits that he does not know any of the accused persons in the matter.

25. On a consideration of the submissions made on behalf of either side, it is essential to observe at the outset that the charges in the matter are yet to be framed by the learned Trial Court in relation to CC No.720/2017. Though, undoubtedly, the allegations levelled against the petitioner are grave and relate to the alleged commission of an economic offence, it is essential to observe that vide order dated 15.07.2019, the respondent i.e. SFIO had been directed to submit the

formal reply setting out the case against the petitioner and a brief summary of the evidence on which it was based. The response of the respondent is on the record which has been adverted to elsewhere hereinabove, however, the specific evidence collected against the petitioner is not spelt out. Undoubtedly, the respondent alleges that in apparent reference to the group of Mohd. Iqbal, the stated king pin and his key associates and family members in furtherance of a larger conspiracy induced the accused companies i.e. Mastiff Industries Private Limited, Net Agrofoods Private Limited, V.K.Health Solutions Private Limited to acquire shareholding in 47 other accused companies which were then used to acquire huge parcels of land in the State of UP to circumvent the land ceiling laws in the State and that as per the investigation conducted, the petitioner was a Director in four of them from 2010 to 13.08.2013 as adverted to hereinabove and that the petitioner continued to remain the Director in Sanchit Infrabuild Pvt. Ltd. till 13.08.2013 even after its acquisition by the Group, as a consequence of which the petitioner is stated to have been a participatory to a conspiracy hatched by the Group as being a Director in the said companies and thus committed fraudulent acts in furtherance of the said conspiracy whereby the Group was able to acquire Rupees 36.91, 53.66 and 178.90 lakhs worth of land parcels with the money infused in the said companies by the Cluster-1 companies of the Group despite the factum that these companies had negligible cash/net worth and were not having any business transactions in the past and that these companies with the help of the petitioner and other accused were used by the Group to commit fraudulent acts.

26. Though undoubtedly, the allegations which are levelled against the applicant/petitioner of his being a Director of four shell companies/ dummy companies which companies are stated to have been created so that they could be taken over by the prime accusedA-1 Mohd. Iqbal for the purpose of laundering his ill-gotten money through engaging in illegal sand mining operations in the State of UP and in/around the District Saharanpur, so that he could project the said ill-gotten money as legitimate assets and these companies were utilized to purchase land and that majority of the transactions made by these companies were outside the banking channels and the companies did not even maintain any account,- are allegations, if established *prima facie* undoubtedly fall within the domain of a fraud in terms of Sections 447 and 448 of the Companies Act, 2013.

27. This is without any observations in relation to the applicability or non applicability of the Companies Act, 2013 to acts committed by the petitioner allegedly prior to the date 12.09.2013, in as much as the said aspect is *sub judice* before the Hon'ble Supreme Court pursuant to the observations made in W.P.(Crl.) No.2453/2018 vide verdict dated 29.08.2018 by the Hon'ble Division Bench of this Court in ***"Neeraj Singh Vs. Union of India & Ors.***" having been stayed by the Hon'ble Supreme Court in CRL.A.No.1114/2018 arising out of SLP Crl. No. 7421/2018 vide order dated 04.09.2018 in ***"Serious Fraud Investigation Office Vs. Neeraj Singh &Anr",*** in view of the contention raised on behalf of the applicant that the accusations

against the petitioner qua applicability of Section 447 of the Companies Act, 2013 relate only upto the period 2011.

28. However, in as much as the basic premise of the prosecution launched against the petitioner relates to the documents allegedly retrieved to show that the petitioner was a Director of four companies i.e. i.e. M/s Sampat Financials Planners Private Limited, M/s Subhiksha Securities & Consultants Private Limited, M/s Shadilal Marketing Private Limited and M/s Sanchit Infrabuild Private Limited, the contention of the petitioner is that his proof of identity has been illegally and unauthorizedly used by Sanat Kumar Jain A-87 whom he met for getting a job.

29. It is essential to observe that the documents that the petitioner has submitted during the course of the present proceedings are copies of an account opening form submitted to the Punjab National Bank, Laxmi Nagar Branch, Delhi by Sarika Jain, his wife and by himself purportedly giving the same address 73, J-Extension, Murtiwali Gali, Laxmi Nagar, Delhi, which is the address mentioned as J-Extension, Laxmi Nagar, Delhi-110092 in the summons issued by the SFIO dated 16.08.2016 to the petitioner apprising him to appear before the SFIO on 15.09.2016 for examination in connection with the investigation into the affairs of M/s AMB Buildgroup Private Limited and Others and AarzooAgritech Private Limited & others under Section 212(1)(c) of the Companies Act which is also shown to be the address on the summons dated 16.03.2017 issued to the petitioner to similar effect.

30. Significantly, page 157 which has been submitted on the record which appears to be the copy of the page 157of the charge sheet,

shows **that the person at this address was reported to have left** as per the report dated 23.08.2016 in relation to the summons bearing No.SFIO/INV/334-339 & 359-463/ AMBBPL & Others and AAPL & Others/ 2016/I/8425/2016 dated 16.08.2016 issued by the SFIO and in relation to the summons bearing No. SFIO/INV/334-339 & 359-463/ AMBBPL & Ors and AAPL & Others/ 2016/I/10205/2017 dated 16.03.2017, **it was reported on 18.03.2017 by the postal authorities that there was no such person**. The copies of the pages of the documents submitted showing the signatures purportedly of the petitioner Sachin Jain at pages 280, 320, 279, 291, 264, do not *prima facie* appear to be as those of the person who signed the account opening form with the Punjab National Bank, Laxmi Nagar Branch in relation to the account No.1603000/02055/117.

31. Taking the said aspect into account as well as the factum that the summons bearing no.SFIO/INV/334-339 & 359-463/ AMBBPL & Others and AAPL & Others/ 2016/I/8425/2016 dated 16.08.2016 and SFIO/INV/334-339 & 359-463/ AMBBPL & Ors and AAPL &Others/ 2016/I/10205/2017 dated 16.03.2017 issued to the petitioner by the SFIO referred to hereinabove were apparently not delivered to him, taking into account also the verdict of the Hon'ble Supreme Court in ***"Rukmini Narvekar Vs. Vijaya Satardekar and Ors." AIR 2008 SC 1013*** with observations in paragraph 17 of the said verdict, which observes categorically to the effect that though defence material cannot be looked into by the Court while considering the framing of the charge in view of the verdict of the Hon'ble Supreme Court in ***"State of Orissa Vs. Devendra Nath Padhi" AIR 2005 SC 359,*** there

may be some very rare and exceptional cases where some defence material when shown to the Trial Court, can be looked into by the Court at the time of the framing of the charges or taking cognizance as well as the observations of the Hon'ble Supreme Court in the verdict in ***"Nitya Dharmananda and Ors. Vs. Gopal Sheelum Reddy and Ors." AIR 2017 SC 5846,*** wherein it has been observed vide para 9 thereof to the effect:-

> ***"9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produces with the charge sheet for dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Code of Criminal Procedure de hors the satisfaction of the Court, at the stage of charge.",***

coupled with the factum that there is no document placed on the record by the SFIO to show any direct benefit having been received by the petitioner herein by the alleged fraud in any mode, without any observations on the merits or demerits of the aspect of framing of charges or otherwise and the trial, if any, in the circumstances, in as much as, it has been laid down by the Hon'ble Supreme Court in ***"P. Chidambaram Vs. Central Bureau of Investigation" 2019 (14)SCALE 157*** that the basic jurisprudence relating to bail remains the same, in as much as the grant of bail is the rule and refusal is the exception, so as to ensure that the accused has the opportunity to securing a fair trial and that even though, economic offences fall under the category of a grave offence and the said circumstance is to be considered at the time of consideration of an application for bail, even if the allegation is one of a grave economic offence, it is not a rule that bail should be denied in every case since there is no bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so.

32. Furthermore, it is in these circumstances that the provisions of Section 212(6) of the Companies Act, 2013 in the facts and circumstances of the instant case would have also to be considered and thus, it cannot be contended that the embargo of Section 212(6) would essentially operate in the instant case.

33. In the instant case, there are no contentions raised on behalf of the SFIO that the applicant's presence cannot be secured or that the applicant would flee from justice or that the applicant can influence the witnesses or tamper with the evidence in any manner.

34. It cannot also be overlooked that as already observed hereinabove, several of the accused persons namely i.e. Ashish Aggarwal A-91, Vijay Kumar Sharma A-86, Kumari Shiriti A-89, Bimla Gupta A-77, Vinod Kumar Mittal A-34, Arvind Kaneri A-92, Sujata Khandelia A-38, Shashi Sharma A-41 have been released on bail and Ravi Kumar Singhal A-65, Yogesh Gupta A-57, Sanjay Garg A-66, Pawan Kumar Aggarwal A-81,Dharmender Gupta, Rakesh Sharma, Suman Sharma, Amitabh Singh, Abhijit Kanth A-58, Suresh Kumar Gupta, Mohit Kumar and Ritika Agnihotri have been granted interim protection by this Court on the basis of the order dated 11.07.2019 in Bail Appl. No.1615/2019.

35. The applicant in the circumstances is allowed to be released on bail on filing a bail bond in the sum of Rs.2,00,000/- with two sureties of the like amount to the satisfaction of the Special Judge, Companies Act seized of the proceedings in CC No.720/2017 titled as ***"SFIO Vs. Mohd. Iqbal & Ors."*** with conditions that he shall not leave the country, shall not tamper with the evidence, shall provide his contact details to the Serious Fraud Investigation Office (SFIO) and shall commit no offence whatsoever.

36. The application is disposed of.

ANU MALHOTRA, J.

DECEMBER 20, 2019/NC