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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 06.05.2020

Pronounced on: 14.05.2020

+ BAIL. APPLN.639/2020 (URGENT)

ADITYA KUMAR BHANDARI

..... Petitioner

Represented by: Mr.Rakesh Kr. Khanna and
Mr.Vikas Pahwa, Sr. Advs.
with Mr.Harsh Sethi,
Ms.Aanchal Basur and
Ms.Sarvapriya Makkar, Advs.

Versus

SERIOUS FRAUD INVESTIGATION OFFICE Respondent

Represented by: Ms.Maninder Acharya, ASG
with Mr.Jasmeet Singh, CGSC,
Mr.Srivats Kaushal and
Mr.Viplav Acharya, Advs. with
IO Arun Prasad.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition is filed seeking the indulgence of this Court for enlargement of the petitioner on bail in Reg. No.CC/149/2020.
2. The case of petitioner is that RHL was established on 04.08.2004. The eldest brother of Srivastava Family namely, Late Rajesh Srivastava was

the '*Founder Chairman and Managing Director*' of Rockland Hospitals Limited (hereinafter referred to as '*RHL*') and was solely managing the day-to-day affairs of RHL till the date of his demise i.e. 25.01.2016 and thereafter the same were handled by his younger brother namely Prabhat Kumar Srivastava till 30.06.2016. The Rockland Group was managed by Late Rajesh Srivastava and his family. The petitioner was a close friend of Srivastavas and was given employment by Late Rajesh Srivastava on this account. After 30.06.2016, RHL was taken over by VPS Healthcare Pvt. Ltd. and on the wishes and directions of Late Mr. Rajesh Srivastava, the Applicant, was designated on paper as a Director of RHL and some other group companies. But since this was primarily an honorary position given to the petitioner, on account of his continued years of service he was never involved in the day-to-day affairs of the said companies and his Share Holding was negligible. The petitioner was never a Guarantor of the Loans obtained by RHL.

3. The above said position of facts is squarely admitted by Serious Fraud Investigation Office (SFIO) inasmuch as the SFIO itself admits that even though the petitioner was a whole time Director of RHL/A1, he was not a signatory to the Financial Statements of RHL/A1 (Page no.34 of the I.O.

Report). Further, the petitioner has been found NOT GUILTY of the alleged offence under Sections 129, 134 and 448 of Companies Act, 2013 in respect of alleged '*False Statement in the Balance Sheets of RHL*' as per finding No.2 at Page No. 8 of complaint. In this regard, as per Section 134(1) Companies Act, 2013 the Balance Sheet of the company is required to be approved by the Board of Directors, meaning thereby that the SFIO admits that despite being a Director in the Board of RHL, the petitioner was not functioning as a decision making member of the Board of Directors and therefore he has admittedly not been held liable for alleged falsification of the balance sheets of the RHL.

4. After the demise of Rajesh Srivastava (Founder Chairman and Managing Director of RHL), Prabhat Srivastava obtained a P.O.A from the petitioner in relation to sale of Shares of RHL in his personal capacity and also in the name of Aditya Medico Private Limited. This fact also establishes that the petitioner was only an inconsequential paper director since this was primarily an honorary position given to the petitioner on account of his continued years of service and negligible shareholder.

5. Mr.Rakesh Khanna and Mr.Vikas Pahwa, learned Senior Advocates appearing on behalf of the petitioner submitted that each and every director

is not liable in criminal proceedings for the act of other director/offence committed. The Hon'ble Supreme Court in the case of ***Pooja Ravinder Devidasini vs. State of Maharastra & Anr. SLP No. 9133-39 of 2010*** has held as under:

"...Simply because a person is a Director of a Company, does not make him liable... Every person connected with the Company will not fall into the ambit of the provision... A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence ...In National Small Industries Corporation (supra) this Court observed... A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements..."

6. Further submitted that the petitioner is aware about the total consideration for purchase of 100% Shares of RHL considered by VPS Healthcare for Rs.650 crores and from the said Sale Consideration, a sum of Rs.430 Crores was paid off to the Banks in complete discharge of loans. The same is evident from the NOC dated 24.04.2017 issued by Lead Bank. Moreover, there is no complaint alleging cheating or misappropriation of their funds made against the petitioner by any Bank or financial institution, till date. In addition, all the banks and lenders of RHL that existed before the

sale of the Company to VPS Healthcare had been duly paid back and no shareholder, creditor or lender has ever raised any complaints about any alleged siphoning off of funds. Moreover, VPS Healthcare owned RHL obtained fresh bank loan of Rs.400 crores from Federal Bank for running of the operations of the Company vide Sanction Letter dated 04.01.2017. However, petitioner is in no manner related to the said fresh bank loan, as he was neither the Borrower nor the Guarantor of the said new loan obtained by VPS Healthcare.

7. Learned senior counsels further submitted that pursuant to the takeover of RHL by VPS Healthcare, various disputes arose between the parties and the same led to:

- i. Passing of Order dated 20.01.2017 by this Court restraining the Srivastava Family and their agents including the petitioner from entering the premises of RHL, **copy whereof is annexed with the petition as Annexure- 5.**
- ii. Passing of Direction under Section 156(3) for registration of an FIR against VPS Healthcare wherein one of the allegations was that VPS Healthcare has manipulated the records of RHL in order to lodge false complaints against its erstwhile Directors,

copy of Order dated 23.08.2017 passed by Ld. M.M under section 156(3) is **annexed with the petition as Annexure- 6.**

- iii. Complaint dated 07.11.2017 and 16.12.2017 to Registrar of Companies, filed by VPS led RHL in a bid to exert undue pressure on the erstwhile promoters of RHL, which were marked to S.F.I.O for investigation vide communication dated 31.05.2018 of the M.C.A., **copy whereof is annexed with the petition as Annexure-7 (Colly).**

8. Subsequently, in the above said Complaint Case No.8519/2017 filed by Prabhat Kumar Srivastava, vide order dated 23.08.2017, directions for registration of a FIR against the functionaries of VPS HealthCare led RHL were passed by the Ld. M.M. Consequently, FIR No.81/2017 has been registered.

9. Thereafter, on 02.02.2019, after lengthy trial of more than one and half years, examination and cross examination of all parties before Arbitral Tribunal comprising of the Ex-Chief Justice of India Mr. Justice T.S. Thakur and retired Judge of Supreme Court Mr. Aftab Alam, the disputes in relation to the accounts of RHL were resolved by the parties vide award dated 01.03.2019 wherein VPS Healthcare even paid settlement amount to the

representatives of the shareholders of RHL in turn for the closure of disputes between them and undertook to withdraw all their complaints. In compliance of the same, VPS Healthcare moved a letter dated 28.03.2019 before the Registrar of Companies, Delhi requesting that all complaints filed by them be treated as withdrawn and proceedings be closed/dropped.

10. However, pursuant to the investigation, petitioner was summoned on 17.01.2019, 26.11.2019, 29.11.2019 and 02.12.2019 to appear before the SFIO. Accordingly, he has complied with every summon and joined investigation as and when called by the investigating authorities. Further, on 02.12.2019, in response to a telephonic summon by the Respondent, petitioner appeared for questioning. However, even despite full assistance and cooperation given by him to the investigation, he was arrested at 8.00 pm. Thereafter, on 31.01.2019, the Investigation Report was filed before the Ld. Special Judge under Section 173 Cr.P.C. Pursuant to this, an application under Section 437 of the Cr.P.C. seeking the petitioner's enlargement on regular bail was filed on 11.02.2020, however, vide order dated 02.03.2020, the Ld. Special Judge dismissed the same.

11. Learned Senior Counsels argued that it is not a case where any public funds/ public interest is involved and that till date there has not been a single

complainant or victim in the present case. Inasmuch as all the loans obtained by RHL, during the period the petitioner was its whole time Director, have been paid back in full. However, the allegation of the SFIO that even though the banks have been paid, at the time of disbursal of the loan, the banks were "*deceived*" on account of presentation of window-dressed accounts before the banks. The said fact falls flat on its face inasmuch as despite notice of the present case by SFIO, none of the banks have stated that they were deceived in any manner, hence, the alleged offences of S 36 (c) read with Section 447, 448 of the Companies Act, 2013 are prima facie not made out. Admittedly, the petitioner was neither the Borrower nor the Guarantor of the loan obtained by RHL.

12. Further argued that no parallels can be drawn between the present case and the case of *SFIO vs. Nitin Johri & Ors.: MANU/SC/1246/2019* as relied upon the Respondent since in the case of Nitin Johri, a staggering amount of about Rs.47,000 crores has been looted from the Banks and still remains unpaid whereas in the present case, an amount of Rs.430 crores has been taken on loan from the banks and has been repaid as far back as 1 ½ years before start of the investigation. However, the Ld. Special Judge has erroneously noted that the allegations against the accused are "*prima facie*

were found to be supported by material in the form of documents and statements of witnesses". It is submitted that there is not even a single document/e-mail communication on record to show that the petitioner was involved in the preparation of any alleged false implant bills. However, only the statements of two witnesses mention the name of the petitioner, one of whom is himself Accused No.9 and the other witness is an ex-employee (Ravinder Sharma) who himself is alleged to have prepared fake expenditure bills but he has not been made an accused. Therefore, these two solitary statements cannot be relied upon to reject the petitioner's bail as the said two statements are also hopelessly un-corroborated with any material on record. However, the Ld. Special Court has failed to consider that even as per the Charge Sheet, against the alleged siphoned-off amount via alleged fake expenditure bills of Rs.76.03 crore, a class of patients namely Doctor Referred Patients (DRP) which have been alleged to be non-existent have deposited a total sum of Rs. 145.59 crores in RHL and the said amount has been used for the business of the company and not for any fraudulent purpose. Hence, the amount of money flowing in RHL is far more than the alleged siphoned-off amount.

13. Learned senior counsels argued that the present proceedings originated from Complaints dated 07.11.2017 and 16.12.2017 filed by VPS Healthcare alleging siphoning of funds from RHL, have already been withdrawn vide Letters dated 28.03.2019. But the SFIO's allegations that the present enquiry had been initiated on the basis of the report dated 19.02.2018 under Section 143(12), Companies Act, 2013 of the Auditor of VPS Healthcare led RHL (which was at logger heads with the petitioner at that time) is also not prima facie reliable inasmuch as the said Report issued by the Auditor is counter blast to the abovesaid FIR No.81/2017 dated 24.08.2017 lodged by the petitioner against VPS led RHL and the said Auditor on account of various facts such as preparation of balance sheet of RHL within a period of one day and manipulation of accounts/ financial statements. The SFIO's allegation that the abovesaid report of the Auditor was thereafter considered by the ROC and Report dated 19.02.2018 under section 208 of the Companies Act, 2013 was issued by ROC whereby also falls flat as the said report did not recommend inquiry by SFIO.

14. Further argued that SFIO has no jurisdiction to investigate the present matter since none of the pre-requisites that confer such jurisdiction upon the SFIO, exist in terms of Section 212 (a) (b) and (c). The petitioner was not

arrested for almost 1 ½ years during investigation, which means that even the SFIO felt that there was no apprehension that he would abscond or hamper the investigation in any manner. The petitioner has been languishing in Judicial Custody for the past more than 92 Days and Charge Sheet/Complaint has also been filed. However, during the term of J.C., the petitioner was only made to join investigation at one instance, clearly demonstrating that he is not required for any investigation. Even assuming that the only apprehension qua the petitioner was that he might influence witness, however, now, since Charge Sheet/Complaint has been filed, the said apprehension of SFIO also cannot be said to be valid ground for him to continue in judicial custody. Therefore, bail should not be withheld as a punishment as observed in the case of *Nagendra vs. King Emperor: AIR 1924 CAL 476*. Moreover, since RHL, which is A-1 company has already been sold to VPS Healthcare Limited, there is no chance or possibility that the petitioner shall commit any similar offence while on bail.

15. It is argued on behalf of the petitioner that he is a sick person aged 58 years, whose health is extremely fragile. He had been a chronic patient of Severely High Level of Diabetes and Blood Pressure. He had, therefore, undergone '*Laparoscopic Sleeve Gastrectomy Surgery*' on 16.01.2015,

Medical Record in this regard is Annexure-12 in the petition. Post surgery, a sterile and specific diet is required to be consumed by the petitioner and in case of non-availability of the same, the petitioner is exposed to an imminent threat of cancer.

16. Further argued that since the day of his arrest, due to non-availability of prescribed diet, the petitioner has lost 10.50 Kg of weight during custody, which, considering his medical condition and age, is an alarmingly high level of weight loss and his medical condition has severely deteriorated on this count also.

17. In this regard, the Hon'ble Supreme Court in the case of ***Dipak Shubhashchandra Mehta v. CBI: (2012) 4 SCC 134*** has observed that “*we are conscious of the fact that the present appellant along with others is charged with economic offences of huge magnitude. At the same time, we cannot lose sight of the fact that though the investigating agency has completed the investigation and submitted the chargesheet including additional charge-sheet.... the presence of the appellant in custody may not be necessary for further investigation. In view of the same, considering the health condition as supported by the documents including the certificate of the Medical Officer, Central Jail Dispensary, we are of the view that the*

appellant is entitled to an order of bail pending trial on stringent conditions in order to safeguard the interest of CBI." (Emphasis Supplied)

18. Though Section 212(6) of the Companies Act, 2013 provides for satisfaction of the twin conditions for grant of regular bail, the proviso to Section 212(6) of the Companies Act, 2013 itself carves out an exception in cases where the Accused is *Sick* and the same reads as under:

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973...

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."

19. On the other hand, Ms.Maninder Acharya, learned Additional Solicitor General submitted that based on order dated 31.05.2018 issued by the Ministry of Corporate Affairs (MCA) under section 212(1)(a)(b) & (c),

an investigation into the affairs of RHL which is currently functioning under the name M/s Medeor Hospital Limited was conducted by SFIO. Prior to ordering investigation, the statutory auditor of RHL for FY 2016-17 had reported fraud to the central government by submitting ADT-4 dated 20.10.2017 to central government under section 143(12) of Companies Act, 2013. Subsequently, MCA directed Registrar of Companies(ROC) Delhi to conduct an inquiry u/s 208 of the Companies Act, 2013 into the affairs of Rockland Hospitals limited vide order dated 20.11.2017. In pursuance of the above-mentioned order ROC Delhi submitted its report under section 208 of Companies Act, 2013 on 19.02.2018 recommending investigation. Thereafter, the MCA, in exercise of its powers under Sections 212(1)(a), (b) & (c) and 219 of the Companies Act, 2013 vide Orders dated 31.05.2018 & 30.09.2019, assigned investigation into the affairs of Rockland Hospitals Ltd. (Now M/s. Medeor Hospital Ltd) and four other companies to SFIO. Accordingly, SFIO conducted investigation into the affairs of Rockland Hospitals Ltd. and four other companies and an investigation report was submitted on 24.01.2020 to MCA and MCA, vide its Letter No. Legal-35/1/2020 dated 30.01.2020 issued necessary directions to the SFIO to file and initiate prosecution against the accused persons. Accordingly, a

Criminal Complaint bearing No. 149/2020 was filed before Ld. Special Judge (Companies Act), Dwarka District Courts, Delhi on 31.01.2020 and vide order dated 29.02.2020, the Ld. Special Judge was pleased to take cognizance of all the offences brought out in the Criminal Complaint against all accused persons.

20. Ms.Acharya further submitted that during investigation two persons Prabhat Kumar Srivastava & Aditya Kumar Bhandari (petitioner herein) the erstwhile promoter-cum-Managing Director & promoter-cum-whole time Director were arrested under section 212(8) of Companies Act, 2013 on 02.12.2019. The investigation report dated 24.01.2020 had brought six (6) separate instances of fraud punishable under section 447 of Companies Act, 2013 against various persons. In five (5) of the six (6) instances the petitioner has been made an accused. Further, he has also been made an accused for violation of section 36(c) of Companies Act, 2013 which is also punishable under section 447 of Companies Act, 2013.

21. Further submitted that Rockland Hospitals Limited (RHL) was a company incorporated in the year 2004. It was incorporated with the objective of carrying out the business of establishing and operating Hospitals. RHL had managed three (3) Hospitals, one at Qutub, Dwarka and

Manesar. While the operations of hospital at Qutub was taken over by RHL in the FY 2008-09, hospital at Dwarka was made operational in the year 2011 and the hospital at Manesar started its operation in the year 2013. Accordingly, 100% shareholding of RHL was transferred by the shareholders i.e. promoters of RHL in the FY 2016-17 to VPS Health Care Private Limited for a consideration of Rs.165 Crores. The promoters including petitioner have committed inter-alia frauds by various manners:

I. Rockland Hospitals (Qutub) started its commercial operations from 2003-04 and was operated and managed by a trust Foundation of Applied Research in Cancer (FARC), the management and operations were transferred from FARC to RHL from 2008-09 onwards. Municipal Corporation of Delhi (MCD) directed RHL to deposit a sum of Rs. 13.21 Crores towards additional Floor Aspect Ratio (FAR) charges for the expansion of Hospital at Qutub Premises. Payment to MCD was made by RHL on 16.08.2011 by obtaining a special term loan of Rs. 13.22 Crore from the Union Bank of India. This loan was repaid in monthly instalments (EMI) by RHL. Subsequently, after various litigations, in compliance to order dated 14.01.2015 passed by this Court, MCD had made a refund of Rs.13.17 Crore paid towards

additional FAR to the account of FARC on 26.03.2015. Since the amount was originally paid by RHL, the amount repaid by MCD ought to have been brought into the Profits and Loss Account, instead a structure was created to defraud RHL of Rs.13.17 Crore. On the same day i.e. 26.03.2015 the entire amount of Rs.13.17 Crore received from MCD was transferred to Rishi Kumar Srivastava (Trustee of FARC) in his personal Saving Bank Account No.344602010085186 and on the next day, the same amount of Rs.13.17 Crore was transferred from Rishi Kumar Srivastava to RHL and this transfer was shown as a unsecured loan advanced by Rishi Kumar Srivastava to RHL. Thus, a false facade was created to show that the amount has been transferred through Rishi Kumar Srivastava to RHL, whereas in truth RHL was burdened with an additional liability of Rs.13.17 Crore, the amount which otherwise belonged to RHL. However, RHL paid back the unsecured loan to Rishi Kumar Srivastava in the subsequent financial years. In fact, even after RHL had paid back the unsecured loan amount to Rishi Kumar Srivastava, against false liabilities created, RHL was still paying back the original loan amount (EMI) borrowed to pay MCD with interest till 17.07.2017.

II. The petitioner was one of the promoters, close associate of Srivastava's and whole-time director of RHL between FY 2011-12 to FY 2014-15 when funds were deposited with MCD and when the refund from MCD was masqueraded and shown as unsecured loan repayable to Rishi Kumar Srivastava. He had signed the Management and Operations License Agreement (MOLA) on 14.02.2007 on behalf of RHL with FARC. He was the authorized representative of FARC in its legal matters and he filed the Writ Petition No.4195/2013 as authorized representative of FARC before this Court, seeking Refund of Rs. 13.17 Crore. He as part of the Board of Directors (BOD) approved acceptance of unsecured Loan of Rs.13.17 Crore from Rishi Kumar Srivastava on 28.03.2015. Thus, he being the whole-time director was having knowledge of accounts of RHL but, facilitated the Srivastava brothers in consummating their fraudulent scheme of siphoning off Rs. 13.17 Crore received for RHL by FARC for the undue enrichment of Rishi Kumar Srivastava.

III. RHL had maintained a Hospital Information System (HIS) wherein details of patients availing facilities/services at its hospitals were captured and these entries including patient registration, billing,

discharge etc., are carried out by their respective departments. However only with respect to a category of patients called “*Doctor Referred Patients (DRP)*”, such entries were made by IT Team of RHL as per the instructions and knowledge of its MD Prabhat Kumar Srivastava and Group CFO Nikhil Sharma. The doctors whose names have been recorded in the HIS had stated under oath that such quantum or nature of surgeries conducted on DRP were false and fake, hence the DRP transactions were fictitious in nature and was one of the means for fudging the books of accounts. This was also substantiated by the various registers of Hospital such as OT Register, Cath Lab register maintained at the Hospitals.

IV. The petitioner was a part of audit committee of RHL in FY 2014-15 to FY 2015-16 and the audit committee is in charge of the Internal Financial Controls of the company as per section 177 of Companies Act, 2013 which include ascertaining and verifying the underlying transactions of the Revenue Source. Given that DRP formed about 40% revenue source of RHL, petitioner by act of omission to verify the revenue source had participated in the fudging of the revenue of RHL by addition of Fictitious DRP in the books of RHL.

V. The recovered email communications from RHL serves revealed that the promoters of RHL, Prabhat Kumar Srivastava, Aditya Kumar Bhandari (petitioner herein) & Nikhil Sharma (Group CFO) had directed the preparation of several implant bills. The emails revealed that RHL had routinely prepared these invoices of 3rd parties pertaining to medical implants in a systematic manner. The emails further revealed that these invoices of 3rd parties were prepared subsequent to the date of payment of monies to these 3rd parties, which is illegal and not as per accepted business practice. The books and accounts of RHL and emails reveal that these monies were paid to 71 different accounts/entities between FY 2013-14 to FY 2015-16. The KYC documentation received from the banks also showed that these entities were majorly Sole Proprietorship & Partnerships firms. The books of accounts of the RHL and its bank statements reveal that a total amount of Rs. 76.03 Crore of RHL had been transferred as implant expenses against whom fake billings were created by RHL itself. Investigation revealed that these accounts were actually operated by accommodation entry operators, who masquerade the source and destination of funds by transferring entries through a web of parties.

VI. The petitioner as promoter and Whole Time Director of RHL during 2013-14 to FY 2015-16 had supervised the fake invoice generation by RHL as brought out in the statements of Tarun Kumar Jain Finance Manager & Ravinder Sharma, thus he had actively connived to book bogus expenses of Rs. 76.03 Crore in the Books of RHL. Further he had actually signed the banking instrument (Cheques/RTGS) etc., for siphoning the funds of RHL as authorized signatory to the Bank Accounts of RHL.

VII. During investigation, it is revealed that RHL had two major sources of funds between FY 2004-05 to FY 2015-16, which were borrowings from the Banks amounting to Rs.294.65 Crore and Share Capital Infusion of Rs.221.20 Crore. Share capital infusion brought into the books of RHL was Rs. 9.61 Crore, World Bank (IFC) had brought in Rs. 40 Crore and 21 Promoter Controlled Companies had brought in Rs. 168.38 Crore. While the net income earned by all promoters of RHL and their spouses shown in the income tax returns filed by them during the period 2005-06 to 2016-17 was Rs. 8.53 Crore only, however, they have shown to have infused share capital of Rs.179 Crores into RHL. The promoters of RHL had designed a dubious

scheme whereby Rs. 168.38 Cr of share capital was brought into RHL through a web of 21 Companies controlled by them with the help of 266 accommodation entry operator-controlled companies spread across Delhi, West Bengal, Assam, Bihar, Himachal Pradesh, Haryana, Karnataka, Kerala, Maharashtra, Orissa, Telangana, Tamil Nadu & Uttar Pradesh. The promoters of RHL had ultimately purchased 100% of shares of all Layer-1 Companies but without any consideration and they were unable to provide any documentary evidence for purchase of these shares from the original share subscribers or from any other party, including bank transactions and share transfer agreements. The modus operandi followed by the promoters was to transfer funds of RHL falsely as advances to Somya Constructions Private Limited (SCPL), RSH Meditech Systems Private Limited (RSH) towards capital expenditure or directly to various 3rd Parties as expenses. Subsequently SCPL or RSH (which were under the common control of the promoters) or 3rd Parties would use accommodation entry operators to layer and transfer these amounts to the 21 Layer 1 Companies, who would in turn invest the same into share capital of RHL. The accommodation entry operators follow the typical method of using

various entities that they operate to layer and transfer the amounts involved from the source to the final destination, which in this case was the 21 Layer-1 companies. The above said *modus operandi* was followed by the promoters of RHL causing methodical falsification of books of accounts of RHL and by siphoning off the funds of RHL to only show that the promoters had infused a total share capital of Rs. 177.94 Crore into RHL, either by themselves or through 21- Layer 1 companies controlled by them. In this process the promoters had also systematically increased their ownership over RHL at the cost of its minority shareholder – World Bank (IFC). The shares of RHL held by 21 Layer Companies were purchased from monies siphoned off from RHL and eventually the promoters disposed of these shares to VPS Health Care Private limited for a consideration of Rs.102.85 Crore resulting in unlawful gain to the promoters.

VIII. The petitioner as a whole time director of RHL, had overseen the dubious scheme of infusing Rs.168.38 crores share capital through a web of companies into RHL resulting in an unlawful gain to the promoters of Rs.102.85 Crore. He was also a director of Aditya Medicos Private Limited & Lipi Finstock Limited (2 of the 21 Layer-1

Companies) used by the promoters of RHL to siphon off funds of RHL and bring back the same in their own name to an extent of Rs.58.10 Crore (Rs. 5.64 Crore through Aditya Medicos Private Limited & Rs.52.46 Crore through LipiFinstock Limited). Personal gain by petitioner & his family in the above *modus operandii* is Rs. 5.03 Crore (Rs. 3.69 Crore in his name & Rs.1.34 Crore in his spouse name) by holding shares in Aditya Medico Private Ltd, Mona Infotech Pvt. Ltd, Prabhat Healthcare Services Pvt Ltd, Regal Builders & Promotes Pvt. Ltd, Umesh Pharmaceuticals Pvt.Ltd, A.B. Medicos Pvt. Ltd, Vaibhav India Surgicals Pvt Ltd (7 of the 21 Layer-1 Companies).

IX. On 06.06.2008 IFC, World Bank had invested Rs.40 Crore in the equity share capital of RHL and by deceit, fraudulent conduct of business and act of omission IFC was made to sell the shares it had purchased at Rs. 40 Crore at Rs.11 Crore to Mala Srivastava on 27.06.2016 and these shares were resold to VPS Health Care Private Limited at a price of Rs.19.15 Cr on 29.06.2016 thus obtaining an unlawful gain of Rs.8.14 Cr. The purchase and resale of share of IFC was not just in violations of provisions of the share purchase agreement and share sale agreement but also against the duty cast on directors of

RHL Mala Srivastava & Prabhat Kumar Srivastava who had the fiduciary duty of protecting the interest of all the shareholders as laid down in section 166 of Companies Act, 2013 which states that a director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders. However the promoters had with full knowledge of sale of share of RHL to VPS Health Care Private Limited, and had abused their position in RHL by conniving to defraud the minority shareholder(IFC), which falls squarely under the definition of fraud as it includes act of omission, concealment of any fact or abuse of position committed by the directors of the company Mala Srivastava and Prabhat Kumar Srivastava with intent to deceive, to gain undue advantage from, or to injure the interests of, its shareholders and hence were made accused under section 447 of Companies Act, 2013.

X. Investigation revealed that the promoters of RHL had created a category of false patients DRP in order to inflate the revenue of the company and amounts receivable from debtors, for instance the financial statements for FY 2015-16 disclose the total trade receivable

as on 31.03.2016 as Rs. 27.13 Crores, however, month wise representation given by company signed by Prabhat Kumar Srivastava as MD of RHL, for obtaining working capital shows the value of debtors (DRP) of the company as Rs.89.87 crores to Rs.141.84 crores between June 2015 to March 2016, which is a materially false statement before the banks so as to receive additional credit.

XI. The petitioner was the promoter director of RHL and had connived with Prabhat Kumar Srivastava to systematically manipulate revenue pertaining to DRP and was on the board of directors that had authorized Prabhat Kumar Srivastava to file false statements before financial institutions on behalf of the Board of Directors of RHL for borrowing of public funds through false representation.

XII. A tabulation of all nine (9) persons accused of section 447 and section 36(c) of Companies Act, 2013 in the above said 7 instances is shown below:

S. No	Name of Persons	Accused No.	MCD	DRP	BOGUS EXPENSES	SHARE CAPITAL	RHOL	IFC	BANKS
1.	Prabhat Kumar Srivastava	A4	Y	Y	Y	Y	Y	Y	Y
2.	Aditya Kumar	A6	Y	Y	Y	Y	Y		Y

	Bhandari								
3.	Rishi Kumar Srivastava	A5	Y	Y	Y	Y	Y		Y
4.	Nikhil Sharma	A7		Y	Y				
5.	Bipin Joshi	A8		Y					
6.	Tarun Kumar Jain	A9			Y				
7.	Mala Srivastava	A10						Y	
8.	Sandeep Narula	A11		Y					
9.	Sandeep Khosla	A20		Y					

22. To strengthen her arguments, learned Additional Solicitor has relied upon the case of ***Serious Fraud Investigation Office vs. Nittin Johari & Ors.: AIR 2019 SC4380***, wherein Hon'ble the Supreme Court has observed as under:

“10. It is pertinent to begin our discussion by referring to the mandatory conditions imposed under Section 212(6)(ii) for the grant of bail in connection with offences under Section 447 of the Companies Act. Sub-clause (ii) of Section 212(6) reads as follows:

“(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—

(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” Although arguments have been advanced touching upon the scope and validity of the above provision, particularly in the aftermath of the decision of this Court in Nikesh Tarachand Shah (supra) pertaining to a similar provision in the PMLA, we do not find it appropriate to make any observations in this regard in light of the pendency of the challenge to the constitutionality of the said provision of the Companies Act before this Court.

11. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the Cr.P.C. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy (supra):

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep- rooted conspiracies and involving huge loss of public funds need 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.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.” This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement (Prevention of Money Laundering Act), Government of India*, (2015) 16 SCC 1, and *State of Bihar v. Amit Kumar*, (2017) 13 SCC 751. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

12. As already discussed *supra*, it is apparent that the Special Court, while considering the bail applications filed by Respondent No. 1 both prior and subsequent to the filing of the Investigation Report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

13. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent No. 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in *Ranjitsingh Brahmajeetsingh Sharma v. State of Maharashtra*, (2005) 5 SCC 294, which discusses the effect of the twin

mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent No.1 by observing that bail was justified on the “broad probabilities” of the case.

In our considered opinion, this vague observation demonstrates non-application of mind on the part of the Court even under Section 439 of the Cr.P.C., even if we keep aside the question of satisfaction of the mandatory requirements under Section 212(6)(ii) of the Companies Act.”

23. She further relied upon the case of ***P. Chidambaram vs. Directorate of Enforcement: MANU/SSC/1670/2019***, wherein Hon’ble the Supreme Court has held as under:

“21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One

of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

24. Learned ASG submitted that while granting bail twin test to be tested in the present case as held by Hon'ble the Supreme Court, in this case, petitioner has played active role in committing fraud, therefore, he does not deserve bail.

25. I have heard learned counsel for the parties at length and perused the material available on record.

26. The allegations against the petitioner are that he was one of the promoters and close associate of Srivastava's and whole time director of RHL between financial year 2011-12 to 2014-15 when funds were deposited

with MCD and when the refund from MCD was masqueraded and shown as unsecured loan repayable to Rishi Kumar Srivastava. The petitioner had signed the Management and Operations Licence Agreement (MOLA) on 14.02.2007 on behalf of RHL with FARC. He was the authorized representative of FARC in its legal matters and he filed the Writ Petition No.4195/2013 of FARC, seeking refund of Rs.13.17 crores. He as part of the Board of Directors (BoD) approved acceptance of Unsecured Loans of Rs.13.17 crores from Rishi Kumar Srivastava on 28.03.2015. Thus, petitioner being the whole time Director was having knowledge of accounts of RHL and facilitated the Srivastava brothers in consummating their fraudulent scheme of siphoning off Rs. 13.17 Crores received for RHL by FARC for the undue enrichment of Rishi Kumar Srivastava.

27. Further allegations against the petitioner are that RHL had maintained a Hospital Information System (HIS) wherein details of patients availing facilities/services at its hospitals were captured and these entries including patient registration, billing, discharge etc., are carried out by their respective departments. However, only with respect to a category of patients called DRP, such entries were made by IT Team of RHL as per the instructions and knowledge of its MD Prabhat Kumar Srivastava and Group CFO Nikhil

Sharma. However, the doctors whose names have been recorded in the HIS had stated under oath that such quantum or nature of surgeries conducted on DRP were false and fake. Hence, the DRP transactions were fictitious in nature and were one of the means for fudging the books of accounts.

28. The above said fact has been substantiated by the records of hospital itself. Moreover, the e-mail communications gathered at the time of investigation reveal that both Prabhat Kumar Srivastava and Group CFO Nikhil Sharma had supervised/directed manipulation of the patient pertaining to DRP recorded in the system. Thus, given that DRP formed about 40% revenue source of RHL, but act of omission to verify the revenue source, petitioner had participated in fudging of the revenue of RHL by addition of fictitious DRP in the books of RHL.

29. It is further alleged against the petitioner that as promoter and Whole Time Director of RHL during financial year 2013 to financial year 2016 had supervised the fake invoice generation by RHL as brought out in the statements of Tarun Kumar Jain, Finance Manager & Ravinder Sharma, thus, the petitioner had actively connived to book bogus expenses of Rs.76.03 Crore in the Books of RHL. Further he had actually signed the

banking instrument (Cheques/RTGS) etc., for siphoning the funds of RHL as authorized signatory to the Bank Accounts of RHL.

30. During investigation, it is revealed that RHL had two major sources of funds between FY 2004-05 to FY 2015-16, which were borrowings from the Banks amounting to Rs.294.65 Crore and Share Capital Infusion of Rs.221.20 Crore. Share capital infusion brought into the books of RHL was Rs. 9.61 Crore, World Bank (IFC) had brought in Rs. 40 Crore and 21 Promoter Controlled Companies had brought in Rs. 168.38 Crore. While the net income earned by all promoters of RHL and their spouses shown in the Income Tax Returns filed by them during the period 2005-06 to 2016-17 was Rs. 8.53 Crore only, however, they have shown to have infused share capital of Rs.179 Crores into RHL. Thus, promoters of RHL had designed a dubious scheme whereby Rs. 168.38 Crore of share capital was brought into RHL through a web of 21 Companies controlled by them with the help of 266 accommodation entry operator-controlled companies spread across the country. The promoters of RHL had ultimately purchased 100% of shares of all Layer-1 Companies but without any consideration and they were unable to provide any documentary evidence for purchase of these shares from the original share subscribers or from any other party, including bank

transactions and share transfer agreements. The *modus operandi* followed by the promoters was to transfer funds of RHL falsely as advances to Somya Constructions Private Limited (SCPL), RSH Meditech System Private Limited (RSH) towards capital expenditure or directly to various 3rd Parties as expenses. Subsequently, SCPL or RSH or 3rd Parties would use accommodation entry operators to layer and transfer these amounts to the 21 Layer-1 Companies, who would in turn invest the same into share capital of RHL. The above said *modus operandii* was followed by the promoters of RHL causing methodical falsification of books of accounts of RHL and by siphoning off the funds of RHL to only show that the promoters had infused a total share capital of Rs. 177.94 Crore into RHL, either by themselves or through 21- Layer 1 companies controlled by them.

31. In addition to above, there are other serious allegations of fraud committed by the promoters as submitted by Ms.Maninder Acharya, learned Additional Solicitor General. However, personal allegation against the petitioner is that by the whole *modus-operandi* the personal gain is Rs.05.03 crore (Rs.3.69 crore in his name and Rs.1.34 crore in his spouse name) by holding shares in Aditya Medico Pvt. Ltd., Mona Infotech Pvt. Ltd., Umesh Pharmaceuticals Pvt. Ltd. Prabhat Healthcare Services Pvt. Ltd.,

A.B. Medicos Pvt. Ltd., Vaibhav India Surgicals Pvt. Ltd. (7 of the 21 Layer 1 companies).

32. In my opinion, sections 210 and 212 of the Companies Act, 2013 are relevant to establish that Central Government has power to investigate into the affairs of a company, which are reproduced as under:

Section 210: Investigation into Affairs of Company: (1)

Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(c) in public interest, it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.”

Section 212: Investigation into affairs of Company by Serious Fraud Investigation Office: (1) Without

prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the

Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in 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 sub-section 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 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.”

33. Regarding medical condition of the petitioner, as per reports dated 06.03.2020, 18.03.2020 & 17.04.2020 show that the Petitioner is a case of Diabetes with a history of Laparospic sleeve gastrectomy surgery on 16.01.2015 and is receiving all medications as prescribed and his condition is stable. In fact, attention is drawn to the following aspects of the report given by the medical officer:

- a) Petitioner didn't require any hospitalization during the judicial custody (Report dated 17.04.2020 Para b)

- b) Petitioner has never been sent to hospital outside jail premises (Report dated 06.03.2020 Para 3)
- c) Petitioner is getting all requisite medication (Report dated 06.03.2020 Para 4 & Report dated 17.04.2020 Para c)
- d) Petitioner's condition is stable (Report dated 06.03.2020 Para 5 & Report dated 17.04.2020 Para c).

34. The medical opinion of the jail doctor dated 30.04.2020 on whether or not the petitioner's susceptibility to Corona virus disease (COVID-19) is high given the fact that he is incarcerated is that *"The inmate is not having any higher susceptibility of getting infected by COVID 19 due to incarceration in the jail environment. However, as per the prevailing conditions and general outcome it has been noted that the patients with diabetes, hypertension, heart disease etc. tend to have increased tendency to develop serious COVID 19 disease."*

35. The medical opinion of the jail doctors dated 30.04.2020 on the issue of his weight loss points out that:

- a) The Petitioners weight was completely stable at 78 Kgs since 17.02.2020 to 29.04.2020. The opinion also states that the inmate has

maintained the same weight for the last 2 months and necessary treatment was provided to him.

b) The petitioner when taken into custody was 90 Kgs and had lost weight in the initial phase of custody due to reduced capacity of the stomach which leads to reduced intake of food, in addition some inmates also tend to lose weight in the initial phase of jail incarceration due to stress and change in diet.

c) Routine investigations were within normal limits.

36. Thus, the medical report shows that the susceptibility of the petitioner to COVID 19 due to incarceration is not higher and further the contention of the petitioner that he had lost 13 kgs in the last 3 months is false, rather his weight had been constant at 78 Kgs for the last 73 days which is within the normal limits (between 17.02.2020 to 29.04.2020). Further, considering that the petitioner is being given all required medical treatment by the Jail Authorities and that his condition is stable from the last two months, it is established that the petitioner is not having any higher susceptibility of getting infected by COVID 19 due to incarceration in the jail environment.

37. Also considering that the height of the petitioner is around 6 feet and his present weight is 78kgs, the Body Mass Index (BMI) of the petitioner is 23.5 Kg/M Sq. Given that the healthy/normal BMI range prescribed by WHO is between 18.5 Kg/M Sq. to 25 Kg/M Sq., by no stretch of imagination can the petitioner be termed as underweight. In fact, the ideal weight range for the petitioners height is between 62 & 82 Kgs.

38. In view of above, I am of the considered opinion that there are no medical grounds available to the petitioner for grant of bail.

39. It is pertinent to mention here that vide order dated 20.04.2020 while disposing of the Criminal Miscellaneous Application No.5825/2020 and thereby allowing urgent hearing of present bail application (through video conferencing) directed the respondent to file the status report in the matter under consideration more specifically, showing the difference between the role of the petitioner herein against that of accused nos.5, 7 to 11 and 20. As per the above tabulation of 9 accused, they all are booked under section 447 and section 36(c) of Companies Act, 2013 in the 7 instances of Fraud as per status report. However, on perusal of said table, role of petitioner and role of Rishi Kumar Srivastava (A-5) is same. But A-5 has not been arrested and chargesheet has already been filed. However, there is no explanation to this

effect. As per the table, role of accused nos.7 to 11 & 20 are very less, therefore, there is justification on not arresting them.

40. It is pertinent to mention here that in respect of Finding No.1- Instance VI, the petitioner has not been arraigned as an accused. However, in respect of Finding No. 2 and 3, the SFIO itself has found the petitioner NOT GUILTY of the alleged offence under Sections 129, 134 and 448 of Companies Act, 2013 in respect of *alleged 'False Statement in the Balance Sheets of RHL'*, despite the fact that the petitioner was a Director of RHL for the relevant period (Finding No. 2 at page No. 8 of the Complaint), he cannot in any manner be accused of Section 36 (C) of the Companies' Act, 2013 i.e. allegedly having represented any False Financial Statement/Information to the Banks in as much as admittedly he had no role in the preparation of the said Financial Statements.

41. Be that it as may, in any case, admittedly, the petitioner had no role to play with the banks inasmuch as the petitioner was not a guarantor to any bank loan of RHL. In any case, the banks have not filed any complaint with regard to having been deceived, rather, admittedly, the entire outstanding of the bank has been cleared.

42. In respect of Finding Nos. 4 to 9, the same are bailable and hence the same are not required to be considered for the adjudication of the present bail application at this juncture.

43. After going through the status report and considering the arguments advanced by learned Additional Solicitor General, Ms. Maninder Acharya, the main beneficiary of all the 7 instances of fraud is Prabhat Kumar Srivastava and his family. The petitioner herein has received peanuts through interest in shares. All directors and promoters are equally liable, therefore, cannot be different parameter for petitioner and other promoters.

44. In the case of ***Y.S. Jagan Mohan Reddy vs. CBI: (2013) 7 SCC 439***, the Hon'ble Supreme Court has held that *"while granting bail, the Court has to keep in mind the factors like the nature of accusation, evidence in support thereof, the severity of punishment which conviction will entail, reasonable possibility of securing the presence of the accused during trial, reasonable apprehension of the witnesses being tempered with, the large interests of the public/state and other similar considerations."*

45. It is pertinent to mention here that SFIO itself admits that even though the petitioner was a whole time Director of RHL/A-1, he was not signatory

to the Financial Statements of said company. Further, petitioner has been found NOT GUILTY of the alleged offence under sections 129, 134 and 448 of Companies Act, 2013 in respect of alleged '*False Statement in the Balance Sheet of RHL as per finding No.2 at page 8 of complaint.*'

46. Admittedly, there is no loss caused either to any financial institution or Central/State Government. Moreover, there is no complaint from any share holders. Whereas, in case of *Nittin Johary (supra,)* huge loss has been caused to the Banks, shareholders and other stake holders. Moreover, in the present case under section 447 the Companies Act, if fraud is proved, the accused shall be punishable with imprisonment for a term which shall not be less than six months but which may extend upto ten years and fine not less than the amount involved. Thus the judgments relied upon by the respondent are not applicable in the facts and circumstances of this case as petitioner is concerned.

47. It is not in dispute that investigation is complete, criminal complaint has been filed and charges are yet to be framed. Presently, our country is under '*Lock-down*' due to COVID-19, therefore, regular functioning of the courts may take more time. Thus, in the present situation, trial of the present case is not possible in the near future. Further, there is no allegations that

petitioner is flight risk or may temper with the evidence or influence the witnesses.

48. Since present application is for bail, therefore, this Court refrains from making any observation on the merit of the prosecution case, which is subject matter of the Trial. However, in view of above facts and considering the period in judicial custody, this Court is of the view that petitioner deserves for bail.

49. Accordingly, he shall be released on bail subject to his furnishing a personal bond in the sum of Rs.50,000/- before the concerned Jail Superintendent and a surety of the like amount to the satisfaction of Trial Court as and when, the Court starts its regular functioning.

50. He shall not leave the country without permission of the Trial Court.

51. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

52. In view of above, present bail application is allowed and disposed of.

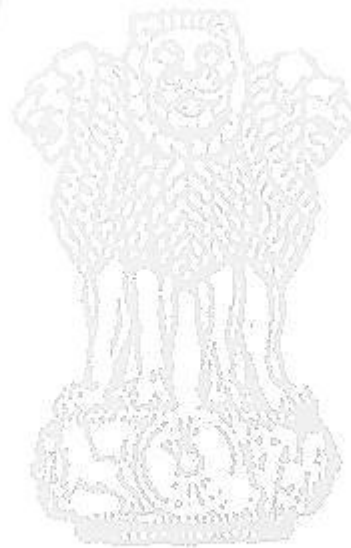
53. Pending application, if any, stands disposed of.

54. Copy of this order be transmitted to learned counsel for the parties through e-mail.

55. A copy of the same shall also be sent to the Jail Superintendent concerned and Trial Court for compliance.

(SURESH KUMAR KAIT)
JUDGE

MAY 14, 2020
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