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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10.07.2020

Pronounced on: 23.07.2020

+ BAIL APPLN. 1100/2020

SUNIL N. GODHWANI

..... Petitioner

Through Mr. Rakesh Khanna, Sr. Adv. and
Ms.Rebecca John, Sr. Adv. with
Mr.Rajat Katyal, Adv.

Versus

STATE

..... Respondent

Through Mr. Panna Lal Sharma, APP for the
State
Mr. Mohit Mathur, Sr. Adv. for
complainant with Mr. Sandeep Das,
Mr. Vipin Tyagi, Ms. Aishwarya
Singh, Ms. Sukanya Lal and Ms.
Surbhi Sharma, Adv.
Inspector/IO Sandeev Dhodi present
through Video Conferencing

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Present petition under section 439 Cr.P.C. has been filed on behalf of the petitioner, Sunil Godhwani, for grant of bail in pursuance to FIR No.50/2019 registered at Police Station EOW for the offences punishable

under sections 420/409/120B IPC.

2. The brief facts of the case, as narrated in the present petition, are that the petitioner joined company by the name '*Fortis Financial Services Limited*' on 01.08.2001, a small broking house. The said broking business started to expand in next few years and in the year 2006, the brand was renamed to '*RELIGARE*'. Pursuant to renaming of brand, the company went public in the year 2007 under the name '*Religare Enterprises Limited*' ('*RFL*'). The said company was listed both on NSE and BSE and was held to the extent of 50.93% by the promoters, viz. Malvinder Mohan Singh (MMS) and Shivinder Mohan Singh (SMS); and 49.07% by the public. Business of RFL was diversified into following verticals:

- Religare Finvest Limited (RFL) (REL owned 84%) which further owned 100% stake in Religare Housing Development Finance Corporation Limited.
- Religare Securities Limited (REL owned 100%) which further owned 100% stake in Religare Commodities Limited and Religare Wealth Management Limited.
- Religare Capital Market Limited (REL owned 100%)

- Religare Invesco Asset Management Company Pvt. Ltd. (REL owned 51%).
- RGAM Investment Advisers Pvt. Ltd. (REL owned 100%)
- Religare Health Insurance Co. Ltd. (REL owned 90%)
- AEGON Religare Life Insurance Co. Ltd. (REL owned 44%)

3. REL and RFL both had a distinct boards comprising of members majorly including relatives and friends (especially father in law of MMS-Sh. Harpal Singh) of the promoters who were always there to watch the interest of the erstwhile promoters MMS & SMS, and MMS/SMS have been stepping in and out of the board of different companies under the brand '*RELIGARE*' as per their wishes and fancies. REL was the holding company of RFL. The promoters MMS/SMS were regularly interacting and directing the management of REL being the majority stake holders. Mr. Hemant Dhingra was of their contact person who was looking after the correspondence and communications and interest of MMS/ SMS. In the year 2010, the Petitioner was promoted as CMD of REL. The business grew multifold and as result, REL became a strong force of almost 8,000 plus employees.

4. It is further stated that petitioner was the CMD and looking after the reins of REL and subsidiaries like Religare Finvest Limited; Religare Securities Limited; Religare Commodities Limited; Religare Wealth Management Limited; Religare Capital Market Limited; Religare Invesco Asset Management Company Pvt. Ltd.; RGAM Investment Advisers Pvt. Ltd.; Religare Health Insurance Co. Ltd. and AEGON Religare Life Insurance Co. Ltd. REL was not only about ICDs and CLB, as is being depicted today, but was one of the premier NBFCs of India and it took much hard work and labour of the respective teams to make it reach such position. The erstwhile promoters MMS/SMS started asking for loans through various channels and entities which were personally guaranteed by them. The promoters were constantly asking for the ICDs and had the ultimate say. Mr. Sachindra Nath was coordinating in that respect. The Petitioner was the Chairman and Managing Director in REL and the loans have been disbursed from RFL which was a separate legal entity and having its own distinct board and personnel. Though RFL was a subsidiary of REL and was having its own loan sanctioning and disbursal matrix, there were procedure and processes put in place for processing, approval and disbursement of loans in the RFT, which was updated from time to time. There was a Credit

Committee-I (CC-I) consisting of senior management of RFL like MD & CEO (Mr. Kavi Arora), President & CFO (Mr. Bipin Kabra), President & CRO (Mr. Pankaj Sharma), Treasury Head (Mr. Pawan Seth) and others who used to process and approve the loans upto a certain amount. But beyond certain amount, the approval process would be escalated to Credit Committee-II (CC-II) which would include Mr. Sachindra Nath (REL Group CEO), Mr. Kavi Arora (RFL CEO), Mr. Anil Saxena (REL CFO), Mr. Sunil Garg (REL Treasury head) and Mr. Pankaj Sharma (RFL CRO). Thus, the Petitioner was not the concerned person in the sanctioning and disbursal process and it was the responsibility of the abovementioned committees to ensure that all procedures and processes were adhered to in the sanction and disbursement of the loans. Neither the Petitioner nor other officials of REL or RFL ever tried to hide these loans- ICD & CLB, however, were duly informed and within the knowledge of:

- Reserve Bank of India
- Private Equity Investors like Jacob Ballas, Siggular and IFC
- Rating agencies like ICRA.

5. Further, even the auditors of REL i.e. M/s. Price Water house Coopers

(PwC) while qualifying their opinion on financials of REL for FY 2016-17 had highlighted these amounts. Mr. Sachindra Nath, who was the Group CEO has been all this time opining that such loans are not covered under related party transactions as per the Companies Act and thus there was no impediment.

6. Mr.Rakesh Khanna and Ms.Rebecca John, learned senior counsels appeared on behalf of the petitioner and submitted that the problematic 19 loans have been mentioned by the Investigating Officer and also their approval matrix. The chart shows that at the highest Petitioner can be said to be part of only 6 out of 19 problematic loans mentioned in charge sheet. Loans at Sr. no. 6, 7, 17 are Loans Against Property and hence secured. Loans at Sr. no. 5, 10, 19 are unsecured loans, but Mr. Mohit Maheshwari, Company Secretary wrote that the transactions were at arm's length and in the interest of company. Apart from petitioner, there were other persons being Credit Committee members and RPT sub-committee members, who have neither been arrested nor even charge sheeted. Moreover, one Anil Saxena, who was the member of the Loan Sanctioning Credit Committee and was the approving authority of all these 6 (six) loans, has already been granted Bail by this Court.

7. Further submitted that if Petitioner was the person involved and forcing everyone in RFL to sanction and disburse loans under CLB, then such loans should have stopped once Petitioner stepped down from REL on 21 October, 2016. However, 13 out of 19 problematic loans as mentioned in charge sheet have been disbursed after stepping down of the Petitioner but the Investigating officer has not bothered to investigate any of persons involved in their disbursal like Maninder Singh, Avinash Chander Mahajan, Bipin Kabra, Harpal Singh, Rashi Dhir, etc. The investigating officer should have detailed the manner in which their role was different from that of other co-accused and at least with respect to the petitioner, who was admittedly not a member of loan sanctioning committees. As per chargesheet, Petitioner was never a member of any of Loan Sanctioning Committees. The perusal of the loan sanctioning mails would show that the allegation that the loans were given to shell companies is also factually incorrect at least in respect to the 6 (six) loans. The data compiled at the time of granting loans clearly show that the said companies were in business and having their income. It might be that the said companies suffered some operational losses, but the ssme are backed by the erstwhile Promoters of the company and were always acknowledged by them. The approvals of the six loans would show

that firstly out of 6 loans, 3 were Loans against Security of property and rest 3 loans were given to companies which were having operations and revenue; and were not shell companies.

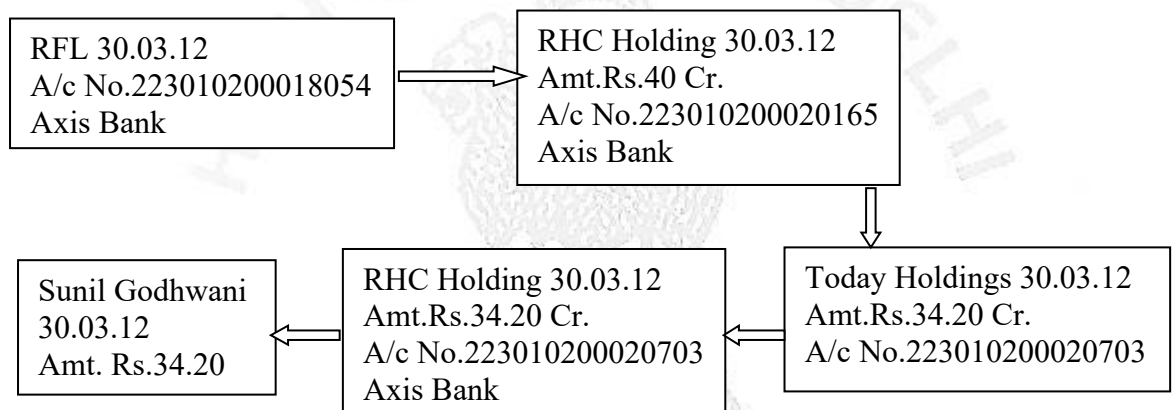
8. It is also submitted that charge sheet or IO does not observe or even allege that petitioner was getting high salary or bifurcated salary from different entities which was in the nature of kick back for giving loans. But bias of IO is clear as admittedly the IO has been observing that the salary of the petitioner was 24 Crores but it has clearly been mentioned that petitioner received around 24 Crores only in the financial year 2014-15 and never before and after that. The annual report of REL shows that REL recorded a '*Profit After Exceptional Items and Before Tax*' of Rs. 4,852.06 million (Rs. 485 Crores), for Financial Year 2014-2015 as compared to '*Profit After Exceptional Items and Before Tax*' of Rs.1,825.04 million (Rs. 182 Crores) for Financial Year 2013-2014. Market Price Index shows that April 2014 BSE recorded High of REL share to Rs. 325 and in March 2015 the same was 411.50. Comparative chart of BSE and NSE Sensex with REL Scrip also shows major peaks and the commanding position in market. Such salary was being given at the time when the share of RELIGARE was strong and growing and the salary was as per the market trend and there was

nothing abnormal about it. If the salary of Petitioner is compared with current CMD Dr Rashmi Saluja who has no experience in this side of industry and especially at the time when share of Religare was down to Rs.40/- and there was no income, and company was in shackles and also because of COVID-19 when the senior management of companies, even which are in profit, have got their salaries cut by 40% or so, a resolution has been moved for appointment of Dr. Rashmi Saluja as Executive Chairman. Further for approval of Dr. Rashmi Saluja salary which technically amounts to 11 Crores, plus value of stock, plus other facilities. (Fixed remuneration Rs. 4.5 Crores; Joining Bonus Rs. 2 Crores; Performance Linked incentive Rs. 4.5 Crores; 50000000 stock options besides other transport and other facilities.)

9. Further submitted, though prosecution has never argued or alleged, but complainant has alleged that the petitioner was receiving salary from REL and another group company “*Finserve Shared Services Limited – FSSL*”. It has been argued that the salary being received by petitioner from two different entities is bad and the salary as received from Finserve Shared Services Limited-FSSL was on account of accommodating the illegal acts of promoters (though not in opinion of IO). However, the bifurcation of the

payments from separate entities was also as per the market trend and several persons were receiving salary from the same shared services company.

10. Further argued that IO in chargesheet has mentioned that *“it was revealed that Fern Healthcare Private Limited extended loan to Sunil Godhwani on 30.03.2020 which was **actually disbursed from complainant company RFL....**”*



11. Whereas, the transaction of 30.03.2012 does not form part of 19 alleged loans entries of year 2016-17 under investigation. Further the mala fide and bias in the investigation is writ large from /the fact that charge sheet was filed on 10.01.2020 and along with charge sheet there was not even a single document/bank statement proving either movement of money as alleged above; or reason for transfer of money from RFL to RHC; or document showing that the money was transferred in pursuance of illegal

motives or on false pretext. But, IO deliberately to prejudice did not state in charge sheet that Petitioner on same day had forwarded the said amount of Rs. 34.20 to RHC Holding Private Limited. However, only after the petitioner brought the said fact to the notice of this Court and pursuant to the directions dated 06.07.2020, IO filed a Status Report that indeed the money was transferred by Petitioner to RHC, but stated that transfer of Rs. 34.20 to RHC by petitioner was on account of payment towards the earlier loans as availed by Petitioner from RHC Private Limited.

12. Learned senior counsels for petitioner submitted that the documents annexed with SR dated 06.07.2020 itself shows that the loan between Petitioner and RHC started in the year 2006, which was much prior to the 19 alleged transactions of 2016-17 and petitioner has even paid interest and made repayments on 25.02.11 of Rs. 3.35 Crores. Moreover, after receipt of the said documents petitioner pointed out that there are no documents on record to show that Rs. 40 Crores was transferred in alleged sequence i.e. from RFL to RHC and then out of that Rs. 40 Crores, RHC transferred to Today Holding, which eventually was transferred to Petitioner. In other words, the allegation that money as received by Petitioner was disbursed from complainant RFL was not proved. Thus, once again IO took time to

point out those statements from the chargesheet. The IO on 10.07.2020 confirmed that the said bank statements have not been filed along with the chargesheet. He filed the copy of Bank statements of RFL, RHC and Today Holding on 10.07.2020 and it is astonishing that Bank statement of the RFL was taken by IO from Bank on 17.01.2020 and bank statement of RHC has been taken on 09.07.2020. Thus this shows that on the date of filing of chargesheet 10.01.2020 there was no document even in the possession of the IO to come to the conclusion as to allegations made in the charge sheet and the diagram made in chargesheet as mentioned above.

13. It is submitted that financial statements of audited balance sheet of RFL shows that RFL has taken loans from RHC and have made repayment of loans to RHC in the said year and RFL also made payments to RHC on account of reimbursements/ interest/ interest on debentures, etc. Further RFL has given loans amounting to Rs 1013 Crores to RHC and RHC has repaid around Rs. 813 Crores. Thus simply showing that there is transaction of Rs. 40 Crores in bank account is not sufficient but IO ought to have disclosed/investigated the reason for the transfer of the said 40 Crores. Moreover, the subject transaction has no connection with RFL as till date RFL has not initiated any recovery proceedings against petitioner before any

court.

14. Further submitted, it's very strange that the persons who were at the highest were the officials of loan granting company have been arrested but none of the person who were the recipients of the 19 loans and were the direct beneficiaries of the loans have been arrested. Hemant Dingra whose wife was one of the recipients of the loan on behalf of Star Artworld has been made a star witness. The forensic audit done by AZB & Partners shows that the promoters are the sole beneficiaries of the said loans. The report further highlights the role played by Hemant Dhingra who was managing the companies of promoters and one Narender Kumar Gowshal, who is a stock broker. Thus, Hemant Dhingra and Narender Kumar Gowshal were the main persons who orchestrated the CLB portfolio:

- a. *The AZB & Partners Forensic Audit Report records that said audit firm on the basis of the emails and discussion with the employees of RFL came to conclusion that loans under CLB portfolio used to be initiated through Hemant Dhingra or Narender Kumar Gowshal.*
- b. *It has further been recorded in report that entire CLB portfolio*

was orchestrated by Mr.Hemant Dhingra and Narender Kumar Gowshal.

- c. It has been found out that It was monthly affair of Hemant Dhingra and Narender Kumar Goshal and they used to look after all the details of such loans.*
- d. Further it is important to note that one of the said 19 loan transactions, Loan amounting to Rs. 150 Crores was given to company by the name of “Star Artworks Private Limited” in the year 2017, when the Petitioner was Non Key Management Personnel and had stopped going to office as well, and in the said company wife of the Hemant Dhingra was the 50% Shareholder and earlier was Director as well. The documents extracted from chargesheet showing directorship and shareholding of wife of Hemant Dhingra.*
- e. Further Hemant Dhingra was the Authorized Signatory in the Bank accounts of “Star Artworks Private Limited”. So admittedly money has gone to Hemant Dhingra, but the Investigating Officer chose to make him witness and the same shows the mala fide in*

investigation. Further Hemant Dhingra was Authorised Signatory in Bank accounts of most of such companies in which loans have been given and have been alleged to be routed. Further even the management of REL and RFL was also communicating with Hemant Dhingra in respect to such loans. One such mail of communication with Hemant Dhingra dated 29.10.2015.

15. To strengthen their arguments, learned counsels for the petitioner have relied upon the following judgments:

- a. Anil Saxena vs. State: Bail Appln.1074/2020*
- b. Navendu Babbar vs. State: Bail Appln.913/2020*
- c. Ashok Sagar vs. State (NCT of Delhi): 2018 SCC OnLine Del 9548*
- d. Sanjay Chandra vs. CBI: (2012) 1 SCC 40*
- e. D.K. Shivakumar vs. Directorate of Enforcement: 2019 SCC OnLine Del 10691*
- f. Binoy Jacob vs. Central Bureau of Investigation: 1993 CrLJ 1293*

16. Finally argued, the entire evidence in the present case is documentary and forms part of the charge sheet and there is no way possible for the petitioner to tamper with the same in any manner whatsoever. The charge sheet has already been submitted before the Ld. Trial Court and there is no possibility of the Petitioner tampering with the evidence. It is further submitted that Petitioner is around 60 years of age and is suffering from Sleep Apnea and his aged parents are also ill. Thus, petitioner deserves bail.

17. On the other hand, case of prosecution is that in the present matter public money worth Rs. 2000 crores has been siphoned away by the Petitioner – Sunil Godhwani pursuant to a deep rooted conspiracy with the promoters of the Complainant Company (Malvinder Mohan Singh and Shivinder Mohan Singh) and others, through a labyrinth of layered transactions. The siphoning has been discovered by the present investigation and investigation done by SEBI and the RBI. Public money is involved since Religare Enterprises Limited (REL) - the parent company of the Complainant Company, is a public listed entity with 42,650 shareholders and the present matter affects them directly. Further, the Complainant Company is a registered NBFC with the RBI and has taken loans from banks, including PSU banks. The siphoning affects the Complainant

Company's ability to repay the banks, to which it owes money(s) worth Rs. 5,000 crores. The loan proposals prepared by RFL itself (for such loans to be extended) evidence that the entities to which loans worth hundreds of crores were extended as funding for '*working capital*' had no business, therefore did not need working capital. The proposal to fund working capital of such entities was only a camouflage for the siphoning. Moreover, no request for borrowing the funds was ever received by RFL from the borrower companies but funds amounting to thousands of crores were extended on the basis of one-page MOUs.

18. Mr.Mohit Mathur, learned senior counsel for complainant and Mr.Panna Lal Sharma, learned APP for State jointly submitted that the case of Artifice Properties Pvt. Ltd. evidences the true intention behind extending these loans. Artifice Properties Pvt. Ltd. had no business income, but still the funds were extended by RFL, ostensibly as working capital facility. Approval for the same was given by the Applicant on 31.08.2016. Investigation has revealed that the Petitioner - Sunil Godhwani controlled and managed the siphoning at each stage. He played a crucial role in (a) RFL's affairs; (b) in the affairs of shell companies which received funds from RFL; and (c) in RHC's affairs - which received the siphoned funds

from the shell entities. The Petitioner was the Chairman and Managing Director in REL between 2010 and 2016, which is the parent company of the Complainant Company. Subsequently, for some time he became the CEO and wholtime director of REL. By virtue of his positions the Petitioner exercised control of REL and all its subsidiaries, including RFL. The same fact is evident from the letter of Mr. Sachindra Nath provided to the I.O. and the Section 161 statement of Mr. Padam Bahl (Director, REL) dated 30.12.2019. Moreover, the Petitioner was a member of the loan approval committees and approved many loans to borrower companies / shell entities known to the Promoters and himself, despite the loan proposal itself showing that the entities to which loans were extended were not creditworthy. In addition, the Petitioner extended 4 loans amounting to approximately Rs.400 crores in February 2016 to the borrowing entities:

- (a) Fern Healthcare Pvt. Ltd.;
- (b) Tripoli Investment and Trading Company;
- (c) Volga Management and Consultancy Private Limited; and
- (d) A&A Capital Service Pvt. Ltd.

All the above-named companies were related to petitioner which is evident

from the loan proposals prepared for these entities. These loan proposals were recommended by petitioner himself approved by him; and the loans were extended on the basis of his relationship with the entities. The loans have not been repaid. Thus, it is a clear case of conflict of interest and breach of fiduciary duty of petitioner.

19. Further argued that the Petitioner was the only member of the Related Party Transaction Committee (RPT Committee), who was in an executive capacity at REL and was therefore, involved in the day to day management of the Religare Group. The RPT reviewed and approved the loans given to the various shell entities under CLB (unlike what the Petitioner has submitted, i.e., it was only a noting committee). He used his position and influence to procure approval of loans from other members of the RPT. The said fact is evident from Mohnish Dutt's email of 24.02.2016 which is on record wherein it was recorded that his consent was given only upon the assurance of petitioner about the good quality of the loan proposals worth Rs. 600 crores to the following entities:

(a) Tripoli Investment and Trading;

(b) Volga Management and Consultancy;

(c) Artifice Properties Pvt. Ltd.;

(d) Ad Advertising Pvt. Ltd.;

(e) Torus Buildcon Pvt. Ltd.; and

(f) Best Healthcare Pvt. Ltd.

20. It is submitted that not surprisingly, (a) Tripoli Investment and Trading; and (b) Volga Management and Consultancy are related to the Petitioner / Sunil Godhwani. In addition, as part of the RPT Committee, the Petitioner also approved loans to shell entities despite opposition from the independent director – Mohnish Dutt and ensured that the loans amounting to approximately Rs. 492 crores were disbursed to the following entities:

(a) Zolton Properties Private Limited

(b) Artifice Properties Private Limited

(c) Modland Wears Private Limited

21. Further submitted, of the 10 entities to which loans were approved by petitioner, Ravi Kohli and Vikramaditya Rajput were directors of 4 entities:

(a) Best Health Management;

(b) Vitoba Realtors;

(c) Zolton Properties Private Limited; and

(d) Artifice Properties Private Limited.

As mentioned above, Artifice Properties is an entity related to petitioner and loans were extended to it on this basis.

22. Additionally, they were directors of shareholding companies of 3 other entities:

(a) Modland Wears Private Limited (Ravi Kohli director in Best Healthcare)

(b) Fern (Ravi Kohli director in Best Healthcare and Vikramaditya Rajput in Vitoba Realtors)

(c) Tripoli (Ravi Kohli director in Best Healthcare)

23. Moreover, the statement of Ravi Kohli and Vikramaditya Rajput is corroborated by the email of 17.05.2006, wherein Hemant Dhingra reports the progress of incorporation of Adept Lifespaces to the Petitioner. He also reports that he had spoken to Ravi Kohli about incorporation of the shell

entity. The emails dated 17.05.2012 shows that petitioner also approved payment of director's fee to the directors of these entities. In fact the emails show the pivotal role played by the Petitioner in the affairs of the entire group as under:

- a. Petitioner approved leave requests for employees of RHC Holdings;
- b. Petitioner approved directors' fee for shell entities;
- c. Petitioner approved payment requests of various companies – not only Religare companies, but also all promoter companies;
- d. Petitioner structured all the payments; and
- e. Petitioner was in direct touch with the promoters – Malvinder Mohan Singh and Shivinder Mohan Singh regarding all these transactions.

24. Further, it has been found in the present investigation and by SEBI, pursuant to a forensic audit that eventually, some part of the siphoned money (over Rs. 1,000 crores) was transferred to RHC Holdings Private Limited (RHC) as is evident from SEBI's order dated 14.03.2019. While the

shareholders of RHC were the promoters of RFL (Shivinder Singh and Malvinder Singh), the Petitioner was the President of RHC and documents reveal that he played a crucial role in the management of RHC. Further, it is evident from the investigation that the Petitioner had various dealings with RHC, which had also extended loans to the Petitioner. It is evident from emails dated 08.07.2009, 09.07.2009, 17.05.2012, 18.07.2012, 20.07.2012 and 27.11.2012 that the Petitioner was also in-charge of the functioning of RHC, one of the beneficiaries of the loans given to the shell companies. The Petitioner in conspiracy with Shivinder Singh and Malvinder Singh siphoned public money to RHC. Surprisingly, petitioner approved the loans extended by RHC Holdings to Anil Saxena (another co-accused) of Rs. 1.40 crores.

25. Thus, in view of above facts and further investigation is going on, if the petitioner is released on bail, he may tamper with the evidence, hamper investigation and influence the witnesses. Hence, he may not be released on bail.

26. I have heard learned counsel for the parties and perused the material available on record.

27. On perusal, the Petitioner received an amount of Rs. 34 crores from

Fern Healthcare Private Limited, one of the shell companies, as part of the benefits for working closely with the Promoters. Fern Healthcare is an entity related to petitioner and loans to the same were proposed and approved by him. The chargesheet clearly records that the real source of the said money was the complainant company. The bank statements filed by the I.O. pursuant to Order dated 02.07.2020 shows that the Petitioner used the abovementioned funds to clear his outstanding liabilities towards RHC Holdings on the very same day on which the money was disbursed by the Complainant Company and was finally routed to the Petitioner.

28. It is on record that the Petitioner gave approval for 9 out of the 19 loans which forming part of the chargesheet. 3 (three) of these loans were purportedly against charge of property. The purported LAP Loans (Loan Against Property - which were purportedly secured loans) were the loans given to:

- i. Vitoba Realtors Private Limited vide email of 23.03.2016;
- ii. Devera Developers Private Limited vide email of 23.03.2016; and
- iii. Best Health Management Private Limited vide email of 23.03.2016.

29. While the Petitioner argued that these were secured and there were no

wrongdoings, it is pertinent to note that these were the loans given on the basis of the close relationship shared by these three companies with the promoters of RFL and the Petitioner herein. The directors of these companies – Ravi Kohli and Vikramaditya Rajput have stated that they became directors of these companies upon petitioner's request. These loans were actually not secured loans and were camouflaged, just to avoid reporting the said loans under the CLB, since the RBI vide its letter dated 08.03.2016 (15 days prior the grant of these loans) had raised concerns about the CLB. Therefore, to hoodwink the RBI and to secure itself from the quarterly reporting on 31.03.2016, the said loans were camouflaged as secured loans under the LAP Book rather than the CLB. It is further evident that these loans were camouflaged as secured loans because the loans were not extended on the basis of title deeds but on the basis of Agreement to Sell. The title deeds were never provided to the Complainant Company and no charge was created.

30. It is pertinent to mention here that in order dated 17.06.2020 granting bail to Mr. Anil Saxena, categorically observed by coordinate bench that he was not part of day-to-day functioning of RFL is of no relevance here as the chargesheet records that by virtue of being Chairman and MD of REL, (the

Petitioner herein) had a say in the functioning of RFL. Further, loans were disbursed upon Petitioner's instructions and to the entities known to him. Thus, case of petitioner is different from the case of Anil Saxena. Moreover, the Petitioner herein also benefitted by way of the loan amounting to Rs.34 crores paid to him from the funds of the Complainant Company. The Petitioner also became the Group President of RHC Holding, which is the ultimate beneficiary of the entire fraud.

31. Moreover, it is relevant to mention here that order dated 17.06.2020 granting bail to co-accused Anil Saxena was challenged before the Hon'ble Supreme Court vide SLP(Crl.) diary no.13106/2020 and same has been disposed of vide order dated 17.07.2020. Whereas, present petition was heard on 10.07.2020 and pending for judgment, however, meanwhile, through Court Master, this Court has been apprised about the said order wherein the Hon'ble Supreme Court has observed that although, the petitioner (therein) may be justified in relying upon documents brought on record to indicate that the finding of the fact noted by this Court (High Court) in the impugned judgment is correct or contrary to record, even so, stating overall view of the matter, their lordships decline to interfere with the order granting bail to Anil Saxena. Further observed, the observations in the impugned order of

bail are confined to R-2 (therein) and cannot be used as precedent/parity for other accused. The case of other accused be considered on its merit.

32. As argued by learned APP & learned counsel for complainant, while a fraction of the money trail of Rs. 2000 crores has been discovered, the investigation is still ongoing with respect to other fraction which remains untraced. Economic Offences Wing (EOW), SEBI as well as several other agencies, including Enforcement Directorate, is still investigating the matter. SEBI itself is still investigating fraud of about Rs. 600 crores and has recorded the same in its order dated 14.03.2019. In fact investigation is still ongoing and money trail of the loan approved to A&A Capital of Rs. 100 crores is yet to be discovered. It is evident from the loan proposal of A&A Capital that it is an entity known to the Petitioner and that the Petitioner had approved the said loan.

33. Further, the offences involve complex and layered transactions which will take time to be unearthed by the EOW. Releasing the Petitioner on bail will hamper the tracing of money trail. Additionally, the accused person being influential is capable of tampering with evidence and influencing witnesses who were his subordinates. As apparent from the various documents and the bail applications themselves, there is no denial by the

accused persons of the Complainant Company's funds having been siphoned away. There is a higher apprehension of the accused persons absconding as they are aware that they may be convicted.

34. Moreover, the Complainant Company has filed various complaints and FIR and the investigation is still pending. Complainant Company verily believes that the Petitioner has been chargesheeted in another case emanating from FIRs No. 189/2019 dated 23.09.2019, which is pending at the stage of cognizance. This is not an isolated instance and there are various other frauds committed by the accused persons. Agencies like SEBI, ED and SFIO are also investigating into the matter.

35. The present case is of an economic offence involving siphoning of public money/investor money to the tune of Rs. 2000 crores. It is settled law that economic offences are considered to be grave offences especially when public money is involved and that the Courts have to be careful in granting bail in such cases.

36. In the case of *Y.S. Jagmohan Reddy v. CBI (Criminal Appeal No. 730 of 2013)* and *Sunil Dahiya v. State [(2016) 4 DLT (Cri) 593]*, this Court held as follows:

“54. The nature and gravity of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only in the progress of the case, but also on the trust of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice.”

37. Similarly, in **Gurmeet Singh & Ors. v. CBI [2017 (162) DRJ 488]**, this Court held as under:

“12. The main argument addressed by learned senior counsels for the petitioners is that entire allegations of the CBI show that being an offence of serious nature, bail should not be granted, whereas in Sanjay Chandra (supra) Supreme Court noted that the statement of the witnesses ran into seven hundred pages and the other documentary evidence was also too voluminous, so the trial may take considerable time and the appellant therein would have to remain in jail longer than the period of detention had they been convicted, thus it was not in the interest of justice that they should be in jail for indefinite period. In Sanjay Chandra (supra) the Supreme Court was not dealing with a case of large number of investors rather the allegations were in respect of criminal conspiracy between the accused in the year 2009 to get UAS license for providing telecom services to a company otherwise ineligible to get UAS license.”

38. The Hon'ble Supreme Court has further recently observed in ***CBI vs. Ramendu Chattopadya (Criminal Appeal No. 1711 of 2019)*** that economic offences having deep rooted conspiracy involving investors' money have to be taken seriously. While dismissing the order of bail, despite filing of chargesheet stated in Paragraph no. 8 as follows:

“This Court is conscious of the need to view such economic offences having a deep rooted conspiracy and involving a huge loss of investors' money seriously. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key role....thereby cheating a large number of innocent depositors and misappropriating their hard-earned money.”

39. Undisputedly, the Petitioner has been charged with Section 409 IPC which is a grave offence punishable with life imprisonment. In ***Nitin Johari v SFIO (Bail Application No. 1971 of 2019)***, this Court has held as under:

“4. Ld. Sr. Counsel has submitted that investigation in the present case stands completed and even charge sheet has been filed by the investigating agency...Despite being CEO and a whole time Director, the petitioner was only an employee of BSL and has never been a shareholder or signatory of the Accounts of BSL. No financial benefit has accrued to the applicant from the allegedly fraudulent activities of BSL. Petitioner has only acted in his professional capacity as CFO of BSL. The work of the finance department was duly delegated, and each person was responsible for his scope of work. The petitioner was neither aware of nor involved in the alleged falsification

of books or the alleged preparation and use of any forged and fraudulent documentation in any manner. It is further submitted that on number of occasions, the documents which came to him in the course of his work were already approved by the Board of Directors as well as by the Audit Committee and there was no reason for the petitioner to suspect any wrongdoing in such decision.

....

16. Ld. Sr. Counsel has argued that investigation in the present case is complete. There are 284 accused persons and documents on which reliance has been placed are voluminous and trial may take considerable time and, therefore, the petitioner in view of the judgment of Hon'ble Supreme Court in Sanjay Chandra's case (supra) be released on bail. However, the said case is distinguishable from the case in hand as the charges in the said case carried a maximum punishment for a term which may extend to seven years whereas in the present case, the petitioner is alleged to involved in offence u/s. 36(c), 128, 129, 447, 448 of the Companies Act, 2013; u/s. 209, 211 r/w 628 of the Companies Act, 1956 and under Section 467, 468, 471 r/w Section 120B of the Indian Penal Code and one of the offence u/s. 467 IPC is punishable with imprisonment up to life."

40. In addition to above, the Hon'ble Supreme Court of India in case of ***Virupakshappa Gouda v. State of Karnataka [AIR 2017 SC 1685]*** has held that *filing of the chargesheet does not lessen the allegations of the prosecution in any manner.* To the contrary, it establishes material against accused persons. Similar pronouncement has been made in ***CBI vs. Ramendu Chattopadya (Criminal Appeal No. 1711 of 2019)*** and ***Nitin***

Johari v SFIO (Bail Application No. 1971 of 2019), wherein bail granted to the Respondent/Accused was set aside despite filing of chargesheet.

41. Moreover, as argued by the prosecution that petitioner is a flight risk and was detected, due to a look-out notice at the Indira Gandhi International Airport, New Delhi while attempting to board a flight to London.

42. In view of above, the judgments cited by the petitioner are of no help, therefore, this Court is not inclined to grant bail to the petitioner.

43. The petition is, accordingly, dismissed with no order as to costs.

44. The Trial Court shall not get influenced by the observations made by this Court while passing the order.

45. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

(SURESH KUMAR KAIT)
JUDGE

JULY 23, 2020
ab