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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. 1413/2020

KAVI ARORA ..... Petitioner

Through Mr.Puneet Bali, Sr. Adv. with Mr.Vibhav Jain, Mr.Aditya Soni & Mr.Mayank Datta, Advs.

versus

STATE ..... Respondent

Through Mr.Amit Chadha, APP for State. Mr.Mohit Mathur, Sr. Adv. with Mr.Sandeep Das, Mr.Vipin Tyagi, Ms.Aishwarya Singh & Ms.Surbhi Sharma, Advs. For R-2.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. The Petitioner is humbly petitioning before this Court under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 seeking the relief of regular bail, having been arrested on 10.10.2019 during the course of investigation in F.I.R. bearing no. 50/2019, dated 27.03.2019, registered by the Economic Offence Wing, Delhi Police, (hereinafter

referred to as the *'Respondent'*), under Sections 409/420 read with Section 120-B of the Indian Penal Code, 1860. The said investigation culminating in chargesheet dated 06.01.2020, wherein the Petitioner was arraigned as Accused No. 4 under Sections 409, 420 and 120-B of the Indian Penal Code, 1860.

2. Mr.Puneet Bali, learned senior counsel appeared on behalf of the petitioner and submitted that petitioner was not named as an accused in the said F.I.R. and the ensuing chargesheet, which was filed as far back as on 06.01.2020, thereby marking conclusion of investigation by the Respondent against the Petitioner, fails to bring forth any material to implicate the Petitioner in the criminal proceedings emanating out of the said F.I.R., much less be able to justify the detention of the Petitioner in custody for more than 8 months, that too even after conclusion of investigation in the said proceedings.

3. Further submitted that a co-accused Anil Saxena has already been granted regular bail by the Court vide order dated 17.06.2020. From a bare perusal of the chargesheet, it becomes crystal clear that Anil Saxena and the petitioner have been attributed similar roles by the investigating agency. Anil Saxena was the group Chief Financial Officer and a member of the

same Risk Management Committee (hereinafter referred to as "*RMC*")/Loan Investment and Borrowing Committee (hereinafter referred to as "*LIABC*") as the petitioner, which approved the loans, till his resignation on 14.11.2017. In addition to this, as per the Investigation Report dated 27.09.2018 prepared by AZB & Partners (Advocates and Solicitors) (hereinafter referred to as "*AZB Report*"), Anil Saxena was issuing direct instructions for disbursement of loans. In fact, the case of the petitioner is on a far better footing, since Anil Saxena was part of the parent company Religare Enterprises Limited (hereinafter referred to as "*REL*") management team, while the petitioner was part of the subsidiary Religare Finvest Limited (hereinafter referred to as "*RFL*") team. Further, whereas there are no allegations whatsoever, against petitioner that he received even a single penny out of the loan amount siphoned off by the promoters, on the other hand there are allegations against Anil Saxena that he was also granted a loan of Rs.1,40,00,000/- (one crore and forty lacs) by one of entities owned and controlled by the promoters.

4. Mr.Bali submitted that the mandate given to the petitioner on his joining RFL was to set up a retail Small and Medium Enterprise (hereinafter referred to as "*SME*") lending business which does not have dependence on

performance of Capital Markets. The Petitioner was handling Consumer Finance which later got rechristened to SME Lending Business, being successfully created so by the Petitioner. The performance evaluation of Petitioner was always limited to SME business throughout his employment at RFL. Further, even after becoming the MD and CEO of the company, the Petitioner was looking after only the SME side of business without any control on the functioning ICD/CLB and Loan Against Shares making the Petitioner merely a figurative MD of RFL. SME lending business/ loans in the present case means secured or unsecured long term loans given to small and medium scale entities. On the other hand in the present case Inter-Corporate Deposits (hereinafter referred to as "*ICD*") / Corporate Loan Book (hereinafter referred to as "*CLB*") were short term unsecured loans given to bigger entities and companies. While RFL management team was managing SME lending business, REL team used to manage ICD/CLB and LAS business.

5. Further submitted that when the Petitioner joined RFL there was a clear understanding that RFL will remain a Retail SME Lending Company and other businesses will be demerged and taken out of this entity. Capital Market Lending was run as a separate business for which another NBFC

license was obtained from RBI under the name of Religare Finance Ltd. An announcement was also made to this effect to the entire senior management of Religare Group in February 2010 by Shachindra Nath, then Group Chief Operating Officer (COO) REL and further reiterated in the group announcement made in April 2010 by Shachindra Nath, who was by then elevated to the position of Group Chief Executive Officer (CEO) REL under his guidance and supervision the SME business loan book grew from Rs. 264 Cr. in 2009 to Rs.l5,976 Cr in 2016. The total Revenue on the other hand grew from Rs.11 Cr. in 2009 to Rs.2,062 Cr. in 2016. However, not a single loan transaction under the *'SME business'* has come under any kind of scanner or investigation by the RBI and neither has been questioned in the investigation in the present case. In fact, while the Petitioner's mandate was to handle the new SME lending business, it was the REL team responsible for managing the already existing Inter-Corporate Deposit (Later named as CLB) and loan against shares business, which were never under the control and supervision of the Petitioner, and in respect of which the Respondent has instituted the said criminal proceedings in the aforementioned F.I.R.

6. Learned senior counsel submitted that the Petitioner was chargesheeted on wholly misconceived facts, falsely implicating him of

causing wrongful losses to RFL by siphoning off its funds as ICD/CLB loans, in conspiracy with the other chargesheeted accused, to the benefit of RHC Holding Pvt. Ltd. (A company consisting of a 100 % shareholding of the Malvinder Mohan Singh and Shivinder Mohan Singh, the promoters of REL). The said chargesheet proceeds on a completely false premise to arraign the Petitioner, holding him liable for disbursal of loans and alleged siphoning of money, without being able to produce even an iota of evidence to show the Petitioner's involvement in the alleged offences.

7. Mr.Bali submitted that the Hon'ble Supreme Court in ***Sanjay Chandra Vs. CBI, (2012) 1 SCC 40,*** which involved economic offences of huge magnitude, while giving due regard to the settled principles of bail jurisprudence has exhaustively laid down law on bail. The Apex Court held that utmost importance has to be given to the valuable right of personal liberty and innocence of the Accused until proven guilty. The said principles were also kept in mind by the Apex Court in ***Dipak Shubhashchandra Mehta v. CBI: (2012) 4 SCC 134,*** wherein it was held that detaining under-trials indefinitely is violative of Article 21 of the Constitution of India. These principles have also been endorsed by this Court, most recently in ***"Firoz Khan vs State (NCT of Delhi), Bail Application 945/2020 decided***

on 29.05.2020" whereby held that detaining under trials inordinately without any purpose leaves them with inevitable impression that they are being punished even before trial and therefore being treated unfairly by the system. If after a protracted trial, the under trials is found not guilty, the state cannot give back to the accused the valuable years of life lost in prison.

8. Further submitted that the case against petitioner is that he was part of various Committees which approved loan to the defaulting entities. What logically follows from the above allegation is that if petitioner is roped in then all committee members have to be attributed similar roles and arrayed as accused. Instead, in the present case, out of all the RMC and RPT Members only the petitioner and two others have been named as accused and the rest are not. Details of other RMC and RPT Members is given below:

A. RMC Committee Members

S.No.	Name	Post	Loans Approved	Whether Made Accused
1.	Maninder Singh	Group CEO and Boss of Kavi Arora	13	No
2.	Mr.Avinash Chander Mahajan	Independent Director of REL (Also Member of RPT Committee of REL)	6	No

3.	Anil Saxena (Already Granted bail)	Group CFO and Director of REL	6	Accused no.5
4.	Sunil Kumar Garg	Group Treasury Head and Director, RFL	6	No
5.	Pankaj Sharma	President and Chief Risk Officer, RFL	6	No
6.	Sunil Godhwani	MD and Chairman of REL (Also Member of RPT Committee of REL)	6	Accused No.3

B. RPT Committee Members

S.No.	Name	Post	Loans Approved	Whether Made Accused
1.	Avinash Chander Mahajan	Independent Director, REL (Also approved 6 loans in RMC meetings)	11	No
2.	Rashi Dhir	Independent Director of REL	6	No
3.	Monish K. Dutt	International Finance Corporation (IFC) Nominee Director, REL	9	No
4.	Sunil Godhwani	MD and Chairman of REL (Also approved 6 loans in RMC meetings)	6	Accused No.5
5.	Harpal Singh	Director, REL	5	No

9. One such RMC Approval meeting dated 31.01.2017 clearly shows that approvals were granted unanimously by entire committee with note that *"entity known to promoter group"*. Not the case that Petitioner acted against

the Committee or Voted to pass loan despite the committee not agreeing to it or insisted on approval of loan, despite a bad credit note. Further, all the RMC approvals were put to the Board of Directors of RFL in the subsequent Minutes of Meetings and the same were duly noted and accepted by the board without any opposition which is evident from the minutes of the board meeting dated 30.08.2017, relevant portion of the same is reproduced as under:-

> *"The Board was apprised that is terms of Secretarial Standards 1, minutes of meetings of any Board Committee shall be noted at the Board Meeting held immediately following the date of entry of such Committee Minutes in the Minutes Book. Accordingly, the minutes of the following Board Committees were circulated to the Board with the agenda and thereafter noted by the Board in the meeting:*
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> *i. Audit Committee Meeting held on June 26, 2017 and June 28, 2017.*
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> *ii. Risk Management Committee (RMC) Meeting held on June 14, 2017 and June 28, 2017.*
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> *iii. Nomination and Remuneration Committee (NRC) Meeting held on June 28, 2017.*
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> *Further, a summary of the above minutes was circulated to the Board with the agenda for its easy reference. The same was duly noted by the Board."*

10. It is further submitted that the case of complainant as per the Internal

Inquiry is that loans were issued to the entities known to the Promoters since atleast 2005-06, as per available record. Yet, none of the persons responsible for issuing those loans have been arrayed as accused. If the petitioner has been arrayed as an accused, then all earlier approving members should also be arrayed as accused in the matter.

11. A perusal of email dated 21.09.2016 would show that same was written by Mr.Pankaj Sharma (then Chief Risk Officer, RFL) to REL Management (Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godhwani, Anil Saxena and Sunil Garg) with only a copy to the petitioner. Relevant Portion of email is reproduced as under:-

> *"Kindly note that this calendar will require new loans to be given in Jan'17 and Jun'17 to avoid reporting NPA. This may not find purchase with the approval committee of RFL and REL."*

Thus, round tripping, if any, was suggested by Pankaj Sharma, who is not arrayed as an accused. In addition, he passed 3 loans as RMC member. Infact, as per RFL website, at present he is the President & Head of Corporate Planning and Strategy. Further, while sending the email he knew that rest of RMC (of which petitioner was a member) would not agree with his suggestion. In addition, as per the charge sheet, the defaulting entities were operating from the offices of RHC and transactions were carried out on instructions of Hemant Dhingra (Director of Finance of RHC). Statement of Hemant Dhingra relied upon in the charge sheet attributes no role to the petitioner, more so does not even mention his name. Statement of Directors of defaulting entities relied upon in the charge sheet attributes no role to the petitioner. Further, these Directors have stated that they were either known to the promoters or acquaintances of their late father. Not even remotely connected to the petitioner.

12. As held in ***P.Chidambaram vs. CBI: 2019 SCC OnLine SC 1197***, *if the applicant fulfils the triple test of bail then holding him in custody is detrimental to course of justice and violative of Article 21 of the Constitution.*

13. In the case of ***S.K. Alagh vs. State of Uttar Pradesh & Ors.: (2008) 5 SCC 662***, it is held by the Hon'ble Supreme Court that *unless the Penal Code provides vicarious liability on the part of the party who has not been charged directly for the offence even if he is the Managing Director, cannot be held vicariously liable for offence by the Company.*

14. Mr.Bali submitted that in view of the role assigned to the petitioner

and settled law and on parity with co-accused Anil Saxena, the petitioner deserves bail.

15. On the other hand, Mr.Amit Chadha, learned APP for State and Mr.Mohit Mathur, learned senior advocate appeared on behalf of the complainant Religare Finvest Limited (RFL) submitted that the present offence relates to siphoning of Rs. 2000 crores of public money through a labyrinth of layered transactions pursuant to a deep-rooted conspiracy in which the Petitioner - Kavi Arora played an active role. The siphoning of pubic money has been discovered by SEBI and the RBI since the Religare Enterprises Limited (REL) - 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. The siphoning affects the complainant company's ability to repay the banks, to which it owes money(s) worth Rs.5,000 crores. The modus operandi adopted for the siphoning was evergreening of unsecured loans which were rotated via circuitous transactions through shell entities which only existed on paper but had no business. 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 (and therefore did not need working capital). The proposal to fund working capital of such entities was only a camouflage for the siphoning. It is important to note that no request for borrowing the funds was ever received by RFL from the borrower companies but funds amounting to thousands of crores were extended based on one-page MOUs. 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 to it ostensibly as working capital facility. Despite, approval for the same was given by the Petitioner on 01.09.2016.

16. Further submitted that petitioner's role in the conspiracy and petitioner's position in the complainant company found during investigation that the Petitioner was the CEO and Managing Director of the Complainant Company for 6 years, i.e., between 14.11.2011 to 12.11.2017. By virtue of his position as the CEO and Managing Director he was the overall incharge of the business of the Complainant Company. During his tenure as the CEO and Managing Director a large part of the siphoning took place. He was the ultimate approving authority on the various committees which sanctioned the loans and was directly responsible for such sanctions. Out of 19 loans in

default which have been mentioned in the chargesheet, the Petitioner had approved 16 loans amounting to approximately Rs. 1900 crores. The other 3 loans out of 19 were initially granted under the Loan Against Property portfolio. Therefore, the Petitioner was approving all loans under the Corporate Loan Book. The Petitioner being the CEO and Managing Director was a key managerial personnel of the Complainant Company and responsible for disbursement of loans to the shell entities. Investigation has found that the Petitioner / Kavi Arora was a crucial link in the chain of approvals relating to the circuitous transactions. Whenever financing was required by the Promoters, (a) Hemant Dhingra (an employee of RHC Holding-an entity owned and controlled by the Promoters); (b) Sunil Godhwani; or (c) Anil Saxena (Group CFO of the Religare Group) would orally instruct the Petitioner / Kavi Arora to extend loans to entities related to the Promoters. While instructions would be issued by persons in other companies, the Petitioner / Kavi Arora executed the conspiracy at RFL's level by ensuring disbursements of unsecured loans worth hundreds of crores and creation of paperwork. Loans were extended and disbursements made, after which documentation was prepared by the petitioner's team at his instance. Since disbursements were made from RFL, official(s) of RFL had to be part of the conspiracy and execute the same at RFL level. The Petitioner was one such top official and investigation against the rest is pending.

17. Further submitted that the following facts show that the Petitioner played an active role in the conspiracy and the siphoning funds:

Date	**Particulars**
29.04.2014	RBI raised concerns about these CLB Loans and pointed out the ever greening or round tripping of funds in a letter addressed specifically to the Petitioner. Despite the said letter the Petitioner being CEO and Managing Director and part of various committees continued to give loans under the Corporate Loan Book to shell entities which rotated these funds.
08.03.2016	RBI again raised concerns in a letter addressed to the Petitioner regarding the CLB Loans and pointed that the CLB Loans policy was deficient.
12.07.2016	The RBI was not convinced with the explanation provided on 8.7.2016. Therefore, the Petitioner (being the CEO and MD of RFL) along with Sunil Godhwani (being CEO and MD of REL) undertook not to increase the CLB Loan exposure or roll over the CLB loans, but continued giving loans under the CLB.
01.09.2016	Despite the aforesaid undertakings to the RBI, the Petitioner approved loans worth Rs. 492 crores to the following entities: Zolton Properties Pvt. Ltd.- Rs.165 cr Artifice Properties Pvt. Ltd.- Rs. 165 Cr Modland Wears Pvt. Ltd.- Rs. 162 Cr

	It is pertinent to mention that these loans were opposed by the independent director - Mr. Mohnish Dutt vide his email dated 31.8.2016 but were still approved by the Petitioner.
21.09.2016	The Petitioner was a party to an internal email which acknowledges that the CLB Loans must be evergreened to avoid being categorized as NPAs. The email was sent in the context of credit rating agency - ICRA seeking explanation regarding the CLB Loans from the Petitioner.
27.01.2017	Since the CLB Loans continued unabated, the RBI once again in a letter addressed to the Petitioner raised issues with the CLB Loans and specifically stated that the loans were routed from one entity to another. RBI red flagged the following entities which are also part of the chargesheet to which loans had been granted: A&A Capital Services Pvt. Ltd. Gurudev Financial Services Pvt. Ltd. Fern Healthcare Pvt. Ltd. Tripoli Investment and Trading Company Annies Apparels Pvt. Ltd. Torus Buildcon Pvt. Ltd. Rosestar Marketing Pvt. Ltd. Best Health Management Pvt. Ltd. Volga Management and Consultancy Pvt. Ltd. Ad Advertising Pvt. Ltd.
31.01.2017	Despite the aforesaid RBI letter to the Petitioner he immediately thereafter pursuant to the conspiracy approved loans to the following entities (which had been mentioned in the RBI Letter) amounting to Rs. 300 cr: A&A Capital Services Pvt. Ltd. Abhiruchi Distributors Pvt. Ltd. Annies Apparel Pvt. Ltd.
30.06.2017	Despite the aforesaid undertakings to the RBI and RBI concerns, the Petitioner disbursed loans worth Rs. 850 crores to the following entities:

	Rosestar Marketing Pvt. Ltd. Tripoli Investment and Trading Company Volga Management and Consultancy Pvt. Ltd. Ad Advertising Fern Healthcare Pvt. Ltd. Torus Buildcon Pvt. Ltd. Reference may be made to Petition Pg. 42 @ Pgs. 73 to 79 It is pertinent to note that while the loans were disbursed on 30 June, 2017 the loan proposals were prepared only on 5 July, 2017 (and thus ante dated). The same is evident from Ms.Rajni Barnwal's statement of (Compilation Pg. 131 and Pg. 75 and emails of July 5, 2017 and July 11, 2017 (Compilation Pg. 133). Therefore, the minutes of the RMC meeting of 28 June, 2017 are fabricated since they record that the loan proposals have been received and reviewed (Compilation Pg. 85). The Petitioner ratified the forged minutes of the RMC meeting of 28 June, 2017 in the RMC meeting held on 16 August, 2017 (Compilation Pg. 272). It is important to note that 30 June, 2017 was the last day of the quarter (1 April, 2017 to 30 June, 2017). Therefore, a sizeable disbursement was made, without documentation to avoid reporting the same to RBI and to evergreen loans which were becoming due on the same day to avoid categorization as NPAs. The loans were granted to entities which were specifically stated to be suspicious in RBI's letter dated 31.01.2017.
31.08.2017	**The petitioner signed the director's report where despite the internal email of 21 September, 2016** (relevant or the financial year 2016-17), the Petitioner (being the CEO and Managing Director) specifically stated to the general public that the CLB Loans were not NPAs.

18. It is submitted, in conclusion, the petitioner's role (as the Managing

Director and CEO) in the conspiracy is evident from the following:

(a) The petitioner kept extending loans to shell companies despite RBI raising a concern regarding the same specifically with the Petitioner. The SEBI has also noticed the increase in CLB Loans despite contrary undertakings to the RBI;

(b) He fabricated minutes of RMC Committee meeting of 28 June, 2017 to disburse loans amounting to Rs. 800 crores and then ratified these forged minutes on 16 August, 2017. This shows that documentation with respect to CLB loans was a mere charade to legitimize the transfer of funds.

(c) He knowingly falsified books of accounts, i.e., the Director's Report dated 31 August, 2017 to state that the CLB Loans were not NPAs, despite knowing to the contrary (as per email of 21 September, 2017 in the context of ICRA seeking answers from the Petitioner).

(d) He was instrumental in granting of loan to Modland Wears Pvt. Ltd. who had admittedly indulged in round-tripping. Modland Wears Pvt. Ltd. in the insolvency proceedings initiated against it by the complainant has admitted that such loan was given for round-tripping and the same has also been recorded in the confirmatory order of SEBI dated 11.09.2019.

19. It is further submitted that the complaint is also against *"other unknown persons (who are associates of the 'promoters' and aided and abetted such acts of the promoters)"*. Additionally, the complaint was filed at that time when the complainant was not aware of specific role of each co-conspirator and these details emerged only during the investigation. In any event it is settled law that the FIR is not an encyclopaedia of all the facts. As argued on behalf of the petitioner that the Petitioner, as the "*leader*" of the team took responsibility for the SCCPL transaction and was willing to resign for the same. Firstly, the SCCPL transaction was a separate transaction which is not part of the chargesheet herein. Secondly, the loans given under this transaction were secured, unlike the loans given under CLB. Therefore, the Petitioner is trying to mislead the court. The Petitioner never took responsibility for the CLB Loans which were ultimately siphoned off and thus cannot claim any moral high ground on the basis of an unrelated transaction.

20. On the ground of parity, it is argued that bail order dated 17.06.2020 granting bail to Anil Saxena categorically states that the observation of the court is limited to examining the question whether the petitioner therein, i.e.,

Anil Saxena, can be released on bail. Therefore, the said order cannot be relied upon by the Petitioner herein and would not applicable to all the accused persons involved. Moreover, Anil Saxena was not holding any executive position in the Complainant Company after 13.11.2011 and was not in control of its day to day management. However, that is not the case for the Petitioner herein. The Petitioner was CEO and Managing Director of the Complainant Company for 6 years, the entity by which the loans under CLB were given. By virtue of that position, he was involved in the day-to-day functioning of the Complainant Company, as was also admitted by him while taking responsibility for the SCCPL transaction. Further, the RBI also addressed all its communications with respect to the Complainant Company to the Petitioner and the Petitioner was further involved in misrepresentations to the RBI in order to hide the siphoning. Moreover, Anil Saxena only approved 6 loans, 3 of which were secured. Without prejudice to the Complainant's contentions against this, the Petitioner herein approved loans to 16 out of the 19 entities in question. Therefore, the Petitioner's role was greater than that of Anil Saxena and the two cannot be placed equally. Thus, the present petition deserves to be dismissed.

21. I have heard learned counsel for the parties and perused the material

available on record.

22. It is pertinent to mention here that while a fraction of the money trail of Rs. 2000 crores has been recovered, the other fraction still remains untraced as yet and investigation regarding the same is ongoing, by the Economic Offences Wing as well as independently by SEBI. The SEBI itself is still investigating fraud of about Rs. 600 crores and has recorded the same in its order dated 14.03.2019. Moreover, the loans granted by the Petitioner to the following entities amounting to over Rs. 600 crores are still under investigation:

A. A&A Capital Services Pvt. Ltd.
B. Shridham Distributors Pvt. Ltd (erstwhile Abhiruchi Distrbutors Pvt. Ltd)
C. Annies Apparel Pvt. Ltd.
D. Gurudev Financial Services Pvt. Ltd; and
E. Tara Alloys Ltd.

23. The petitioner 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 of the Complainant Company's funds by the accused persons having been

siphoned away. In addition, there is a higher apprehension of the accused persons including petitioner herein absconding as they are aware that they are likely to be convicted. Further, the conduct of the Accused with respect to internal investigation being carried out by AZB & Partners is also relevant as the Accused refused to participate in the investigation.

24. In addition, there are various complaints and FIR which have been filed by the Complainant Company and are pending investigation. The Accused has also been made a suspect in another case emanating from FIR No. 189/2019 dated September 23, 2019 which is pending at the stage of cognizance. It is pertinent to note that 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 REL.

25. 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. These observations have been made in Y.S. Jagmohan Reddy v. CBI (Criminal Appeal No. 730 of 2013).

26. In the case of ***Sunil Dahiya v. State [(2016) 4 DLT (Cri) 593]*** this Court held as follows:

> *"54. The nature and wavily 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, lie may flee from justice."*

27. In the case of ***CBI vs. Ramendu Chattopadya (Criminal Appeal No. 1711 of 2019)***, the Hon'ble Supreme Court held that *economic offences having deep rooted conspiracy involving investors' money have to be taken seriously.* The Hon'ble Supreme Court 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."*

28. This Court is conscious about the fact that the Petitioner has been charged with Section 409 IPC which is a grave offence punishable with life

imprisonment. The judgments of ***Sanjay Chandra vs. CBI*** is distinguishable from the present case as the charges in the said case carried a maximum punishment of 7 years, which is not the case herein. The same was also noted in ***Nittin Johari vs. SFIO (BA 1971/2019),*** wherein this Court held:

> *"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.*
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> *.....*
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> *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."

29. The Hon'ble Supreme Court of India has held that of chargesheet does not lessen the allegations of the prosecution in any manner. To the contrary, it establishes material on record against accused persons. ***(Virupakshappa Gouda vs. State of Karnataka [AIR 2017 SC 1685]).*** Similar pronouncements have been made in ***CBI vs. Ramendu Chattopadya and Nittin Johari vs. SFIO (BA 1971/2019).***

30. The judgments being relied upon by the Petitioner, i.e., the judgment of ***Sanjay Chandra v. CBI*** is distinguishable as the same do not involve misappropriation of public money, unlike in the present case. The same has been distinguished by this Court in the case of ***Gurmeet Singh & Ors. v. CBI [2017 (162) DRJ 488]***, wherein this Court held:

"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."

31. Moreover, ***Sanjay Chandra vs. CBI & Ors.*** has been distinguished by this Court in the case of ***Sunil Grover v State: [(2012) 3 DLT (Cri) 861]*** wherein it was held that no public money was involved in Sanjay Chandra's case. This Court in Sunil Grover's case held as follow:

"12. So far as the judgments of the Apex Court in Sanjay Chandra's case and Suresh Kalmadi's case (supra) are concerned, no doubt, these reinforce and revisit the basic principles of law with regard to the grant of bail...In the cases, which have been cited by the learned counsel for the petitioner, no member of the general public was affected directly, rather it was the public ex-chequer which was put to loss by not holding auction of government resources or by over invoicing lenders. This is totally different from the facts of the present case where the petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them lucrative returns at regular intervals."

32. It is pertinent to mention here that in order dated 17.06.2020 granting

bail to 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 per the role played by the petitioner in the present case.

33. 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 pettion 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, there 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.

34. In view of above facts and law discussed and the fact that further investigation is at the crucial stage regarding fraud committed by accused

for worth of Rs.2,000/- crores plus of public money, there is apprehension that the petitioner may tamper with the evidence and influence the prosecution witnesses, therefore, this Court is not inclined to grant bail.

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

36. The Trial Court shall not get influenced by the observations made by this Court while passing the order in the present petition.

37. 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