IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.22815 of 2021
Date of Decision: 20.12.2021

Priyanka Modi

.........Petitioner

Versus

Serious Fraud Investigation Office

.........Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Vikram Chaudhri, Senior Advocate with
Mr. Keshavam Chaudhri, Advocate for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Alok Kumar Jain, Senior Panel counsel (Union of India)
for the respondent.

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MEENAKSHI I. MEHTA, J.

The petitioner herein seeks the relief of regular bail in the Criminal Complaint Case bearing No.3 dated 18.05.2019 titled as "***SFIO vs. Adarsh Build Estate etc.",*** as filed under Sections 120-B, 406, 417, 418, 420 & 477A IPC and Sections 211(7), 227 & 628 of the Companies Act, 1956 as well as Sections 74(3), 147, 447 & 447 of the Companies Act, 2013 (for short "the Act of 2013") and pending in the Court of learned Sessions Judge, Gurugram.

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the subject Complaint Case, are that in pursuance of the orders issued by the Ministry of Corporate Affairs (for short "the MCA") on 20.06.2018 and 25.02.2019 in the public interest, the investigation was

conducted into the affairs of Adarsh Group of Companies and LLPs (for short "AGC&L") and on completion of the same, the respondent submitted its report to the MCA. On the basis of this report, the above-said Complaint Case has been filed in the Special Court with the allegations that the petitioner is one of the Directors of Adarsh Credit Co-operative Society Limited (here-in-after to be referred to as "ACCSL") which has been revealed to be the fund mobilization arm of AGC&L and the said Group comprises of 126 Companies, managed and controlled by her (petitioner's) father, Mukesh Modi, and his family members including her and she is found to be involved in siphoning-off the funds of ACCSL as she was one of the Directors of several companies of AGC&L which had secured the loans from ACCSL fraudulently and illegally, by way of falsification of their financials whereas only the members of ACCSL were eligible to secure such loans and thus, she committed fraud by swindling away the hard-earned money of the members/depositors of ACCSL, mainly belonging to the low and middle income groups. Vide the order Annexure P-2 as passed on 03.06.2019, the Special Court has taken the cognizance against the petitioner under the provisions, as enumerated in the opening para of this order.

3. The respondent has already filed its detailed written-reply in the instant petition.

4. I have heard learned Senior counsel for the petitioner as well as learned Additional Solicitor General of India with learned Senior Panel Counsel (UOI) for the respondent in the present petition and have also perused the record thoroughly.

5. Learned Senior counsel for the petitioner has contended that throughout during the investigation proceedings, the respondent did not arrest the petitioner and rather, she was arrested in connection with the above-said Complaint Case in pursuance of the order Annexure P-2 as passed by the Court below for taking the cognizance against her whereas in the afore-discussed eventuality, she was entitled to be released on bail on her putting in appearance/being produced before the trial Court. To buttress his contentions, he has placed reliance upon the observations made by the Apex Court in ***Aman Preet Singh vs C.B.I. Through Director, Criminal Appeal No.929 of 2021 (Arising out of SLP (Crl.) No.5234/2021) Decided on 02.09.2021*** and ***Siddharth vs The State of Uttar Pradesh & Anr, Criminal Appeal No.838 of 2021 (Arising out of SLP (Crl.) No.5442/2021 Decided on 16.08.2021.***

6. Per-contra, learned Additional Solicitor General of India and learned Senior Panel counsel (UOI) have argued that the grant of the relief of bail in the matter/case involving the offence under Section 447 of the Act of 2013, is governed by the provisions contained in Section 212(6) of the said Act which require the fulfilment of the twin conditions before extending such relief to the offender and the petitioner cannot be considered to be eligible for the said relief in view of the magnitude of the fraudulent transactions involved in the present matter which, in themselves, speak volumes of her active participation in the crime.

7. A perusal of the order Annexure P-2 passed by learned Sessions Judge Gurugram reveals that the petitioner, along-with her co-accused, has

been summoned to face trial under various provisions, including Section 447 of the Act of 2013 which attracts the provisions contained in Section 212(6) of the said Act. In the judgment recently rendered in ***Satender Kumar Antil Vs. Central Bureau of Investigation & Anr, Special Leave to Appeal (Crl.) No.(s) 5191/2021 Decided on 07.10.2021,*** the Apex Court has laid down the guidelines for grant of bail in the eventuality where the offender is not arrested during the investigation and co-operates throughout in the said proceedings, while categorizing the offences and has placed the offences punishable under the Special Acts containing the stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)] and Companies Act [Section 212(6)] etc. in Category 'C' and has observed that "*on appearance of the accused in the Court pursuant to the process issued in the cases falling under the said Category, the bail application is to be decided on merits with the additional condition of compliance of the provisions of bail contained in the Special Act*". These observations clinch the entire matter and in the light of the same, the observations, as made by Hon'ble Supreme Court earlier in ***Aman Preet (supra)*** and ***Siddharth (supra),*** are of no help to the petitioner to seek the relief of regular bail.

8. Learned Senior counsel for the petitioner has further conteneded that even if the petitioner is alleged to have committed the offence under Section 447 of the Act of 2013 besides other offences, even then she, being a female, deserves the relief of bail by virtue of the proviso appended to Section 212(6) of the said Act.

9. However, learned Additional Solicitor General of India and

learned Senior Panel counsel (UOI) have argued that the said proviso does not, in itself, entitle a female offender to the relief of bail and keeping in view the fact that the petitioner, along-with her co-accused, has duped the bona-fide/genuine depositors of ACCSL of their life-time earnings, the present petition be dismissed.

10. The offence under Section 447 of the Act of 2013 invites the rigour of Section 212(6) of the Act of 2013 for the purpose of grant of bail which provides as under:-

> "*(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—*
>
> *(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."

From the bare reading of the afore-said provisions, it becomes explicit that the word used in the above-quoted proviso is "*may*" which itself leads to an irresistible inference qua the intent of the Legislature to vest the Court concerned with the discretion to extend or deny the relief of bail to an offender of the above-described categories and the same does not, *ipso-facto,* entitles any such offender to the said relief.

11. Further, it has categorically been mentioned in Paras (I) and (II) in the written-reply (on merits) that during the investigation, it was found that ACCSL is a Credit Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 and is the fund mobilization arm of AGC&L and has 800 plus branches, 20 lacs members, mostly belonging to low and middle income group, 3.7 lacs Advisors and an outstanding deposit of Rs.9,253 crore as on 31.05.2018. It has also been mentioned in Para No.III therein that 70 Companies out of 126 Companies Under Investigation (CUIs), had secured loans to the tune of Rs.1700 crore from ACCSL fraudulently and illegally and a sum of Rs.4120 crore was outstanding balance against the loan in these CUIs, as on 31.03.2018. In Paras No. (IV), (V) & (VI), it has further been specifically mentioned that the petitioner was one of the Directors and also a signatory to the loan applications pertaining to some of the said loanee Companies and the loan had been sanctioned in favour of these Companies without examining or verifying the documents and without adhering to the prescribed procedure and Rules for the same. In these circumstances, this Court does not find any cogent ground to exercise

the discretion, as provided in the said proviso, in favour of the petitioner or to record its satisfaction qua the fulfilment of the twin pre-requisites, as envisaged under Section 212(6) of the Act of 2013, so as to extend the relief of bail to her.

12. Learned Senior counsel for the petitioner has also contended that the petitioner has been granted the relief of interim bail by the Rajasthan High Court in another case vide the order dated 20.12.2019 (Annexure P-3) which has been extended vide the order dated 25.08.2021 as passed in **D.B Civil Writ Petition No.4134 of 2021** titled as ***"Rahul Modi and Others vs. State of Rajasthan through PP"*** and even, her co-accused Vijay Shukla has also been granted the interim protection by the Apex Court in ***"Vijay Shukla vs. Serious Fraud Investigation Office" Petition(s) for Special Leave to Appeal (Crl.) No.(s) 6338 of 2021*** and moreover, she (petitioner) has been in custody in the subject Complaint Case since 01.07.2019 and in these circumstances, she deserves the relief of regular bail. He has placed reliance upon ***Union of India vs. K.A. Najeeb (2021)3 Supreme Court Cases 713; Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab (1980) 2 Supreme Court Cases 565*** and ***Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 Supreme Court Cases 40,*** in support of his contentions.

13. However, the afore-raised contentions do not hold much water because vide the above-said order Annexure P-3, the petitioner was granted the relief of interim bail only in some other case pending before the Rajasthan High Court which has been extended vide the said order dated 25.08.2021 and therefore, these orders do not entitle her (petitioner) to seek

the relief of regular bail in the present matter. Further, the above-named co-accused of the petitioner, i.e Vijay Shukla, has also been granted the interim protection only and that too, in the circumstances when this Court had specifically noted in the impugned judgment that he was not accused of having committed the offence under Section 447 of the Act of 2013 and was only a signatory to the financials of the Company whereas the petitioner was one of the Directors in ACCSL as well as in some of the Companies comprised in AGC&L and she has categorically been alleged to have committed the offence under Section 447 of the Act of 2013. Again, mere custody of the petitioner since the said date, in itself, does not suffice at all to extend the relief of bail to her in the eventuality when Section 212(6) of the Act of 2013 is applicable to the present case as discussed earlier.

14. The observations made by Hon'ble Supreme Court in ***Union of India (supra), Shri Gurbaksh Singh Sibbia and Others (supra)*** and ***Sanjay Chandra (supra)*** also do not come to the rescue of the petitioner to seek her release on bail because the facts and circumstances of the case in hand are distinguishable from those of the cited above. In ***Union of India (supra)***, the Apex Court was dealing with the issue of "cancellation of bail" in a matter involving Section 43-D(5) of the UAP Act and had, rather, observed that there was a vivid distinction between the parameters to be applied while considering the bail application vis-à-vis those, applicable while deciding a petition for its cancellation and moreover, the respondent-accused had been in custody in the said case for more than five years whereas the petitioner has moved this petition with a prayer for "grant of bail" and she is in custody for the last about 2½ years. In ***Gurbaksh Singh Sibbia and Others***

(supra), the Apex Court had dealt with the relief of anticipatory bail whereas the petitioner seeks the relief of regular bail in the present case which as mentioned above, attracts the provisions as contained in Section 212(6) of the Act of 2013. In ***Satish Chandra (supra)*** also, the offence under Section 447 and the provisions of Section 212(6) of the said Act were not involved whereas it is so in this case.

15. As a sequel to the fore-going discussion, it follows that the petitioner does not deserve the relief of regular bail and the petition in hand, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)

December 20, 2021. **JUDGE**

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Whether speaking/reasoned: Yes
Whether Reportable: Yes