

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

+ **BAIL APPLN. 463/2021**

Judgment reserved on : 15.03.2021

Date of decision: 25.03.2021

PRABHAT KUMAR SRIVASTAVA

..... Petitioner

Through: Mr.Rakesh Khanna, Sr.Advocate with
Mr.Alok Kumar, Sr.Advocate with
Mr.Harsh Sethi, Mr. Sarvapriya
Makkar, Mr.Himanshu Bhandari,
Mr.Naman Joshi & Mr.Abhishek
Pruthi, Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICE Respondent

Through: Mr.Chetan Sharma, ASG with
Mr.Ajay Digpaul, CGSC, Mr.Amit
Gupta, Mr.Vinay Yadav, Mr.Akshay
Gadeock, Ms.Sahaj Garg,
Mr.R.Venkat Prabhat for UOI,
Mr.Kamal R Digpaul &
Mr.Upamanyu Sharma, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application seeks the grant of regular bail in complaint No.149/2020 pending before the learned

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Special Judge, Companies Act, Dwarka District Courts in the complaint titled as “***Serious Fraud Investigation Officer (SFIO) Vs. Rockland Hospitals Ltd. & Ors.***” in which the applicant vide order dated 29.02.2020 of the learned Trial Court has been summoned for the alleged commission of offences punishable under Sections 36(c), 128, 129, 134, 188(5), 447, 448 of the Companies Act, 2013 and Section 211, 217, 628 of the Companies Act, 1956.

2. As per the observations in the order on summoning dated 29.02.2020 of the learned Special Judge, Companies Act, the Central Government under powers conferred under Section 206 (4) directed the conducting of an inquiry vide order dated 20.11.2017 which culminated into submission of an inquiry report dated 19.02.2018 under Section 208 of the Companies Act to the Central Government as a consequence of which the Ministry of Corporate Affairs, Government of India in terms of the exercise of power under Section 212(1)(a), (b) & (c) of the Companies Act, 2013 assigned the investigation into the affairs of Rockland Hospitals Limited (RHL) now M/s Medeor Hospital Limited vide order dated 31.05.2018 and also accorded approval to carry out the investigation into the affairs of

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four other group companies of the complainant i.e. Rockland Hotels Limited (RHOL), Somya Constructions Private Limited (SMCL), Rockland Media and Communication Private Limited (RMCPL) and RSH Meditech Systems Pvt. Ltd. vide order dated 30.09.2019 and that the Director SFIO in turn appointed officers of the SFIO as inspectors to exercise all the powers under Section 212(1) (c) of the Companies Act, 2013 and to carry out investigation of the above captioned companies vide order dated 08.06.2018 which was modified vide order dated 22.06.2018 and 10.05.2019; information is also stated to have been collected from various agencies including MCA Portal, Regional Director/ROC, Banks, Government Departments, Statutory Auditors and statements of various persons were recorded.

3. As per the investigation conducted, the petitioner and other persons arrayed as accused, connived and siphoned of funds of RHL by way of separate/distinct transactions.

4. Seven distinct transactions are alleged to have taken place during the functioning of RHL whereby the funds of the said company are stated to have been siphoned of. The details of such transactions as have been depicted in the order on summoning whereby the petitioner

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has been summoned to face trial have been put forth as also in the written submissions submitted on behalf of the SFIO to submit to the effect:-

*“23. That the investigation established the following facts which clearly established that the applicant in connivance with co-accused committed offences mentioned above by way of various **separate/ distinct instances/modus operandi**. The Investigation Report establishes that the total amount of siphoning off the RHL funds from 12.09.2013 onwards against instance 1, 2, & 4 was Rs.87.93 Crore. The total unlawful gain by sale of shares of Layer-1 Companies (Instance 3) is Rs. 102.85 Crore and by purchase and resale of share of IFC to VPS is Rs. 8.15 Crore.*

24. The separate instances of fraud and the modus operandi adopted by the Applicant in connivance with other individuals has been explained below in brief:

***A. First Instance:** Investigation established that the applicant, in conspiracy with co-accused Aditya Kumar Bhandari, Rishi Kumar Srivastava, siphoned off the funds of RHL which were received from South Delhi Municipal Corporation (SDMC) as refund of the additional FAR charges. It is established that an amount of Rs.13.21 crores were paid from joint account of RHL & FARC (Trust) by taking a term loan in the name of RHL. While the aforesaid payment to MCD was **paid from a joint account of RHL and FARC (Trust)**, the refund made by SDMC was intentionally taken into **individual account of FARC on 26.03.2015**, and on the same day, the entire amount of Rs.13.17 Crore was transferred, under the signature of Prabhat Kumar Srivastava/applicant, to the personal Saving Bank Account of co-accused Rishi Kumar Srivastava. Further, on the next day, the same amount of Rs, 13.17 Crore was transferred from the account of Rishi*

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Kumar Srivastava as unsecured loan to RHL. The said unsecured loan of Rs. 13.17 Crore was gradually repaid by RHL to Rishi Kumar Srivastava in the financial year 2014-15, 2015-16 & 2016-17, which were actually the funds of RHL itself. By transferring the amounts from FARC to Rishi Kumar Srivastava and then further transferring it to RHL as unsecured loan, a false facade was created to show that the amount has been transferred through Rishi Kumar Srivastava to RHL, as disclosed in the FARC financial statements, whereas in truth RHL was burdened with an additional liability of Rs. 13.17 Crore, the amount which otherwise belonged to RHL.

B. Second Instance: Investigation established that RHL maintained a Hospital Information System (HIS) wherein details of patients availing facilities/ services at its hospitals are captured and these entries including patient registration, billing, discharge etc., are carried out by their respective departments. However only with respect to a certain 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/ applicant and Group CFO Nikhil Sharma as stated by the IT Team at the time of statements recorded on oath. The email communications gathered at the 'time of investigation establish that Prabhat Kumar Srivastava/applicant had supervised/ directed manipulation of the patient information pertaining to "Doctor Referred Patients" recorded in Hospital Information System. The doctors whose name have been recorded in the HIS had stated on oath that such quantum or nature of surgeries conducted on "Doctor Referred Patients,' were false and fake hence the DRP transactions were fictitious in nature and was one of the means for fudging the books of accounts. The financial statements of RHL for FY 2017-18, had disclosed that it had deleted Rs. 66. 17 Crore of revenue/receivable from the books of accounts of the company pertaining to the FY 2015-16 as the same was found to be non-existent and

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overstated. Thus, Investigation established that the aforesaid manipulation/fraudulent act was done with intent to deceive the users of the financial statements, such as banks/prospective investors, by showing inflated/bogus/non-existent revenue/receivables from the patients under DRP category.

C. Third Instance: Investigation established Prabhat Kumar Srivastava/applicant, Aditya Kumar Bhandari & Nikhil Sharma (Group CFO)/ co-accused had also directed the preparation of false implant bills. The email communication established that RHL had routinely prepared these invoices of 3rd parties pertaining to medical implants in a systematic manner. The emails gathered during investigation further established that these invoices of 3rd parties were prepared subsequent to the date of payment of monies to these 3rd parties. The books of accounts of the RHL and its bank statements established that a total amount of Rs. 76.03 Crore of RHL had been transferred as implant expenses against which fake billings were created by RHL itself. The books of accounts of RHL and emails established that these monies were paid to 71 different accounts/entities between FY 2013-14 to FY 2015-16. Investigation established that these accounts were operated by accommodation entry operators, who masquerade the source and destination of funds by transferring entries through a web of parties. Investigation established that applicant between FY 2013-14 to FY 2015-16 was in-charge of the day-to-day affairs of RHL. He was a signing and approving authority for disbursements made against expenditure in RHL. He was also one of the authorized signatories to the Bank Accounts of RHL through which payments to the 71 accounts/ entities were made. It was on his directions that bogus expenses, siphoning off Rs. 76.03 Crore were recorded in the Books of RHL.

D. Fourth Instance: The books of accounts of RHL established that, a total of Rs. 9.61 Crore were brought in as share capital by the promoters and a total of Rs. 168.38

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Crore were brought into the company through 21 Companies (Layer -1) controlled by the promoters, including the applicant, of RHL during the FYs 2004-05 to 2014-15, whereas 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. These 21 companies were incorporated by the promoters, including the applicant, of RHL with the fraudulent intention of using these companies as vehicles to increase their share capital in RHL by siphoning off funds from RHL, which was also self-admitted before the income tax settlement commission. Further, the 21 Layer-1 Companies were controlled by the promoters by placing employees as dummy directors on their board and who had no active control over these companies and the shares of these 21 Layer-1 Companies were held by 266 Layer-2 Companies. The employees of these Layer-1 Companies have stated under oath that they were either coerced into lending their names as directors or had taken up the directorship in these companies to safeguard their employment. The applicant was the brain behind the transfer of shares of the Layer- 1 companies held by Layer-2 companies to his and his co-promoter's family members. These fraudulently acquired shares were sold to VPS at a cost of Rs. 10.2.85 Cr, thus deriving unlawful gain from the sale of these ill-gotten shares. It is submitted that while directors/promoters of a company are entrusted with the duty of acting in good faith in order to promote the objects of the company for the benefit of its members as a whole including minority shareholders and lenders(bankers), he had in the instant case, fraudulently conducted the business of the company only to increase their shareholding in RHL fraudulently and that too by siphoning of funds from RHL.

E. Fifth Instance: Investigation established that RHL and Rockland Hotels Limited (RHOL) were having same promoters, directors and signatories including Prabhat Kumar Srivastava/applicant during the FY 2008-09 to FY

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2014-15. RHOL had received share capital from 18 of the 21 layer-1 companies between FY 2008-09 to FY 2013- 14 amounting to Rs. 14. 52 Crore. Investigation established that Rs.1.16 Crore brought into RHOL as share capital was sourced from the fund of RHL. It is established that RHL had made payments to SCPL &, RSH Meditech and these monies, with the help of accommodation entry operators, had been transferred to RHL, thus establishing siphoning of funds of RHL.

F. Sixth Instance: Investigation established that in 2008, the International Finance Corporation ('IFC') (World Bank Group) invested Rs. 40 crores in RHL. On 22.03.2016, Prabhat Kumar Srivastava/applicant signed a Letter of Intent (LOI) with VPS Health Care Limited ('VPS'), to sell 100% equity shares of RHL to it, at that time the applicant was not holding all the shares. The shares of IFC were purchased by the promoters only on 27.06.2016 at a cost of Rs.11 Crores. Prabhat Kumar Srivastava/applicant chose not to inform IFC of the deal with VPS and entered a separate deal with IFC for Rs. 11 Crore to purchase its shares in RHL, so that they could obtain undue benefit from the sale at the expense of the minority shareholder (IFC). VPS has transferred Rs. 19.5 crores to escrow account held by Prabhat Kumar Srivastava/applicant, Rishi Kumar Srivastava & Mala Srivastava and thereafter Rs.11 Crore was paid to IFC. These shares were, thereafter, sold within 2 days to VPS for a price of Rs. 47.45 per share which translated to a total amount of Rs. 19.15 Crore. In this regard it is to be noted that the share sale agreement dated 27.06.2016 between IFC and Mala Srivastava had stated unequivocally that the purchaser was not purchasing the same for resale. **Thus the aforesaid facts established that the applicant was having full knowledge of sale of share of RHL to VPS, 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**

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abuse of position committed by the directors of the company (Prabhat Kumar Srivastava) with intent to deceive, to gain undue advantage from, or to injure the interests of, its shareholders.

G. Seventh Instance: Investigation established that Prabhat Kumar Srivastava/ **applicant** made false/ deceptive statement before the financial institution/ Union bank of India (UBI), Federal Bank, Bank of India, Oriental bank of Commerce with UBI as the lead Bank and induced them to enter into agreement with RHL to provide it credit facilities from FY 2008-09 to FY 2014-15. He had submitted false financial statements to the lending banks between FY 2008-09 to FY 2014-15 to avail credit facilities. It was on basis of the false financials of the RHL that the credit facility was given to it from time to time. Investigation established that at every stage of disbursement of loans, the promoters of RHL were required to bring in their share of contribution as equity. However as established during investigation majority of share capital and premium infusion is through 21 Layer-1 paper-based companies, source of which can be traced back to expenses made by RHL for construction of building/purchase of medical equipment. Thus, instead of bringing in their own capital the promoters of RHL including the applicant had siphoned of the funds of RHL and brought the same back as share capital and had used the financial statements showing such addition in share capital for obtaining further credit facilities from the banks. **The applicant as the promoter director and signatory to the balance sheet between FY 2004-05 to FY 2014-15 and the Managing Director of RHL from 01.03.2010 onwards had orchestrated and overseen the addition of fake debtors "Doctor Referred Patients" that were shown as part of trade receivable to banks, on the strength of which banks have provided working capital loans to RHL. Thus, investigation established that Prabhat Kumar Srivastava/applicant, had fraudulently**

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induced banks and financial institutions to extend term loans to RHL.

H. Falsification of Books: Further, investigation established that financials of the RHL & RHOL were not depicting true and fair picture of their affairs of these companies and the applicant was a signatory to the financial statements, despite having complete knowledge that the financial statements were false, in the sense that the assets (Building and Medical Equipment) recognized were inflated, expenses in Profit and Loss account were bogus etc.”

5. The petitioner in response to the written submissions of the SFIO specifically in relation to the transactions detailed in paragraph 4 hereinabove has submitted as under:-

“Allegation A: Applicant, in conspiracy with Aditya Kr Bhandari, Rishi Kumar Srivastava (Charge Sheet/ Complaint filed without Arrest), allegedly siphoned off funds of RHL to the tune of Rs.13.21 Cr belonging to RHL, the applicant has committed an offence u/s 447 and 448 of the Companies Act, 2013.

Applicants Reply: After obtaining this amount on loan from Bank, RHL paid the same to MCD for sanction of Additional Constructible Area/ FAR for Qutab Institutional Area Hospital as RHL was occupying the Hospital on Licensee Basis from Far Trust, however, when MCD refunded this amount, the same was received by FARC Trust as the said Trust was the Landowner/ Lessee of DDA. FARC transferred the amount back to RHL through one of its Trustees A5/ Rishi Kr Srivastava and the same has been ‘DECLARED’ in the Balance Sheet of FARC Trust of FY 2014-15. When VPS purchased RHL, since the said amount was standing as Director Loan, VPS paid the said amount to RHL and then RHL paid the said amount to Rishi Kumar Srivastava in order to discharge Director’s Loan so

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standing in the name of Rishi Srivastava. In this regard, SFIO has also failed to consider that, in case the said sum was not paid to Rishi Kumar Srivastava as Director Loan even then the same would have reached the Srivastava Family/ Rishi Srivastava as being part of Sale Consideration for Sale of Shares of RHL to VPS as the total consideration to be paid by VPS for purchase of 100% Shares of RHL to Srivastava Family included this amount of Directors Loan. Hence there is no wrongful gain to the Srivastava Family. Ultimately, it also an admitted fact that the said sum of Rs.13.22 Cr was repaid by RHL to the Bank when VPS purchased RHL and neither is VPS nor is any Bank deceived/aggrieved by the same. The SFIO has also not considered that in case Rishi Kumar Srivastava wanted to siphon-off the said sum he would not have transferred the said sum to RHL at the first place.

Allegation B: *In order to “deceive” the users of the Financial Statements by inflating the Sale/ Patient Figures for obtaining loans, a category of patients called "Doctor Referred Patients" (DRP) were allegedly recorded by IT Team of RHL on instructions of Prabhat Kr Srivastava and CFO Nikhil Sharma (Charge Sheet filed without Arrest) and since these patients were allegedly nonexistent, the applicant has committed an offence u/s 36 (c) R/w 447 and 448 of the Companies Act, 2013.*

Applicants Reply: *Not even a single user of the Financial Statements nor any Bank has raised any allegation of having been "Deceived". Further, it is the admitted case of the SFIO that a total payment of Rs.145.59 Cr has been received by RHL (page No.95 of the IO Report) as against DRP Sales and therefore Prima Facie it cannot be stated that DRP Sale was bogus as RHL has received money and not lost money.*

Allegation C: *For recording the Medical Treatment of the above said alleged Non Existent category of Patients the applicant along with Aditya Kr. Bhandari & Nikhil Sharma (Charge Sheet filed without Arrest) allegedly directed the*

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preparation of false implant bills go the tune of Rs.76.03 Cr of RHL and therefore such amount has been allegedly Siphoned-Off from RHL and Entry Operators have stated that the said amount has been paid back in Cash to the accused persons and therefore the applicant has committed an offence u/s 447 and 448 of the Companies Act, 2013.

Applicants Reply: *Payments to Vendors (who have been alleged to be Entry Operators) were only made through Banks and not in cash. The allegation that the Entry Operators returned Cash to the accused persons does not stand on its legs as there is no proof of cash transactions such as “Source”/ “Cash Receipt” on record. The Hon’ble Delhi High Court in Bai App No.434/2020 titled Pradeep Sherawat Vs. State has granted Anticipatory Bail as no proof of cash such as “Source and/ or Cash Receipt” was available. MOST IMPORTANTLY, even if the allegations of SFIO are considered to be gospel truth, it is reiterated that as against alleged Siphoned-Off amount of 76.03 Cr, a sum of Rs.145.59 Cr has already been collected by RHL in the above said Instance of alleged Non Existent Doctor Referred Patients Sale, hence the question of their being an intention to Siphon-Off does not arise at the first place.*

Allegation D, E, G & H: *Bank landed funds were allegedly siphoned off from RHL through bogus expenses/ bills and thereafter deposited back in RHL as Share Capital by the Group Companies under the ultimate control of the Srivastava Family for increasing their Share Value and showcasing inflated financial strength to the Banks in order to obtain further Loans and hence, the applicant is liable u/s 36 (c) R/w 447 and 448 of the Companies Act 2013.*

Applicants Reply: *Majority Shares of RHL belonged to Srivastava Family at the first instance and they were free to deal with the same. The only 3 Parties that had the locus to object to the sale purchase/ transfer of the shares were Minority Share Holder i.e. International Financial Corporation (IFC), Banks or subsequent purchaser of Shares i.e. VPS. However, none of them have raised any*

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objection/ complaint till date. Hence prima facie, the question of violation of Section 36(c), 447 or 448 does not arise as Banks funds have been paid back in full.

Allegation F: *Minority Shares of RHL owned by IFC were purchased back by Mala Srivastava (Charge Sheeted Without Arrest) on 27.06.2016 without informing IFC about the underlying deal with VPS. In case IFC would have sold its shares to VPS directly, IFC could have realized more money.*

Applicant's Reply: *Shares were purchased back from IFC on 27.06.2016 and till date there is no complaint/ case by IFC. In any case, Transactions between Mala Srivastava and IFC is a bilateral transaction between Share Holders and the company i.e. RHL is not even a party to the same, hence, the question of committing fraud on RHL does not arise.*

In this regard the Hon'ble Delhi High Court while granting bail to co-accused Aditya Kumar Bhandari vide Order dated 14.05.2020 has also clearly stated that:-

"Para 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....".

6. The petitioner has submitted further that RHL was established in 2004 and being led by Srivastava Family as its Directors and

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Majority Share Holders, RHL availed Bank loans to the tune of 430 Cr approximately, that in 2016, the minority Share Holding of RHL which was owned by International Finance Corporation (IFC) were purchased by Mala Srivastava and thereafter 100 % Shares of RHL were sold to VPS Healthcare; that as a part of consideration purchasing the 100% Shares of RHL, after taking over RHL, during January, 2017, the Srivastava Family paid the entire loans of RHL out of their sales consideration from 100% shares of RHL which were obtained by RHL during the tenure of Srivastava Family and discharged the guarantees of the Srivastava Family; that thereafter various disputes arose and VPS Healthcare by themselves and through its Auditor filed a complaint before the ROC in respect to the manner in which the affairs of RHL were managed by Srivastava Family in December 2017, pursuant to which vide order dated 31.05.2018 MCA directed SFIO to investigate the matter and that no other Shareholder/ Creditor/ Debtor of RHL has filed any Complaint till date and that it might be noted that other than VPS healthcare, there was no other aggrieved party / complainant in the present case and that not even a single Bank has filed a single complaint till date and that the Auditor

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who has filed the complaint with the ROC in December 2019, was also the auditor of RHL for FY 2015-16 but he opted to remain silent and not even a single observation was made by him in the Financial Statement of FY 2015-16 or to any authority; that vide Award dated 01.03.2019 passed by the Arbitral Tribunal comprising of the Ex-C.J.I of India HMJ T.S. Thakur and HMJ Aftab Alam (former Judge of the Hon'ble Supreme Court of India), all disputes between the new management of RHL/ VPS Healthcare and the Old Promoters/ Srivastava Family then led by the Applicant were settled in finality and that the VPS Healthcare, being the only aggrieved party also withdrew all its Complaints from ROC/ MCA way back vide Letters dated 28.03.2019; that the Applicant joined investigation as and when directed by the Respondent SFIO and never evaded even a single summon and that since the date of commencement of investigation, till date, there has not been a single incident showing any interference of the applicant with any witness / evidence / investigation; that the applicant has been granted interim bail on Medical Grounds and its extensions on seven different occasions; but that, the applicant has never jumped the terms of Bail; that the chargesheet/complaint was

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filed way back on 31.01.2020 and investigation stands completed; that the passport of the applicant is already deposited with the respondent and that the respondent has been unable to demonstrate why and for which purpose the custody of the applicant was/is required and hence, it is submitted on behalf of the applicant that no useful purpose will be served by keeping the applicant behind bars. It is further submitted on behalf of the petitioner that the co-accused namely Aditya Kumar Bhandari has been granted regular bail by the Co-ordinate Bench of this Court in Bail Appln. No.639/2020 vide order dated 14.05.2020; that the trial is at the stage of summoning of the accused persons listed for the date 27.05.2021 and considering that there are 46 witnesses that are to be examined and the trial will take a long time, the applicant be released on bail.

7. *Inter alia* the petitioner submits that the medical document in relation to his ailments established that he is a sick/infirm person suffering from Major medical ailments i.e. Type 2 — Diabetes Mellitus, Hypertension, Coronary Heart Disease, ‘Severe’ Non Proliferative Diabetic Retinopathy (NPDR), Hypothyroidism, Benign Prostate Hyperplasia (BPH), derailment of LFT Parameters and that,

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his urine flow is also stated to be insufficient. It is further submitted that the applicant suffers from attacks of benign paroxysmal positional vertigo and has developed a problem in walking properly and has disk bulge at L3, L4 and L5 S.1 which are ailments of such irreversible nature that the same require continuous follow-ups and treatment and lapse of treatment could be fatal to the life of the applicant and the factum of the applicant being highly co-morbid has also not been denied by the SFIO. The applicant thus, submits that he is a sick/ infirm person and therefore falls within the proviso to Section 212(6) of the Companies Act, 2013 which is a proviso enabling the Court to grant bail to the applicant without applying the twin conditions of bail under Section 212(6) of the Companies Act, 2013 and it is contended on behalf of the applicant that thus, the only test applicable to him, would only be the Tripod Test i.e. whether the applicant is a flight risk, whether he has or will tamper with any evidence and/or influence with any witness and whether or not the investigation stands completed.

8. Reliance is also sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court of India in "*P*

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Chidambaram vs CBI” 2019 SCC Online SC 1380, wherein it has been observed to the effect:-

“31. It is to be pointed out that the respondent - CBI has filed remand applications seeking remand of the appellant on various dates viz. 22.08.2019, 26.08.2019, 30.08.2019, 02.09.2019, 05.09.2019 and 19.09.2019 etc. In these applications, there were no allegations that the appellant was trying to influence the witnesses and that any material witnesses (accused) have been approached not to disclose information about the appellant and his son. In the absence of any contemporaneous materials, no weight could be attached to the allegation that the appellant has been influencing the witnesses by approaching the witnesses. The conclusion of the learned Single Judge “...that it cannot be ruled out that the petitioner will not influence the witnesses directly or indirectly” is not substantiated by any materials and is only a generalized apprehension and appears to be speculative. Mere averments that the appellant approached the witnesses and the assertion that the appellant would further pressurize the witnesses, without any material basis cannot be the reason to deny regular bail to the appellant; more so, when the appellant has been in custody for nearly two months, co-operated with the investigating agency and the charge sheet is also filed.

32. The appellant is not a “flight risk” and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from

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21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail.”

9. It is submitted on behalf of the applicant that he is neither a flight risk nor is there any allegation against him of tampering any evidence and that the investigation in the matter is complete and the charge sheet has already been filed and thus, he be granted regular bail.

10. It is further submitted on behalf of the applicant/petitioner that the order dated 14.05.2020 granting regular bail to the co-accused Aditya Kumar Bhandari takes into account the factum that there was no public money involved and all bank loans stood fully paid back and that the bankers did not file any complaint and no loss had been caused to any financial institution or Central Government, which factors apply even qua the present applicant/petitioner.

11. A contention was raised on behalf of the SFIO that in terms of Section 212(6) of the Companies Act, 2013, wherein it has been legislated to the effect:-

“212. Investigation into affairs of Company by Serious Fraud Investigation Office.—

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(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.*
- (7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail., ”*

no person accused of any offence covered under Section 447 of the Companies Act, can be released on bail without giving an opportunity to the public prosecutor to oppose the application for such release and where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not

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guilty of such offence and that he is not likely to commit any offence whilst on bail. It was thus, submitted on behalf of the SFIO that the provisions of Section 212(6)(ii) of the Companies Act, 2013 are mandatory in nature and that in the facts and circumstances of the instant case, the applicant is not entitled to be released on bail and that orders under Sections 439 of the Cr.P.C., 1973 as sought by the petitioner cannot be granted without reference to the provisions of Section 212(6) and Section 212(7) of the Companies Act, 2013 without recording a written finding on the required level of satisfaction of the Court that there are reasonable grounds for believing that the petitioner is not guilty of the offence alleged to have been committed by him and that the petitioner is not likely to commit any offence whilst on bail.

12. Section 212(7) of the Companies Act, 2013 reads to the effect:-

“212. Investigation into affairs of Company by Serious Fraud Investigation Office.—

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(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal

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Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

13. It is further submitted on behalf of the SFIO that the applicant is an accused against whom offences under Sections 447, 36 r/w/s 447/448 r/w/s 447 have been invoked separately for distinct fraudulent transactions wherein he is allegedly involved and thus the satisfaction required by Section 212(6) (ii) of the Companies Act, 2013 as required to be recorded is qua each of the said separate transactions before grant of bail to the applicant. It is further submitted on behalf of the SFIO that the grounds raised by the applicant i.e. settlement with the new management/VPS, no loss to banks, no complaint by banks, withdrawal of resolution by VPS seeking investigation, are not the relevant considerations to be considered while deciding the bail application under the Companies Act, 2013 and that rather the applicant can be granted relief of bail only after complying with the conditions laid down u/s 212(6) of the Act.

14. It is further submitted on behalf of the SFIO placing reliance on the verdict of the Hon'ble Supreme Court in ***“Y.S. Jagan Mohan Reddy v. CBI” (2013) 7 SCC 439***, with specific reference to observations in paragraphs 34 & 35 which read to the effect:-

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"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 a 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."

that the applicant being involved in an economic offence affecting the economy of a country as a whole and posing a serious threat to the financial health of the country, ought not to be released on bail. It has been further submitted on behalf of the SFIO that grave immense irreversible damage has been caused to the economy of the country and public interest by the applicant.

15. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in **"State of M.P. v. Kajad"** (2001) 7 SCC 673 to submit that in circumstances similar to the Companies Act, 2013 where there are non obstante clauses prescribing that no bail ought to be granted except for reasons detailed by the statute, the

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negation of bail is the rule and its grant an exception and that a liberal approach in the matter of bail under the said enactment i.e. the NDPS Act, 1985 and consequentially likewise qua the offence punishable under Section 448 of the Companies Act, 2013 is wholly uncalled for. Reliance was also placed on behalf of the SFIO on the observations of the Hon'ble Supreme Court in the said case, which read to the effect:-

*“A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. **Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1).** For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. **Liberal approach in the matter of bail under the Act is uncalled for**”*

16. Likewise, the SFIO places reliance on the verdict of the Hon'ble Supreme Court in “***Bijando Singh v. Md. Ibocha***” (2004) 10 SCC 151 in relation to the aspect of grant of bail under the NDPS Act, 1985 despite the provisions of Section 37 of the NDPS Act, 1985 which read to the effect:-

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“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity] 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]”,

with reliance having been placed on behalf of the SFIO on the observations in paragraph 3 of the said verdict, which read to the effect:-

“3. Being aggrieved by the order of the Special Court (ND&PS), releasing the accused on bail, the appellant moved the Guwahati High Court against the said order on the ground that the order granting bail is contrary to the provisions of law and the appropriate authority never noticed the provisions of Section 37 of the NDPS Act. The High Court, however, being of the opinion that if the attendance of the accused is secured by means of bail bonds, then he is entitled to be released on bail. The

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High Court, thus, in our opinion, did not consider the provisions of Section 37 of the NDPS Act. In this view of the matter, the order releasing the accused on bail by the Special Judge as well as the order of the High Court in revision are quashed. The accused should be taken into custody forthwith. After the accused is taken into custody, the trial may commence".

17. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in ***"State of Kerala etc. v. Rajesh etc."*** (2020 SCC OnLine SC 81) with specific reference to observations therein, which read to the effect:-

"2. The appellant-prosecution has challenged the discretion exercised by the learned Single Judge of the High Court of Kerala in granting post-arrest bail to the accused respondents without noticing the mandate of Section 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter being referred to as "NDPS Act") under the order impugned dated 10th May, 2019 followed with 12th June, 2019 rejecting the application filed by the appellant under Section 482 of the Code of Criminal Procedure (hereinafter being referred to as "CrPC") for recalling the order of post-arrest bail dated 10th May, 2019.

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18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite.

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20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

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26. In the result, the appeals are allowed and the impugned order passed by the High Court releasing the respondents on bail is hereby set aside. Bail bonds of the accused

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respondents stand cancelled and they are directed to be taken into custody. The trial Court is directed to proceed and expedite the trial."

18. Reliance was also placed on behalf of the SFIO on the verdicts in ***“Union of India Vs. Rattan Mallik @ Habul-(2009) 2 SCC 624,*** ***“Narcotics Control Bureau v. Kishan Lal (1991) 1 SCC 705,*** ***“Customs New Delhi v. Ahmadalieva Nodira” 2004 3 SCC 549,*** ***“Union of India v. Shiv Shanker Kesari” (2007) 7 SCC 798,*** ***“Satpal Singh v. State of Punjab” (2018) 13 SCC 813,*** ***“Union of India v. Niyazuddin” (2018) 13 SCC 738.*** Reliance was also placed on behalf of the SFIO on the verdict in ***“Serious Fraud Investigation Office v. Nittin Johari & Anr.” SCC Online SC 1178*** to reiterate its contention that Section 212(6) of the Companies Act, 2013 is mandatory in nature and as in the facts and circumstances of the instant case which have been explained in detail, the applicant is not entitled to be released on bail as there is no reasonable ground for believing that he has not committed any fraud in view of ample evidence available on record.

19. The observations of the Hon’ble Supreme Court in ***“Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46*** with

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specific observations in paragraph 21 thereof which reads to the effect:-

“.... 21. The consistent view taken by this Hon'ble Court is that 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 a serious threat to the financial health of the country....”,

have essentially to be taken into account before considering the prayer made by the applicant seeking the grant of regular bail.

20. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in ***“State of Gujarat v. Mohanlal Jitamalji Porwal and others”*** (1987) 2 SCC 364 on specific observations in paragraph 5 thereof, which reads to the effect:-

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

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21. The SFIO has further submitted that this Court has taken the similar view in *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*.

ANALYSIS

22. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the charges in the matter are yet to be framed in CT No.149/2020 by the learned Special Court.

23. It is essential to observe that vide a verdict dated 24.12.2019 in Bail Appln. No.2154/2019 titled as “*Gaurav Kumar Vs. Serious Fraud Investigation Office*” vide observations in paragraphs 50 & 51, it has been observed to the effect:-

“50. Thus without any observations on the merits or demerits of the aspect of framing of charges or otherwise and the trial, if any, in the circumstances, in as much as, it has been laid down by the Hon’ble Supreme Court in “P. Chidambaram Vs. Central Bureau of Investigation” 2019 (14)SCALE 157 that the basic jurisprudence relating to bail remains the same, in as much as the grant of bail is the rule and refusal is the exception, so as to ensure that the accused has the opportunity to securing a fair trial and that even though, economic offences fall under the category of a grave offence

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and the said circumstance is to be considered at the time of consideration of an application for bail, even if the allegation is one of a grave economic offence, it is not a rule that bail should be denied in every case since there is no bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so.

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

and vide verdict dated 20.12.2019 in Bail Appln. No.1706/2019 titled as **“Sachin Jain Vs. Serious Fraud Investigation Office”** vide observations in paragraphs 31 & 32 thereof, it has been observed to the effect:-

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

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

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

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

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

24. On behalf of the SFIO, it was however submitted that the transactions in which the petitioner is involved which have resulted into a fraud that has been committed by the petitioner relating to an economic offence, negate the grant of bail to the applicant.

25. Reliance was also placed on behalf of the SFIO on the order dated 14.05.2020 of the Co-ordinate Bench of this Court in Bail Appln. No.639/2020 whereby the co-accused namely Aditya Kumar Bhandari was granted bail with specific observations in paragraph 43 thereof, which reads to the effect:-

“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.”

to submit to the effect that it has already been observed thereby that the applicant and his family were the main beneficiary of all seven instances of fraud.

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26. Another contention raised on behalf of the SFIO was to the effect that the applicant cannot seek the grant of regular bail under Section 439 of the Cr.P.C., 1973 in view of order dated 08.04.2020 in Bail Application No.418/2020 of this Court read with order dated 02.07.2020 of this Court in similar bail application whereby vide paragraph 5 of the order dated 02.07.2020, it was observed to the effect:-

“5. Considering the medical condition of the petitioner and extra-ordinary circumstances that at the moment asking the petitioner to surrender and then grant him interim bail with effect from 14th July, 2020 would not be in the interest of the health condition of the petitioner, this Court deems it fit to extend the interim bail granted to the petitioner for a further period of four weeks on the same terms and conditions as imposed vide order dated 8th April, 2020 in BAIL APPLN. 418/2020.”

6. It is however clarified that in case the petitioner is not administered injection in the eye on 15th July, 2020 and on 17th July, 2020 his catheter angiography is not performed, petitioner will surrender to custody on 19th July, 2020.”

whereby, vide order date 02.07.2020, the applicant had been allowed to be released on bail in terms of the order dated 08.04.2020 on medical grounds with it having been observed to the effect vide order dated 02.07.2020 that in case the petitioner was not administered injection in the eye on 15th July, 2020 and on 17th July, 2020 his

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catheter angiography was not performed, the petitioner would surrender to custody on 19th July, 2020 and it was only vide order dated 16.07.2020 in view of the orders in W.P.(CrI.)3037/2020 that interim bail granted to the applicant was extended in CRL.M.A.9213/2020 till 31.08.2020 on the same terms and conditions as imposed vide order dated 08.04.2020 in Bail Appl. No.418/2020 and that in as much as W.P.(CrI.)3037/2020 was disposed of vide order dated 20.10.2020 directing surrender of all prisoners on interim bails in a phased manner and no further extension having been granted with it having been directed that the litigants were at liberty to move the Courts concerned for extension of interim orders which could be considered by the Courts concerned uninfluenced by the order passed dated 20.10.2020 in W.P.(CrI.)3037/2020 by the Hon'ble Full Bench of this Court and coupled with the factum that vide order dated 01.03.2021 in a Petition for Special Leave to Appeal (C) No.13021/2020 whereby there has been no further extension of interim bail was granted, which order has been partly modified vide order dated 15.03.2021 of the Hon'ble Supreme Court whereby a schedule for surrender has been laid down on the date stipulated in the

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said order. Another contention raised on behalf of the SFIO was that in as much as, the applicant is on interim bail unless he surrenders, the provisions of Section 439 of the Cr.P.C., 1973 cannot be brought into play qua which, reliance is sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Apex Court in "**Sundeep Kumar Bafna Vs State**" [(2014) 16 SCC623] wherein it has been laid down that once the prayer for surrender is accepted, the Appellant before the Court would come into the custody of the Court within the contemplation of Section 439 Cr.P.C.

27. Taking the said aspects into account, this Court is of the considered view that merely because the petitioner is on interim bail, it cannot be held that the petitioner's prayer seeking the grant of regular bail cannot even be considered till he surrenders for the very prayer made by the applicant seeking the grant of regular bail implicitly in the facts and circumstances of the instant case takes into account that the applicant was granted interim bail after he had been arrested on 02.12.2019 with he having been granted interim bail on 09.01.2021 for a period of four weeks after which he surrendered on 08.02.2020 and then filed the Bail Appl.418/2020 in which he was granted interim bail

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vide order dated 08.04.2020 for a period of six weeks extended thereafter vide order dated 14.05.2020 on medical grounds extended thereafter vide orders dated 19.05.2020 and 16.07.2020 and thereafter in terms of the orders of the Hon'ble Full Bench of this Court in W.P.(Crl.)3037/2020 and thereafter extended vide order dated 15.03.2021 in the instant case till the pronouncement of orders which were directed to be listed for orders for the date 24.03.2021 i.e. today. Thus, it is held that in the facts and circumstances of the instant case, the petition filed by the petitioner seeking release on regular bail in terms of Section 439 of the Cr.P.C., 1973 is maintainable.

28. As regards the contention raised on behalf of the petitioner that he falls within the ambit of being a sick person or infirm person and thus, in terms of Section 212(6) and the proviso thereto Section 212(6) of the Companies Act, 2013, he may be released on bail without consideration of the twin considerations that he is not guilty of such offence and that he is not likely to commit any offence whilst on bail as requisite under Section 212(6)(ii) of the Companies Act, 2013, it is essential to observe that the applicant had submitted that he had to undergo a coronary heart angiography test in the first week of April,

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2021 as per the document issued by the Human Care Medical Trust which document was directed to be verified by the SFIO and furthermore, a report was also called vide order dated 09.03.2021 from the jail authorities where the applicant was lodged as to whether the said test was requisite and whether it could be conducted at the jail premises. The SFIO had also been called upon to submit a verification report in relation to the physical condition of the applicant.

29. The SFIO verified the document issued by the Human Care Medical Trust, Dwarka with a questionnaire dated 10.03.2021 to the effect:-

“No.SFIO/INV/RHL/838/2018/1/21796/2021 dated 10/03/2021

To
HUMAN CARE MEDICAL TRUST
PALAM VIHAR, SECTOR-6
DWARKA,
NEW DELHI-110075

Subject: Seeking Medical Opinion on the orders of the HHC, Delhi.

Sir,

Shri Prabhat Kumar Srivastava has approached the Hon’ble High Court, Delhi seeking bail by filing Bail Application No.463/2021 and the Hon’ble High Court while hearing of his bail petition has directed Serious Fraud Investigation Office to verify the medical condition of Prabhat Kumar Srivastava as to his assertion that he is scheduled to undergo Coronary Heart Angiography during the first week of April, 2021. In support of this he has submitted an Outpatient summary dated 06.02.2021 from your Hospital (Copy Enclosed). In this regard you are required to state

A) Whether the document produced by Shri Prabhat Kumar Srivastava is true

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- B) What is the physical condition of Shri Prabhat Kumar Srivastava and what is the medical advice given, if any
- C) Whether Shri Prabhat Kumar Srivastava is required to undergo Coronary Heart Angiography procedure and what is the time period within which this procedure has to be conducted.
- D) Would such procedure require hospitalization, if so specify the number of days?
- E) Whether the procedure is scheduled on the first week of April, 2021.”,

to which a response received from the Human Care Medical Trust,

Dwarka which reads to the effect:-

“
Dated 12/03/2021
To
M.Arun Kumar
Deputy Director, SFIO
NEW DELHI.

In ref. to your letter dated 10/03/2021
No.SFIO/INV/RHL/838/2018/1/21796/2021

This is point wise reply as follow.

- (A) *The document True he visited Hospital on 06/02/2021.*
- (B) *He is a know case of Diabetes, Hypertension, Dyslipidemia, Coronary Artery disease, Post angiography and start march, 2017 at Venketeshwar Hospital, Now presented Angina pectoris NYHA cl2 and Dyspnoea on exertion NYHA outside showed Triple vessel disease significant LAD lesion and patient previous start his LV EF is normal. He is getting treatment for eye disease from AIIMS. Angiography was planned in view of CT coronary angio which showed significant LAD lesion however patient wants coronary angio on later date, in first week of April after eye treatment.*
- (C) *Yes ne need coronary Angiography in view of symptoms and significant disease shown in CT coronary Angio. However second opinion from cardiologist may be taken. Angiography takes one day but further intervention/CABG depending on procedure.*
- (D) *Yes Angiography requires Hospitalization Angiography on day, other procedure may take time depending on procedure required and kidney function test etc.*

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(E) It is planned in first week of April on patients choice, he wants eye treatment first.”

30. The report that was received from the Medical Officer, In-charge, Central Jail-07, Tihar, New Delhi pursuant to order dated 09.03.2021 was to the effect:-

“D.No./SMO/CENTRAL JAIL-07/2021/539 dated 12/03/2021

To,
The Superintendent
Central Jail-07
Tihar, New Delhi-110064

(COURT MATTER)

Sub:- REGARDING REPORT OF INMATE PRABHAT KUMAR SRIVASTAVA S/O SARJU PRASAD SRIVASTAVA SOUGHT BY HON’BLE COURT OF MS. JUSTICE ANU MALHOTRA, HIGH COURT OF DELHI, NEW DELHI.

In reference to the subject cited above, it is hereby submitted that the aforesaid inmate PRABHAT KUMAR SRIVASTAVA (60 years old Male) S/o SARJU PRASAD SRIVASTAVA was previously lodged in CENTRAL JAIL-07, Tihar.

In reference to the court order dated 09/03/2021, Where in the HON’BLE HIGH COURT wants to know two issues/queries:-

- 1. Angiography test can be conducted at jail premise?*
- 2. Under custody, facilities are available to take the accused to appropriate government hospital for angiography test, if so medically advised?*

Clarification- *In regards, to the two queries, My opinion is an under that the inmate patient Prabhat Kumar Srivastava was a known case of Uncontrolled type-2 Diabetes Mellitus, Essential Hypertension, C.A.D. (coronary atery diseases) (heart diseases), history of P.T.C.A. done in 2017, Hypothyroidism with severe non proliferative diabetes retinopathy with diabetes macular edema. Inmate patient was admitted in M.I.Room of Central Jail no.07, Dispensary from 27/02/2020 to 23/03/2020 in critical condition. While at Central jail no.07, He was repeatedly sent to Safdarjung Hospital for follow up treatment of C.A.D. (Coronary Artery Diseases) (Heart diseases) and AIIMS (R.P.CENTER) for monoclonal antibodies intravitreal injection (Eye) treatment of Severe Non Proliferative Diabetes Retinopathy with Diabetes Macular Edema. Considering the irreversible nature of ailments and multiple co-morbidities of the patient, he requires regular*

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*medical attention and further treatment for Coronary Artery Disease (CAD) such as **Catheter angiography which is not possible within the central jail no.07 dispensary and central jail hospital.***

*In case of emergency related to Cardiology and Ophthalmology (Eye) ailments, the patient does not reach super specialty within the time limits (60 mins) then **permanent disability of eyes and possibility of paralysis or even death cannot be ruled out.***

31. It was thus contended on behalf of the petitioner that the petitioner fell within the ambit of a sick person or infirm person and on the other hand it was contended on behalf of the SFIO by the learned ASG that it was the petitioner who had chosen to be a sick person or infirm person by choosing to seek his angiography to be conducted in the first week of April after his eye treatment.

32. It was also submitted on behalf of the SFIO that the factum that the applicant was being provided treatment from the jail dispensary also from 27.02.2020 to 23.03.2020 at the Safdarjung Hospital at AIIMS (R.P. CENTER) for monoclonal antibodies intravitreal injection (Eye) treatment of Severe Non Proliferative Diabetes Retinopathy with Diabetes Macular Edema indicated that the petitioner could be provided adequate treatment whilst being lodged at the jail itself, in as much as he could be sent from the jail to the concerned hospitals i.e. Safdarjung Hospital and AIIMS Hospital for his catheter angiography as well as for his intravitreal injections in the

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eye. It was submitted on behalf of the SFIO that the observations in the report of the Medical Officer, In-charge, Central Jail-07, Dispensary to the effect:-

“In case of emergency related to *Cardiology and Ophthalmology (Eye) ailments, the patient does not reach super specialty within the time limits (60 mins) then permanent disability of eyes and possibility of paralysis or even death cannot be ruled out.*”

are only general in nature and would apply to any inmate of the jail.

CONCLUSION

33. On a consideration of the submissions that have been made on behalf of either side, this Court is of the considered view that the applicant cannot be considered to be a person so sick to fall within the ambit of grant of regular bail till disposal of the proceedings in the complaint case for all that he needs is the intravitreal injections and the angiography which he himself has chosen to be rescheduled after his eye injections and which angiography even as per the report of the Human Care Medical Trust would require hospitalization **for a day**, though the other procedure would take time depending upon the procedure required and the kidney function test.

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34. Thus, though the Court does not consider it appropriate to grant the bail to the applicant in terms of Section 212(6) and the proviso thereto in the category of being a sick person or infirm person, nevertheless, in as much as, the applicant does require medical care despite the factum that it is the applicant who has chosen to get his angiography done in the month of April, 2021 conducted after his eye treatment, it is considered appropriate to extend the period of interim bail granted to the applicant vide order dated 08.04.2020 for a period of 60 days at the maximum whereupon he is directed to surrender without default.

35. As regards the contentions that have been raised on behalf of the petitioner that the requirement of Section 212(6)(b) of the Companies Act, 2013 is not required to be fulfilled in the instant case in as much as there has been no loss of any kind caused to the public exchequer and public interest, the factum that Section 447 of the Companies Act, 2013 itself through explanation (i) thereof defines ‘**fraud**’ to the effect:-

“447. Punishment for fraud.—

.....

.....

Explanation.—For the purposes of this section—

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(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;”,

thus indicating to the effect that in relation to the affairs of a company or any body corporate whether or not there is any wrongful gain or wrongful loss to the applicant himself or to any person, the invocation of fraud in terms of Section 447 of the Companies Act, 2013 comes into play once there is an act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive or to gain undue advantage from or to injure the interests of the company or its shareholders or its creditors or any other person. Qua the same, the observations of this Court in Bail Appln. No.639/2020 qua the co-accused Aditya Kumar Bhandari since released on bail cannot be overlooked wherein it has been expressly observed to the effect that the main beneficiary of all the seven instances of fraud is Prabhat Kumar Srivastava i.e. the petitioner herein and his family.

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36. The status report that has been submitted by the SFIO specifically alleges incidence of Rs.13.17 Crores transferred under the signatures of the petitioner to the personal savings bank account of the co-accused Rishi Kumar Srivastava which amount was transferred from the account of Rishi Kumar Srivastava as an unsecured loan to RHL which was gradually being paid by the RHL to Rishi Kumar Srivastava in the year 2014-15, 2015-16 & 2016-17 which are stated to be actually funds of RHL itself with the allegations against the petitioner that by transferring the amounts from FARC to Rishi Kumar Srivastava and that further transferring it to the RHL as unsecured loan, a false facade was created to show that the amount had been transferred through Rishi Kumar Srivastava to RHL as disclosed in the FARC financial statements whereas RHL was burdened to an additional liability of Rs.13.17 Crores which amount otherwise belonged to RHL, coupled with the allegations against the petitioner that email communications gathered at the time of investigation established that the petitioner had supervised direct manipulation of the patient information pertaining to “Doctor Referred Patients” recorded in the Hospital Information System and that the doctors

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whose names were recorded in the said Hospital Information System stated on oath that such quantum or nature of surgeries conducted on “Doctor Referred Patients” were false and fake and the DRP transactions were fictitious in nature and was one of the means for forging books of accounts, coupled with the factum that as per the investigation conducted by the SFIO, the applicant is alleged to have prepared false implant bills with other co-accused persons and thus apart from other submissions that have been made against the applicant by the SFIO, the facts and circumstances of the instant case are not similar to the facts and circumstances of the cases relied upon on behalf of the applicant in ***Sachin Jain Vs. Serious Fraud Investigation Office*** in Bail Appl. No.1706/2019, in as much as, in that case there was no document placed on the record by the SFIO to show any direct benefit having been received by that accused by any alleged fraud in any mode and furthermore, the facts alleged in the instant case are not in *pari materia* with the facts and circumstances of the case ***Gaurav Kumar Vs. Serious Fraud Investigation Officer*** in Bail Appl. No.2154/2019 where allegations in relation to the applicability of Section 448 of the Companies Act, 2013 had been

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contended to be wholly doubtful in the absence of any signed document having been submitted by that applicant/accused, in as much as, no documents had been filed by the said accused Gaurav Kumar with any statutory authorities and there were only some draft documents prepared from the statutory records available which were downloaded from the site of MCA.

37. Thus, in the facts and circumstances of the instant case, it is not considered appropriate to grant bail to the applicant. However, as observed hereinabove, the interim bail granted to the applicant vide order dated 08.04.2020 is extended for a further period of 60 days on the same terms and conditions as imposed vide order dated 08.04.2020 in Bail Appl. No.418/2020 and extended thereafter as per record adverted to hereinabove, with further conditions imposed to the effect that the application under no circumstances shall leave the country and shall appear before the learned Trial Court as and when directed by the learned Trial Court during this period of interim bail.

38. The application is disposed of accordingly.

ANU MALHOTRA, J.

MARCH 25, 2021
'neha chopra'

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