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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 02.06.2021

Pronounced on: 14.06.2021

+ **CRL.M.C. 796/2021 & CRL.M.As. 3935/2021, 7302/2021 & 7329/2021**

RELIGARE FINVEST LTD. Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Sandeep D. Das,
Mr. Siddharth Sharma, Mr. Harsh
Gautam, Ms. Aishwarya Singh &
Mr. Shashwat Sarin, Advocates

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for respondent No.1/State
Mr. Siddharth Aggarwal, Senior
Advocate with Mr. Shri Singh,
Mr. Abhishek Singh, Ms. Padma
Venkataraman, Mr. Abhinav Sekhri &
Ms. Arshiya Ghose, Advocates for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner, a non-banking financial company, is aggrieved by the order dated 03.03.2021 passed by the learned trial court, vide which respondent

No.2- *Shivender Mohan Singh*, has been granted bail in FIR No. 50/2019, under Sections 409/420/120-B IPC, registered at Economic Offences Wing (EOW), New Delhi. The aforesaid order dated 03.03.2021 passed by the learned trial court is under challenge in this petition.

2. As per the final report dated 06.01.2020, the facts of the present case are that complainant-company- Religare Finvest Limited (RFL) is registered with the Reserve Bank of India (RBI) and is licensed to undertake the business of financial services as a non-deposit taking/lending Non-Banking Financial Company (NBFC). It operates as a small and medium enterprise (SME) financing focused NBFC and is in the business of extending SME working capital loans, secure SME business expansion, loans, short term trade finance and other loans to various entities. The complainant-company is classified as a 'systematically important NBFC' by the RBI and is a subsidiary of Religare Enterprises Limited (REL), which is a public company, listed on stock exchanges.

3. Pertinently, respondent No.2- *Shivender Mohan Singh*, the accused in FIR in question, was the Promoter along with the entities controlled by him and with persons acting in concert with him, owned the majority shareholding of REL till June 2017 and was as such classified as the

Promoter of REL. Effectively, he continued to control REL till February, 2018, i.e. till the time he remained on the Board of Directors of REL and thereby, since the complainant-company was a subsidiary of REL, he also controlled the complainant-company i.e. RFL. Thus, he allegedly played a significant role in the management and conduct of affairs of the complainant-company and exercised deep and pervasive control over its management.

4. In February, 2018, respondent No.2-Shivender Mohan Singh and his brother, Malvinder Mohan Singh, who was also the Promoter, lost complete control over REL and its subsidiaries, including the complainant-company, pursuant to invocation of the shares pledged by them and other promoter entities with various banks. After their exit from the Board of Directors of REL, a fresh Board of Directors was constituted to manage the affairs of REL and its subsidiaries.

5. Upon taking over the reins, the new Board and management realized that REL and its subsidiaries were in terrible financial condition and they sought to ascertain the reason(s) for such bad financial position. Internal inquiries showed that the poor financial condition of the complainant-company was to a large extent on account of wilful defaults on significant unsecured loans, defined for internal purposes as the Corporate Loan Book

(CLB), by borrower entities either related, controlled or associated with the Promoters. All of them had been provided the subject loans from the complainant-company on a non-arms' length basis, in violation of corporate governance norms and in contravention of policies and prudential behaviour expected of a NBFC registered with the RBI. Further, the new Management of REL became aware of the investigations carried out by Serious Fraud Investigation Office (SFIO) and Securities and Exchange Board of India (SEBI) into various related party and non-arms' length transactions, involving REL and its subsidiaries, including the complainant-company.

6. From the review of the record, it came to be noted that RBI (being the regulator for NBFCs) had from time to time expressed concerns regarding the CLB portfolio of the complainant-company, but these concerns were not addressed by the Promoters. RBI had specifically raised concerns about the Promoters using their influence for disbursement of high value unsecured loans to entities with no financial standing (but controlled or associated with the Promoters) and breach of corporate governance norms.

7. The complainant-company believed that the illegal transactions were caused by respondent No.2 in connivance with his brother- Malvinder Mohan Singh so as to siphon away the funds of the company before they

ceased to be in control over the complainant-company. In this background, a complaint was made by petitioner/company to the EOW, which resulted in the FIR in question against the accused persons, including respondent No.2 herein for allegedly misappropriating, siphoning off and diverting through a labyrinth of financial transactions, the funds of petitioner- Religare Finvest Limited (RFL).

8. During the course of investigation, it revealed that high amount of shareholder's funds of REL have been invested in RFL. In this manner, the diversion of funds from RFL caused a direct loss to the shareholders of REL for the reason REL owned 85.64% equity share capital in RFL, the management of RFL is under the control of REL and REL is accountable for the actions taken by the management of RFL.

9. From further investigation, it was found that the Corporate Loan Book (CLB) was created since beginning of RFL business for the purpose of utilizing funds at the disposal of Promoters. This was done through loan product unsecured and also through investment route in a systematic manner. The *modus operandi* had been inter-corporate loans to various companies under control of Promoters (directly or indirectly) through which the funds were routed to the Promoter/ Promoter owned companies being ultimate

beneficiaries. Since, the due amounts were funded through new loans and also there were continuous requirement of additional funds, the CLB loan book gradually increased over the period of time. This process of CLB continued since 2008. The loans were sanctioned to multiple companies within same group ignoring the cross-holding and common Directors within the companies to whom the loans were sanctioned. Thus, the Corporate Loan Policy was not followed by the sanctioning authority.

10. The Corporate Loan Policy, which formed the basis of CLB portfolio, did not specify the criteria for lending i.e. financial status of the borrower. Any loan being sanctioned by the company should be based on the purpose of the loan and repayment capacity of the borrower. The loan policy was deficient as it did not mandate calling of financial details of borrowers to ascertain their eligibility/repayment for loan, thus, making the loan sanction highly subjective. Such policies also reflect on the lack of corporate governance in the vital segment of company's business.

11. However, during the course of investigation, it also transpired that the accused Shivinder Mohan Singh and his brother - Malvinder Mohan Singh came on Board in 2016 and thereafter, through Corporate Loan Book which is running since 2008, the money was diverted to their companies i.e. RHC

Holding Pvt. Ltd. and Ranchem Private Limited, which were completely owned by both of them, where it has been used to square off the liabilities and the loan disbursed to these entities were never returned.

12. The stand of respondent No.2- Shivender Mohan Singh in his disclosure statement was that he is not aware regarding the operations of REL and RFL, as he retired from active life and went to Radha Swami Satsang, Beas. However, from the records as well as Board Minutes and various emails exchange, it was allegedly revealed that he actively participated in the affairs of the REL and RFL after his appointment as Non-Executive Director & Vice Chairman. It is also a matter of record that Shivinder Mohan Singh became the Director of the shell entities through which money has been disbursed and used as vehicle for rotation of money and was ultimately misappropriated/siphoned off through RHC Holding Pvt. Limited or Ranchem Private Limited.

13. The charge sheet in this case was filed on 06.01.2020. Subsequently on 15.01.2020, supplementary charge sheet was filed.

14. At the hearing, learned senior counsel for petitioner-RFL submitted that the FIR in question pertains to serious economic offence of high magnitude where huge public money to the tune of approximately Rs.2397

crores as principal amount has been siphoned away at the behest of respondent No.2 in collusion with his brother- Malvinder Mohan Singh and other co-accused, for their personal benefit. Learned senior counsel emphasized that offence under Section 409 IPC has been invoked against both of them, which is punishable with imprisonment up to life.

15. Learned senior counsel for petitioner submitted that the learned trial court while granting bail to respondent No.2 vide impugned order dated 03.03.2021 has not taken the directions issued by this Court vide order dated 09.02.2021 in its right perspective.

16. He next submitted that on the very same day of passing the impugned order, the learned trial court has dismissed bail application of co-accused Rajender Prasad Aggarwal on the grounds of gravity and seriousness of the offence, but has erroneously allowed bail application of respondent No.2. Further submitted that bail application of another co-accused Malvinder Mohan Singh was also dismissed by the trial court on 01.04.2021 while considering the seriousness of gravity of offence.

17. The impugned order has also been assailed on the ground that the conduct and behaviour of respondent No.2 itself disentitles him to the benefit of bail, as the order dated 25.09.2020 dismissing his first bail application

speaks for itself. In the said order, the learned trial court has taken note of the fact that respondent No.2 had smuggled a mobile phone while in custody of the Enforcement Directorate. It was submitted that in the impugned order, learned trial court has not taken note of the facts enumerated in the said order dated 25.09.2020.

18. Learned senior counsel also pointed out that in the charge sheet field it is noted that after respondent No.2 came on Board as the Director of petitioner-company, corporate loans/ money was diverted to RHC Holdings Pvt. Ltd., which is owned and controlled by respondent No. 2 along with his brother Malvinder Mohan Singh, as they both held 50% shareholding each in the said company.

19. Learned senior counsel submitted that chargesheet also records that the Directors of shell/dummy companies were old acquaintances of Promoters, i.e. respondent No.2 and his brother -Malvinder Mohan Singh and followers of Radha Swami Satsang and these associated Directors were drawing salary at the end of the financial year for signing the documents of the company. The charge sheet further records that even the Directors of shell entities namely, Rajveer Singh, Deepak Poswal, Gurpreet Singh Sodhi, Premlata and Pramod Kumar Ahuja, in their disclosure statements have

admitted to the aforesaid effect. It is asserted that the board minutes and emails bely the claim of respondent No. 2 that he had retired from active life and went to Radha Swami Satsang, Beas.

20. Further submitted that learned Sessions Judge has consciously not taken into consideration the merits of the case and the order releasing respondent No.2 on bail is contrary to the law laid down by the Hon'ble Supreme Court in various decisions.

21. In support of his submissions, learned senior counsel for petitioner relied upon decisions in *State of Bihar Vs. Amit Kumar* AIR 2017 SC 2487; *Central Bureau of Investigation Vs. Vijay Sai Reddy* AIR 2013 SC 2216; *Mahipal Vs. Rajesh Kumar @ Polia and Anr.* (2020) 2 SCC 118; *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr.* AIR 2011 SC 274; *Neeru Yadav Vs. State of Uttar Pradesh & Anr.* (2014) 16 SCC 508; *Ram Govind Upadhyay Vs. Sudarshan Singh and Ors.* AIR 2002 SC 1475; *Ranjit Singh Vs. State of M.P. and Ors.* (2013) 16 SCC 797; *Kalyan Chandra Sarkar Vs. Rajesh Ranjan and Ors.* (2004) 7 SCC 528; *Nittin Johari Vs. Serious Fraud Investigation Office* 2020 SCC Online Del 394 and *Rajesh Ranjan Yadav Vs. CBI* (2007) 1 SCC 70.

22. Lastly, learned senior counsel submitted that petitioner has prayed for setting aside of impugned order dated 03.03.2021 and resultantly, cancellation of bail granted to respondent No.2 is sought, as the impugned order is perverse and has been passed by non-application of mind.

23. On the other hand, learned senior counsel appearing for respondent No.2 supported the impugned order and submitted that the trial court was well cognizant of the merits of the case, which have been noted at length in the impugned order and so, it does not suffer from any illegality or perversity.

24. Learned senior counsel submitted that the learned trial court has correctly taken note of the fact that once supplementary charge sheet has been filed and no further investigation is required qua respondent No.2, his detention is not necessary and he qualifies the triple test of bail.

25. Learned senior counsel also submitted that in the charge sheet filed, no specific role has been attributed to respondent No.2, as he was not the Director of petitioner-company during the relevant period and also was never in direct control of Corporate Loan Book. Hence, respondent No.2 cannot be vicariously held liable under the IPC for the alleged act by the other co-accused.

26. It was next urged on behalf of respondent No.2 that he has already spent more than 18 months in custody and investigation qua him is complete and no plausible reason is forthcoming to keep him behind bars and also if he continues to be behind bars, he will not be able to prepare his defence in this case and other cases.

27. Learned senior counsel further submitted that co-accused Anil Saxena, Maninder Singh and Narender Kumar Ghoushal have already been granted regular bail and other accused Sunil Godwani, Kavi Arora and Rajender Prasad Aggarwal have been granted interim bail from time to time and so, petitioner also deserves benefit of bail.

28. In support of case of respondent No.2, reliance was placed upon decisions in *Sanjay Chandra Vs. CBI* 2012 (1) SCC 40; *Manoranjana Sinha Vs. CBI* (2017) 5 SCC 218; *Dataram Singh Vs. State of Uttar Pradesh & Anr.* (2018) 3 SCC 22; *Vinod Bhandari Vs. State of Madhya Pradesh* (2015) 11 SCC 502; *Dipak Shubhashchandra Mehta Vs. CBI & Anr.* (2012) 4 SCC 134; *Union of India Vs. KA Najeeb* (2021) 3 SCC 713; *State of Kerala Vs. Raneef* (2011) 1 SCC 784; *Myakala Dharamrajam & Ors. Vs. State of Telangana & Anr.* (2020) 2 SCC 743; *Directorate of Enforcement Vs. Gagan Dhawan* 2019 SCC Online Del 9521; *Prabhakar*

Tewari Vs. State of Uttar Pradesh & Anr. (2020 11 SCC 648 and ***P. Chidambaram Vs. Enforcement Directorate*** (2020) 13 SCC 791.

29. Lastly, it was submitted that respondent/State has failed to show the necessity for continued incarceration of respondent No.2 and since the trial is not likely to conclude in near future, the present petition deserves to be dismissed.

30. The submissions advanced by learned senior counsel appearing from both the sides were heard at length and I have gone through the impugned order, decisions relied upon and other material placed on record.

31. During the course of arguments, learned senior counsel for petitioner asserted that respondents have mistakenly considered the present petition as only for cancellation of bail granted to respondent No.2, whereas in the present petition, setting aside of order dated 03.03.2021 passed by the learned trial court is sought.

32. Pertinently, the prayer made in this petition is two folds; (a) setting aside of the impugned order (b) consequently cancellation of bail granted to respondent No.2. Hence, this Court is not just required to test the correctness of the impugned order, but also to dwell upon the reasons as to why the relief

of bail, already granted to respondent No.2, is required to be interfered with by this Court.

33. On this aspect, the pertinent observations of the Hon'ble Supreme Court in ***Mahipal Vs. Rajesh Kumar*** (2020) 2 SCC 118 are as under:-

“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. , the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held:

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application

for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.....”

34. In the light of afore-noted decision of Hon’ble Supreme Court, this Court has to find out whether the cardinal principles of law to grant bail, were borne in mind of the trial court while passing the impugned order.

35. What should weigh in the mind of court at the time of granting or refusing bail, has been succinctly described by the Hon’ble Supreme Court in **Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli)&**

Anr. 2021 SCC OnLine SC 335, whereby deciding bunch of five appeals arising from orders of the High Court of Gujarat granting bail under Section 439 of the Code of Criminal Procedure 1973 to six persons, who were implicated in five homicidal deaths, the Hon'ble Supreme Court observed as under:-

“43. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice.....”

36. Keeping in mind the afore-noted observations of Hon'ble Supreme Court in ***Mahipal (Supra)*** and ***Ramesh Bhavan Rathod (Supra)***, this Court has to scrutinize the impugned order and consider the rival contentions raised on behalf of the parties.

37. For a ready reference, the observations made by the trial court in the impugned order dated 03.03.2021, are as under:-

“14. The first question that arises for consideration in this case is that as to whether there is change of circumstances since dismissal of bail application of the applicant/accused on 25.09.2020. The answer to this question is found in the

aforesaid order dated 09.02.2021 passed by Hon'ble High Court of Delhi. In this order passed by Hon'ble High Court, the submissions of the IO was recorded to the effect that chargesheet in this case has already been filed and investigation qua petitioner is complete and no supplementary chargesheet in this case has to be filed qua to the petitioner. Hon'ble High Court observed that it is not in dispute that bail application was filed before the Trial Court before completion of investigation and after filing of chargesheet the right of petitioner has accrued for seeking bail. It is clear from the order dated 09.02.2021 that there is change of circumstances and hence the applicant/accused could have very well moved this application seeking regular bail.

15. It has to be kept in mind that accused/applicant is in custody for the period of one year and four months and applicant/accused cannot be kept in custody for infinite time. Even as per the submissions of the IO made before Hon'ble High Court investigation qua applicant is complete. Therefore, prosecution has to clarify as to why accused should be kept in continued custody. This case will reach at the stage of arguments on charge. It is not in dispute that applicant/ accused is facing litigations in other cases. The applicant/accused can prepare for his defence in all those cases in a better way only if his liberty is restored.

16. A bare perusal of the reply/status report filed by the IO would show that except for last paragraph the entire reply is more or less a reiteration of the chargesheet and the supplementary chargesheet. IO states in the last paragraph of the reply that it is a fraud of large magnitude where public money has been swindled in conspiracy with the officials of the company and promoters. It is further stated that it is quite likely, if accused/applicant be released on bail, he could influence the witnesses and tamper with the evidence.

17. The possibility of tampering with the evidence exists in every case till the length of the trial. If the stand of the IO

canvassed in the reply is accepted then any accused cannot be released till the conclusion of the trial as there is always a possibility of tampering with the evidence. I find substance in the contention of Ld. counsel for applicant/accused that merits of the case has receded in the background and after filing of the supplementary chargesheet the merits of the case was discussed in detail by this court vide order dated 25.09.2020 and thereafter order dated 09.02.2021 of Hon'ble High Court was passed. The applicant/accused is not at flight risk as admittedly LOC has been opened against him. The entire evidence is documentary in nature which cannot be tampered with. The prosecution or the complainant has not shown or produced any material before the court to show that applicant/accused if released on bail will tamper with the evidence.”

38. The foremost plea put-forth by petitioner is that the trial court while granting bail to respondent No.2 vide impugned order dated 03.03.2021, has not taken into consideration the directions issued by this Court vide order dated 09.02.2021 in its right perspective.

39. On this aspect, this Court finds that while declining bail to respondent No.2, the learned trial court had taken detailed note of the factual matrix and seriousness of the present case in the order dated 25.09.2020 and at that time investigation qua petitioner was in progress. Thereafter, respondent No.2 approached this Court for bail. At that stage, this Court was informed by the prosecution that investigation qua him was complete and no supplementary charge sheet was to be filed. Thus, there were change of circumstances and

therefore, this Court vide order dated 09.02.2021, relegated respondent No.2 to the trial court to seek regular bail. Further, it was categorically directed that the learned trial court shall consider the said application on merits and in accordance with law.

40. Accordingly, respondent No.2 preferred an application for bail before the trial court, which was allowed vide impugned order dated 03.03.2021. A bare perusal thereof shows that the learned trial court had heard the parties at length, noted their contentions and thereafter, held that accused is in custody for one year and four months and he cannot be kept in custody for infinite time; that investigation is complete and prosecution has to clarify why accused should be kept in continued custody and also that tampering of evidence exists in every case till the length of the trial.

41. The principles which ought to be kept in mind while granting bail, have been enumerated in *State of Bihar Vs. Amit Kumar* (2017) 13 SCC 751 whereunder in an appeal against the order of High Court of Judicature at Patna, the accused who was charge sheeted for the offences under Sections 409/465/467//468/471 and other offences under the IPC, as well as Prevention of Corruption Act, was granted bail while observing as under:-

“11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsel, it should be

noted that there is no straitjacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although "bail is the rule and jail is an exception" is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail."

42. No doubt at the time of grant of bail, the court is not required to go into the merits of the prosecution case and meticulous observations on the material placed on record are not required to be made, but the court is expected to judiciously apply its mind as to whether a *prima facie* case against the accused is made out and his continued detention in judicial custody would serve any purpose. The Court has also to bear in mind the gravity and seriousness of the offence alleged and the punishment prescribed in respect thereof. In the light of aforesaid, this Court does not find substance in the findings returned by the court below in the present case.

43. I am conscious that by invoking the appellate jurisdiction, this Court is required to justify the reasons for arriving at a conclusion as to on what premise the trial court order granting bail has to be inhibited. In a case where

the High Court declined to interfere in an order passed by the trial court granting bail to the accused, the Hon'ble Supreme Court in ***Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat and Others*** 2019 SCC OnLine SC 945, observed as under:-

“10. It is well settled that the consideration applicable for cancellation of bail and consideration for challenging the order of grant of bail on the ground of arbitrary exercise of discretion are different. While considering the application for cancellation of bail, the Court ordinarily looks for some supervening circumstances like; tampering of evidence either during investigation or during trial, threatening of witness, the accused is likely to abscond and the trial of the case getting delayed on that count etc. Whereas, in an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail. The appellant has challenged the very grant of bail on the ground of arbitrary exercise of discretion ignoring the relevant materials to be considered in the application for bail. Since the High Court proceeded under the footing as if the appellant had filed the application only for cancellation for bail for which, the consideration is different, the impugned order is liable to be set aside and the matter is remitted to the High Court for consideration of the matter afresh.”

44. The above noted apposite observations of the Hon'ble Supreme Court make it abundantly clear that how an order shackles the foundation of the prosecution case, have to be noted and for this purpose, the *prima facie* role contributed by the accused in the commission of alleged crime has to be

seen.

45. In the impugned order, the learned trial court has recorded reasons for granting bail to respondent No. 2, but has failed to consider that the present FIR case pertains to a serious economic offence of high magnitude, where large amount of approximately Rs.2400 crores including interest has been siphoned off at the behest of respondent No.2 and his brother Malvinder Mohan Singh by diverting it through various financial transactions, by granting loan to the shell companies, of whom they were the Directors or Promoters or beneficiary in interest. There are allegations that respondent No.2 in connivance with other co-accused created the Corporate Loan Book (CLB) for the purpose of utilizing the funds of the company to their personal benefits and the Corporate Loan Policy was not at all followed by the sanctioning authority. Moreover, the learned trial court has ignored the fact that respondent No.2 along with other accused persons has been charge-sheeted for the offences under Sections 409/420/120B IPC. The punishment prescribed for the offence under Section 409 IPC is imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

46. In this way, the learned trial court has failed to take note of the fact

that offences alleged are serious in nature and rather than taking into account the factors that respondent No.2 is behind bars for more than one year and that investigation is complete, however, should have borne in mind the peculiarity of fraud and conspiracy involved in this case and refrained itself from passing a blanket order releasing respondent No.2 on bail. No doubt on the premise that investigation is complete and accused is behind bars for some time and that trial shall take time, bail can be granted but only when the offences alleged are of lesser magnitude. However, the trial court by rendering such an opinion in the present case, lost sight of the enormity of the offence alleged against respondent No.2.

47. In the case in hand, the Religare Enterprises Ltd. (REL) is a public listed company and Core Investment Company (CIC) which has made investments in its subsidiary companies, of which Religare Finvest Ltd. (RFL) is the one. Respondent No.2 having absolute control over REL and its subsidiary companies, put RFL in poor financial condition by way of disbursing the loans to the entities having no financial standing. It has been revealed that high amount of shareholder's funds of REL have been invested in RFL. In this manner, the diversion of funds from RFL caused a direct loss to the shareholders of REL.

48. There are allegedly 19 entities involved to which loans were extended and these loans were never returned to the complainant-company and were misappropriated/ siphoned off. It also emerged that these loans were given on the recommendation of promoters as the owners of the borrowing entities had good relations with the promoters. The credit approvals in few of these loan accounts explicitly mentioned that loans were granted on the basis of recommendation of the Promoters. Majority of the loans in this portfolio were unsecured and no documents, except a loan agreement/MOU entered into between RFL and other corporate and also the company was not aware of the end use of these funds.

49. A report was obtained by SEBI with respect to financial management and diversion of funds in Religare Finvest Ltd. Accordingly, a Forensic Auditor was appointed by SEBI and forensic audit was conducted. According to the said report, the utilization of the loans disbursed by RFL (complainant-company) to the tune of Rs.1250 crores, was ultimately done by the company RHC Holding Pvt. Ltd., which belonged to its Promoters - Shivinder Mohan Singh and Malvinder Mohan Singh. A cursory perusal of letter dated 27.01.2017 issued by Reserve Bank of India to the Managing Director of Religare Finvest Ltd. as well as copies of SEBI's orders dated

14.03.2019 and 1.09.2019 strengthens the case of prosecution against respondent No.2 and his brother Malvinder Mohan Singh, who allegedly, in connivance with co-accused Rajendera Prasad Aggarwal, Narender Kumar Ghoushal and Maninder Singh hatched a conspiracy to divert the funds of complainant-company. Hence, the plea put-forth on behalf of respondent No.2 that he cannot be held vicariously liable for the acts of the company, shall be tested during trial.

50. The plea put-forth by respondent No.2 that he had taken retirement from active life and was in Radha Swami Satsang, Beas is controverted by the prosecution alleging that Board Minutes and various emails reveal his active participation in the affairs of the company even after his appointment as Non-Executive Director & Vice Chairman and this assertion of prosecution, casts a doubt in the mind of this Court that if respondent No.2 is released on bail, he may not design a conspiracy to tamper with the evidence or influence the witnesses.

51. So far as the assertion on behalf of petitioner that other co-accused Rajender Prasad Aggarwal has been refused bail by the trial court on the same day of passing the impugned order, however, the same is not subject matter of consideration before this Court but it is relevant to mention here

that while dismissing the bail application of said accused vide order dated 03.03.2021, the same court has observed that *it is clear from the investigation conducted in this case that applicant/accused Rajender Prasad Aggarwal provided a route for siphoning of money to the company of promoters. There may be no gain to him, but through his actions, definite caused wrongful loss to the complainant-RFL. It is fraud of large magnitude where public money has been swindled in conspiracy with officials of the company and promoters.*

52. It is not disputed that after passing the impugned order dated 03.03.2021, considering the seriousness and gravity of the offence, learned court of Sessions dismissed the bail application of Malvinder Mohan Singh vide order dated 01.04.2021, who has been ascribed a similar role in the present case. Thus, in my considered opinion the court below had no ground to grant bail to the respondent No.2 vide its impugned order dated 03.03.2021, as the role of respondent No.2 is not less than above named accused by any stretch of imagination. However, the impugned order dated 03.03.2021 has been stayed by this Court vide order dated 09.03.2021.

53. As far as plea of respondent No.2 that other co-accused have been granted bail in this FIR case, this Court finds that while granting or refusing

bail, the role attributed to each accused has to be seen independently and reasoning for one may not be binding on the other.

54. The parameters, which govern the cancellation of bail, as reiterated by Apex Court in ***Kanwar Singh Meena Vs. State of Rajasthan*** (2012) 12 SCC

180, are as under: -

“While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider,

this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

55. In the present case, nature and gravity of accusation against respondent No.2 is serious. The grant of bail in a case involving cheating, criminal breach of interest 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 on the progress of the case but also on the trust of the criminal justice system that people repose. Thus, the parameters set out by the Hon'ble Supreme Court for cancellation of bail in ***Kanwar Singh Meena (Supra)***, have been met out.

56. Keeping in mind the factual matrix of the present case as also the pertinent observations of the Hon'ble Supreme Court in various decisions, I have no hesitation to hold that the impugned order suffers from serious infirmities, resulting in miscarriage of justice. Moreover, continued detention of respondent No.2 in this FIR case is necessary not only to unearth the conspiracy hatched by him, but also to derive out/ trace the siphoned money which he has credited for his personal benefit.

57. In view of afore-going narration, the impugned order dated 03.03.2021 passed by the learned trial court is set aside. Consequentially, the bail

granted to respondent No.2 in this FIR case by the trial court is also set aside.

58. With aforesaid observations, the present petition is allowed and is accordingly disposed of. Pending applications are disposed of as infructuous.

59. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information.

(SURESH KUMAR KAIT)
JUDGE

JUNE 14, 2021

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