IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2022

PRONOUNCED ON : .09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.19767 of 2022

K.E. Devarajan ... Petitioner

Vs.

The Senior Assistant Director,
Serious Frauds Investigation Office (SFIO),
Chennai-600001. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 Cr.P.C r/w. 212(6) of Companies Act, seeking to enlarge the petitioner on bail in connection with F.No.3/61/2018/CL-II(SR) on the file of the respondent.

For Petitioner : Mr.V.Karthick, Senior Counsel
for M/s.R.Meenakshi Devi

For Respondent : Mr.B.Mohan,
Special Public Prosecutor
for SFIA

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 05.08.2022 for the alleged offences punishable under Sections 212 (1)(c) of the Companies Act, 2013 in connection with F.No.3/61/2018/CL-II(SR) pending on the file of the respondent, seeks bail.

2. The case of the prosecution is that the Surana Group of Companies (SGC), consisting of three flagship companies namely Surana Industries Limited (SIL), Surana Corporation Limited (SCL) & Surana Power Limited (SPL). They had bank borrowings which had been declared as non-performing asset and presently undergoing liquidation under the IBC. The liquidator has admitted a total liability of Rs.10,233 Crores. The petitioner being a Chartered Accountant from the Financial Year 2010 onwards, was incharge of the accounts of Surana Corporation Limited (SCL). He was made Assistant Vice President (Accounts & Finance) in the year 2010-2012 and was made Vice President (Accounts & Finance) in the year 2013-2014. He was appointed as a Director of

Surana Corporation Limited on 07.03.2015 and continued in the post till the winding of the company on 05.10.2018, he was in charge and a key managerial person and he had signed the financial statements of the companies. It is alleged that between the Financial Year 2014-2017, a total of 674 Kgs of Gold was removed as wastage without any actual manufacturing activity by the said companies. He connived with the other accused persons to siphon off funds and gold. The petitioner being the Board of Director of the company, had approved the falsified account statements for the Financial Year 2015-2017. He had implicated a fraudulent scheme of transferring funds from the company to a puppet company named M/s.Sayso Exim Private Limited to the tune of Rs.108.37 Crores, under the pretext of purchase of gold. It is further alleged that he had connived with other accused persons to falsely induce banks to lend monies. Thereby, the accused persons siphoned off Rs.8.02 Crores as refund of the share application money. The petitioner made a false representation to banks during Corporate Debt Restructuring of companies regarding the recoverability of debts due to the said companies. During the Financial Year 2015-2018, he along with other accused persons had written off non-perishable steel stock to an extent of

Rs.191.31 Crores. He had also indulged in the process and activity connected to the siphoning of funds borrowed from banks and had committed fraud as defined under Section 447 of the Companies Act, 2013.

3. Mr.V.Karthick, learned Senior Counsel for the petitioner would submit that the petitioner was appointed as an Additional Director of one of the companies vide Board Resolution dated 03-07-2015 and subsequently he was confirmed as a Non-Executive Director of Surana Corporation Limited. As a Non-Executive Director, the petitioner had no role in the day to day affairs of the company and no remuneration was paid to him and he was paid salary only from Surana Industries Limited. In fact, he had resigned from the Board in the month of July, 2017 and the same was duly communicated to the Ministry of Corporate Affairs through FORM DIR-11 & 12. The alleged irregularities committed by the company if any, was either before the petitioner joined the Board or after his resignation. Therefore, the petitioner had no role to play whatsoever the affairs of Surana Corporation Limited. The alleged write off of 674 Kgs of gold wastage by Surana Corporation Limited in the Financial Year

2014-2015, when the petitioner was not even appointed to the Board of the Company and when he was appointed as an Additional Director in the month of July, 2015, the accounts had already been adopted by the Board of Directors. The raid was conducted by the officials of the Directorate of Revenue Intelligence on 13.10.2014 in the residential premises and business premises owned by the Managing Director of Surana Corporation Limited and the gold weighing 5242.730 grams were recovered, and other lockers were also opened by the officials again on 31.03.2015, the officials had opened two lockers and nothing incriminating was recovered.

4. The learned Senior Counsel would further submit that the gold which was sold by Surana Corporation Company to M/s.Thirubhuvan Enterprises Private Limited and M/s.Sayso Exim Private Limited, since there was a dispute regarding the purity of the gold, purity was tested and upon revaluation, the value of the price of gold was written off as wastage. As regards the transfer of funds to the puppet company is baseless as the said company called M/s.Sayso Exim Private Limited was

registered customer of State Trading Corporation for Bullion Purchases. An amount of Rs.8.02 Crores relating to promoters contribution was brought as share application money and the same was to be converted as share capital only after obtaining approval from the consortium of bankers and other statutory authorities. Therefore, the petitioner was no way connected with the writing off non-perishable steel stock of Surana Industries Limited and the same was done based on the valuation of the available steel stock and at the insistence of the statutory auditors.

5. He would further submit that the petitioner has to satisfy twin conditions imposed under Section 212(6) of the Companies Act for the relief of granting bail. The petitioner is not guilty of the offences alleged against him and how the entire allegations leveled against him are imaginary and tainted with malafides. In fact, the petitioner had appeared before the respondent and his statements have been recorded contemplated under Section 217(4) of the Companies Act, 2013 as many as five times prior to his arrest and thereafter, he was arrest and remanded to judicial custody.

6. Mr.B.Mohan, learned Special Public Prosecutor appearing for SFIA would submit that the petitioner has been associated with Surana GOC since Financial Year 2010-11 onwards. The petitioner was appointed and functioned as in-charge of accounts of Surana Corporation Limited from Financial Year 2010-11 onwards. He being a qualified chartered accountant had functioned as Assistant Vice President (Accounts & Finance) between 2010-11 to 2011-12 and as Vice President (Accounts & Finance) between 2012-13 to 2013-14. Further he became a Director of Surana Corporation Limited from 07.03.2015 onwards and had continued in the post till 09.10.2017. He has also functioned as Group Chief Accounts Officer of Surana Industries Limited from July 2015 onwards and he was in-charge of finance and was designated as a Key Managerial Person of the said company. He had also signed the financial statements of Surana Industries Limited and Surana Corporation Limited, knowing fully well that they are false and fabricated.

7. During the course of investigation, the respondent found that the management of Surana Industries Limited had manipulated revenue, shown fraudulent trading activity as manufacturing activity and fraudulently rotated funds borrowed from banks to falsely show promoter investment in the said company as share capital, subsequently the bank borrowings were siphoned off by wilful mis-management of the said company. It is revealed that inventories worth about Rs.191.31 Crores were taken out from the books of Surana Industries Limited between Financial Year 2015-16 to 2017-18 by provisioning/writing off the inventories. Further the investigation had revealed that subsequent to take over by the petitioner as Group CAO and the son of the Managing Director as Group CEO, two entities Radha Vyapar (India) Private Limited (RVPL) and Radha Industries Private Limited (RIPL) owe Rs.76.10 Crores & Rs.39.89 Crores respectively to Surana Industries Limited as per the latest audited financial statements for Financial Year 2016-17. The money has remained unrecovered from Radha Group.

8. During the Financial Year 2014-15 to 2016-17, a total of 674 Kgs of Gold was removed from the stock of the company falsely classifying the same as wastage when infact no manufacturing activity in gold was done by Surana Corporation Limited during the relevant period. It is alleged that the petitioner had planned and implemented fraudulent accounting practice of booking gold wastage even without conducting any manufacturing activity and also he connived with the other accused persons to siphon funds and stock gold of Surana Corporation Limited as wastage. He also connived and implemented fraudulent scheme of transferring funds of Surana Corporation Limited to a puppet company named M/s.Sayso Exim Private Limited to the tune of Rs.108.37 Crores, under the pretext of purchase of gold. It is further alleged that he had connived with other accused persons to falsely induce banks to lend monies. Thereby, the accused persons siphoned off Rs.8.02 Crores as refund of the share application money and a false representation was made by the petitioner before banks during Corporate Debt Restructuring of Surana Corporation Limited on the recoverability of debt due to the said company from Puppet entities controlled by Surana GOC, knowing fully well of the non-recoverability of the amounts from such puppet

companies. Hence, he prays for dismissal of the bail petition.

9. On a perusal of the materials available on records, it reveals that the petitioner has signed falsified financial statements in the capacity of Vice President from Financial Year 2012-13 to Financial Year 2014-15 and as director of Surana Corporation Limited for Financial Year 2015-16 & 2016-17. The documents obtained from bankers show that the petitioner sent a letter dated 05.05.2017 seeking one time settlement of all the bank dues from the consortium of banks. Therefore, the petitioner has actively involved in the affairs of the company and signed all the statements.

10. The learned Senior Counsel for the petitioner contended that the write-off gold as wastage was in the Financial Year 2014-15 which is before the petitioner's term of directorship, while the fact is that the gold write-off was over a period of three years i.e. Financial Year 2014-15 to Financial Year 2016-17. The petitioner was in-charge of finance and accounts from the year 2011 onwards. As per Section 447 of Companies

Act, 2013, the fraud in relation to affairs of a company committed by any person or any other person with connivance in any manner, as such it does not require a person to be director alone to be charged under the Section, rather Section 447 of Companies Act applies to any person who is a party to the fraud. Further, the petitioner in the capacity of Vice President (Finance and Accounts) and in the capacity of Director of Surana Corporation Limited was party to fraud.

11. The investigation revealed that during the above period, Surana Corporation Limited was not carrying out any manufacturing of gold ornaments as declared in the Board of Directors reports. The value of gold was falsely recorded as wastage amounts to the tune of Rs.194.81 Crores. The gold was purchased by Surana Corporation Limited, borrowing public funds predominantly from public sector banks, as such Surana Corporation Limited has adjudicated dues to the tune of Rs.3,532 Crores of which Rs.2,729 Crores is owed to banks. Based on the false representation made by the petitioner and other supporting documents, banks had renewed and enhanced the cash credit cum working capital

limits from 300.00 Crores to Rs.1160.00 Crores to Surana Corporation Limited vide the sanction of SBI dated 19.11.2013. Therefore, the allegation as against the petitioner squarely falls under the provisions of Section 212 (6) (ii) of the Companies Act, 2013. The restrictive conditions of bail provided under Section 212 (6) of the Companies Act, 2013 are similar to the provisions provided under several other statutes including NDPS Act (Section 37); TADA Act (Section 20); Maharashtra Control of Organized Crime Act, 1999 (Section 21).

12. The Hon'ble Supreme Court of India in the matter of ***Serious Fraud Investigation Office Vs. Nittin Johari and Another (Crl.A.No.1381 of 2019),*** held as under:-

> *"24. It is pertinent to begin our discussion by referring to the mandatory conditions imposed under Section 212(6)(ii) for the grant of bail in connection with offences under Section 447 of the Companies Act. Sub?clause (ii) of Section 212(6) reads as follows: (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 (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 Although arguments have been advanced touching upon the scope and validity of the above provision, particularly in the aftermath of the decision of this Court in Nikesh Tarachand Shah (supra) pertaining to a similar provision in the PMLA, we do not find it appropriate to make any observations in this regard in light of the pendency of the challenge to the constitutionality of the said provision of the Companies Act before this Court.

26. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the Cr.P.C. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy (supra):

"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 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."

This Court has adopted this position in several decisions, including 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. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

28. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent No. 1 both prior and subsequent to the filing of the Investigation Report and complaint, has attempted to *account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.*

29. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent No. 1, came to the conclusion that the role attributed to him was merely that of colluding with the co?accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra, (2005) 5 SCC 294, which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent No. 1 by observing that bail was justified on the broad probabilities of the case.

30. ....

31. ....

32. ....

33. In light of the foregoing discussion, we are of the view that the High Court has failed to apply its mind to all the *circumstances that were required to be considered while granting bail, particularly in relation to economic offences. Accordingly, the impugned order is hereby set aside.*

34. In the interest of justice, we deem it fit to remand the matter to the High Court to reconsider Bail Application No. 1971/2019 filed by Respondent No.1 in light of the principles governing the grant of bail under Section 439 of the Cr.P.C, while also keeping in mind the scope and effect of the twin mandatory conditions for grant of bail laid down in Section 212(6)(ii) of the Companies Act. Needless to say, Respondent No. 1 shall continue to remain in custody subject to the order of the High Court in the said bail application."

13. In view of the above, 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 serious threat to the financial health of the country. Therefore, there is no reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

14. Therefore, this Court is not inclined to grant bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

.09.2022

Anu

G.K.ILANTHIRAIYAN, J.

Anu

Crl.O.P.No.19767 of 2022

.09.2022