IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2022

PRONOUNCED ON : 11.10.2022

CORAM:

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

Crl.O.P.No.22595 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., 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.N.R.Elango, Senior Counsel
for P.Ramesh Kumar

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

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. It is further submitted that at the time of alleged offence, as per the prosecution, the petitioner was not looking after the company and he only acted as an Auditor and as such, he has nothing to prove with the allegations as alleged by the prosecution. Since he was working as a Non-Executive Director, he was not aware of the day-to-day affairs of the company and he had only verified the accounts based on the documents submitted by the persons who were managing the affairs of the company. However, he would furthermore submit that the petitioner is ready and willing to deposit a reasonable amount as directed by this Court. Hence, he prays to grant bail to the petitioner.

7. 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.

8. 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.

9. 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.

10. This Court is of the considered view the submissions made by the learned Senior Counsel for the petitioner 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. He further submits that only in the event of a person is appointed under Section 203 of the Companies Act, 2013 read with Rule 8 & 8A of the Companies (Appointment and Remuneration of Key Managerial Personnel) Rules, 2014, such person shall be in charge of and supervision of the day-to-day operations of the company. Similarly, under Section 170 of the Companies Act, 2013, the appointment of the petitioner was only registered as a Director and no filing as a Key Managerial Personnel was done within 30 days of such appointment. Therefore, he has never been shown as a Key Managerial Personnel of M/s.Surana Corporation Limited in such Register. It is also submitted that all the other accused persons have released on bail except the founders of the company. The petitioner herein is a Chartered

Accountant by profession and he had done his duty as a Chartered Accountant, without involving himself in any of the physical activities alleged against the company.

11. Considering the facts and circumstances of the case and the period of incarceration suffered by the petitioner from the date of arrest i.e on 05.08.2022, this Court is inclined to grant bail to the petitioner with certain conditions.

12. Accordingly, the petitioner is directed to deposit original title deed, value to the tune of Rs.10,00,00,000/- (Rupees Ten Crores) along with the proper valuation certificate obtained from the authority concerned and on such deposit the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two blood related sureties, each for a like sum to the satisfaction of learned XV Additional Sessions Judge, Special Judge to Deal with Trial of Offences under Companies Act and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police twice daily at 10.30 a.m., and 04.30.p.m., for a period of six weeks and thereafter as and when required for interrogation.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].**

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

11.10.2022

Anu

Copy to:

1. The XV Additional Sessions Judge,
   Special Judge to Deal with Trial of Offences under Companies Act.

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

3. The Superintendent,
   Central Prison,
   Puzhal.

4. The Public Prosecutor,
   Madras High Court.

G.K.ILANTHIRAIYAN, J.

Anu

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