

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-25345-2022 (O&M)
Reserved On: 07.12.2022
Pronounced on: 09.12.2022

Bhagwan Dass Gupta

....Petitioner

Versus

The Serious Fraud Investigation Office

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Anjum Ahmed, Advocate, for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel
for the respondent.

HARNARESH SINGH GILL, J.

The petitioner, by way of the present petitions, seeks regular bail in complaint case No.17 dated 11.06.2021, under Section 448 of the Companies Act, 2013 and Section 628 of the Companies Act, 1956.

Learned counsel for the petitioner would vehemently argue that the petitioner had been a dummy Director; that at no point time, had he been in-charge of the day to day affairs of the Company-SRS Modern Sales; that even in the complaint filed by the SFIO, in para No. 13 of the complaint, it was clearly mentioned that the control and overall management of the SRS Group was with accused Nos. 9 to 15 arraigned in the complaint; that in the very complaint itself, the petitioner is alleged to have committed the offence under Section 448 of the Companies Act and not under Section 447 of the Act; that twin-

stringent conditions stipulated under Section 212(6) of the Companies Act, 2013 would apply to Section 447 of the said Act, of which the petitioner is neither accused nor charged with and that the only offence alleged against the petitioner being Section 448 of the Companies Act, 2013, the petitioner is entitled to the grant of concession of bail.

It is further submitted that the petitioner is accused of having signed the Financial Statements for the year 2010-11; 2011-12; 2013-14 and 2014-15 and that as the amendment in the Companies Act, came into force in the year 2013, therefore, the petitioner cannot be made liable for the alleged signing of the Financial Statements for the years 2010-11 and 2011-12. It is further argued that so far as the said balance sheets are concerned, the offence falls under Section 628 of the Companies Act, 1956 and the same is bailable and as regards the signing of the Financial Statements for the years 2013-14 and 2014-15, the provisions of Section 448 of the Companies Act, 2013 are not attracted.

Learned counsel further contends that the alleged incident took place in the year 2017, whereas the present complaint was registered on 11.06.2021 i.e. after a delay of about four years and that during this period, the petitioner was neither called upon to join the investigation nor any summon was issued to the petitioner, by the investigating agency.

Still further, it is argued that the petitioner is not the beneficiary of any of the transactions and all the Directors,

namely, Kailash Mohan Mehta; Mayank Goyal; Khem Chand; Rajender Kumar Gupta; Praveen Sharma; Lalit Khosla, Dinesh Kumar; Abhishek Goyal, Deepak Garg and Bhagwat Dayal are on interim bail. On these grounds, the counsel for the petitioner would seek the grant of bail to the petitioner.

Per contra, learned Senior Panel Counsel for the respondent, while vehemently opposing the bail petition, contends that in the present case, total eighty eight Companies were involved (consisting of SRS Group and Non-SRS Group), which on the basis of false and fabricated statements, obtained loans from different banks and did not repay the same to the tune of Rs.1596.94 crores. She further contends that there was sufficient material on record to prove that SRS Limited and its various companies were being controlled by Anil Jindal, Bishan Bansal, Nanak Chand Tayal, Sushil Singla and Rajesh Singla, J.K. Garg and P.K.Garg; that the petitioner was/is a Director/Additional Director five companies associated with SRS Group and an amount of Rs.645.86 crore had been diverted from SRS Group of Companies by way of separate/distinct transactions. It is further contended that the investigation report would reveal that the Directors of the non-SRS Companies were mostly employees, known persons or relatives of the controllers of the SRS Group.

Ms. Puneeta Sethi, further contends that earlier this Court had dismissed the bail petitions of Sushil Singla and Rajesh Singla, by detailed orders and this case is not distinguishable from that the said cases. As regards the

submissions made by the learned counsel for the petitioner that as the petitioner is not accused of the offence under Section 447, therefore, the twin conditions laid down in Section 212(6) of the Companies Act, 2013 would not be applicable, the learned Senior Panel Counsel, draws the attention of this Court to the provisions of Section 448(b) of the Companies Act, 2013 to point out that whosoever is accused of the offence under Section 448 of the said Act, would entail punishment under Section 447 of the Act. She further argues that there is no term like Dummy Director in the Companies Act, 2013 and having signed the Financial Statements, the petitioner cannot wriggle out of his criminal liability.

I have heard the learned counsel for the parties.

The petitioner claims himself to be a Dummy Director. However, there is nothing on record to authenticate the said plea. As per the Companies Act, a Director is required to discharge his duties with due diligence ensuring that there is no siphoning off and/or diverting of the funds. Still further having actively participated in the affairs of the Company and having signed the Financial Statements, the petitioner cannot take the plea that him being a dormant Director, no liability can be fastened upon him.

In respect of the contention of the learned counsel for the petitioner that the petitioner is not accused of the offence under Section 447 of the Companies Act, 2013 and hence, the twin-conditions of Section 212(6) would not be applicable to

him, it would be just and relevant to reproduce Section 448 of the Companies Act, 2013 as under:-

“448. Punishment for false statement.- Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any persons makes a statement,-

- (a) Which is false in any material particulars, knowing it to be false; or
- (b) Which omits any material fact, knowing it to be material, he shall be liable under Section 447. (*emphasis supplied*).”

A perusal of sub Section (b) aforesaid would show that the offence under Section 448 would entail the punishment under Section 447 of the Companies Act, 2013.

The economic offences, being against the Society at large, have been strictly dealt with in the recent past. Very recently, the Hon’ble Apex Court in Vijay Mandanlal Choudhary & Ors. Vs. Union of India & Ors. (2022 SCC OnLine SC 929), while considering the constitutional validity and applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2002, has held that money laundering is an offence against the sovereignty and integrity of the country.

Reliance of the petitioner and his seeking parity with the co-accused, earlier granted the concession of bail, is of no help as in the said case, such concession was granted before the judgment of the Hon’ble Supreme Court in Vijay Mandanlal

Choudhary's case (supra). The Hon'ble Supreme Court, in the said judgment, has held as under:-

“129. xxxxxx This portion of the judgment of the Constitution Bench has not been noticed in Nikesh Tarachand Shah. Further, we do not agree with the observations suggestive of that the offence of money-laundering is less heinous offence than the offence of terrorism sought to be tackled under TADA Act or that there is no compelling State interest in tackling offence of money-laundering. The international bodies have been discussing the menace of money-laundering on regular basis for quite some time; and strongly recommended enactment of stringent legislation for prevention of money-laundering and combating with the menace thereof including to prosecute the offenders and for attachment and confiscation of the proceeds of crime having direct impact on the financial systems and sovereignty and integrity of the countries. That concern has been duly noted even in the opening part of the introduction and Statement of Objects and Reasons, for which the 2002 Act came into being. This declaration by the Parliament itself is testimony of compelling necessity to have stringent regime (enactment) for prevention and control of the menace of money-laundering. Be it noted that under Article 38 of the Constitution of India, it is the duty of the State to secure social, economic and political justice and minimize income inequalities. Article 39 of the Constitution mandates the State to prevent concentration of wealth, thus, to realize its socialist goal, it becomes imperative for the State to make such laws, which not only ensure that the unaccounted money is infused back in the economic system of the country, but also prevent any activity which damages the economic fabric of the nation. It cannot be gainsaid that social and economic offences stand on a graver footing as they not only involve an individual direct victim, but harm the society as a whole 47th Law Commission Report. Thus, the Law Commission also in its 47th report recommended an increase in punishment for most of the offences considered therein. Further, the quantum of punishment for money-laundering offence, being only seven years, cannot be the basis to undermine the seriousness and gravity of this offence. The quantum of sentence is a matter of legislative policy. The punishment provided for the offence is certainly one of the principles in deciding the gravity of the offence, however, it cannot be said that it is the sole factor in

deciding the severity of offence as contended by the petitioners. Money-laundering is one of the heinous crimes, which not only affects the social and economic fabric of the nation, but also tends to promote other heinous offences, such as terrorism, offences related to NDPS Act, etc. It is a proven fact that international criminal network that support home grown extremist groups relies on transfer of unaccounted money across nation States Ram Jethmalani & Ors. Vs. Union of India & Ors., (2011) 8 SCC 1, thus, by any stretch of imagination, it cannot be said that there is no compelling State interest in providing stringent conditions of bail for the offence of money-laundering. In Ram Jethmalani & Ors. Vs. Union of India & Ors., (2011) 8 SCC 1, the Court expounded the theory of "soft state" which is used to describe a nation which is not capable of preventing the offence of money-laundering.

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139. Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail.

140. Suffice it to observe that it would be preposterous and illogical to hold that if a person applies for bail after arrest, he/she can be granted that relief only if the twin conditions are fulfilled in addition to other stipulations predicated in the 1973 Code; but another person, who is yet to be arrested in connection with the same offence of money-laundering, will not be required to fulfil such twin conditions whilst considering application for grant of bail under Section 438 of the 1973 Code. The relief of bail, be it in the nature of regular bail or anticipatory bail, is circumscribed by the stipulations predicated in Section 45 of the 2002 Act. The underlying principles of Section 45 of the 2002 Act would get triggered in either case before the relief of bail in connection with the offence of money-laundering is taken forward. Any other view would be counterproductive and defeat the purposes and objects behind the stringent provision enacted by the

Parliament for prevention of money-laundering and to combat the menace on account of such activity which directly impacts the financial systems, including the sovereignty and integrity of the country.

141. As a result, we have no hesitation, in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

142. There is, however, an exception carved out to the strict compliance of the twin conditions in the form of Section 436A of the 1973 Code, which has come into being on 23.6.2006 vide Act 25 of 2005. This, being the subsequent law enacted by the Parliament, must prevail. Section 436A of the 1973 Code reads as under:

[436A. Maximum period for which an undertrial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]"

In the Statement of Objects and Reasons, it was stated thus:

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143. In Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar, Patna (1980) 1 SCC 98, this Court stated that the right to speedy trial is one of the facets of Article 21 and recognized the right to speedy trial as a fundamental right. This dictum has been consistently followed by this Court in several cases. The Parliament in its wisdom inserted Section 436A under the 1973 Code recognizing the deteriorating state of undertrial prisoners so as to provide them with a remedy in case of unjustified detention. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Ors., (1994) 6 SCC 731, the Court, relying on Hussainara Khatoon, directed the release of prisoners charged under the Narcotic Drugs and Psychotropic Act after completion of one-half of the maximum term prescribed under the Act. The Court issued such direction after taking into account the non obstante provision of Section 37 of the NDPS Act, which imposed the rigors of twin conditions for release on bail. It was observed:

"15. ...We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh Vs. State of Punjab. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak, (1992) 1 SCC 225, release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation

pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. ..."

144. The Union of India also recognized the right to speedy trial and access to justice as fundamental right in their written submissions and, thus, submitted that in a limited situation right of bail can be granted in case of violation of Article 21 of the Constitution. Further, it is to be noted that the Section 436A of the 1973 Code was inserted after the enactment of the 2002 Act. Thus, it would not be appropriate to deny the relief of Section 436A of the 1973 Code which is a wholesome provision beneficial to a person accused under the 2002 Act. However, Section 436A of the 1973 Code, does not provide for an absolute right of bail as in the case of default bail under Section 167 of the 1973 Code. For, in the fact situation of a case, the Court may still deny the relief owing to ground, such as where the trial was delayed at the instance of accused himself."

The said judgment delivered while adjudicating upon the Constitutional Validity of the provisions of the PMLA, is applicable to the present case, as the offences alleged in the present case are akin.

The allegations against the petitioner are serious in nature. The complaint was filed only after detailed investigation report. The said investigation reveals the petitioner's involvement in 88 Companies of SRS Group. The Directors of the said Companies, including the petitioner, had submitted false statements of the debtors, inflated purchase and sale figures and deliberately concealed the material facts. The said

Companies are accused of siphoning off the funds to the tune of Rs.671.48 crore and diverting the funds of Rs.645.86 crore from SRS Group of Companies by way of separate/distinct transactions.

Thus, keeping in view the seriousness of the allegations against the petitioner and the judgment of the Hon'ble Apex Court in Vijay Mandanlal Choudhary's case (supra), the petitioner does not deserve the concession of bail.

Hence, the present petition is dismissed.

09.12.2022
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(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No