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

Date of decision: 21st December 2022

\+ BAIL APPLN. 1740/2022 & CRL.M.(BAIL) 746/2022, CRL.M.A.20763/2022

KOMAL CHADHA ..... Petitioner

Through: Mr. Neeraj Thakkar, Advocate *via* video-conferencing.

versus

SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

Through: Ms. Nidhi Raman, CGSC with Ms. Devika Bajaj, Advocate with Mr. Arib Ansari, Prosecutor for SFIO with Mr. Tarun Srivastava & Mr. Shubham Gangal, Advocates for SFIO.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition under section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) the petitioner, who is accused in CC No.245/2021 titled ***SFIO vs. Parul Polymers Pvt. Ltd & Ors.*** pending before the learned Special Judge (Companies Act), Dwarka Courts, New Delhi), seeks regular bail.

2. The petitioner is arraigned as accused No. 3 in the trial court proceedings, among 12 other accused.

3. Notice on this petition was issued on 02.06.2022; consequent whereupon the respondent/Serious Fraud Investigation Office ('SFIO' for short) has filed reply/counter-affidavit dated 10.08.2022 opposing grant of bail.

4. Briefly, the petitioner was summonsed in the matter *vide* summoning order dated 07.03.2022 made by the learned Special Judge (Companies Act), Dwarka Courts (SW), the essential imputation against the petitioner being that she was director of M/s Parul Polymers Pvt Ltd. (accused No. 1), being the wife of Suman Chadha, who was the other director of the company; and taking cognisance of offences *inter-alia* under section 447 of the Companies Act, 2013 ('Companies Act' for short).

5. The gravamen of the offences alleged *inter-alia* under section 447 of the Companies Act is that the company, which was engaged in the trade of plastic granules, indulged in cash sales, in fictitious sale of food grain and in creation of accommodation/adjustment accounting entries, apart from misuse of cheque discounting facilities.

6. It is also the allegation that the company manipulated financial statements, to project substantial growth in its revenues, to mislead banks, so as to induce them to extend and enhance credit limits, which monies were not used towards the business activity of the company but were diverted and siphoned-off to other entities, with no genuine underlying business transactions, thereby indulging in fraudulent diversion of funds to sister concerns.

7. Suffice it to say, that a perusal of the summoning order, which is based upon the criminal complaint filed by the SFIO *inter-alia* under

section 212(15) of the Companies Act, shows that the role ascribed to the petitioner is that of being an 'officer who is in default' within the meaning of section 2(60) of the Companies Act, since the petitioner was a director of the company; and was therefore, liable for the affairs of the company under section 212(14) of the Companies Act.

8. This court has heard Mr. Neeraj Kumar, learned counsel appearing for the petitioner; as also Ms. Nidhi Raman, learned CGSC appearing for the respondent. Counsel have also filed their written submissions in the matter.

Petitioner's Contentions

9. It has been contended on behalf of the petitioner that the offences are alleged to have been committed between 2011-14 *i.e.* during a period even prior to the enactment of the Companies Act, 2013; and that investigation in the matter was commenced in compliance of order dated 07.12.2015 made by a Co-ordinate Bench of this court in Contempt Case (C) No. 3/2015; and after prolonged investigation, the SFIO filed the criminal complaint against the petitioner and other co-accused persons on 08.02.2021; which came to be registered as Complaint Case No. 245/2021.

10. Cognisance of the offence was taken *vide* order dated 07.03.2022, whereby the petitioner was directed to appear before the court on 25.05.2022. It is submitted that the petitioner was never arrested throughout the investigation and the complaint was also filed without her arrest.

11. Be that as it may, upon appearing before the learned Special Judge, the petitioner was remanded to judicial custody and has been in prison since 25.05.2022.

12. The next date in the proceedings before the learned Special Judge is 22.02.2023 and charges are yet to be framed.

13. Attention is drawn to section 212(6) of the Companies Act, to urge that the said provision contains a proviso empowering the court to release *inter-alia* a woman on bail, notwithstanding the twin conditions otherwise stipulated in the said provision. Section 212(6) reads as under:

> *"212. (1) ...*
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> * * * * *
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> *(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—*
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> > *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
> >
> > *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> ***Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:***
>
> *Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—*

> *(i) the Director, Serious Fraud Investigation Office; or*
> *(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.*"

(emphasis supplied)

14. It is further submitted that there is no material, nor even an allegation by the SFIO, that the petitioner is either a flight-risk or that she may intimidate witnesses or destroy evidence or commit any offence.

15. Counsel argues that the petitioner was merely a signing authority for the company, who functioned on the instructions of her husband and main accused Suman Chadha; and that Suman Chadha has so stated on oath in his statements dated 17.07.2017 and 23.08.2017 recorded under section 217 of the Companies Act.

16. It is further submitted that since both the petitioner and her husband are in judicial custody, among other things, there is no one to look after the petitioner's 88-year old father-in-law, who is currently in the care of the petitioner's married daughter. That apart, it is submitted that the evidence in the matter is documentary in nature; all of which has already been collected and filed alongwith the criminal complaint; and no further custody is necessary.

17. It is also submitted that the petitioner has already been admitted to regular bail *vide* order dated 27.09.2022 made by the learned Special Judge, CBI, Rouse Avenue District Courts, in connected case bearing No. CBI/13/2021 titled *CBI vs. Parul Polymers Pvt. Ltd. & Ors.* which case also emanates from same set of allegations as the present case.

18. In support of the petitioner's case, the following judicial precedents have been cited:

18.1. ***Priyanka Modi vs. Serious Fraud Investigation Office***[1] : To say that a woman is protected under the proviso to section 212(6) of the Companies Act, and there is no requirement to fulfil the twin conditions contained in the parent provision;

18.2. ***Sanjay Chandra vs. Central Bureau of Investigation***[2] : To submit that where the petitioner was neither named nor arrested in connection with the offence, nor is there any allegation that she would commit any offence while on bail, such person could be admitted to bail;

18.3. ***Rana Kapoor vs. Directorate of Enforcement***[3]: On the point that where an accused woman was never arrested during or after investigation, despite the SFIO having statutory powers to do so, she may be admitted to bail;

18.4. ***Jainam Rathod vs. State of Haryana & Anr***[4] and ***Sujay U Desai vs. Serious Fraud Investigation Office***[5]: On the point that apart from enforcing the provisions of section 212(6) of the Companies Act, it is also necessary to protect the Constitutional

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[1] Crl. A. 189/2022 decided on 07.02.2022 (Supreme Court)

[2] (2012) 1 SCC 40

[3] 2022 SCC OnLine Del 4065

[4] 2022 SCC OnLine SC 1506

[5] 2022 SCC OnLine SC 1507

right of a accused to an expeditious trial; and where there are a large number of accused, delay in the trial is bound to occur;

18.5. ***K Veeraswami vs. Union of India & Ors***[6] : On the point that a final report under section 173 Cr.P.C. (in this case, the criminal complaint filed by SFIO) is nothing more than the opinion of the Investigating Officer and does not constitute legal evidence; and

18.6. ***Dataram Singh vs. State of Uttar Pradesh***[7]: On the point that discretion in matters of grant of bail must be exercised judiciously, in a humane manner, and compassionately.

SFIO's Contentions

19. On the other hand, opposing grant of bail, Ms. Raman has urged that the present application is the sixth attempt on the petitioner's part to seek bail in a span of 05 months. It is noticed however, that the bail applications referred to by the SFIO are all applications seeking interim bail on various grounds, which appear to have been withdrawn. These also include interim bail applications filed in the present petition itself.

20. It is further submitted that there is apprehension of witnesses being influenced, since charges are yet to be framed and evidence is yet to be recorded.

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[6] (1991) 3 SCC 655

[7] (2018) 3 SCC 22

21. It is pointed-out that most of the other accused persons are either employees or accountants or auditors of the company, over whom the petitioner enjoys clout, which she may use to interfere in the course of trial.

22. It is urged that the offence under section 447 of the Companies Act is an economic offence, which genre of offences, the courts have said, are far more serious compared to individual criminal offences since they tend to destroy the economy of the country, causing immense irreversible damage to the larger public interest.

23. It has also been argued on behalf of the SFIO that the petitioner was not arrested during the course of investigation since the SFIO follows the mandate contained in section 212(8) of the Companies Act, *viz.* that the investigating office "*may* arrest such person" if he has reason to believe that the person is guilty of any offence punishable under the concerned sections, with the reasons to be recorded in writing; and in the present case the investigating officer has exercised his discretion cautiously to not arrest the petitioner; but that would not prevent the court to direct custody of the accused, after taking cognizance.

24. In support of its contention, the SFIO has also relied upon following judicial precedents :

    24.1. ***Priyanka Modi vs. Serious Fraud Investigation Office***[8]:On the point that the defence of being a mere signing authority would not entitle the petitioner to grant of regular bail;

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[8] CRM-M No. 22815/2021 decided on 20.12.2021(Punjab & Haryana High Court)

24.2. ***Suman Chadha & Anr vs. Central Bank of India***[9]:To illustrate the petitioner's conduct who was held guilty of contempt for filing post-dated cheques;

24.3. ***Pralad Singh Bhati vs. NCT Delhi***[10]: On the principles that the court must bear in mind while considering a bail application;

24.4. ***State of U.P. through CBI vs. Amarmani Tripathy***[11]: On the point that a court granting bail must apply its mind and determine whether a *prima-facie* case is established against the accused, going into the merits of the evidence on record. It is argued that the seriousness and gravity of the crime is a relevant consideration;

24.5. ***Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh***[12] : citing Krishna Iyer J., to urge that the nature of the charge is a vital factor and the nature of evidence is also pertinent in considering grant of bail;

24.6. ***Gurcharan Singh vs. State***[13] : To urge that the likelihood of an accused fleeing from justice and tampering with prosecution witnesses are the two paramount considerations for grant of bail;

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[9] 2021 SCC OnLine SC 564

[10] (2001) 4 SCC 280

[11] (2005) 8 SCC 21

[12] (1978) 1 SCC 240

[13] (1978) 1 SCC 118

24.7. ***Rohit Tandon vs. Directorate of Enforcement***[14]: To urge that economic offences with deep rooted conspiracies and involving a huge loss of public funds need to be viewed seriously and considered grave offences affecting the economy of the country as a whole;

24.8. ***Shivani Rajiv Saxena vs. Directorate of Enforcement & Anr***[15] : to contend that merely because the accused is a woman, does not by itself entitle her for bail under the proviso to section 212(6) of the Companies Act; and the nature and gravity of the offence has to be considered;

24.9. ***Arnesh Kumar vs. State of Bihar & Anr***[16]: To submit that not arresting the petitioner, was in compliance of the Supreme Court mandate as contained in this judgment;

24.10. ***Satender Kumar Antil vs. CBI***[17]***, YS Jagan Mohan Reddy vs. Central Bureau of Investigation***[18]***, Serious Fraud Investigation Office vs. Nittin Johari & Anr***[19]***, P Chidambaram vs. Directorate of Enforcement***[20] and ***State of Gujarat vs. Mohanlal Jitamalji Porwal & Anr***[21]: On the point

[14] (2018) 11 SCC 46

[15] (2017) 245 DLT 230

[16] (2014) 8 SCC 273

[17] (2022) 10 SCC 51

[18] (2013) 7 SCC 439

[19] (2019) 9 SCC 165

[20] (2019) 9 SCC 24

[21] (1987) 2 SCC 364

that economic offences constitute a separate class, and the court must consider circumstances such as the possibility of deep-rooted conspiracies and loss of public funds; and

24.11. ***State of M.P. vs. Kajad***[22] and ***T Bijando Singh vs. Md. Ibocha***[23]: On the point that the twin conditions (though in the context of NDPS Act) in stringent bail provisions must be met before granting bail.

Discussion & Conclusion

25. On point of fact, throughout the course of investigation which started in December 2015 and culminated in filing of the criminal complaint in February 2021, the petitioner was never arrested; nor was her police custody ever sought in the matter.

26. It is only after cognizance was taken by the learned Special Judge; the accused persons were summonsed; and the petitioner appeared before the court, that the court deemed it appropriate to remand the petitioner to judicial custody. The order remanding the petitioner to judicial custody, discloses no application of mind as to why, on what basis, for what reason, or for what purpose the learned Special Judge formed the view that the petitioner's judicial custody had become necessary, after the petitioner had been at liberty for the past 06 years; even though there was no allegation of her either intimidating any

[22] (2001) 7 SCC 673

[23] (2004) 10 SCC 151

witnesses or tampering with evidence or otherwise interfering in the course of investigation.

27. In fact, it is interesting to note that in order dated 25.05.2022, the learned Special Judge refers to the stringent twin conditions contained in section 212 of the Companies Act, going-on to say that merely because the petitioner is a woman, does not justify 'grant of bail' to her. However, this was not a case of *grant of bail* since the petitioner had not been arrested and was not in custody at all. This was a case of either remanding the petitioner to judicial custody, or of allowing her to go through the trial while not in custody. Evidently, the learned Special Judge misdirected himself in applying section 212(6) of the Companies Act, which is not a section that deals with the question of remanding the petitioner to judicial custody.

28. As a consequence, the petitioner has been in judicial custody since 25.05.2022.

29. As observed above, the offences in relation to which the criminal complaint has been filed relate to the period 2011-2014.

30. In the opinion of this court, upon a cautious consideration of the averments contained in the subject criminal complaint, as also the summoning order; and in view of what is stated in the petition and the submissions made by counsel for the parties, the following inferences arise:

30.1. There is no allegation by the SFIO that during the course of the investigation, the petitioner attempted to destroy evidence or intimidate witnesses, or that she otherwise interfered in the course of investigation;

30.2. It is apparent that the essence of the allegation against the petitioner is, that being the wife of the main accused Suman Chadha and a director of the company, the petitioner signed various papers, documents and records in her capacity as a co-director, and is therefore an 'officer who is in default' in relation to the affairs of the company within the meaning of section 2(60) of the Companies Act;

30.3. Despite having the power under section 212(8) of the Companies Act, to arrest the petitioner in the course of investigation, the investigating officer did not arrest the petitioner, by which it can reasonably be inferred that the officer did not have reason to believe that the petitioner was guilty of any offence punishable under the concerned sections of the Companies Act. Even when the report under section 212(12) of the Companies Act was filed, there is nothing on record to show that the investigating officer sought for the petitioner to be remanded to judicial custody;

30.4. In the opinion of this court, the petitioner's conduct cannot have a worse effect now, than it possibly could have had during the course of investigation, since all the purportedly incriminating evidence and material has already been collected and placed before the learned Special Judge as part of the criminal complaint;

30.5. It requires no cogitation to say that the trial will take considerable time, to say the least;

30.6. Most importantly, the proviso to section 212(6) of the Companies Act cannot be treated as nugatory or dead letter. By way of the proviso, the Legislature has specifically carved-out an exception to the otherwise strict provision for bail, to say that though the twin conditions in section 212(6)(i) and (ii) of the Companies Act must otherwise be satisfied before a person is released on bail, those conditions would not apply *inter-alia* to a woman. In view of the proviso, it would be anathema to the legislative intent to not grant the benefit of the relaxation to a woman accused;

30.7. Insofar as the SFIO's apprehension that the petitioner is a flight-risk is concerned, suffice it to say that *theoretically every undertrial who is granted bail is a flight-risk*[24]; but unless there is any specific risk cited and shown to exist, bail must not be denied only by reason of a perceived theoretical risk. No specifics of the apprehension of flight-risk have been presented in the present case. The apprehension of flight-risk would of course be addressed by imposing appropriate conditions on grant of bail;

30.8. As to the allegation of severity of the offence, in the words of the Supreme Court, the severity of the offence will beget the length of the sentence[25];

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[24] ***Ashok Sagar vs. State***, 2018 SCCOnLine Del 9548, cf. para 35

[25] *P. Chidambaram* (supra), cf. para 12

30.9. It may not be out of place to also briefly refer to the view taken by the Supreme Court on the consequences of pre-trial detention. In ***Moti Ram & Ors. vs. State of Madhya Pradesh***[26], speaking through Krishna Iyer J., the Supreme Court has said that the consequences of pre-trial detention are grave, subjecting the undertrial to psychological and physical deprivations of jail life, which are usually more onerous than even those imposed on convicts. Not to mention, that an undertrial in custody is prevented from contributing to the preparation of their defence in the trial, which burden then falls heavily on innocent members of the family;

30.10. It is also noticed that in ***Laloo Prasad vs. State of Jharkhand***[27], after taking into consideration the seriousness of the charges and the maximum sentence that could be imposed, the Supreme Court directed the release of the accused, who had been in jail for a period of more than 06 months, observing that further detention as a pre-trial prisoner would not serve any purpose;

30.11. This court is constrained to observe, that in view of the above discussion, keeping the petitioner in judicial custody throughout the course of trial *could* only be justified by way of *pre-trial punishment*, which is abhorrent to the law. Keeping the petitioner in judicial custody will serve no discernible purpose, except to deny her liberty, for no reasonable cause.

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[26] (1978) 4 SCC 47, cf. para 14

[27] (2002) 9 SCC 372, cf. para 7

31. It is important to note that the power of the SFIO to arrest an accused during investigation in exercise of the powers conferred under section 212(8) of the Companies Act is the power to enforce '*police custody*' in aid of investigation. The provision says, that this power may be exercised by an investigating officer of the SFIO if he *has reason to believe on the basis of material available* with him that a person is guilty of commission of offences stipulated in section 212(6) of the Companies Act.

32. On the other hand, the power vested in the court to remand is the power to enforce '*judicial custody*' of an accused; which, of necessity, must arise at the pre-trial stage only from some apprehension *on the part of the investigating officer*, say of witness intimidation, evidence tampering, flight-risk or such other matter. *Such apprehension can rarely, if ever, emanate in the court itself*, since the court is meant to be the neutral arbiter of the case.

33. The notion that a person summonsed after cognisance must necessarily be remanded to judicial custody, simply because the allegation relates to a 'serious offence', must be disabused. Merely because the offence is cognizable and non-bailable, it is not essential that an accused must be taken into custody when the charge-sheet is filed.[28] Bail, it is trite to say, is the rule and not the exception.[29] Arrest

[28] ***Siddharth vs. State of Uttar Pradesh & Anr.*** (2022) 1 SCC 676, cf. paras 5-10; ***Aman Preet Singh vs. CBI***, 2021 SCC OnLine SC 94, cf. paras 9-12

[29] ***State of Rajasthan vs. Balchand***, (1977) 4 SCC 308

at the hands of the investigating officer and remand by the court must not be done on a whim or without reason.

34. Accordingly, in the opinion of this court, the petitioner is entitled to benefit of the proviso to section 212(6) of Companies Act.

35. In view of the above, the court is persuaded to admit the petitioner to regular bail, subject to the following conditions:

35.1. The petitioner shall furnish a personal bond in the sum of Rs. 5,00,000/- (Rs. Five Lacs Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned Special Judge;

35.2. The petitioner shall furnish to the Investigating Officer/SFIO a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

35.3. If the petitioner has a passport, she shall surrender the same to the learned Special Judge and shall not travel out of the country without prior permission of the learned Special Judge;

35.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

36. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

37. A copy of this judgment be sent to the concerned Jail Superintendent *forthwith*.

38. The petition stands disposed-of.

39. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 21, 2022
*uj/*Ne