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

Date of decision: 18.07.2022

\+ BAIL APPLN. 1825/2022

GHANSHYAM DAS GUPTA ..... Petitioner

Through: Mr Sujeet Kumar Mishra, Adv.

versus

UNION OF INDIA, SFIO ..... Respondent

Through: Mr Harish Vaidyanathan Shankar, CGSC with Mr Srish Kumar Mishra, Mr Sagar Mehlawat and Mr Alexander Mathai Paikaday, Advs. for UOI.
Ms Shivani Sharma and Mr Vishal Shrivastava, Advs. with Ms Sonam Sharma, Senior Assistant Director

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (*ORAL*)**

1. This is an application for grant of regular bail to the applicant in CC No. 77/2019, *SFIO v. Bhushan Steel Ltd. & Ors.*, under Section 447 of the Companies Act, 2013.

2. It is stated by Mr. Mishra, learned counsel appearing for the applicant, that the applicant is a Chartered Accountant by profession. He submits that there are no specific allegation of fraud having been committed by the applicant in the entire complaint filed by the respondent SFIO in relation to

the Category – D Companies which are 8 in number.

3. It is submitted by Mr Vaidyanathan, learned CGSC appearing for the respondent that as per the respondent, the applicant herein has paid an active role in the fraud committed by the company along with ex-promoters and its associates as he was the statutory auditor of Category D Companies. His role in the summoning order dated 16.08.2019 is as under:

> "*A-207 was statutory auditor of A-149 to A-157 and conducted audit without visiting the registered office or verifying the credentials of directors of these companies.*"

4. The applicant is alleged to have acted in connivance with other accused persons since he had given unqualified reports in reference to Category D Companies. Further, the applicant himself has admitted that these Category D Companies are investment company with no business activities, still the applicant had not pointed out any irregularity/qualification in his Auditors' Report regarding the irregular flow of funds in Category D Companies with no business activities.

5. Mr Mishra submits that the applicant had conducted audit for Financial Year 2014-2015 and in some companies from 2015-2016 and thereafter, the applicant had immediately resigned. He submits that as per provisions of Standards on Auditing (SA) 240 as issued by the Institute of Chartered Accountants of India, it provides for "The auditor's responsibilities relating to fraud in an Audit of Financial Statements" wherein the responsibilities of the auditors has been provided under paragraph 5 which is as follows:

> *"An auditor conducting an audit in accordance with Standard on Auditing (SAs) is responsible for obtaining reasonable assurance*

that the financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. Owing to the inherent limitations of an audit, there is a unavoidable risk that some material misstatements of the financial statements may not be detected, even though the audit is properly planned and performed m accordance with the Standard on Auditing (SAs)"

"In accordance with Standard on Auditing (SAs) 200, the auditor shall maintain professional skepticism throughout the audit, recognizing the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's past experience of the honesty and integrity of the entity's management and those charged with governance (Ref: Para. A7-A8)".

6. Mr. Mishra further submits the following arguments, and I am in agreement with the same:

a) There is no specific allegation of fraud committed by the applicant in the complaint.
b) The applicant has worked according to the Standards on Auditing (SA) 240.
c) The applicant has been appearing before the Trial Court for the last three years and has never been arrested. The applicant has been arrested now on 31.05.2022.

7. The the main stakeholders of both the company i.e. BSL and the Bank i.e. PNB have already been enlarged on bail/interim bail:

a. Interim relief granted till pendency of proceedings to ex-promoter/director of the company, Neeraj Singal by the Hon'ble Supreme Court on 04.09.2018 in SLP (Crl.) No. 7241 of 2018.

b. On grounds of parity, co-accused, Nittin Johari, ex-promoter of BSLin the same case was granted bail in the matter, ***Vijay Madanlal Chaudhary &Ors. v. Union of India &Ors.*** dated 18.08.2021[MANU/SCOR/25854/2021].

c. Additionally, the same summoning order dated 16.08.2019 has been quashed by a coordinate bench of this court against Dr. Rajesh Kumar Yaduvanshi, who was a Nominee Director appointed PNB on the board of BSL. [***Dr. Rajesh Kumar Yaduvanshi v. SFIO***, CRL. REV.P. No. 1308 of 2019 vide order dated 21.09.2020].

d. Co-accused, Mr. Pankaj Mahajan who is also a practicing Chartered Accountant at the firm, M/s. A.C. Gupta & Associates is also admitted on bail by a coordinate bench of this court in BAIL APPLN No. 1813 of 2022 titled ***Pankaj Mahajan v. SFIO*** dated 29.06.2022.

e. A coordinate bench of this court also enlarged Rupesh Purwar, co-accused no. 203 on bail. He was signatory to the Financial Statements of the company for the FY 2013-14 and 2014-15 in his capacity as the Company Secretary, which he had signed for the purpose of regulatory filing of the Company. [***Rupesh Purwar v. SFIO***, CRL. M.C. No. 2878 of 2022 dated 29.06.2022]

f. This Court granted bail to Sunil Bhatia, Chartered Accountant of the firm, ASRN & Associates who was responsible for preparing the Stock Audit Report dated 15.02.2017 by BAIL APPLN. 1802/2022 titled ***Sunil Bhatia v. Serious Fraud Investigation Office*** dated 07.07.2022.

g. This Court granted bail to General Managers and Assistant General Managers of UCO Bank by BAIL APPLN 2053/2022, BAIL APPLN. 2055/2022 and BAIL APPLN 2056/2022 dated 11.07.2022.

8. The applicant has participated in the inquiry and as and when called by the SFIO. The applicant further undertakes to participate as and when he is called by the SFIO. The charge sheet in the present case has already been filed and there is nothing else which is required to be recovered from the applicant.

9. As regards the legal embargo of Section 212(6), I am of the view that Sub-section-(i) has duly been complied with, as the Public Prosecutor (Ld. CGSC) has been given a chance to oppose the bail application. I am *prima facie* of the view that the Applicant is not guilty of the offence of which he are charged with, and therefore, I am also of the opinion, that he is not likely to commit any further offence while on bail. Hence, sub-section (ii) of Section 212(6) is also complied with, notwithstanding the observations of ***Jainam Rathod vs. State of Haryana and Ors***. [SLP (Crl) No. 1554/2022, Order dated 18.04.2022)]. The Supreme Court had observed the following in the above case:

> '*8 In this backdrop, in the absence of a fair likelihood of the trial being completed within a reasonable period, this Court must be mindful of the need to protect the personal liberty of the accused in the face of a delay in the conclusion of the trial. We are inclined to grant bail on the above ground having regard to the fact that the appellant has been in custody since 28 August 2019.*
> ***In Nittin Johari (supra)****, this Court has held:*

"24. 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 CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences."

While the provisions of Section 212(6) of the Companies Act 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial would necessarily result in a delay in its conclusion. The role of the appellant must be distinguished from the role of the main accused.'

10. Hence, the Applicant is enlarged on bail on the following terms and conditions:

i. The applicant shall furnish a personal bond with two local sureties in the sum of Rs. 25,000/- each, to the satisfaction of the Trial Court;

ii. He shall appear before the Court as and when directed;

iii. In case he changes his address, he will inform the IO concerned and this Court also;

11. The view expressed above is only for the purpose of deciding the bail

application and will not come in the view of final adjudication after recording of evidence.

12. Application is disposed of in the aforesaid terms.

Copy of this order be given *dasti* under the signature of Court Master/Private Secretary.

JASMEET SINGH, J

JULY 18, 2022
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Click here to check corrigendum, if any