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

Date of decision: 18.07.2022

\+ BAIL APPLN. 1950/2022

VINAY KUMAR JAIN ..... Petitioner

Through: Mr Abhik Kumar and Ms Rinku Mathur, Advs.

versus

SERIOUS FRAUD INVESTIGATION OFFICE ..... 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*)**

CRL.M.A. 12239/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 1950/2022 & CRL.M.(BAIL) 776/2022-INT. BAIL

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. Kumar, learned counsel appearing for the applicant

(A-187), that the applicant is a Chartered Accountant by profession.

2. The applicant was partner with Mr. R.K. Mehra of Mehra Goel & Co., who was a Statutory Auditor for mostly category B and C Companies which was directly under the control of the promoters. He submits that the applicant has not appended his signature on any of the financial statement including bank loan utilization certificate of the Accused Company and it was Mr. R.K. Mehra, who used to sign the financial statement certificates of the accused No. 1 Company. Further, Applicant was not having any authority under the law to ask for the change in the auditor's report, which is the sole responsibility and authority of Mr. R.K. Mehra.

3. It is submitted by Mr. Vaidyanathan, learned CGSC appearing for the respondent that as per the respondent, the applicant herein has played an active role in the fraud committed by the company along with ex-promoters and its associates as he was the statutory auditor for 18 companies. His role in the summoning order dated 16.08.2019 is as under:

> "*2.46 A-186 to A-188 were the statutory auditors of A-1 Company. A-186 and A-187 were also auditors of A-2 to A-64. While conducting the audit of these companies, they did not use their professional scepticism and relied upon the information provided by management with regard to various adjustments made in the financials of accused companies. They did not ensure disclosure of true state of affairs of the category "B" and Category C companies. The Ind AS adjustment of Rs.10000 crore, among others, was material and the 'emphasis of matter' given by the auditors (A-186 to A-188) in the audit report of A-1 Company, nowhere indicates that they have obtained sufficient appropriate audit evidence and matter is not materially misstated in the financial statements.*
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> *7 Further, it is found that sufficient material has been placed on record against the accused persons to face prosecution in respect of following offences:*

187. *A- 187: Vinay Jain: u/s 447 of the Companies Act, 2013.* "

4. Mr. Vaidyanathan submits that the Applicant herein, was a Partner of Mehra Goel & Co. along with one Late Mr. R.K. Mehrotra, the said firm had conducted the audit of BSL (Accused No. 1 Company) and other Category - B Companies which was involved in the fraud of siphoning of money availed through Credit facilities from banks and then investing the same in the preference shares of BSL for managing its debt equity ratio. As per the Statements of the applicant, he was heading the team of Charted Accountants responsible for auditing Bhushan Steel and the other co-accused companies. Huge amount of funds was being credited into the various bank accounts of BSL which were being falsely reflected in the books of accounts and not reflected in the balance sheet, but the auditors never raised this issue with the ex-promoters and employees of BSL although he was present in the relevant meetings.
5. Mr. Kumar submits the following arguments, and I am in agreement with the same:
   a) the Applicant did not append his signature on any documents, nor did he carry out any audit.
   b) Applicant has received no financial benefit from the aforesaid transactions.
   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.

6. 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.

7. 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.

8. 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.'

9. 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;

10. 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.

11. 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