$~28, 30 and 31

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

Date of decision: 11.07.2022

\+ BAIL APPLN. 2053/2022
ASHOK KUMAR MAKHIJA ..... Petitioner
versus
SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

\+ BAIL APPLN. 2055/2022 & CRL.M.A. 12892/2022
MITHILESH KUMAR JHA ..... Petitioner
versus
SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

\+ BAIL APPLN. 2056/2022 & CRL.M.A. 12893/2022
RAVINDER KUMAR NAGPAL ..... Petitioner
versus
SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

MEMO OF APPEARANCE

Mr Ramesh Gupta, Sr. Adv. with Mr Sanjiv Sagar, Mr Dhir Singh Kasana, Mr Rishab Malik and Ms Nazia Parveen, Advs.

Mr Harish Vaidyanathan Shankar, CGSC with Mr Srish Kumar Mishra, Mr Sagar Mehlawat, Mr Alexander Mathai Paikaday, Advs.

Mr Nitin Agnihotri, Prosecutor with Mr Tarun Srivastava and Mr Shriram Tiwary, Advs. for SFIO.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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

CRL.M.A. 12890/2022 in BAIL APPLN. 2053/2022, CRL. M.A. 12892 in BAIL APPPLN. 2055/2022 and CRL. M.A. 12893 in BAIL APPLN. 2056/2022.

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 2053/2022, BAIL APPLN. 2055/2022 and BAIL APPLN. 2056/2022

1. These are applications under Section 439 Cr.P.C filed on behalf of accused Nos. A-195 - Ashok Kumar Makhija, A-193 - Mithilesh Kumar Jha and A-194 - Ravinder Kumar Nagpal (hereafter accused persons shall be referred to as 'A-195', 'A-193' and 'A-194' respectively) for grant of bail in respect of offences committed under Sections 447 of the Companies and under Section 409 IPC in Complaint Case No. 770/2019.

2. Issue notice. Mr Harish Vaidyanathan Shankar, learned CGSC accepts notice and states that he does not wish to file a reply and has instructions to argue the matter, which he has very ably done.

3. All the accused persons have been arrested on 04.07.2022. The reason for summoning have been given in para 2.48 of the summoning order dated 16.08.2019 which reads as under:

> *"2.48: A-190 to 198 failed to discharge their duties at the time of discounting of documents under LCs and did not adhere to the system, procedure and guidelines issued by banks/RBI, as a result committed various acts and omission which caused loss to the banks."*

4. Pursuant to issuance of summons, the petitioners have been appearing before the trial Court for the last three years and were never arrested.

5. A-195 retired as General Manager from UCO Bank, A-193 retired as Assistant General Manager from UCO Bank, and A-194 retired as Assistant General Manager from UCO Bank.

6. The complaint pertains to the acts of misappropriation of huge sums of money by Bhushan Steel Ltd. and Bhushan Energy Ltd.

7. The the main stakeholders of both the company i.e. BSL and the Bank i.e. PNB have 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.

8. A-195, A-193 and A-194 in support of their bail application have argued similar grounds and I am *prima facie* agreeable with the same:

a. All are retired officers of the bank.

b. The Applicants are not accused of fraud and the only allegation is of neglect of duties. Additionally, they were not the only officers dealing with LCs, there was a team of officers, GM, DGM, AGM, Sr. Manager, Manager, Clerk and other officials.

c. The Applicants were bank employees and not of Bhushan Steel and there is no siphoning off of funds by the Applicants. Further, the complaint does not disclose which LC was encashed wrongly due to the petitioner, similarly the Investigation report also does not contain anything of such nature. The averments are of general nature on lapse of banks and not the applicant.

d. The summoning order was issued on 16.08.2019 and the Applicants had not been arrested till 04.07.2022 without there being any protection in favour of the Applicants. There is also no reason shown for seeking judicial custody of the Applicants.

9. Since the applicants have already retired and similarly situated persons have already been granted bail, especially, the main accused Nitin

Johri and Neeraj Singhal, therefore, the applicants also need to be enlarged on bail.

10. 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 applications. I am *prima facie* of the view that the Applicants are not guilty of the offence of which they are charged with, and therefore, I am also of the opinion, that they are 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.*
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> ***In Nittin Johari (supra)****, this Court has held:*
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> > *"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.'

11. Hence, the Applicants are enlarged on bail on the following terms and conditions:

i. Each 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. They shall appear before the Court as and when directed;

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

12. Applications are disposed of in the aforesaid terms.

JASMEET SINGH, J

JULY 11, 2022/sr

Click here to check corrigendum, if any