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

Date of decision: 22.07.2022

\+ **BAIL APPLN. 2054/2022**

MUKESH KUMAR SINGH ..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr. Sanjeev Sagar, Ms. Nazia Parveen, Advocates

versus

SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alesander Mathai, M.r Tarun, Ms. Arti, Advocates

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, (*ORAL*)

1. This is an application under Section 439 Cr.P.C filed on behalf of accused No. A-191 - Mukesh Kumar Singh, for grant of bail in respect of offences committed under Sections 447 of the Companies Act, 2013 and under Section 409 IPC in Complaint Case No. 770/2019.

2. This court had issued notice to Mr. Harish Vaidyanathan Shankar, learned CGSC on 11.07.2022, who accepted the same. On 11.07.2022, the court had also granted bail in BAIL APPLN. 2053/2022, BAIL APPLN. 2055/2022, and BAIL APPLN. 2056/2022 wherein the applicants were all retired UCO Bank's General Managers or Assistant General Managers. The present bail application was listed separately as the Applicant is still working with UCO Bank. Other than that, the

matter is to be heard on the same footing.

3. The Ld. CGSC has stated that he does not wish to file a reply and has instructions to argue the matter, which he has very ably done.

4. The accused person has 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."*

5. Pursuant to issuance of summons, the applicant has been appearing before the trial Court for the last three years and was never arrested.

6. As stated above, the applicant is still working with UCO Bank and is a senior manager.

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

8. 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 BSL in 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 retired 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.

h. This Court granted bail to two Chartered Accountants by BAIL

APPLN. 1950/2022 and BAIL APPLN. 1825/2022 dated 18.07.2022.

9. The applicant in support of his bail application has argued similar grounds and I am *prima facie* agreeable with the same:
   a. He is still in service of the bank.
   b. The Applicant is not accused of fraud and the only allegation is of neglect of duties. Additionally, he is not the only officer dealing with LCs, there was a team of officers, GM, DGM, AGM, Sr. Manager, Manager, Clerk and other officials.
   c. The Applicant is a bank employee and not of Bhushan Steel and there is no siphoning off of funds by the Applicant. Further, the complaint does not disclose which LC was encashed wrongly due to the applicant, 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 Applicant had not been arrested till 04.07.2022 without there being any protection in favour of the Applicant. There is also no reason shown for seeking judicial custody of the Applicant.
10. The main accused Nitin Johri and Neeraj Singhal have been granted bail, therefore, the applicant also needs to be enlarged on bail.
11. 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 is 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:*
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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."*
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> *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.*'

12. 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;
13. Applications are disposed of in the aforesaid terms.
14. Lastly, this court has not expressed any views on merits in the present case.
15. *Dasti* be given under the signature of the Court Master.

JASMEET SINGH, J

JULY 22, 2022 / (MS)

Click here to check corrigendum, if any