

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.586 OF 2023

Rana Kapoor
s/o Late Raj Kishore Kapoor, Age 66 years,
R/o.Flat No.34, NCPA Apartments,
Nariman Point, Mumba-400 021.
Currently lodged in Talaja Jail.

Applicant

versus

1. Directorate of Enforcement
through Assistant Director,
Zone Office-I, Kaiser-I-Hind
Hallard Estate, Fort, Mumbai.

2. The State of Maharashtra.

Respondents

Mr.Aabad Ponda, Senior Advocate, with Ms.Stuti Gujral, Mr.Aditya Mithe, Mr.Rahul Agarwal, Ms.Jasmin i/by Siya Chaudhary, Advocates for Applicant.

Mr.Hiten Venegavkar, Special P.P. with Mr.Bharat Mirchandani, Advocates for Respondent no.1.

Mrs.Anamika Malhotra, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Judgment Reserved on : 27th April 2023

Judgment Pronounced on : 4th May 2023

JUDGMENT :-

1. The applicant is seeking bail in ECIR No.MBZO-I/03/2020 registered by Directorate of Enforcement, Mumbai on 7th March 2020 for offence under Sections 3 r/w 4 of Prevention of Money Laundering Act ('PMLA Act') culminated in Special Case No.452 of 2020.

2. This is second application for bail. Previous application was rejected by this Court vide order dated 25th January 2021. In view of direction issued by Hon'ble the Acting Chief Justice, this application is listed before me.

3. On 7th March, 2020 CBI registered an FIR under Section 120-B r/w. 420 of Indian Penal Code, 1860 ("IPC" for short) and Sections 7, 12, 13(2) r/w. 13(1) (d) of Prevention of Corruption Act. ("P. C. Act" for short). In the FIR it was alleged that during 2018-2019, Rana Kapoor (applicant) entered into criminal conspiracy with Kapil Wadhwan, Promoter Director of M/s.DHFL and others for extending financial assistance to M/s. Dewan Housing Finance Corporation Ltd ("DHFL" for short) in lieu of substantial undue benefit to applicant and his family members through companies held by them. During April-June, 2018 YES Bank invested Rs.3,700 Crores in short term debentures of DHFL. Around the same time, Mr. Kapil Wadhwan paid kick back of Rs.600 Crores to applicant and his family members by extending loan of Rs.600 Crores by DHFL to M/s. DOIT Urban Ventures (India) Pvt. Ltd ("DUVPL" for short) a wholly owned subsidiary of M/s. RAB Enterprises (India) Private Ltd in which Bindu Kapoor, wife of applicant is a Director and 100% shareholder. Daughters of applicant Roshni Kapoor, Radha Kapoor Khanna and Rakhee Kapoor Tandon are 100% shareholders of M/s. DOIT Urban Ventures (India) Pvt. Ltd through Morgan Credit Private Ltd. The loan of 600 Crores was sanctioned by DHFL to DOIT on the basis of mortgage of sub-standard property having meagre value and by considering its future conversion from agriculture land to the residential land. M/s. DHFL has not redeemed amount of Rs.3700

Crores invested by M/s.YES Bank in debentures. YES Bank also sanctioned loan of Rs.750 Crores to M/s. RKW Developers which is DHFL group company for their Bandra Reclamation Project, Mumbai and whole amount was siphoned off by Kapil Wadhwan since entire amount was transferred by M/s. RKW Developers to M/s.DHFL without investment in Bandra Reclamation Project for which loan was sanctioned thus applicant obtained undue pecuniary advantage from M/s. DHFL in matter of investment in debentures of M/s.DHFL by YES Bank through companies held by wife and daughters.

4. The complaint filed by the Directorate of Enforcement alleges that the applicant was MD/CEO of YES Bank. He misused his position to gain financial benefits for himself and for his family members, through companies controlled by them for sanctioning huge loans through YES Bank. He received kick back over bogus loans extended by YES Bank to DHFL company, which was owned by Kapil Wadhwan and Dheeraj Wadhwan and to its Group companies and those kick back amounts were misused by the applicant for purchasing properties in the name of his family members. The applicant deliberately used, projected and claimed those proceeds of crime as untainted by laundering the same for personal gain. The daughters of the applicant are arrayed as accused No. 2 to 4 in complaint. They were holding 33.33 percent shares each in M/s. DOIT Urban Ventures (India) Pvt. Ltd company which is arrayed as accused No. 6 in the complaint. M/s. Morgan Credits Pvt Ltd Company ("MCPL" for short) is impleaded as accused No. 7. The said company was holding 99.99 percent shares of the company. Yes Bank had bought debentures of Rs.3,700 Crores of DHFL company controlled by Kapil Wadhwan and Dheeraj Wadhwan during the

period from April 2018 to June 2018 and thereafter DHFL had paid kick back to applicant under the garb of loan of Rs.600 Crores to accused No. 6. The said loan was given without adequate collateral, though DHFL had not redeemed the amount of Rs.3700 Crores invested in its debentures by YES Bank, and though accused No.6 did not have any business activity to repay the loan. Loan of Rs.750 Crores was fraudulently given in the year 2018 from YES Bank by applicant to M/s. Belief Realtors Pvt. Ltd, which was a group company of R.K.W of Wadhwan's for SRA redevelopment of Bandra Reclamation Project. Deposits of people were used to purchase the debentures, and as such loan was given to accused No. 6 to camouflage. The amounts were further invested through subsidiary companies to divert the proceeds of crime and used for which accused No. 2 to 4 were hand in glove with applicant/accused. Wife of applicant arrayed as accused No.5, is the owner of M/s. RAB Enterprises India Pvt. Ltd., Co. which is impleaded as accused No.8 in the complaint. The said company received a gift of Rs. 87 Crores from applicant. Wife of applicant is house-wife having no source of funds, yet her company made huge investments in its subsidiary companies, which fact was within her knowledge and thereby she had abetted commission of crime of money laundering by the applicant. The applicant illegally obtained money for accused No.6 to 8 in connivance with Kapil Wadhwan, Dheeraj Wadhwan and others by entering into conspiracy in respect to which CBI had registered a crime for the offences under Sections 120-B, 420 of IPC and Sections 7, 12, 13(2) r/w. 13(1) (d) of Prevention of Corruption Act against the applicant, Kapil Wadhwan, Dheeraj Wadhwan and Others. This kick back amount was used by applicant and his family members for acquiring various properties and it is projected that the properties are

untainted. The complaint was filed on 6th May 2020. The Court took cognizance of the complaint vide order dated 23rd May 2020 for offences under Sections 3 r/w. 4 of the PMLA Act.

5. Pursuant to filing the complaint, further investigation was conducted. Supplementary complaint was filed on 11th July, 2020. In the supplementary complaint, it was alleged that during the investigation, details of more than 100 companies owned by the applicant and his family members, were found. In these companies, applicant's family members had majority share holding, and all financial transactions were handled by the applicant. It was noticed that many of those companies are not operative and are used for siphoning off illegally obtained money i.e. proceeds of crime by applicant. It is also found that dummy Directors were appointed by the applicant on the board of many of these companies. Cognizance of supplementary complaint was taken by order dated 23rd July 2020. Second supplementary complaint was filed on 14th March 2022. Cognizance of said complaint was taken on 6th April 2022. The third supplementary complaint was filed in August-2022. The Special Judge took cognizance of complaint vide order dated 25th August 2022.

6. Learned advocate for Applicant submitted as under :-

(i) The applicant has been incarcerated for a period exceeding the minimum sentence period prescribed by way of punishment for the offence under Section 3 of the PMLA Act, which is punishable under Section 4 where the minimum sentence is three years, and the maximum is seven years. This was not the position when the first bail application was rejected earlier on 25th January

2021;

(ii) Till date no charge is framed though the applicant has put in three years one month and thirteen days in pre-trial custody;

(iii) The record of the lower Court which is handling the case reveals that there is no likelihood of the trial commencing in the near future including even the framing of charges. The reply of Respondent no.1 before this Court corroborates this contention that ultimately the prerogative to frame charge is with the lower Court and not with them and they cannot say anything about the trial commencing or concluding. This can be discerned from page 1282 and page 1283 of the reply;

(iv) The fetters of Section 45 of PMLA Act are subservient to Article 21 of Constitution of India and considering the current situation and the trend of cases and case laws by the Hon'ble Supreme Court and this Hon'ble Court post the rejection of the application of the Applicant, he deserves to be released on bail, because there is no likelihood of the trial being started in the near future much less completed;

(v) The right to get bail in such cases is completely independent of the right under Section 436A of the Cr.PC, a right which is recognized by Hon'ble Supreme Court in the case of Vijay Madanlal Chowdhury (2022-SCC OnLine-SC-929) even to cases that fall u/s.3 of PMLA Act;

(vi) While granting bail to the applicant in PMLA Special Case No.404 of 2021, the Special Court under PMLA in its order dated 1st April 2023, has discussed the nature and volume of trial of PMLA case. It is observed that as per Section 44(1)(c) of PMLA Act, the case relating to the scheduled offence has to be committed to the said Court, which has taken cognizance of PMLA case. After

commitment both the cases have to be tried simultaneously but separately and not jointly. Even if the PMLA Special Court is one, there may be number of cases relating to scheduled offence, which have to be committed and tried simultaneously with PMLA special case. There are so many cases which have been pending in the said court to show that for a single PMLA case, there are multiple cases relating to the scheduled offence.

(vii) The Supreme Court recently in the decision of Ritu Chhabria Vs. Union of India (Criminal Writ Petition No.60 of 2023, dated 26th April 2023), has considered the law relating to default bail u/s.167(2) of Cr.PC on the ground of filing incomplete charge sheet. In the reply filed by Respondents it is stated that investigation is still in progress. However, present application is preferred primarily on the ground of long incarceration in custody without trial, and learned counsel would restrict his argument to the extent of bail on the ground of being in custody for more than three years.

(viii) Applicant has been granted bail by concerned Courts in five cases. The applicant is in custody without bail in three cases including the present case;

(ix) The Apex Court and this Court in several cases granted bail to the accused including PMLA cases where they are in custody for substantial period of one year or more than that. There are several accused in this case, about fifty witnesses and voluminous documents. Trial would not be concluded soon.

7. Learned advocate for applicant has tendered compilation of various decisions in support of his submissions :

a. Sanjay Agarwal Vs. E.D. (2022-SCC OnLine-SC-1748);

- b. Vijay Narendra Kumar Kothari Vs. E.D and another (2021-SCC OnLine-SC-561);
- c. Raj Kumar Goel Vs. E.D. (2018-SCC Online-Del-8873);
- d. Raman Bhuraria Vs. E.D. (2023-SC Online-Del-657);
- e. Ramchand Karunakaran Vs. E.D. and another Criminal Appeal No.1650 of 2022;
- f. Mohammad Arif Vs. E.D. (Criminal Appeal No.702/2023);
- g. Jainam Rathod Vs. State of Haryana and another (2022-SCC OnLine-SC);
- h. Sujay Desai Vs. Serious Fraud Investigation Office (2022-SCC Online-SC-1507);
- (i) Union of India Vs. K.A.Najeeb (2021)3-SCC-713;
- (j) Sujit Tiwari Vs. State of Gujarat and another (2020)13-SCC-447;
- (k) Naib Singh Vs. State of Haryana (CRM-M-29466-2022);
- (l) Mohammad Salman Hanif Shaikh Vs. State of Gujarat SLP (Cri.).5530 of 2022;
- (m) Gopal Krishna Patra @ Gopalrusma Vs. Union of India (Criminal Appeal No.1169 of 2022);
- (n) Shariful Islam @ Sarif Vs. State of West Bengal SLP (Cri.) No.4173 of 2022;
- (o) Nitish Adhikary @ Bapan Vs. State of West Bengal SLP (Cri).No.5769/2022;
- (p) Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)
- (q) Ajit Bhagwan Tiwde Vs. State of Maharashtra 2022-SCC OnLine-Bom-4079;
- (r) Ajay Thakre Vs. State of Maharashtra Cri.Bail Application No.515/2022.

- (s) Vilay Madanlal Chowdhary and others Vs. Union of India and others – 2022-SCC OnLine-SC-929.

8. Learned advocate for Respondent no.1 submitted that previous application for bail has been rejected by this Court on merits. There is no change in circumstance to entertain second application for bail. There is no constructive change in entertaining this application. While considering application for bail u/s.379 of Cr.PC, long incarceration, if any, has to be considered with the merits of case. He relied upon decision of Hon'ble Supreme Court in the case of Kalyanchandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another (2005-Cri.L.J.-944). He also relied upon order dated 3rd April 2023 passed by this Court in the case of Hemant Dahyalal Bhatt Vs. Central Bureau of Investigation and another (Cri.Bail Application No.2895 of 2022) wherein it is observed that the gravity of the accusations and the seriousness of the charges when juxtaposed against the long incarceration, the former would gain a primacy. The offence committed by the accused persons is mammoth in all aspects and is considered to be a gigantic fraud, which has largely impacted economy of the country. It is submitted that this is the application under Section 438 of Cr.PC. Investigating agency cannot be held responsible for delay. The applicant is involved in serious economic fraud. Prosecution is ready to proceed with trial.

9. Undisputedly previous application for bail was rejected by this Court vide order dated 25th January 2021. In paragraphs 11 to 14 of the said order, it was observed as follows :-

“11. I have perused the documents on record. The case of complainant/respondents is that the ECIR was registered on 07th March 2020 in pursuant to

registration of FIR by CBI. During the course of investigation, it was noticed that M/s. YES Bank Limited had subscribed to debenture issued by DHFL worth Rs.3700 Crores during the period April to June 2018. It was further noticed that simultaneously DHFL had sanctioned loan of Rs.600 Crores to M/s.DOIT Urban Venture Limited of family Enterprise of applicant. As the said, the transactions appeared suspicious in nature, searches were conducted at the residential premises of the applicant on 06th March 2020 in connection with said transactions and crucial document were recovered. CBI registered FIR No. RC-219-2020-E0004 dated 07th March 2020 against DHFL, M/s. DOIT Urban Venture India Limited, applicant, promoter director CEO of M/s. YES Bank Limited, Kapil Wadhawan, promoter director of M/s. Diwan Housing Finance Limited, Mr. Dheeraj Wadhawan Director of RKW Developers Private Limited and others, under Section 120-B read with Section 420 IPC and Section 7, 12, 13(2) of P. C. Act. As per the FIR, the applicant had entered into criminal conspiracy with Mr.Kapil Wadhawan and others for extending financial assistance to M/s. DHFL by YES Bank Limited in lieu of substantial undue benefit to himself and his family members through the companies held by them. Investigation was initiated by respondent No.1 into offences of money laundering. The main accused applicant is the promoter of his family group companies being operated under flagship of MCPL, YCPL and RAB. These companies were used by him for layering and parking proceeds of crime. He was controlling authority and the decision maker. He is prime accused who with the help of Associates devised the mode of fraud, conspiring with other accused to cheat the bank in the manner explained in complaint. The proceeds of crime has been siphoned off and laundered for concealment layering through acquisition of properties. During the course of investigation, it was revealed that while working as MD/CEO of YES Bank applicant had connived with Kapil Wadhwan, Promoter of DHFL and others to extend undue financial benefit to M/s. DHFL by YES Bank and to get return undue benefit from Wadhwans for himself and family through companies held by them. During April to June 2018 M/s. YES Bank invested Rs.3700 Crores in the short term debentures of

M/s. DHFL and simultaneously Kapil Wadhwan paid kick back of Rs.600 Crores under garb of loan to DOIT Urban Ventures (India) Pvt. Ltd. The daughters of the applicant are 100% shareholder of DOIT Private Limited through M/s. Morgan Credits Private Limited. Loan of Rs. 600 Crores was sanctioned by M/s. DHFL to M/s. DOIT Urban Venture India Private Limited, on the basis of mortgage of substandard properties having meagre value and considering its future conversion from agriculture land to residential land. M/s.DHFL has not redeemed the amount of Rs.3700 Crores invested by M/s. YES Bank in its debentures till date. M/s. YES Bank had also sanctioned loan of 750 Crores to M/s. Belief Realtors one of RKW Developers group of companies beneficially owned by Wadhawans for its Bandra Reclamation Project but the whole amount was siphoned off by Kapil Wadhawan and Dheeraj Wadhwan to M/s.DHFL without making investment in Bandra Reclamation Project. Investigation revealed that Wadhawans had criminally conspired with applicant for illegal sanction of loans to their respective entities.

12. According to complainant details of several companies beneficially owned by the applicant and his family members were collected. The accused are involved in diverting proceeds of crime and layering, siphoning funds. The complaint refers to the chart of flow of funds. The accused had fraudulently obtained and siphoned off crores of rupees by cheating and defrauding the YES Bank. The investigation conducted so far reveals that total estimated proceed of crime is to the tune of Rs. 5050 Crore (3700+600+750). The figure has been disputed by the applicant. It is contended by the applicant that Rs.600 Crores has been added once again. The complainant further mention that the group of companies beneficially owned by the applicant and his family members are controlled by Applicant. The modus operandi devised by the applicant, with criminal intent was to enjoy loan facility without providing proper collateral. The said money being proceeds of crime was laundered by the applicant. It is clearly established that the fund acquired by the accused were obtained without proper collaterals and as per prescribed requirement. The complainant also provides role played by each of the accused in

transaction. The complainant mentioned that during the tenure of the applicant, YES Bank had extended loan to entity, despite them incurring losses and having negative net worth. There entities extended loans to the companies beneficially owned by applicant. Applicant's family members having no substantial business and on the basis of artificially inflated value of mortgage. During the tenure of the applicant with YES Bank, amount of 750 Crores was sanctioned to M/s. Belief Realtors Pvt. Ltd. which is one of the group company of RKW adventure. The proceeds of crime were Rs.5050 Crores. The applicant was the founder of DOIT Urban Ventures. Findings of the investigating agency were that huge economic scam was brewing since many years in YES Bank during the tenure of the applicant. It came to notice that there was poor credit culture, poor compliance culture, centralization of power and lack of institutionalization prevailing in YES Bank.

13. The statement of witnesses shows the complicity of the applicant in the crime. Further investigation was conducted and supplementary complaint has been filed before the competent Court. The supplementary complaint also discloses great details as to how the accused have indulged in the alleged acts. The findings of the further investigation as reflected in the supplementary complaint and the documents therein indicate that huge economic scam was brewing in YES Bank and DHFL. The perpetrators of scam in YES Bank was the applicant and in DHFL, they were Kapil Wadhawan and Dheeraj Wadhawan. Effective and honest governance of banks/financial institutions is critical to proper functioning of the banking sector and the economy as a whole. The applicant while working as MD/CEO of the YES Bank had connived with the co-accused with intention to extend undue financial benefit to M/s.DHFL by YES Bank and to get in return benefits from DHFL for himself and his family through companies held by them. Yes Bank had brought debentures worth Rs. 3700 Crore between April 2018 to June 2018 from DHFL and DHFL gave loan of Rs.600 Crore to DOIT which is beneficially owned by applicant and his family. The applicant's family member had majority shareholding and all financial transactions were handled by applicant. it was noticed that there

companies were not operating and used for siphoning off illegally obtained money i.e. proceeds of crime by the applicant.

14. *The case of the complainant is that M/s.DUVPL is a company beneficially owned by the applicant through his daughters. The applicant entered into conspiracy with Kapil Wadhawan and Dheeraj Wadhawan. YES Bank extended loan to entity despite incurring losses. These entities extended loan to company owned by the applicant, applicant's family members having no business which indicate the case of the Quid pro quo. According to the complainant there was no active or operating business in M/s. DUVPL at the time of proposal of loan. The loan proposal had been approved by DHFL on the basis of substandard properties furnish as security by DUVPL a company owned by daughters of applicant. The said company has no business activity and not generating any revenue. The applicant and Promoter/Director of DHFL conspired to get sanctioned loan to the respective entities from YES Bank and DHFL respectively. The Applicant was the person on ground interacting with Wadhawans. During the course of investigation, it was revealed that loan of Rs.7500 Crores disbursed by YES Bank to M/s. Belief Realtors Private Limited. It was not utilized for the purpose to which is sanctioned. The proceeds of crime according to complainant involved in this case is Rs.5050 Crores. It is also revealed that the applicant had siphoned off huge amount out of India through his family/group owned controlled companies. It is found that out of the proceeds of crime of Rs.600 Crores, Rs.378 Crores were invested overseas. The investigation in relation to exact foreign proceeds of crime is still under investigation. The applicant and his family members have incorporated or beneficially interest in various companies. The applicant is desperately trying to dispose of his property. He has given online advertisement for sale of his London based property. The said property is attached by ED vide provisional attachment order dated 25th September 2020 being proceeds of crime in terms of Section 2 (1) (u) of PMLA Act. According to complainant if the applicant is released on bail, he will try to sell that property. Further investigation is still in progress."*

10. Applicant is now seeking bail on the ground that he is in custody from 8th March 2020 and there is no progress in the trial. The maximum sentence which can be imposed is up to seven years. In the reply filed by respondent no.1 it is stated that Department is taking all necessary steps towards completion of investigation and that predicate case bearing No.830 of 2020 in FIR No.RC 210 2020 E0004 dated 7th March 2020 filed by CBI/EO-I, New Delhi has now been transferred to the Special PMLA Court in terms of Section 44(1) (c) of PMLA. The proceedings for PMLA case and predicate agency would now be taken up by PMLA Special Court with regard to the framing of charges. It is in the Court's domain to frame the charges.

11. No doubt Hon'ble Supreme Court and this Court in several cases granted bail to the accused on the ground of long incarceration. However, gravity of accusations in the present case cannot be brushed aside. Hon'ble Supreme Court in the case of Y.S.Jaganmohan Vs. CBI (2013)7-SCC-439 has observed that "economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country". The Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing presence of the accused at the trial, reasonable apprehension of the

witness being tampered with, the larger interests of public/State and other similar considerations. It is also pertinent to note that applicant is involved in seven other similar cases.

12. The prosecution case is that applicant entered into criminal conspiracy with Dheeraj Wadhwan and Kapil Wadhwan as well as others and extended undue financial benefit to M/s.DHFL and in return got undue financial benefits from Wadhwans. During April-2018 and June-2018 the applicant through M/s.Yes Bank Limited got invested Rs.3,700 crores in short term non-convertible debentures of DHFL. Mr.Kapil Wadhwan through DHFL paid kick back of Rs.600 in the garb of loan to applicant's beneficially owned companies. Applicant is one of the main accused in the complaint. He has misused his official position to gain undue financial benefit for him and his family members and associates. He is involved in bribery, corruption and money laundering activities. The POC involved in this case is to the extent of Rs.5,333 crores. It is alleged that applicant had siphoned off huge amount of POC out of India through his family group owned/controlled companies. Out of proceeds of crime of Rs.600 crores, Rs.378 crores have been invested overseas. Investment relating to exact layering of proceeds of crime is still under investigation. Applicant and his family members have incorporated or have beneficial interest in various companies. These factors cannot be ignored considering the role of applicant in the crime, the Magnitude and seriousness of crime, the applicant is not entitled for bail. The allegations against applicant is that applicant is involved in laundering of public money. He has allegedly hatched conspiracy with owners of DHFL for siphoning huge amount. Though the applicant is in custody for three years, the involvement

of public money shows that charge is serious. There is apprehension of tampering evidence. Hence, on the ground that applicant is in custody from 8th March 2020, bail cannot be granted.

ORDER

- (i) Bail Application No.586 of 2023 is rejected.

(PRAKASH D. NAIK, J.)

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