IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1068 OF 2023

SATISH KUMAR PAWA ..APPLICANT
VS.
1. SERIOUS FRAUD INVESTIGATION OFFICE
2. STATE OF MAHARASHTRA ..RESPONDENTS

Mr. Ashok Mundargi, Senior Advocate a/w Adv. Sankalp Sharma a/w Adv. Abhijeet Badar for the applicant.
Adv. H. S. Venegavkar for respondent No.1.
Mr. P. H. Gaikwad, APP for the State-respondent No.2.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 6, 2023.

P.C. :

1. Heard learned Senior Advocate for the applicant, learned counsel for the respondent No.1-SFIO and learned APP for the respondent No.2-State.

2. This is an application for bail in respect of the offence punishable under Section 447 of the Companies Act, 2013 (hereafter 'the said Act' for short) registered at the instance of the Serious Fraud Investigation Office (hereafter 'SFIO' for short) in Special Company Case No.418 of 2022.

3. The applicant - Satish Kumar Pawa is the accused No.4. So far as the accused No.2-Sant Lal Aggarwal is concerned, this Court by an order dated 03.10.2023 had allowed the application for bail on the terms and conditions mentioned therein.

4. The applicant's wife was the Director of Jagat Agro Commodities Pvt. Ltd. (hereafter 'JACPL for short). The applicant was the Chief Executive Officer. It is at the instance of the present applicant that proceedings were initiated before NCLT as there were some financial irregularities on the part of accused No.2 in the matter of dealings of the said company. The applicant had a grievance against the accused No.2.

5. For ease of reference I reproduce the order dated 03.10.2023 passed in Bail Application No.785 of 2023 in respect of Sant Lal Aggarwal Vs. Serious Fraud Investigation Office and another. The relevant portion of the order dated 03.10.2023 reads thus :-

> "2. This is an application for bail in respect of the offence punishable under Section 447 of the Companies Act, 2013 (hereafter 'the said Act' for short) registered at the instance of the Serious Fraud Investigation Office (hereafter 'SFIO' for short) in Special Company Case No. 418/2022. The period in respect of which the accusations are made pertain to the year 2013 to 2016. The complaint on the basis of which the prosecution was initiated by the SFIO is dated 22/4/2022. The applicant was, however, arrested on 8/3/2022. There are in all

four accused of which one is granted bail by the trial Court and one by this Court.

3. The applicant is a director of the company named Jagat Agro Commodities Pvt. Ltd. (hereafter 'JACPL for short) which was initially incorporated in the year 1984 by the Pawa Group and in 1993, Aggarwal Group joined as the other shareholder. JACPL was primarily engaged in rice production. It is the contention of learned senior advocate for the applicant that the bank auditors carried out repeated physical verification and vide reports dated 12/2/2014, 5/12/2024, 15/6/2015 and 8/10/2025 categorically verified the physical existence of the godowns and the value of the stocks. It is submitted that last of the Forensic Audit Report dated 8/10/2015 found the losses incurred by JACPL in the year 2014-2015 to be genuine and also found no diversion of funds. While adjudicating a lis arising out of a dispute between two shareholder groups, that is Pawa Group and Aggarwal Group in JACPL, the Company Law Board ('CLB' for short) directed SFIO to file a report with respect to the position of stock. An assertion was made by Pawa Group that stock worth Rs.201 crores was in the godowns. The Ministry of Corporate Affairs passed a formal order on 7/3/2016 in exercise of its powers under Section 212 (1) (c) of the said Act assigned the investigation into the affairs of JAPCL to SFIO. According to learned senior advocate, the order of the CLB was misinterpreted.

4. On 18/4/2016 and 16/5/2016, SFIO conducted physical verification at the company's godown and submitted its status report. During verification, SFIO took Pawa Group's declaration in CLB petition (that stock worth Rs.201 crores was in 36 godowns) as baseline and concluded that there was only 5% variation between the declared stock and the stock found in the godowns. The first investigation report dated 21/9/2016 was submitted. On 8/3/2022, the applicant was arrested by SFIO on his appearance in Special Court, New Delhi in another matter. Learned senior advocate submitted that on several occasions the applicant was called by SFIO at Mumbai prior to his arrest and his statements were recorded. SFIO submitted a supplementary investigation report to the Ministry of Corporate Affairs on 6/4/2022. The accusation is that the applicant defrauded the bank by declaring false value of stock offered as collateral. It is, thus, the submission of learned senior advocate that the stock value of Rs.37.80 crores is arrived at based only on the statements of JACPL's employees Suresh Kumar and Siya Ram Tiwari and not on the basis of any Scientific Forensic Audit independently conducted. Learned senior advocate urged that no independent stock audit is conducted by SFIO.

5. The accusations of the SFIO primarily are that number of

godowns are less than what was stated in the CLB petition filed by Pawa Group and the value of the stock is much less than that of the value of the stock worth Rs.201 crores mentioned before CLB. It is further the accusation that an amount of Rs.550 crores has gone to 'Jagat Overseas' from the account of the company which amounts to siphoning.

6. One of the point urged by learned senior advocate is about the applicability of the said Act. It is submitted that commencement of investigation under Section 212(2) thereof and the exercise of the power of arrest under Section 212(8) and consequent prosecution under Section 447 of the said Act, all proceedings under the Companies Act, 1956 will continue to hold the field until 30/1/2019. It is, thus, the submission that once the entire proceedings were initiated on the strength of the Companies Act, 1956, there was no occasion, justification or jurisdiction with the SFIO to commence and conclude its investigations and prosecute the applicant under Section 447 of the said Act. It is then submitted that even on the same set of accusations, CBI has registered First Information Report (FIR) under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code (IPC) at the instance of the bank defrauded. It is, therefore, submitted that the question is whether prosecution under Section 447 of the said Act would stand validated or not would also require adjudication at an appropriate stage. In the facts and circumstances of the present case, having regard to the view that I am inclined to take, I do not propose to delve into the aforesaid aspects of this paragraphs which could be a subject matter of consideration in appropriate proceedings.

7. Mr. Hiten Venegavkar, learned counsel for the respondent no.1-SFIO, vehemently opposed this application. It is submitted that the applicant is facing serious accusations of financial fraud in the company and there are materials to support the accusations. It is submitted that though the company projected that it has large number of godowns, but during investigation, it is revealed that there are much lesser number of godowns. It is further submitted that the financial statements are forged and fabricated. It is submitted that the company falsely projected that it had stocks over Rs.200 crores. However, investigation revealed that there was stock of hardly Rs.37 crores. It is submitted that the company inflated the value of its stock given as collateral to the bank and taken enhanced credit facilities from the bank. Relying on the materials, it is submitted that the monies received from the bank have then been diverted by JACPL to related parties thereby defrauding the bank. It is submitted that the investigation report and the supplementary investigation report by SFIO reveals that the applicant was involved in day-to-day business, he has signed the stock

statements and attended board meetings. During the investigation when the applicant was confronted, he could not identify all the godowns which were disclosed to the bank and CLB. It is submitted that it is the company through the applicant is responsible for the fraud worth approximately Rs. 349 crores.

8. Mr. Venegavkar, placing reliance on the statements of Rajkumar dated 6/4/2022, who was the proprietor of 'Jai Shiv Trading Co.' submitted that the bills are forged by the said Raj Kumar at the behest of JACPL. It is submitted that the statement of Vinod Kumar, who is a Chartered Accountant and proprietor of 'Mukesh Vinod & Company' reveals that the stocks were overvalued. He also relied on the statement of Vikas Bansal, an employee, to show how financial irregularities are committed by the applicant. It is submitted that there is ample material in support of the accusations. It is further submitted that there is a transfer of funds to the tune of Rs.550 crores from one concern to another which amounts to siphoning. It is then submitted that having regard to the serious nature of the accusations and as the punishment prescribed for the offence is minimum three years imprisonment, this is not a fit case to enlarge the applicant on bail on the plea of having undergone incarceration for more than 18 months. It is further submitted that adequate medical facilities are made available to the applicant and therefore, this is not a case where the applicant is entitled to be enlarged on bail on medical grounds. It is then submitted that though the properties are attached and an affidavit has been filed to indicate that part of the amount involved in the fraud can be covered up, however, this cannot be a factor for enlarging the applicant on bail having regard to the serious nature of the accusations.

9. Having heard learned counsel, while deciding the present application I must bear in mind the provisions of sub-section (6) of Section 212 of the said Act which reads thus:-

> "**212(6)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), [offences covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless-
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> PROVIDED that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

PROVIDED FURTHER that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by-

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government."

10. From the record it is seen that the officers of the bank had conducted physical audit of the stocks of the JACPL including Forensic Audit done where stocks have been valued for over Rs.200 crores. There is a status report dated 18/4/2016 of the SFIO which mentions that there is only 5% variation in the declared stock and the stock found in the godowns during inspection. The Forensic Audit Report which SFIO is relying upon indicates that JACPL has faced genuine business losses and that there is no financial irregularities. It appears that there is no independent stock audit done by SFIO. The SFIO has arrived at value of the stock based on the statement of the store keepers and I find some substance in the contention of learned senior advocate for the applicant that SFIO did not carry out any independent forensic analysis relating to valuation of the stock.

11. So far as the accusation that Rs.550 crores have gone to 'Jagat Overseas' from the account of the company which amounts to siphoning is concerned, it appears that in the financial year 2014-2015 Rs.522.60 crores were transferred from Jagat Overseas' account to the account of JACPL and Rs.552.41 crores was received back from JACPL to 'Jagat Overseas'. Prima facie, this may be a transaction squaring up of the amount credited and debited. In my prima facie opinion, I am satisfied that there is a reasonable ground to believe that the offence punishable under Section 447 of the said Act may not be attracted in the present case.

15. Chapter XXIX of the said Act contains Section 447 which provides for punishment for fraud. Section 447 reads thus:-

"**447. Punishment for fraud.**

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud [involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

PROVIDED that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years:

[PROVIDED FURTHER that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to [fifty lakh rupees] or with both.]

Explanation: For the purposes of this section -

(i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled."

16. Learned senior advocate submitted that the applicant is now in custody for more than 18 months. Placing reliance on Section 447 of the said Act it is submitted that the maximum punishment for the offence is imprisonment for a term which shall not be less than six months but which may extend to ten years. Prima facie, I am of the opinion that having regard to the nature of the accusations made in the case at hand, as per the first proviso to Section 447 of the said Act, the alleged fraud in question involves public interest, for which the term of imprisonment shall not be less than three years. However, the circumstance that the applicant has undergone custody as an undertrial for more than 18 months which period is equivalent to half of the minimum punishment for the offence, is the another circumstance which I am inclined to consider in favour of the applicant for enlarging him on bail.

17. One more aspect which needs consideration is an affidavit of the applicant's son which has been filed on his behalf which records thus:-

"AFFIDAVIT OF THE APPLICANT'S SON ON HIS BEHALF

I, Gaurav Aggarwal, Aged 37 years, son of Shri Sant Lal Aggarwal, presently residing at J-401, 4th floor, DLF City, Ambience Caltriona, Section-24, Gurgaon, DLF Phase-III, Gurgaon, Haryana 122010 do hereby solemnly affirm and declare as under:-

1. I am the elder son of the Applicant Sant Lal Aggarwal who is aged about 64 years. The Applicant's family comprises of his wife Smt. Rajni Aggarwal (guarantor in Jagat Agro Commodities Private Ltd. JACPL) who is also a senior citizen and suffering from various old age-related ailments. That apart, the Applicant has one daughter who is married and two sons namely Saurav Aggarwal (guarantor in JACPL) and Gaurav Aggarwal (guarantor & Deponent herein). While the younger son of the Applicant has a wife and 7 year old school going son, the elder son l.e. the deponent's family comprises of his wife and two minor children i.e. a daughter aged 13 years and a son aged 5 years respectively.

2. That the share of the Aggarwal Group in JACPL was merely 42% out of which the individual shareholding of the Applicant was to the extent of 10.61% only.

3. That on account of incessant losses to the rice industry which has been widely recognized and accepted even by the government agencies, JACPL suffered huge losses and the credit facilities availed by the company from State Bank of India ("SBI") Primary Lender and Punjab National Bank ("PNB") - Secondary Lender went away. In the present case, the accusations by the SFIO are that Rs.349 crores of the bank money having been siphoned off. The accusations are vehemently denied by the Applicant.

4. That it is a matter of record that the Bank(s) have since disposed of the properties that were mortgaged with them for the purpose of sanction/grant of credit facilities for approximately Rs.120 Crores.

5. That the record also reveals that on the basis of the FIR registered by the CBI for offences u/s. 120-B, 420, 467, 468 & 471 IPC vide RC2202020E0013 dated 27.5.2020 and on account of the invocation of Section 447 of Companies Act, 2013 by the SFIO in the instant case, the Enforcement Directorate ("ED") has also commenced its investigations under PMLA vide ECIR /14/MBZO-1/2021 dated 31.3.2021. During the process of such investigations, the ED has since provisionally attached the following assets vide PAO No. 17/2022dated 24.11.2022, which was confirmed by the Adjudicating Authority vide order dated 10.05.2023 in OC 1859/2022:

Sr.	Description of Property	Valuation taken by ED
1.	Flat No.819, 8th floor, Amba Deep Building, 14 Kasturba Gandhi Marg, New Delhi measuring 562 Sq. Ft. in the name of JACPL.	15,18,173/-
2.	Flat No.801, 8th floor, Amba Deep Building, 14 Kasturba Gandhi Marg, New Delhi measuring 360 Sq. Ft. in the name of JACPL.	21,00,000/-
3.	Flat No.802, 8th floor, Amba Deep Building, 14 Kasturba Gandhi Marg, New Delhi measuring 456 Sq. Ft. in the name of JACPL.	12,31,827/-
4.	Flat No.803, 8th floor, Amba Deep Building, 14 Kasturba Gandhi Marg, New Delhi measuring 445 Sq. Ft. in the name of JACPL.	2,33,62,500/-
5.	Office Space no. 328, D. Mall, Plot No.185, Twin District Centre, Sector 10, Rohini, Delhi 110 085 (Lease hold property) in the name of M/s. Jagat Overseas.	17,01,35,000/-
6.	Office Space No.321, D. Mall, Plot No.185, Twin District Centre, Sector - 10, Rohini, Delhi 110 085 (Lease hold property) in the name of M/s. Jagat Overseas.	19,51,25,000/-
7.	Khewat No.601/531/439, Khasra 88/13 & 14, area - 12 kanal, Village Kundli, Tehsil Rai, Dist. Sonipat, Haryana vide deed registration no.9369.	73,75,000/-
	Total provisional attachment confirmed in OC 1859/2022 vide order dated 10.05.2023 (this value may be lesser than the fair market value)	38.86 Crores

6. That vide another PAO No. 11/2023 dated 27.7.2023, further immovable assets have been attached by the ED, the total value whereof is said to be approximately Rs. 10.50 Crores. The said PAO is pending adjudication before the Adjudicating Authority, Delhi.

7. That **<u>therefore, the total attachment by the ED comes to Rs. 49.36 Crores</u>**. As stated above, the value accorded by the ED may be less than the fair market value

8. That apart from the above, it is further humbly submitted that the following properties of approximately **Rs. 37.25 Crores** or more have been offered to the bank after mutual discussions for the purpose of arriving at a One Time Settlement ("OTS") of the entire dues, the details whereof are as under: -

Properties offered under OTS proposal dated 12.05.2023 to the Bank towards satisfaction of entire outstanding debt:

S. No.	Description	Owner
1.	Agricultural land measuring 50 kanal 17 marla (33184 sq. yds Kila No.76/21/BG), 76/21/1(3-10), 76/23/2 (5-10), 78/24/1/1(3-6), 88/2(8-0), 88/7 (8-0), 88/9 (8-0), 88/8 (7-13, 85/10/2 (2-18) situated in village Kundli District, Sonepat (Haryana).	JACPL
2.	Agricultural land at village Kohand, Tehsil Gharaunda, District Karnal, Haryana, Khewat no.132, Khatoji No.235, Murabba no.14, Kila no.11/2 area measuring 1 kanal 10 marla.	JACPL
3.	Agricultural land at village Khoand, Tehsil Gharaunda, Dist. Karnal, Haryana. Khewat no. 152 measuring 5 Kanal 7 Marla.	JACPL
4.	Agricultural land situated at Karnal, Haryana, Khewat no. 132, khatoni 238 admeasuring 75 kanal, 12 marla	JACPL
5.	Agricultural land situated at Singhu Border, Delhi Khasra no:8/2, 11/1.	JACPL

9. That total OTS Proposal after mutual discussion with the Bank is for an amount of Rs. 37.25 Crores which includes the value of the above unsold/unattached properties. This proposal is under active consideration by the Bank which is evident from its email correspondence dated 09.08.2023 which reads as under:

> "With reference captioned subject, you are requested to provide us LEI number of above company to expediate your request in the system. Please, Cooperate"

10. That the Applicant or his family would have absolutely no objection for the bank to dispose of the aforementioned assets so as to realize its dues.

11. That the Applicant and his family members including his wife and two sons namely Gaurav Aggarwal and Saurav Aggarwal stand as guarantors in JACPL wherein bank has already initiated recovery proceedings since 2017. It is humbly submitted that majority of including as well as individual assets are already auctioned and the remaining proceedings against all the family members are undertaken by SBI.

12. That it is humbly submitted that during the course of hearing of SA/40/2018 titled as "Jagat Agro Commodities Pvt. Ltd. V/s State Bank of India" pending adjudication before Debt Recovery Tribunal (DRT-III), New Delhi, respective statements have been made by the counsel for the Company and the bank accepting that the likelihood of matter being finally settled with the Bank, in this context, the relevant contents of the order 08.08.2023, passed by the DRT relevant extract of the order reads as under:

"3.Ld. Counsel for S. applicant submitted that the matter is under settlement between the parties and there is every likelihood that the matter will be settled between the parties".

"4.Ld. Counsel for respondent no. I has also conceded the statement made by Ld. Counsel for S.Applicant and made a request to adjourn the matter for next 3- weeks to ensure outcome of settlement proposal given by S.Applicant".

13. That it is evident that the Bank is actively considering the OTS Proposal at an advance stage and therefore, there is every likelihood of burial of the entire dispute.

14. That it is humbly submitted that the bank is actively considering the proposal for OTS and if that fructifies, the entire liability of the company would come to an end. <u>In any event, it is noteworthy that the Pawa Group has almost equal shareholding and therefore, the same may also be an equitable factor for consideration by this Hon'ble Court.</u>

15. That it is further humbly submitted that insofar as the personal assets of the applicant and his family are concerned, they are left with virtually nothing as everything has gone towards the payment of debts and satisfying the lenders. So much so, they do not even have their own house to live in and have been living in rented accommodation for the last more than 5 years. The only remaining assets with the family are the personal jewelry of the three ladies i.e., the wife of the Applicant

and his two daughters-in-law which would come out to be approximately Rs. 1.10 Crores. The family is ever ready to place this entire jewelry as security with the Learned Trial Court during the pendency of the Trial and/or subject to any direction that may be issued by this Hon'ble Court.

16. That the Applicant further humbly beseeches this Hon'ble Court to grant him indulgence and release him on bail so that he may make all out efforts to fructify the OTS and generate all other resources to settle the entire matter.

17. That the Applicant further undertakes to furnish adequate surety for the purpose of bail and may be able to persuade his relatives etc. to furnish a surety having valuation of upto Rs. 5 Crores for the purpose of releasing him on bail within such time frame/period that this Hon'ble Court may deem fit."

18. In paragraph 17 of the affidavit, though it is stated that the applicant is willing to furnish a surety having valuation of upto Rs.5 crores for the purpose of releasing him on bail, on behalf of the applicant, learned counsel on instructions of the applicant through his son who is personally present in the Court submitted that a sum of Rs.5 crores will be deposited with the Special Court by way of Fixed Deposit in the name of the concerned Registrar/ Superintendent of the Special Court within a period of two months from the date of the applicant's enlargement on bail. The statement is accepted as an undertaking to this Court. The affidavit to that effect be filed by the applicant in this Court before his release. Registry to accept. The said deposit will abide by the orders passed by the Special Court."

6. I have heard Mr. Mundargi, learned Senior Advocate for the applicant and Mr. Venegavkar, learned counsel for respondent No.1.

7. Mr. Venegavkar, learned counsel for respondent No.1 submitted that so far as the role of the present applicant is concerned, the same is slightly different from that of the co-accused. My attention is invited to the affidavit-in-reply filed on behalf of the respondent No.1. Apart from this Mr. Venegavkar submitted thus :-

A. SFIO investigation revealed that various individuals including the Applicant were persons who played crucial roles and were responsible for violations of fudging of financial statements to avail additional loans as also enhanced credit limit from banks without sufficient stock, and thereby. committed the offences as defined under Section 447 of the Companies Act, 2013.

B. That though the Applicant was never a Director or Chairman of A-1 Jagat Agro Commodities Private Limited, but he was controlling the affairs of the company through his wife, A-3 Sudha Satish Pawa. He used to meet various people and presented himself as the Chief Executive Officer (CEO) of the Company and the same was also displayed on the Website of the company.

C. That despite not having any signing power on behalf of the company, he was actually running the company on behalf of his wife/director, Sudha Satish Pawa. He, along with others blatantly used the structure of A-1 Jagat Agro Commodities Private Limited for taking credit facilities from the banks by submitting fudged financial statements with regard to the stock position.

D. The Applicant remained evasive in his answers during investigation and it is pertinent to mention here that Applicant/A-4 along with other officials were confronted with the fact regarding valuation of the stock when most of the godowns were not traceable and no satisfactory reply was provided. Despite being aware of the position of stocks and godowns, directions of Hon'ble NCLT and subsequent verification by the SFIO officers, the same was not informed to the bank officials.

E. That scrutiny of the bank statements of Jagat Agro Commodities Private Limited, Jagat Overseas maintained with SBOP, PNB and HDFC Bank, and personal accounts of Satish Kumar Pawa, and Satish

Kumar Pawa HUF, especially the bank accounts maintained with SBOP, PNB, Bank of India of CEO Satish Kumar Pawa, Jagat Agro Commodities Private Limited, Jagat Overseas & Others, revealed that transactions amounting to several crores of rupees, especially during the Financial Years 2013-14 to 2015-16, had been received into the personal accounts of Satish Kumar Pawa by channelizing through Jagat Overseas which was, in turn, received from the Company.

F. He alongwith Sant Lal Aggarwal were controlling day to day affairs of the company and were actively participating into the banking transactions with the Bank including attending the meetings with the consortium of the banks.

G. That statement of Vikas Bansal, Vinod Kumar, Raj Kumar and Yugul Kishor Garg was recorded during the course of investigation which indicates that bogus billing was being raised through Jagat Agro to inflate the turnover and valuation of the stocks of the company which was used to raise the funds from the consortium of the Banks which ultimately resulted into default of 386.99 Crores of loan amount to the Banks.

H. In light of the foregoing facts, it is clear that Satish Kumar Pawa/Applicant was charged for offence punishable U/s 447 of the Companies Act, 2013 and before granting the bail the court had to cross the hurdles of S. 212 (6) of the Companies Act, 2013.

8. Mr. Mundargi, learned Senior Advocate for the applicant submitted that the properties which have been secured in Bail Application No.785 of 2023 concerns the present applicant as well. To show the applicant's bonafides, an affidavit dated 05.11.2023 has been filed by the wife of the present applicant stating thus :-

> "1. That I am a law-abiding senior citizen having my address as mentioned herein above. I am providing this affidavit for the purpose of furnishing security in order to secure bail of my husband Mr. Satish Pawa, who came to be arrested on 22nd February 2022 in relation to offence under Section 447 of the Companies Act 2013 and has been languishing in judicial custody lodged at the Mumbai Central Prison at Arthur Road, Mumbai.
>
> 2. Mr. Satish Pawa was a shareholder in Jagat Agro Commodities Pvt. Ltd. (**"JACPL"**) wherein I was a director. Me and my family (**"Pawa group"**) held around 48.81% of the shares of the Company and were involved in marketing and promotion activities of JACPL. The operational, financial and

administrative affairs of JACPL were primarily under the control of Mr. Santlal Aggarwal along with his family (**"Aggarwal group"**). In and around the year 2014, as a result of repercussions of the drought and famine on the rice industry and rising variable interest rates of the mortgages, the financial health of JACPL fell in a delicate position due to which, Mr. Santlal Aggarwal, namely Accused No.2 herein, being at the helm of all the financial decisions, opted inter alia, for enhancement of financial assistance despite there being strong resistance from the Pawa group.

3. Consequently, the Pawa group was marginalized in the financial and operational affairs of JACPL. Thus, due to such gross mismanagement of the affairs of JACPL, the Pawa group was constrained to act as whistleblowers and therefore, had to file a petition before the Hon'ble National Company Law Board (NCLB") under Section 397, 398, 402, and 403 of the Companies Act 1956.

4. That it is also a well-known fact that during the relevant time period, due to the incessant losses to the rice industry as also recognized and accepted by the government agencies, JACPL suffered huge losses and the credit facilities availed by the company from State Bank of India ("SBI")-the primary lender and Punjab National Bank (“PNB")-the secondary lender, had to be restricted and the disbursal arrangements thereto, were revoked. In the present case, the accusations by the Serious Fraud Investigation Office ("SFIO") are that Rs.349 crores of the bank money have been siphoned off - The accusations are vehemently denied by the Applicant.

5. My husband and I have suffered personal losses, including the tragic loss of our only child, Ms. Swati Pawa, to a brain stroke. Our financial resources have been depleted due to property attachments by enforcement agencies and banks. The mismanagement of JACPL by the Aggarwal group has led to significant professional and personal losses, leaving us without a source of income.

6. Despite the afore-mentioned challenged, I am willing to furnish the following personal property as security for Mr. Satish Pawa's bail:

- Property Details:
  - Plot No. D-842, measuring 564 sq. yds.
  - Located at New Friends Colony, New Delhi-110065

The Agreement of Sale of the abovementioned property was executed in New Delhi on 11th day of April 1997 between Shri

> Arun Kumar resident of 61/20, Ramjas Road, Karol Bagh, New Delhi and Mrs. Sudha Pawa (me) and my husband Mr. Satish Pawa, for the sale of the mentioned plot. The Agreement of Sale along with all the relevant documents pertaining to the property are hereby annexed and marked as **Exhibit 'A'**.
>
> 7. I affirm that my husband and I are co-owners of the aforementioned property, each holding an equal share in the said same. This property represents our only remaining asset. I understand that by furnishing this property as security for bail, I may be required to surrender the property if Mr. Satish Pawa fails to appear in court as required or violates any conditions of bail."

9. The affidavit is taken on record and marked as Exhibit "X" for identification.

10. Learned Senior Advocate submits that the present applicant as well as Mrs. Sudha Satish Pawa will abide by the statements made in the affidavit.

11. It is at the instance of the applicant that the proceedings commenced before the NCLT in respect of financial irregularities alleged by the applicant against the Director – Sant Lal Aggarwal who has been enlarged on bail. It is the case of the respondent No.1 that the applicant along with Sant Lal Aggarwal were controlling day to day affairs of the company and were actively participating into the banking transactions with the Bank including attending the meetings with the consortium of the banks. It is thus obvious that the order in the case of co-accused - Sant Lal Aggarwal enlarging him on bail will cover the case of the present applicant as well.

12. The applicant presently is 77 years of age. He is suffering from old age ailments. The applicant was arrested on 23.02.2022. He is in custody for more than one year and eight months. The maximum punishment for the offence alleged is ten years of rigorous imprisonment. No doubt a minimum period of three years is prescribed. The trial is likely to take a long time to conclude. Considering the age of the applicant, the period of his detention as an under-trial and since the order dated 03.10.2023 in Bail Application No.785 of 2023 covers the case of the present applicant also, in the facts and circumstances of the present case I am satisfied that the hurdle of twin conditions laid down by Section 212(6) of the Companies Act can be overcome. The applicant can be enlarged on bail. Hence, the following order :-

O R D E R

(a) The application is allowed.

(b) The applicant-Satish Kumar Pawa in connection with C.R. No. SFIO/INV/JACPL/473/2016 registered with Serious Fraud Investigation Office, Mumbai and in Special Company Case No.418 of 2022, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.

(c) The applicants is permitted to furnish cash bail surety in the sum of Rs.1,00,000/- for a period of six weeks in lieu of surety.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly.

(g) The applicant shall surrender his passport, if any, with the Special Court if not already surrendered.

(h) The applicant shall not leave the country without the permission of the Special Court.

(i) The statements made in the affidavit shall be abided by the applicant.

13. The aforesaid observations are prima facie in nature expressed in view of the mandate of Section 212(6) of the said Act and the same shall not influence the Special Court while trying the special case.

14. The application is disposed of.

(M. S. KARNIK, J.)