IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4424-2023 (O&M)
Reserved on: 16.02.2023
Pronounced on: 03.05.2023

Neeraj Saluja

... Petitioner(s)

Versus

Central Bureau of Investigation

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Mukul Rohatgi, Sr. Advocate with
Mr. R.S. Rai, Sr. Advocate,
Mr. Anand Chhibbar, Sr. Advocate,
Mr. Mahesh Aggarwal, Advocate
Mr. Shikhar Sarin, Advocate
Mr. Gautam Dutt, Advocate
Ms. Sukriti Rai, Advocate
Mr. Arjun Rai, Advocate
Mr. Farhad Kohli, Advocate
for the petitioner(s).

Mr. Rajeev Anand, Standing Counsel for CBI.

***

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
RC2232020 A0004	6.8.2020	AC-V Delhi, District Delhi	403, 420, 467, 468, 471, 120-B IPC and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Report under Section 173(2) CrPC for commission offences u/s 420, 477-A and 120-B IPC.

1. The petitioner, incarcerating upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.

2. In paragraph 15 of the bail application, the accused declares the following

criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	RC2232019 A0002	4.11.2019	120-B r/w 403, 420 IPC & 13(2) r/2 13(1)(d) P.C. Act	SPE/CBI/AC-V/New Delhi

3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

> [10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

> While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. The preliminary response of the CBI, as contained in paras 1 to 3 of the reply, is extracted as follows:

> "1. That, the company, M/s SEL Textiles Ltd. having its registered office at 274, Dhandari Khurd, G.T. Road, Ludhiana was engaged in the business of textile industry. The brief allegation in the FIR is that M/S SEL Textiles Ltd. availed credit facilities, such as Term Loans and CC (Working Capital) from Central Bank of India (Lead Bank) and the consortium Banks, for

setting up and expansion of its units at Neemrana (Rajasthan), Hansi (Haryana), Rahon (Punjab) and Punjava (Punjab). The Company's account came under default, as interest/EMIs were not serviced on time and account was classified as NPA on 31.03.2014 with the Complainant Bank. The accounts of the company also turned NPA in other Consortium banks afterwards. The company requested the lender banks for restructuring of its loans under Corporate Debt Restructuring (hereinafter referred to as "CDR"). The restructuring of loans under CDR mechanism was sanctioned by the CDR-EG on 23.09.2014 through CDR package, for providing a revival chance to the Company, with certain terms and conditions. The performance and financials of the company did not improve and rather got deteriorated. The company did not comply with the Terms and Conditions of the CDR sanction, due to which the loan accounts of the company turned NPA again on 28.02.2016. Forensic Audit of the account of the Company was conducted by M/s GSA & Associates, New Delhi (Forensic Auditors), which vide its report dated 30.01.2017 observed serious irregularities viz. diversion of bank funds to its Related Parties, siphoning off public money out of India, fictitious sales, misrepresentation in the stock statements etc. The account was declared as fraud on 18.04.2018 by the Lead Bank, i.e. Central Bank of India, followed by the other Consortium Banks.

2. That, after receiving the report of GSA & Associates and subsequent declaration of fraud by the lenders, the Central Bank of India, on behalf of members of consortium banks, submitted a complaint dated 29.07.2020 to CBI through Vinod Kumar Malik, Assistant General Manager, SAM Branch, Central Bank of India, Chandigarh against M/S SEL Textiles Ltd. having registered office at Plot No. 274, G.T Road, Dhandari Khurd, Ludhiana, Punjab against the Borrower Company M/S SEL Textiles Ltd. and its Directors, namely, Ram Saran Saluja, Neeraj Saluja and Dhiraj Saluja, Unknown Public Servants and Unknown Private Persons for the offences of having committed cheating/criminal breach of trust, criminal conspiracy and forgery, criminal misconduct, diversion/misappropriation of public money, thereby, causing loss of to the tune of INR 1530.99 crores during the year 2009-2013. Thereafter, on the basis of aforesaid complaint, CBI registered FIR i.e. RC2232020A0004 on 06.08.2020 against M/S SEL Textiles Ltd. and its Directors, namely, Ram Saran Saluja, Neeraj Saluja and Dhiraj Saluja, Unknown Public Servants and Unknown Private Persons u/s 120B r/w 403, 420, 467, 468 & 471 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.

3. That, during investigation, it revealed that the major decisions with regard to the functioning of M/S SEL Textiles Ltd. were being taken by the accused Shri Neeraj Saluja. Though Shri Neeraj Saluja was examined on various dates, but, he was found to be always evasive in his replies.
Consequently, accused Shri Neeraj Saluja was arrested by CBI on 28.10.2022. Chargesheet in the instant case was filed on 27.12.2022 against the accused company M/S SEL Textiles Ltd. through its Directors (A-1), Neeraj Saluja (A2), Dhiraj Saluja (A-3), Navneet Gupta (A-4), RamDass Khanna, partner, M/s Dass Khanna & Co. (A-5), M/s Rhythm Textiles & Apparels Park Ltd., through its Directors (A-6), M/s Silverline Corporation Ltd., through its Directors (A-7) u/s 120-B r/w 420 and 477-A of IPC and substantive offences thereof. However, during investigation role of certain public servant / Bank Official came to light for violations/omissions/commissions in sanctioning / disbursing /

monitoring of credit facilities granted to M/S SEL Textiles Ltd. Prior approval of the competent authorities of concerned banks are being sought as per Section 17 A of The Prevention of Corruption (as amended in 2018) Act, 1988 for conducting investigation of the offences against the said public servants/bank officers. Investigation u/s 173(8) Cr.PC. on the points regarding role of public servants involved in the sanction of credit facilities to the accused company, promoter's contribution introduced by its holding company M/s SEL Manufacturing Co. Ltd, transaction of SEL Textiles Ltd. with M/s Shiva Texfabs Ltd. and its group concerns, etc is being carried out and a Supplementary Final Report u/s 173(8) Cr.P.C. will be submitted subsequently before the concerned Court after completing the further investigation. The Special Judge, Punjab at Mohali forwarded the chargesheet to Special Judicial Magistrate for CBI cases, Punjab situated at Mohali, who had taken cognizance on 01.02.2023 and issued notices to the accused persons, Neeraj Saluja, Dhiraj Saluja, Navneet Gupta, all Directors of M/s SEL Textiles Ltd., R. D. Khanna, CA, Partner, M/s Das Khanna & Company, M/s Rhythm Textiles and Apparels Park Ltd through its Directors and M/s Siverline Cooperation Ltd. through its Directors for appearance on 15.02.2023. Accused-applicant is in judicial custody since 03.11.2022.

8. When the matter was being heard on February 16, 2023, this court had passed the following order:

"Mr. Mukul Rohtagi, Senior Advocate submits on instructions from assisting counsel-Mr. Shikhar Sarin that the petitioner would have no objection to declare all his assets through notarized affidavit alongwith his wife's affidavit as well as of his children, as per the format provided by CBI, within two weeks from the release, in case this Court grant bail. They would voluntarily declare all their assets including foreign accounts and are ready to furnish notarized affidavit in this regard.

Further, he would have no objection in case this Court puts condition of freezing his property, account and restricted it to withdraw the amount to the extent of Rs.10 lacs per month for their own expenses. Petitioner shall not sell the property except to repay loan amount and he shall sell his property only with the permission of Court.

Counsel for the CBI submits that they required detail of all accounts of petitioner and his family member because massive amount siphoned by them in foreign accounts.

On this, Senior counsel for the petitioner submits that they are willing to disclose all accounts even if any account held by them in Swiss Bank on notarized affidavit.

Arguments heard.

Judgment reserved."

9. As per CBI's reply, the petitioner is in custody since 28-10-2022. Given undertakings made by the petitioner through his counsel, subject to their strict compliance, viz-a-viz pre-trial custody of six months, coupled with the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

10. In Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, Supreme Court holds,

> [28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

11. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought

not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

12. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the compliance of all undertakings made on Feb 16, 2023, and also the additional following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

14. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

> [53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms**:**

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). Such court shall have a lien over the deposit until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). It shall be the total discretion of the petitioner to choose between surety bond and fixed deposit. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(e). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that number which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned police station and the concerned court.

(f). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

16. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

17. In terms of order dated 16.02.2023, as reproduced in paragraph 8 above, the petitioner shall declare all his assets through notarized affidavit along with his wife's affidavit as well as of his children, as per the format provided by CBI, within two weeks from his release. They would voluntarily declare all their assets including foreign accounts/assets, complete details of bank accounts, fixed deposits, DEMAT account numbers, jewellery, sovereign metals, all precious articles held individually or jointly and cash-in-hand by way of notarized affidavits in this regard. It is further directed that the petitioner shall not sell the property except to repay loan amount and in case of extreme necessity, he shall sell his property only with the permission of Court. The petitioner is further restricted not to withdraw an amount more than Rs.10 lacs per month towards his expenses.

18. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not

canceled due to non-appearance or breach of conditions.

19. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed." . In <u>Mohammed Zubair v. State of NCT of Delhi</u>, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

20. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

21. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

22. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

23. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than what is prescribed for the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned

above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

24. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

25. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

26. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

May 03, 2023
AK

Whether speaking/reasoned : Yes
Whether reportable : No