HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-17518-2022 (O&M)
Decided on 20.04.2023
****

Aditya Sarda ... Petitioner

VS.

Serious Fraud Investigation Office ... Respondent

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

****

Present: Mr. Vinod Ghai, Sr.Advocate with
Mr. Sangram S Saron, Advocate and
Ms. Shubreet Kaur, Advocate for the petitioner

Ms. Puneeta Sethi, Sr.Panel Counsel, UOI

****

Sandeep Moudgil, J.

The petitioner seeks grant of anticipatory bail in respect of complaint bearing CIS No.COMA/5/2019 dated 18.05.2019, filed by the respondent under Sections 58A, 58AAA, 211(7), 227, 628, 233 of Companies Act, 1956, Sections 74(3), 76A, 448, 147, 447, 448, 143, 144, 141(3)(e) of the Companies Act, 2013 and Section 120-B read with Sections 406, 417, 418, 420, 467, 468, 471, 477A, 474 of IPC, pending before the Special Judge, Gurugram.

The case of prosecution is that one Mukesh Modi along with other members of his family got a Co-operative Society registered by the name of "Adarsh Credit Co-operative Society Ltd." (in short, 'the Cooperative Society') and that the said society collected huge amounts and after collecting these amounts floated various companies numbering more than 100 in which said Mukesh Modi or his relatives were the Directors and the Co-operative society advanced loans to the said companies which were never repaid and thus the amount collected from innocent investors was siphoned off.

Learned counsel for the petitioner contended that the petitioner has never been a signatory to any Bank account, or employee or advisor of Sears Bilt P.Ltd. and has nothing to do with the said company. It is alleged that the petitioner has siphoned off Rs.30.21 crores from Adarsh Buildestate Ltd. (ABL) which was actually the funds of Adarsh Credit Cooperative Society Ltd. (ACCL). Admittedly, the Indian Fibres Ltd. is the company owned and managed by the petitioner and the same is not arraigned as accused in the present case.

The further contention of learned counsel for the petitioner is that Section 73 of the Companies Act, 2013 and Section 58-A of the Companies Act, 1956 pertain to company asking/investing deposits. It is vehemently contended that the petitioner and other co-accused have not taken any deposit within the meaning of Rule 2(b) of the Companies (Accepting of Deposit) Rules, 1975, as according to the petitioner, the word 'deposit' used in accounts would not fall under the provisions of the offences drawn against the petitioner as per law since the same is in the shape of loan from another legal entity i.e. the Cooperative Society.

On the other hand, Ms. Puneeta Sethi, learned Sr. Panel Counsel, Union of India appearing for respondent-SFIO submits that the petitioner, in abuse of his position as sales and marketing head of Adarsh Buildestate Ltd., (CUI), siphoned off loan funds from ACCSL by way of different fraudulent transactions from the said companies for personal use. It is revealed in the investigation report that as to how funds to the tune of Rs.1700 crores were given as illegal loans from ACCSL to its own controlled 70 Adarsh Group of Companies and certain other companies belonging to the other group of persons, despite the fact that no loan could be given to a company by a Society.

Ms. Sethi maintained that the case of respondent-SFIO is that the petitioner is being prosecuted being an employee/officer/Director of the company and being as such, the petitioner misused his position and illegally obtained and siphoned off loans from the Cooperative Society by the companies belonging to Adarsh Group & Riddhi Siddhi Group, on the basis of forged financials/loan documents submitted/signed by the Directors etc. of the companies in connivance with the accused persons. She further averred that the petitioner is involved in fraud/conspiracy by creating different corporate identities by creating different layers of money and further concealed the identity of the investors/shareholder thereby causing wrongful gains to himself and corresponding loss to ACCL and to its depositors.

Learned counsel for the respondent averred that the twin conditions, as prescribed under Section 212(6) of the Companies Act, 2013 are not attracted in the case against the petitioner. She has placed reliance on a decision of the Supreme Court in ***Vijay Madanlal Choudhary & Ors. vs. UOI & Ors. (2022) SCC Online SC 929***, wherein the Apex Court dealt with the Constitutional validity and the applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2002 which are stated to be akin to the conditions laid down in Section 212(6) of the Companies Act, 2013.

It is further urged by learned counsel for SFIO that the past conduct of the petitioner vis-à-vis initiation of proclamation proceedings would also show that the petitioner deliberately avoided execution of repeated processes/warrants issued by the court and therefore, in view of the law laid down in ***Prem Shankar Prasad vs. State of Bihar & Anr. (2021) SCC Online SC 955***, the petitioner is not entitled to the relief of anticipatory bail.

Heard learned counsel for the parties and gone through the record.

Although right to seek anticipatory bail is not a fundamental right, yet an individual is having a right to life and liberty, as granted by Article 21 of the Constitution of India. However, the said right can very well be curtailed by the procedure established by law. The normal procedure for curtailing the liberty of a person accused in an offence is that the accused can be arrested even without warrants from the court. Same is the situation under the new Companies Act as well and the authorized officer/designated officer can arrest a person even without warrants issued from a Court. However, to ensure that an innocent person is not unduly harassed by taking him into custody, the Courts have been conferred a special power under Section 438 CrPC. But this power has to be exercised sparingly by the courts, keeping in view the mitigating circumstances showing the *ex facie* innocence of the accused vis-a-vis the allegations leveled against him and further, that in case the accused is granted protection, the investigation of the case would not be unduly hampered.

This Court is in agreement with the contention raised by learned counsel for the petitioner that the petitioner has not taken any deposit within the meaning of Rule 2(b) of the Companies (Accepting of Deposit) Rules, 1975. The word 'deposit' used in accounts is in the shape of loan from another legal entity and as such, the same cannot be stretched to an extent to implicate the petitioner for the offences as alleged.

On a query put by this Court, learned counsel for the respondent, on instructions, informed that the investigation of the case is already complete and that nothing further is to be recovered from the petitioner. Since the investigating officer of the case had not considered it appropriate to arrest the petitioner during the investigation, it can easily be inferred that the investigation of the case is not going to be hampered, in any manner, if the petitioner is granted concession of anticipatory bail.

Even the case of the SFIO is that the petitioner is being prosecuted only because of being an employee/officer/Director of the company from the year 2005 till 2017. However, again, it is not even disputed that the petitioner had already resigned from the company much before the business of the company was adjudged by the SFIO to be fraudulent and found involved in non-payment of the loan availed by the company. In any case, whether the petitioner would be liable or not, is a subject matter of the trial.

In the present case, the petitioner was not apprehending his arrest so far as the investigation was over. The apprehension has arisen only from the impugned order issued by the Court for non-bailable offences. The petitioner is seeking protection against his arrest so as to appear before the trial court to face further proceedings in accordance with law. Hence, on its own facts, the present case stands on an altogether different footing. As observed above, if no active role is alleged against the petitioner in the alleged offence and if he is not required for any investigation purposes, then it would not be appropriate to leave the petitioner to be taken into custody. If the petitioner is, ultimately found guilty by the trial court, he would be very much there to suffer sentence for the same in accordance with law. But it would not be reasonable to make him suffer incarceration even before he is adjudged guilty, particularly with reference to the facts as state above.

It is also to be borne in mind, while examining the reliance put by the respondent upon ***Vijay Madanlal Choudhary & Ors.*** case (supra) that unlike the Companies Act, 2013, in a case of money-laundering under the PMLA Act, which is a special legislation, it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets" and as such requires systematic and analysed investigation. In ***Vijay Madanlal Choudhary & Ors.,*** the Supreme Court took note of the nature of allegations and the stage of the investigation and in the facts and circumstances, it was deemed necessary that the investigating agency be given sufficient freedom in the process of investigation.

The Companies Act, is a complete Statute in itself and distinguishable from PMLA Act which was brought out to prescribe the procedures and penalties for economic offences. The gravity for the economic offences will have to be gathered from the facts and circumstances of each case and in such circumstances, while considering the application for bail, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. This Court also cannot lose sight of the fact that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. That being so, the precedent of another case alone will not be the basis for either grant or refusal or to cancel the bail though it may have a bearing on principle considering the facts of the case.

It is also to be noticed that ***Review Petition (Criminal) No.219 of 2022 in TC (Criminal) No.4 of 2018, Karti P. Chidambaram vs. The Directorate of Enforcement*** is pending before the Supreme Court. In terms of the order dated 25.08.2022, the Supreme Court issued notice to the respondent for reviewing the judgment in ***Vijay Madanlal Choudhary & Ors.*** case (supra), the order dated 25.08.2022 is as follows:-

> *"Having heard learned Senior counsel appearing on behalf of the petitioner as also learned Solicitor General appearing on behalf of the respondent, prima facie, we are of the view that at least two of the issues raised in the instant petition requires consideration.*
>
> *2. In view of the above, issue notice to the respondent.*
>
> *3.Mr. M. K. Maroria, learned counsel appearing on behalf of the respondent, accepts notice."*

In fact, the issue with regard to validity of Section 212(6) of the Companies Act, 2013 is already pending before Supreme Court, which fact is reflected from the order dated 26.10.2021 passed by the Supreme Court in the case of ***Vijay Shukla vs. Serious Fraud Investigation Office, SLP (Crl.) No.6338 of 2021***. In terms of the said order dated 26.10.2021 passed by the Supreme Court, the petitioner therein was granted interim protection subject to cooperating with the investigating process.

It is trite that grant of anticipatory bail, at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed and grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Admittedly, the investigation of the present case is already complete and no further recovery is to be made from the petitioner. In that eventuality, it would not be justified to put the petitioner put that bars as no useful purpose would be served. As a matter of fact, if indeed, investigation is complete, the normal implication would be that there is no occasion for the investigating agency to require the custody of an accused, because there would have been nothing in his behavior requiring such a step. In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge-sheet is filed and there would be no necessity for a direction by the court that he be arrested and further that he had cooperated with the investigation.

The Supreme Court in ***Siddharth vs. State of Uttar Pradesh & Ors. SLP (Crl.) No.5442 of 2021*** decided on 16.08.2021 while observing that it is not essential in every case involving cognizable & non-bailable offence to take the accused into custody at the time of filing of filing of charge-sheet especially where the accused have cooperated throughout the investigation, held that:-

> *"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not*

mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

In ***Satender Kumar Antil Vs. Central Bureau of Investigation Misc. application No. 1849 of 2021 in Special Leave Petition No. CRL No. 5191 of 2021***, the Supreme Court observed that directions issued in ***Mahdoom Bava vs. CBI (Crl. Appeal No.853/2023)*** decided on 20.03.2023 where the issue qua how the Court deals with anticipatory bail where a person has cooperated with the investigation but never arrested and charge sheet has been filed has been dealt with, shall equally apply to the anticipatory bail cases as they are also one of the species of bail.

It is equally important to notice that the co-accused Jainam Rathod approached the Supreme Court in Criminal Appeal No.640 of 2022 and the Supreme Court vide order dated 18.04.2022 granted bail to the said accused observing that "*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 delay in its conclusion. The role of the appellant must be distinguishable from the role of the main accused*".

Another co-accused, namely, Peeyush Aggarwal also challenged the order dated 18.12.2022 vide which this Court rejected the anticipatory bail petition, before the Supreme Court in SLP(Crl.) No.12744 of 2022 which was allowed vide order dated 13.01.2023 restraining the respondent-SFIO from initiating coercive steps. The details of the co-accused released on bail, either by this Court or by the Supreme Court, are as follows:-

(i) Anticipatory bail to Bharat Mardia by this Court vide order dated 15.10.2019.

(ii) Regular bail to Vivek Harivyasi by the Supreme Court vide order dated 17.12.2020.

(iii) Regular bail to Priyanka Modi by the Supreme Court vide order dated 07.02.2022.

In view of above discussions and considering the fact that investigation of the case is complete; nothing more is to be recovered from the petitioner; undisputedly the petitioner fully cooperated with the investigating agency; apart from the undertaking given before this Court to the effect that the petitioner is ready and wiling to join the investigation, if any; and also keeping in view the education, antecedents and character of the present petitioner, the petitioner is not likely to flee from the course of justice since there is nothing on record to suggest that if the petitioner is granted concession of anticipatory bail, he would influence any witness in the case; and that admittedly, the petitioner has already left the company much before the start of investigation, this Court is of the considered view that the petitioner deserves to be granted the concession of anticipatory bail, at this stage.

Accordingly, this petition is allowed. The petitioner shall be released on bail, at this stage, by the trial court on his furnishing bail bonds/sureties to its satisfaction. The petitioner shall appear before the trial court on or before the next date of hearing which, in fact, will facilitate the progress of legal proceeding putting the wheel of law in motion.

Ordered accordingly.

20.04.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*