2023:PHHC:150478

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208

CRM-M-15759-2023
Date of decision : 09.11.2023

Rajeev Kumar Rana ...... **Petitioner**

versus

Serious Fraud Investigation Office (SFIO) ...... **Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harshit Sethi, Advocate
for the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel
for the respondent.

****

PANKAJ JAIN, J. (Oral)

1. Petitioner herein prays for regular bail pending complaint bearing No.CNR No.HRGR01-007022-2019 (CIS NO.COMA/5/2019) filed by the respondent under Sections 58A(6) read with Section 58AAA/211 read with Section 628, 227 read with Section 233 of the Companies Act, 1956, Sections 447, 448, 143, 74(3), 76A, 144 read with Section 141(3)(e) read with Section 147 of Companies Act, 2013; Section 120B of IPC read with Section 447 of Companies Act, 1956 and Sections 406, 417, 418, 420, 467, 468, 471, 477A, 474 read with 120-B of IPC (Annexure P-3).

2. Counsel for the petitioner has taken this Court to the complaint filed by respondent, wherein the petitioner has been nominated and arraigned as accused in category V and the precise allegations qua the petitioner read as under:-

> "26. Rajiv Kumar Rana (A-177), Partner in ABL Projects, subsidiary of Adarsh Buildestate Limited (A-1/CUI of AGC&L) and Mahesh Dutt Sharma (A-178), GM sales of Dehradun and Jammu Projects of Marsh Buildestate Limited (ABL) and Riddhi Siddhi Infra projects Private Limited (RSIPL) (A-87) were brought under the fold of investigation due to gravity of their roles in the functioning of, and transactions with, some of the CUIs.
>
> 27. Rajiv Kumar Rana, Partner-Authorised Signatory of ABL Projects, a firm in which major shareholding of Adarsh Buildestate Limited, siphoned off Rs.78.74 Crore from the books of accounts of ABL Projects for his personal benefits. Further, he also siphoned off Rs.5.81 Crore in the name of Meeruth Project from Adarsh Buildestate Limited."

3. It has been contended by the counsel representing the petitioner that once the complaint i.e. in form of the chargesheet already stands filed before the Court that itself evidently demonstrates that the investigation qua the petitioner stands concluded and thus the custody of the petitioner cannot be prolonged as a punitive measure. He further submits that majority of the accused arraigned in the present proceedings already stand admitted to bail.

4. Reliance is being placed upon by the order passed by Supreme Court in the case of ***Jainam Rathore vs. State of Haryana and another*** passed in ***Criminal Appeal No.640 of 2022*** dated 18.04.2022, wherein the Apex Court observed as under:-

> "xx xx xx

7. The appellant is in custody since 28 August 2019. 187 accused are named in the criminal case by the prosecution. It is stated in the counter affidavit that all except 27 of them have appeared. It is evident that even as regards the balance, proclamation proceedings are intended to be initiated pursuant to the order of the Special judge dated 25 March 2022. The proceedings are now listed before the Special Judge in July 2022.

8. In this backdrop, in the absence of a fair likelihood of the trial being completed within a reasonable period, this Court must be mindful of the need to protect the personal liberty of the accused in the face of a delay in the conclusion of the trial. We are inclined to grant bail on the above ground having regard to the fact that the appellant has been in custody since 28 August 2019. In **Nittin Johari (supra)**, this Court has held:

> "24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in Cr.P.C. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences."

While the provisions of Section 212(6) of the Companies Act 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial would necessarily result in a delay in its conclusion. The role of the appellant must be distinguished from the role of the main accused."

5. Further reliance is being placed upon law laid down in ***Sanjay Chandra vs. Central Bureau of Investigation***, reported as ***2012(1) SCC 40***, wherein Apex Court observed as under:-

> "xx xx xx
>
> 21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.
>
> 22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.
>
> 23. Apart from the question of prevention being the object of a refusal of bail, one must not lose

sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. xx xx

25. The provisions of CrPC confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.

26 to 39 xx xx

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same

time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

41 & 42 xx xx

43. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet."

6. *Per contra,* counsel appearing for respondent-SFIO has opposed the bail plea. Reference is being made to the part of the investigation report which is part of the complaint culling out the actual role of the petitioner which reads as under:-

"CATEGORY V DIRECTORS/EMPLOYEES: RAJEEV KUMAR RANA AND MAHESH DUTT SHARMA

RAJIV KUMAR RANA

ABL PROJECTS

4.199 Adarsh Buildestate Limited (ABL) started a project under the name of ABL Project (Partnership Firm) in Dehradun in partnership with Rajiv Kumar Rana. The CUI had 72% share and Rajiv Kumar Rana had 28% under his own name (18%), Deepak Pundir (5%), Dehra Cold Retreads Private Limited (2.5%) and Kanishka Syringe (2.5%).

4.200 ABL Projects (erstwhile B.D. Agarwal Project) was initially funded by the ABL to the tune of Rs. 120 Crore through advances. There was a tripartite agreement between ABL, ABL Projects and ACCSL whereby the advance given to ABL Projects by ABL was taken over by ACCSL as loan on ABL Projects.

4.201 ABL Projects, in Dehradun, was being managed by minority partner Rajiv Kumar Rana. ABL Project had executed contract with two of the entities owned and controlled by him viz. Surya Builders & Developers and Surya Buildarch Private Limited for construction work.

4.202 Funds withdrawn by Rajiv Rana from ABL Projects are tabulated below:

Table No. 88: Funds withdrawn by Rajiv Rana from ABL Projects (Amount In Crore)

SL. NO.	**OUTFLOW HEAD**	
1.	Withdrawn by Rajiv Kumar Rana through capital.	45.20
2.	Advances given to Rajiv Kumar Rana.	19.92
3.	Cash withdrawals covered up through SAM.	9.72
Total		**74.84**

It has been revealed during the investigation that the outflows as mentioned at Serial No.1, 2 and 3 above were basically siphoning and diversion of funds from the books of ABL Projects. Each of the three head have been discussed in detail below:

SERIAL NO.1-WITHDRAWN BY RAJIV KUMAR RANA THROUGH CAPITAL

a. It has been noticed that since inception of ABL Projects, Rajiv Rana had been consistently withdrawing money from accounts of ABL Projects by virtue of being authorised signatory. The amount has been shown as capital withdrawn in the name of Rajiv Rana in the books.

b. An amount of Rs. 45.20 Crore was withdrawn, and it is noticed that the utilization of the same has been for purposes other than the business in ABL Projects. The details of the same are tabulated below.

Table No.89: Withdrawn by Rajiv Kumar Rana Through Capital.

Withdrawn by Rajiv Kumar Rana Through capital.	Amount (in Crore)	Remarks
Cash withdrawal	12.28	Unexplained
Hemco Garments	5.97	Company of Rajiv Rana
Land Purchase	5.53	Unexplained
Personal Exp.	5.18	Utilized for personal purposes
Surya Builders	4.50	Firm of Rajiv Rana
Abl Projects	4.32	No remarks provided
Mumbai Projects	2.18	Owned by Firm of Rajiv Rana
Eagle Stone	1.38	Firm of Rajiv Rana
Ananata Hygine	0.82	Company of Rajiv Rana
SBPLTD.	0.69	Company of Rajiv Rana
Accounting Entry	0.58	Adjustment entry in the books
Surya Buildarch	0.51	Company of Rajiv Rana
Surya Construction	0.25	Firm of Rajiv Rana
Meerut Project	0.20	Unexplained
Dhmspltd.	0.20	Company of Rajiv Rana
ABL Gurgaon	0.15	Firm of Rajiv Rana
Surya Media	0.15	Firm of Rajiv Rana
Deepak Pundir	0.12	Partner in ABL Projects
Rajiv Kumar	0.11	Utilized for personal purposes
Raajvir Rana	0.05	Son of Rajiv Rana
Vandana Rana	0.01	Wife of Rajiv Rana
Divya Himgiri	0.01	Unexplained
Ramapati	0.01	Unexplained
Office Exp.	0.01	Unexplained
Rishika L&B	0.01	Unexplained
RMSJ	0.00	Unexplained
P & L	0.00	Unexplained
Legal EXP.	0.00	Unexplained
Grand Total	**45.21**	

c. As can be seen from the above table, Rajiv Rana has siphoned off money from ABL Projects for his personal benefits and benefit of his entities/associated individuals.

SERIAL NO.2- ADVANCES GIVEN TO RAJIV KUMAR RANA

a. Rajiv Rana has also withdrawn money to the tune of Rs. 19.93 Crore from ABL Projects in the form of advances and the utilization of the same is tabulated below:

Table No.90: Advance given to Rajiv Kumar Rana.

Sl. No.	**Advances given to Rajiv Kumar Rana.**	**Amount (in Crore)**	**Remarks**
1	Expenses related to ABL projects	2.23	Unexplained
2	Cash Withdrawal	0.51	Unexplained
3	Hemco Garments	1.49	Company of Rajiv Rana
4	Mumbai projects	11.38	Owned by Firm of Rajiv Rana
5	Personal expenses of Rajiv Rana	1.56	Unexplained
6	Surya Build Creation	0.06	Firm of Rajiv Ranas
7	Surya Buildarch Private Limited	0.83	Company of Rajiv Rana
8	Surya Builders & Developers	1.56	Firm of Rajiv Rana
9	Surya Constitution	0.30	
		19.93	

b. These advances have never been returned to ABL Projects.

SERIAL NO. 3-CASH WITHDRAWALS COVERED UP THROUGH SAM

a. It has been revealed during the investigation that Rajiv Rana as authorized signatory of ABL Projects was withdrawing cash through Imprest account which was shown as cash in hand in the books amounting to Rs. 10.38 Crores as on 31.03.2016.

b. This cash was actually siphoned off and when demonetization was announced out of Rs. 10.38 Crore, Rs.9.72 Crore was covered up through share application money transaction with ACCSL. Tite modus operandi has been explained in detail under the heading *"Siphoning of cash by CUI & Cover Up through SAM"*. The cash receipts and share application form of ACCSL have been enclosed and marked as **Annexure-A56.**

4.203 The relevant extract of Tally Ledger of ABL Projects, balance sheets, as validated with bank statements and documents/data received from Rajiv Kumar Rana have been enclosed and marked collectively as **Annexure-A57."**

7. Thus, it is being claimed that *prima facie* there is an offence made out against the petitioner and he has evidently misused his position as authorized signatory after the funds lent by ABL Projects were taken over by ACCSL i.e. the cooperative society. It is asserted that it is ultimately the ACCSL-the Cooperative Society who had to bear the liability and the funds that are being utilized/mis-utilized belong to the persons belonging to lower middle class and lower income groups and thus the petitioner being guilty of serious fraud does not deserve to be released on bail. It has been further contended that even the conduct of the petitioner is such that the same does not merit his release on bail. The petitioner initially preferred pre-arrest bail which was dismissed by Special Court on 21.07.2020. After having evaded more than 10 non bailable warrants, the petitioner could be produced only after he was arrested by Rajasthan Police.

8. Having heard rival contention of the parties and after going through the records of the case, this Court finds that the present petitioner has been arraigned as accused qua offence punishable under Section 447 of the Companies Act. The same reads as under:-

"**Section 447: Punishment for fraud.**

447. 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 [1][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.

1[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 [2][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."

9. The allegation against the petitioner is of having misused his position as an authorized signatory of ABL-the company. It has also come on record that the amounts which were being used by ABL for its project which the petitioner is accused of having misused in fact were the amounts that form liability of ACCSL-a cooperative society. Meaning thereby, that ultimately it is the lower income group innocent persons who were investing these monies in the hope of getting their own house.

2023:PHHC:150478

10. In view of aforesaid, this Court does not find that it is a case for grant of bail to the petitioner.

11. Resultantly, the same is dismissed.

(PANKAJ JAIN)
JUDGE

09.11.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No