

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22247-2023 (O&M)

Decided on 24.05.2023

Dortse

... Petitioner

VS.

Serious Fraud Investigation Office

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Messrs Abhinav Sood, Anmol Gupta, and Vardaan Malhotra,
Advocates for the petitioner

Ms. Puneeta Sethi, Advocate for the respondent

Sandeep Moudgil, J. (Oral)

The petitioner seeks grant of regular 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.

It is the prosecution case that the petitioner was amongst the directors/partners in a total of 28 CUIs/LLPs and his role in the accused entities is that funds were secured fraudulently and illegally during the terms of directorship of the petitioner from Adarsh Credit Cooperative Society Ltd (hereinafter referred to ACCSL) and he had signed balance sheets of certain companies. The funds obtained from ACCSL were siphoned off from 30 CUIs and the petitioner siphoned off crores of rupees from the firms through cash withdrawals.

The premises of M/s JCIPL was searched/seized by the office of Registrar of Companies Delhi after obtaining orders from learned Sessions Judge, Gurugram dated 8.9.2022. Digital record and other necessary articles were taken into possession. It is also admitted that petitioner is one of the director of JCIPL. He is allegedly having connections with another Director namely Wan Hul. The said lady director is stated to be settled at China. According to investigation, JCIPL mainly operating through petitioner in India. He is engaged in appointing dummy directors having maximum qualification of 12th standard and graduate. JCIPL company through petitioner uses such directors and used them for the investment purposes. He also mis-utilized the documents of the dummy directors relating to identity. During the investigation, it was also found that one Mad Elephant Network Technology Pvt ltd. was incorporated by the JCIPL. Approximately 3,68,000/- equity shares of Rs. 10/- each to Ruming (Hong Kong) Network Technology Ltd, Hong Kong was flouted by them. That apart, he also made numerous shell companies in order to siphon off the Indian Money.

Learned counsel for the petitioner contended that he has been falsely implicated in the present case. The co-accused persons, who have been attributed with graver allegations, have already been granted the concession of anticipatory bails whereas the petitioner is in custody for a period of more than three years. There is no progress in the trial and the petitioner is the victim of protracted trial. The allegations levelled by the respondent nowhere suggests that the petitioner had been the beneficiary of

the entire transaction since the entire matter is based upon documentary evidence.

On the other hand, Ms. Puneeta Sethi, learned Sr. Panel Counsel, Union of India appearing for respondent-SFIO has filed reply, which is taken on record. She submitted that the petitioner is being prosecuted being a 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 JCIPL, on the basis of forged financials/loan documents submitted/signed by the Directors etc. of the companies in connivance with the accused persons.

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

Learned counsel for the respondent, on instructions, informed that the petitioner was taken into custody on 10.09.2022 and the investigation of the case is already complete and that nothing further is to be recovered from the petitioner.

It is the case of the petitioner 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. In the same manner, Vivek Harivyasi and Priyanka Modi have also been extended the benefit of regular bail by the Supreme Court

‘Bail is rule, jail is an exception’ is a legal principle that was laid down by the Supreme Court in a landmark judgment of **State of Rajasthan v. Balchand alias Baliya 1977 AIR 2447**. His Lordship Hon'ble Mr. Justice Krishna Iyer, speaking on behalf of the Bench, held that bail and not jail would be the basic Rule in ordinary circumstances, when His Lordship observed, "*The basic Rule may 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.....*". The judgment was based upon several rights that have been guaranteed by the Constitution of India with Article 21 being the most important one. Detention of an individual infringes his right to life and liberty as guaranteed under Article 21 of the Constitution of India. The main purpose of detention is to ensure easy proceedings by availing the accused for the trials without any inconvenience. Thus, if it can be ensured that the accused will be available as and when required for the trial, then, detaining the person is not necessary. Therefore, it was held that the provisions of the Criminal Procedure Code, 1973 (CrPC) regarding the arrest of an individual must be

interpreted in a sense that unless indispensable, detention of a person must be avoided.

In this view of the matter and also taking into consideration the fact that investigation of the case is complete; nothing more is to be recovered from the petitioner; also keeping in view the education, antecedents and character of the present petitioner, he is not likely to flee from the course of justice and also the fact that the trial is likely to take some time, therefore, no fruitful purpose will be served by keeping the petitioner behind bars, the petitioner is directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

The present petition is, therefore, allowed.

24.05.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No