

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40944-2022 (O&M)

Date of Decision: 20.03.2023

Serious Fraud Investigation Office

... Petitioner

VS.

Akshat Singh

... Respondent

CRM-M-1180-2023

Serious Fraud Investigation Office

... Petitioner

VS.

Naveen Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Puneeta Sethi, Advocate for the petitioner

Sandeep Moudgil, J.

This order shall dispose of the above-cited two criminal miscellaneous petitions filed by Serious Fraud Investigation Office seeking cancellation of bail to the respondents. For the sake of order, CRM-M-40944-2022 is being treated as the lead petition.

The petitioner seeks setting aside the order dated 20.07.2022 passed by Additional District & Sessions Judge-cum-Special Court (Companies Act), Gurugram granting anticipatory bail to the respondent in COMA/05/2019 under Sections 58A/211(7)/227/628 of the 1956 Act and Sections 74(3)/76(A)/447/448/147 of Companies Act.

The petitioner – Serious Fraud Investigation Office (SFIO) is a statutory office constituted and established under Section 211 of the Companies Act, 2013. The petitioner, through its Deputy Director & Investigating Officer, in exercise of powers conferred upon him by the

Central Govt. Ministry of Corporate Affairs, filed a complaint seeking prosecution, jointly and severally, against the respondent-Akshat Singh s/o Dan Singh r/o H.No.99, Mahendergarh, Gurugram and accused as many as 181 other persons for various violations & offences punishable under the provisions of the Companies Act, 1956, Companies Act, 2013 and under the Indian Penal Code. The respondent filed second bail application on 04.06.2022 before the trial court and the trial court vide impugned order dated 20.07.2022 allowed the same. It is against the said impugned order that the petitioner has approached this court seeking cancellation of bail granted to the respondent.

Factual background

The Ministry of Corporate Affairs, in public interest, formed its opinion and passed an order dated 20.06.2018 to investigate into the affairs of Adarsh Group of Companies and LLPs, in exercise of powers under Section 212(1)(c) of the Companies Act, 2013 and Section 43(2) & (3)(c)(i) of *Limited Liability Partnership Act*, 2008. The MCA vide order dated 25.02.2019 granted approval to investigate into the affairs of 20 more companies and 2 connected Directors/Employees. Pursuant thereto, report dated 09.05.2019 was submitted by the Inspectors, nominated as such to the MCA, who, vide its letter dated 16.05.2019 directed the petitioner-SFIO to initiate prosecution against the accused persons.

The petitioner filed a complaint before the trial court with the investigation report dated 09.05.2019, on 18.05.2019. It is submitted that as per Section 212(15) of the Companies Act, 2013, the aforesaid investigation

report filed with the Special Court for framing of charges shall be deemed to be a report filed by the police officer under Section 173 of CrPC.

The trial court vide order dated 03.06.2019 (Annexure P3) took cognizance against the respondent for the offences punishable under Sections 74(3), 147, 447 of the Companies Act, 2013; under Sections 58A(6), 211(7), 227, 628 of the Companies Act, 1956; and under Section 120-B, read with Sections 417, 418, 420, 477A, IPC. The said order attained finality since the same remained unchallenged by the respondent.

The respondent is one of the directors in the Adarsh Group of Companies, a group of 126 companies (AGC&L), which were being managed/controlled by Mukesh Modi/co-accused, his family members including the respondent and associates. Out of 126 companies under investigation (CUIs), 70 such companies secured loans from the Adarsh Credit Co-operative Society Ltd. (ACCSL) – a fund mobilization arm of the Adarsh Group, which accepted deposits from its members, who are mostly low to middle income individuals. The mandatory conditions, fulfillment of which was adhered to in grant of loan to entities and individual other than the CUIs, were never fulfilled in the case of AGC&L and other CUIs. The CUIs filed unverified and baseless projected financial with no specific repayment schedule as per these applications. It was found that no physical verification and viability reports of projected financial of projects proposed by CUIs were available. The loan application form was just a formality as the full control over ACCSL was exercised by Mukesh Modi, his family and associates. Investigation further revealed that the respondent was also a signatory of balance sheet of the companies named “Reed Promoters and Developers Pvt

Ltd”; “Gajanan Infrabuild Pvt Ltd”, “Chevron Buildcon Pvt Ltd”, for the period 2011-12 which were false in material particular i.e. the statements were showing funds secured from ACCSL as loan whereas the same was required to be shown as deposits as the company was not eligible to be members of ACCSL, hence was not eligible to take loan from ACCSL making the respondent liable for offences under Sections 211 (7), 227, 228 of the Companies Act. The aforesaid loans should have been repaid by the CUIs to ACCSL, as per provisions of Section 74 of the Companies Act, 2013 read with the Companies (Acceptance of Deposit) Rules, 2014. Thus, the respondent is liable for offence under Section 73(3) of the Companies Act, 2013.

The investigation further revealed that respondent entered into conspiracy with other co-accused and siphoned off funds from the three entities wherein the respondent was also a director during the relevant period i.e. “Reed Promoters and Developers Pvt Ltd”; “Gajanan Infrabuild Pvt Ltd”, and “Chevron Buildcon Pvt Ltd”, using corporate identities of the Sidhartha Group of Companies. It is revealed that funds siphoned off from the said three entities were actually the funds which were secured illegally and fraudulently from ACCSL and aforesaid purported loan amount were transferred to the Sidhartha Group of Companies without any agreement/paperwork, in this regard. The funds were transferred to Sidhartha Group of Companies, on the pretext of acquiring of land, in the name of aforesaid three CUIs wherein the respondent was a director, yet the Sidhartha Group of Companies was unable to produce any agreement with any farmer/landlord to prove that they actually purchased any such land in the

name of said three entities/Adarsh Group of Companies/CUIs from whom they received the huge funds. The respondent alongwith one another co-accused Deepak Shrimali was holding 33% shareholding in one of the Sidhartha Group Company i.e. Sidhartha Ahaar Vighar Udyan Pvt Ltd. Since 15.10.2011, without they having made any subscription for acquiring the said shareholding. Thus, the shareholding is an illicit in kind payment given by the said company to respondent and Deepak Srimali co-accused for the fraudulent transaction i.e. securing of loans from CUIs and siphoning of the same. The shareholding of Sidhartha Ahaar Vihar Udyan Pvt. Ltd still shows in the name of respondent.

Learned counsel for the petitioner submitted that from aforesaid facts, it would be clear as to how the abovesaid *modus operandi* was used by co-accused Vivek Harivyasi, Deepak Srimali acting in connivance with respondent and Sidhartha Chauhan-controller of Sidhartha Group of Companies to siphon off the funds from the Adarsh Group CUIs to monetarily benefit themselves and acquiring stake in Sidhartha Group of Companies and thus causing wrongful loss to the Adarsh Group CUIs - the creditors. It is further averred that respondent entered into conspiracy with other co-accused and siphoned off funds from Adarsh Buildestate Ltd using corporate identity of accused entities i.e. HNS Infratech Pvt Ltd. and HNS Project Pvt Ltd. wherein the respondent was holding position of a director.

It is averred that Adarsh Buildestate Ltd. is amongst the 70 CUIs belonging to AGC&L who secured loans illegally from ACCSL to the tune of Rs. 663.70 crores. The said loan remains unpaid, as on date, with outstanding amounting to Rs.1434.75 crores. The investigation into the affairs of Adarsh

Buildestate Ltd. revealed that the respondent entered into conspiracy with directors of Adarsh Buildestate Ltd for further siphoning off the funds from Adarsh Buildestate Ltd. The Adarsh Buildestate Ltd. gave Rs.4 crores as advance to the two companies of HNS Group i.e. HNS Infraech Pvt Ltd and HNS Project Pvt ltd. During 2011-12 to 2012-13 for purchasing the land without there being any underlying agreement or actual underlying business transaction. The funds were actually transferred from the accounts of Adarsh Buildestate Ltd. for siphoning off the same as the said funds of Rs.4 crores remain as outstanding till date on the books of Adarsh Buildestate Ltd. and no land has been allotted to Adarsh Buildestate till date by HNS Group of Companies. To show the aforesaid transaction, as a genuine business transaction, the HNS group showed a land deal with third party owned by respondent to justify the aforesaid advance taken from Adarsh Buildestate Pvt Ltd. and co-accused Surender Singh in his statement on oath during investigation admitted that planning for purchase of land was mutually decided between co-accused Vivek Harivyasi, respondent and him. The investigation further revealed that an MOU dated 15.12.2017 was entered into between Adrash Buildestate Ltd. and HNS Group of Companies with intention to show the aforesaid advance of Rs.4 crores as genuine. The HNS group agreed to give four flats to Adarsh Buildestate Ltd. in lieu of advance amounting to Rs.4 crores and the interest accrued on it. The said MOU was signed by co-accused Surender representing both the companies of HNS Group as its authorised representative in individual capacity despite the fact that co-accused Surender was not a director in any of the companies of HNS Group at the said time. It was revealed that said MOU was only a sham

transaction, as none of the companies of HNS Group was having any title over the said four flats mentioned in MOU and even despite entering into purported MOU dated 15.12.2017, no flats were handed over to Adarsh Buildestate Ltd., till date. Thus the respondent became part of the conspiracy with co-accused and entered into aforesaid MOU to commit fraud upon Adarsh Buildestate Ltd. having knowledge of advance taken by HNS Group of Companies from Adarsh Buildestate Ltd in 2011-12 and 2012-13. It was also revealed that Adarsh Buildestate Ltd. has been accounting for accrued interest on the aforesaid advance of Rs.4 crores, without actually receiving it, on the loans and advance given and capitalising the same. The aforesaid facts clearly show that advance of Rs.4 Crores from Adarsh Buildestate Ltd during 2011-12 to 2012-13 was a way to siphon off the money from its account and the same was continued further by way of aforesaid MOU in the year 2017 entered into causing wrongful loss to the Adarsh Buildestate Ltd.

The respondent also moved an application stating that he never took part in any activities of these three accused companies. He was not in-charge of the business affairs and day-to-day running of these companies in any manner. The statements of the respondent were recorded by SFIO during the course of investigation on 20.02.2019 and 28.02.2019 and questions were put to him. In the said statements, the respondent reiterated the fact of his resignation as director from the said companies. It is further submitted that there are no imputations against the respondent with regard to any of the allegations as against the three accused companies in the complaint or in any of the statement of the witnesses. Respondent was not active as a director in these companies and was not in-charge of the affairs or the management or

running of these companies in any manner. He was not a beneficiary of any cash withdrawal or Share Application Money (SAM) and nothing in this regard has been alleged too and that no remunerations were paid by these companies to the respondent, during the period when he was a director *albeit* non-active.

Allegations

As per the report of investigation into the affairs of CUIs coupled with the complaint filed by the petitioner, the allegation against the respondent is that of involvement in securing 'illegal' & 'fraudulent' loans from the ACCSL & non-repayment of the same and also signing of the falsified balance-sheets which attracts offence punishable under Sections 58A, 628 of the Companies Act, 1956 and Section 74(3) of the 2013 Act.

The respondent is alleged to have signed balance sheets of the M/s HNS Group Pvt Ltd., The Reed Promoters and Developers Pvt Ltd., Gajanan Infrabuilt Pvt Ltd. and Chevron Buildcon Pvt Ltd. which were either false in material particulars and/or were omitting material facts i.e. the statements were showing funds secured from ACCSL as loans, whereas the same were required to be shown as deposits, as the company was not eligible to be a member of ACCSL, hence was not eligible to take loan from ACCSL.

It is further alleged that CUIs filed unverified and baseless projected financials with no specific repayment schedule as part of these applications. Neither any physical verification and viability reports of the projected financials of the projects proposed by CUIs were available nor the verification of loan documents was carried out as the loan application form was a mere formality.

Further, the allegation is that ACCSL, being a credit cooperative society under the MSCS Act, 2002, can extend loans to its members only. However, ACCSL, of its own, included the companies to be its members. The attempt of projecting the definition of 'person' in the byelaws of ACCSL for making 'persons' eligible to be members of ACCSL was rejected by the Central Registrar on 19.04.2012.

Contentions

Learned counsel for the petitioner submitted that the company had paid more money to the landowners under the written agreements than what was received by them from CUIs. The statement of the respondent was also recorded with regard to the aforesaid allegation, wherein he stated that the affairs of the company have been run by Sidharath Chauhan since the date of incorporation till date and he is not aware whether he applied for the shares or not, whether any payment in lieu of any shares have been made to Sidharath Ahaar Vihar Udyan Private Limited for allotment of shares.

It is contended that since the respondent, who was supposed to bring 33% of the total capital of Rs.80 Lacs was not successful in bringing the required capital, he ended up resigning from Sidharath Ahar Vihar Udyan Pvt. Ltd. on 09.08.2018 and the commercial project never took place and even the limited involvement of the respondent came to be extinguished. The respondent had further stated that he had orally asked Deepak Shrimali many a times to take the shares but he told him to wait for some time and that they will surrender the shareholding later on.

Learned counsel for the petitioner further averred that the instead of taking into consideration the well-reasoned judgments passed by this Court

in **Priyanka Modi vs. SFIO (CRM-M-22815-2021)** and **Vijay Shukla vs. SFIO (CRM-M-24870-2020)** wherein the applicability of restrictive conditions of bail under Section 212(6) of the Companies Act, 2013 has been discussed in detail, the trial court wrongly arrived at a finding on the basis of broad probabilities and in fact conducted 'mini trial' and to wrongly hold that there are reasonable grounds that the respondent is not guilty of alleged offence. Reliance has been placed on **Vijay Madanlal Choudhary & Ors. vs. UOI & Ors. (2022) SCC Online SC 929**, wherein the Supreme 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 akin to the conditions laid down in Section 212(6) of the Companies Act, 2013.

It is further urged that the trial court did not take into consideration the previous conduct of the respondent i.e. issuance of proclamation proceedings against respondent under Section 82(1) CrPC despite issuance of two bailable warrants and 11 warrants of arrest. Learned counsel for the petitioner has referred to **Prem Shankar Prasad vs. State of Bihar & Anr. 2021 SCC Online SC 955**, wherein the Supreme Court held that a person against whom the proclamation has been issued and the proceedings under Sections 82-83 CrPC have been initiated, is not entitled to the benefit of anticipatory bail.

Learned counsel for the petitioner has placed heavy reliance on the judgment dated 13.11.2019 passed in **CRM-M-41761-2019 (Surender Singh vs. SFIO)** as well as the judgment dated 24.05.2021 passed in **CRM-M-25229-2020 (Surender Singh s. State of Haryana & Ors.)** and **Siddharth**

Chauhan vs. SFIO 2019 SCC Online P&H 4986, wherein this Court dismissed the bail applications of the co-accused holding that they were *prima facie* found involved in siphoning off the funds from Adarsh Buildestate Ltd. and Siddharth Group of Companies in the garb of loans and advances using corporate identities of HNS Group of companies

I have heard learned counsel for the petitioner and gone through the record through her able assistance. This Court is not inclined to accept the submissions made by learned counsel for the petitioner.

According to petitioner-SFIO, the respondent was director in Companies namely M/s HNS Group Pvt Ltd., The Reed Promoters and Developers Pvt Ltd., Gajanan Infrabuilt Pvt Ltd and Chevron Buildcon Pvt Ltd. He remained director in M/s HNS Group of Companies w.e.f. 13.02.2009 to 20.09.2018. In Sidharath Group of Companies, the respondent claimed that he was director from 22.09.2011 to 01.07.2018 but the documents placed on record shows that he was director in the documents on 22.02.2019. Another three companies, namely, The Reed Promoters and Developers Pvt Ltd., Gajanan Infrabuilt Pvt Ltd. and Chevron Buildcon Pvt Ltd. he remained director from May 2011 till 28.03.2014. As per the case of the petitioner-SFIO, the present matter relates to above-named five companies *qua* respondent. The respondent has been summoned under Sections 74 (3), 147, 447, of the Companies Act, 2013, under Sections 58A (6), 211 (7), 227, 628 of the Companies Act, 1956 and under Sections 120-B read with Section 417, 418, 420 and 477A of IPC, 1860. The Companies Act, 2013 came into existence w.e.f. 12.09.2013. As per this Act, Section 212(6) was enacted in which twin conditions regarding decision of bail application

has been laid down. The SFIO, in its investigating report, submitted that CUIs and signatories who signed the statement during the financial year 2010-11 to 2013-14 have been covered under Sections 628 and 211 of the Company Act. 1956. Meaning thereby that Sections 447 and 448 came into operation in respect of transactions and statements for the year 2014-15 and onwards.

The trial court rightly observed that the petitioner-SFIO opted unholy and illegal principle of pick and choose while arraying the respondent in its complaint knowing fully well that Kuldeep Dangi was the authorized signatory of M/s Adarsh Buildestate P.Ltd. holding 50% share and not the respondent. Then also, the said Kuldeep Dangi was not arrayed as accused. It was further observed that the respondent was not signatory of MOU dated 15.12.2017 between M/s HNS Group and Adarsh Buildwell P.Ltd. which was executed much prior to Central Govt. sanction order dated 20.06.2018 and the authenticity of such document is a matter of trial and also that the Section 447 of the Companies Act came into being w.e.f. 12.09.2013.

The trial court has further observed and rightly so that as per para 4.92 of the investigation report, the petitioner-SFIO itself after examining the record reached at the conclusion that the name of the landowner and the amount paid to the landowners indicated in the agreement tallied with the ledger amount and the bank accounts. This falsifies the case of the petitioner-SFIO that M/s Sidharath Group of Companies, on the pretext of acquiring land in CUIs of which the respondent directly got transferred certain amounts for purchasing land.

As regards the allegation that the respondent is shareholder of 33% in Siddharath Ahaar Vihaar Udyan P.Ltd. and as such the respondent was under obligation to bring 33% capital in the bank, the trial court relied upon the question No.10 which was put to the respondent during the course of investigation and its answer shows that *prima facie* no monetary benefits were derived by the respondent and he even failed to derive his capital share upto the extent of 33%. The SFIO failed to show that at any point of time, the respondent received any benefit accrued out of his 33% share.

The trial court took note of the fact that the alleged transaction between the respondent and Sidhartha Ahar Vihaar Udyan P.Ltd. pertains to the year 2010-11 whereas the provisions of the Companies Act, 2013 came into force w.e.f. 12.09.2013 and as such Section 447 of the 2013 Act could not have been invoked against the respondent since the respondent signed the balance sheet for the year 2011-12 in respect of “Reed Promoters and Developers Pvt Ltd”; “Gajanan Infrabuild Pvt Ltd”, “Chevron Buildcon Pvt Ltd”, therefore, he could be summoned under Sections 211(7), 227 and 628 of the 2013 Act for his role in the above said companies.

The trial court also noticed that the SFIO has failed to point out any particular document forged by the respondent and all the submissions, oral and documentary, of the petitioner were successfully rebutted by the respondent and thus, the respondent cannot be said to be guilty, at this stage. Even otherwise, the evidentiary value of the statement of the respondent is subject to rebuttal by the petitioner-SFIO during the course of trial and therefore, the respondent does not fall within the rigors of Section 212(6) of the Companies Act, 2013. The trial court was in cognizance of the fact that

the other co-accused, namely, Vimal Sanwarmal Sharma and Leena Harivvayi who are stated to be similarly-situated were admitted to concession of bail by the Addl. Sessions Judge, Gurugram vide orders dated 24.06.2020 and 06.01.2020 and the respondent stands on equal footing.

The Supreme Court 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 considered the question whether economic offences should be treated as a class of its own or otherwise and observed the said issued stands settled in P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791. It held that:-

“The gravity of the offence, the object of the [Special Act](#), and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis..”

xxxx xxxx

“However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made

against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is 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. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

I am of the firm view that very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out an order granting bail is not to be lightly interfered with under Section 439(2), Cr.P.C. While considering the petition for cancellation of bail, a Court shall bear in mind that:-

- 1. the accused misuses his liberty by indulging in similar criminal activity,*
- 2. interferes with the course of investigation,*
- 3. attempts to tamper with evidence or witnesses,*
- 4. threatens witnesses or indulges in similar activities which would hamper smooth investigation,*
- 4. there is likelihood of his fleeing to another country,*

5. *attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency and*
6. *attempts to place himself beyond the reach of his surety, etc.*

It is thus clear before this Court that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled unless there are very cogent and overwhelming circumstances or grounds on any supervening event for cancellation of bail which is not to be lightly interfered with under Section 439(2).

The Supreme Court in **Bhuribai vs. State of Madhya Pradesh in criminal appeal No.1972 of 2022** elaborated the powers of the Court for cancellation of bail and held that it cannot be approached as in case of disciplinary proceedings against accused and such power of cancellation of bail should be exercised with extreme care and circumspection and the same cannot be ordered merely for any perceived indiscipline on part of accused before granting bail.

Coming to the case in hand, the complaint was filed by the petitioner alleging that the respondent is involved in securing 'illegal' & 'fraudulent' loans from the ACCSL & non-repayment and signed signed balance sheets of three above-named companies which were false and that the CUIs filed unverified and baseless projected financials with no specific repayment schedule. It was the Kuldeep Dangi who was the authorized signatory of M/s Adarsh Buildestate P.Ltd. holding 50% share and not the petitioner. Even then the said Kuldeep Dangi was not arrayed as accused. So

much so the respondent was not signatory of MOU dated 15.12.2017 between M/s HNS Group and Adarsh Buildwell P.Ltd. which was executed much prior to Central Govt. sanction order dated 20.06.2018. However, this Court refrains from commenting on this aspect at this stage, being a matter of trial. The name of the landowner and the amount paid to the landowners indicated in the agreement tallied with the ledger amount and the bank accounts which dents the case of the SFIO that M/s Sidharath Group of Companies directly got transferred certain amounts for purchasing land.

This Court is of the considered view that the petitioner-SFIO has failed to highlight any cogent or overwhelming circumstances or grounds which is a *sine qua non* for seeking cancellation of bail. It is not the case of the petitioner that the respondent has misused the liberty or had comported himself in any manner in violation of the conditions imposed on him. The power of cancellation of bail ought to be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that economic offence is involved in the case.

Since the said amount was only an “advance” and not a loan hence, the question of accumulation of interest on the said amount does not

arise. The fact that Adarsh Buildestate Limited had accounted the interest in their ledgers is an accounting error/default on their part and HNS Group cannot be held liable for the same. This is further corroborated from the fact that there was no agreement of loan executed between Adarsh Buildestate Limited and HNS Group and in the absence of the same, Adarsh Buildestate Limited could not have unilaterally and arbitrarily calculated interest on the amount so advanced to HNS Group and booked the same in their ledgers. Thus, from the above, it is quite apparent that neither Section 448 of the Companies Act, 2013 nor Sections 628 & 211 of the Companies Act, 1956 is applicable on the respondent and Section 448 of the Companies Act, 2013 is not made out as against the respondent therefore, Section 447 stands diluted. Since the books of accounts of the Companies of the respondent reflected true statements, therefore, Sections 211 and 628 of the Companies Act, 1956, cannot be invoked against the Respondent.

The alleged transaction were made in the year 2011 to 2012 and the entire set of transaction with regard to facilitation of funds stood completed in the year 2012 itself. Article 20(1) of the Constitution of India embodies an underlying objection to ex post facto laws and is designed to prevent a person from being punished for an alleged act or omission which was considered neutral or innocent when done or omitted. The Statute which affects the substantive rights is presumed to be prospective in operation unless made retrospective either expressly or by necessary intendment as has been held by the Supreme Court in **Soni Devrajbhai Babubhai vs. State of Gujarat (1991) 4 SCC 298**. Therefore, the respondent cannot be prosecuted for offences under Section 447 of the Companies Act, 2013 as the said

offence was not in existence when the act constituting the offences alleged against the respondent are said to have been committed i.e. during 2011-12. The respondent cannot be subjected to a penalty greater than which might have been inflicted under the law in force at the time of commission of offence, therefore any provision that seeks to enhance penalty for an offence cannot be applied retrospectively. [Ref. *Commissioner of Income Tax (Central-I), New Delhi vs. Vatika Township P.Ltd. (2015) 1 SCC 1*]

Further, the restrictive bail conditions as laid out in Section 212(6) of the Companies Act, 2013 also cannot be applied in the case of the respondent and also cannot be used a tool to seek cancellation of bail to the respondent. The offences made punishable under Section 447 of the Companies Act, 2013 are listed in Section 212(6) of the said Act. Section 447 does not list out any offence but on the other hand in only a section that list out punishment for offences pertaining to fraud. Therefore, the requirement is that offences that are punishable under Section 447 need to have been committed for Section 212(6) to be made applicable. The investigation report does not mention any other offences under the Companies Act except Section 447 qua the respondent. This fact itself shows the non-application of mind by the petitioner and the authority granting sanction for prosecution as well as the reckless approach in dealing with such serious allegations.

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. It has to be borne in mind 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.

Even otherwise, since the Supreme Court vide order dated 17.12.2020 in Special Leave to Appeal (Crl.) No.6456/2020 (Vivek Harivyasi vs. Serious Fraud Investigation Office) had issued notice restricted to the question of propriety of the order cancelling the bail with a direction to release the petitioner therein on interim bail, it would be absolutely unnecessary at this stage, to accept the submission of the petitioner for cancellation of bail.

In view of the aforesaid discussion, this Court does not find any illegality or irregularity in the impugned order passed by the trial court in granting the concession of anticipatory bail to the respondent.

This petition is accordingly dismissed.

Nothing stated herein shall be taken as an expression of views on merits of the case.

20.03.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No