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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 02nd June, 2023

+ BAIL APPLN. 1005/2022

SUNIL NARAIN DAS GODHWANI

..... Petitioner

Through: Mr. N. Hariharan, Senior Advocate
with Mr. Rajat Katyal, Mr. Rahul
Sambher, Mr. Prateek Bhalla,
Mr. Siddharth S. Yadav, Mr. Punya and
Mohd. Qasim, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sanjeev Bhandari, Additional
Standing Counsel (Criminal) with
Mr. Kunal Mittal and Mr. Saurabh
Tanwar, Advocates. Insp. Sanjeev D.
Mr. Mohit Mathur and Mr. Sunil Dalal,
Senior Advocates with Mr. Sandeep
Das, Mr. Lakshya Dheer, Ms. Manisha
Saroha, Mr. Nikhil Beniwal
Mr. Harshit Mahalwal and
Mr. Mahabir Singh, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 50/2019 dated 27.03.2019, under Sections 420/409/120B of the Indian Penal Code, 1860 ('IPC') registered at PS Economic Offences Wing.



1.1. By separate judgments of the same date, this Court has disposed of applications seeking regular bail filed on behalf of the other co-accused in the present FIR - Malvinder Mohan Singh (BAIL APPLN. 2810/2021), Kavi Arora (BAIL APPLN. 1059/2022) and Rajender Aggarwal (BAIL APPLN. 1384/2021).

Factual Background

2. The FIR in the present case was registered upon a complaint received from Mr. Manpreet Singh Suri, Authorized Representative of Religare Finvest Limited ('RFL') alleging a financial fraud perpetrated by the promoters of Religare Enterprises Limited ('REL') - Shivinder Mohan Singh and Malvinder Mohan Singh, the then Chairman-cum-Managing Director – Sunil Godhwani (applicant herein) and Narendra Kumar Ghoushal.

2.1. RFL is a company registered with the Reserve Bank of India ('RBI') and is licensed to undertake the business of financial services as a Non-Banking Financial Company ('NBFC'). It operates as an NBFC focused on financing small and medium enterprises ('SME') and extends SME working capital loans, secure SME business expansions, loans, short term trade finance and other loans to various entities. The complainant company is a subsidiary of REL which is a public company listed on the stock exchange. The majority shareholding of REL was owned by Malvinder Mohan Singh and Shivinder Mohan Singh till June, 2017, i.e., till when they were classified as promoters of REL. Thereafter, till February 2018, they remained on the Board of Directors of REL. Effectively, since Malvinder Mohan Singh and Shivinder Mohan Singh had control over REL, they also had control over its subsidiary - RFL, the complainant company. Shivinder Mohan Singh held the position of Non-Executive Director of REL from 13.12.2004 till 06.04.2010 and



thereafter, he held the position of Non-Executive Director and Vice-Chairman of REL from 29.07.2016 till 14.02.2018. Malvinder Mohan Singh, held the position of Non-Executive Chairman of REL from 13.12.2004 till 06.04.2010 and thereafter, from 29.07.2016 till 14.02.2018.

2.2. The shareholding and Board of REL was reconstituted in the year 2018 after Shivinder Mohan Singh and Malvinder Mohan Singh lost control pursuant to invocation of shares pledged by them with various banks in February 2018. After the said reconstitution, the new management conducted internal enquiries and discovered willful defaults on significant unsecured loans, defined for internal purposes as the Corporate Loan Book ('CLB'), by borrower entities, either related, controlled or associated with the promoters, all of who had been provided the subject loans from RFL on a non-arms' length basis. The primary allegation against the applicant was that he, in conspiracy with Malvinder Mohan Singh and Shivinder Mohan Singh caused RFL to give unsecured loans to the tune of Rs. 2,397 Crores, on a non-arms' length basis and without proper documentation, to shell companies related to them and these entities, willfully defaulted in making the repayments. As on the date of the FIR, i.e., 27.03.2019, nineteen such entities were identified which had defaulted on their borrowings from RFL.

2.3. Enquiries further brought to light that the Securities Exchange Board of India ('SEBI') and the Serious Fraud Investigations Office ('SFIO') were already investigating the transactions involving REL and related entities. A review of the records revealed that the RBI had, from time to time, expressed concerns about the CLB portfolio of RFL. However, these concerns were allegedly never addressed by the promoters. The RBI had raised concerns about the promoters disbursing high value unsecured loans to entities with no



financial standing. In its inspection report dated 06.01.2012, the RBI has observed that the RFL had a practice of parking a major chunk of surplus funds with fellow subsidiary/group companies/other companies which were often being used for taking positions in securities. RBI had further pointed out that the reports pertaining to monitoring of the said loans was not available on record. The RBI had also pointed out that the top borrowers of RFL under the CLB portfolio were related entities. There were inter-linkages between the borrowers, as funds were routed from one borrower to another.

2.4. During the course of investigation, it was revealed that REL was a public listed Core Investment Company ('CIC'), which had made major investments in its subsidiary companies, i.e., RFL, Religare Health Insurance Co. Ltd. ('RHL') and Religare Broking Limited ('RBL'). REL had invested 57.77% percents of its assets and 89.78% of its net-worth in RFL. REL owned 85.64% of the equity-share capital in RFL. Since REL had major investments in RFL, any loss caused to RFL due to the alleged diversion of funds resulted in a direct loss to the shareholders of REL. Investigation revealed that the CLB was created since the inception of RFL, primarily for the purpose of utilization of funds by the promoters. The *modus-operandi*, as alleged by the investigating agency, was that inter-corporate loans were disbursed to various companies controlled by the promoters, through which funds were routed to companies owned by the promoters, who were the ultimate beneficiaries. The CLB increased gradually because the amounts due towards re-payment of loans were funded through new loans.

2.5. Furthermore, it was found that the CLB Loans were granted on the basis of verbal instructions. RFL did not receive any official request from the borrowers requesting such loans. The only written communications available



with respect to the initiation of the said loans were e-mails circulated by Mr. Pawan Seth to Ms. Rajni Barnwal, requesting her to initiate the underwriting process, and emails from Ms. Rajni barnwal to Mr. Punit Arora requesting him to initiate the RMC approval process.

2.6. Nineteen entities to which loans were extended were indentified. It was alleged that the amount extended as the loan was misappropriated/siphoned off and was never returned to RFL. The said 19 entities and the details of their Directors at the relevant point of time have been placed on record in the chargesheet.

2.7. During the course of investigation, RFL also provided details of the persons who approved the loans extended to the said entities. A tabular representation of the same has been given in the chargesheet.

2.8. During the course of investigation, a report dated 27.01.201 was obtained from the General Manager of the RBI, wherein certain observations pertaining to the CLB portfolio of RFL were made.

2.9. In a forensic audit conducted by SEBI, utilization of loans disbursed by RFL was scrutinized and it was revealed that Rs. 1,260 Crores had been diverted to various companies including RHC Holdings Pvt. Ltd. and ANR Securities Pvt. Ltd. belonging to the promoters, i.e., Malvinder Mohan Singh and Shivinder Mohan Singh. A report from the Registrar of Companies ('ROC') confirmed that Malvinder Mohan Singh and Shivinder Mohan Singh own 50% each of the shareholding of RHC Holdings Pvt. Ltd.

2.10. During the course of investigation, Shivinder Mohan Singh, the applicant, Anil Saxena and Kavi Arora were arrested on 10.10.2019 and Malvinder Mohan Singh was arrested on 11.10.2019.



2.11. *Vide* letter dated 29.12.2014, Malvinder Mohan Singh and Shivinder Mohan Singh had assured the applicant, the then Chairman and Managing Director of REL that they are willing to purchase the CLB from RFL upon completion of the sale of a substantial part of their shareholding in REL to one or more institutional/strategic investors.

2.12. An investigation report received from the SEBI further revealed that out of Rs. 676.10 Crores lent by RFL to 5 companies under Group-2, Rs. 210.05 Crores was diverted for the benefit of RHC Holding Pvt. Ltd.

2.13. An Indemnification-cum-Release Agreement dated 14.11.2017 was signed between Malvinder Mohan Singh, Shivinder Mohan Singh, RFL, Religare Securities Ltd., Religare Commodities Ltd., Religare Capital Market Ltd. and Religare Comtrade Ltd. At that point in time, the accused persons were on the Board of Directors and they diverted funds from the complainant company, i.e., RFL to square off the liabilities/borrowings from lenders in their parent company – RHC Holdings Pvt. Ltd. to the tune of Rs. 1,260 Crores. With respect to the liability created with RFL, over which they had control by virtue of their positions at REL, the accused persons indemnified themselves. The said Indemnification-cum-Release Agreement was revoked by the new management.

2.14. Upon completion of investigation, the chargesheet in the present case was filed on 06.01.2020 under Sections 120B/409/420 of the IPC *qua* Malvinder Mohan Singh, Shivinder Mohan Singh, Kavi Arora, Anil Saxena, the applicant and RHC Holding Pvt. Ltd.

2.15. Narendra Kumar Goushal and Maninder Singh were arrested on 27.10.2020 and Rajendra Prasad Aggarwal was arrested on 07.12.2020. Thereafter, a supplementary chargesheet in the present case was filed on



20.01.2021 under Sections 120B/477A/420/409 of the IPC *qua* the following persons/companies:

- i. Maninder Singh
- ii. Narender Kumar Goushal
- iii. Rajender Prasad Aggarwal
- iv. M/s A&A Capital Services Pvt. Ltd.
- v. M/s Abhiruchi Distributors Pvt. Ltd.
- vi. M/s Ad Advertising Pvt. Ltd.
- vii. M/s Annies Apparel Pvt. Ltd.
- viii. M/s Artifice Properties Pvt. Ltd.
- ix. M/s Gurudev Financial Services Pvt. Ltd.
- x. M/s Modland Wears Pvt. Ltd.
- xi. M/s Platinum Infrastructure Pvt. Ltd.
- xii. M/s Rosestar Marketing Pvt. Ltd.
- xiii. M/s Star Artwors Pvt. Ltd.
- xiv. M/s Torus Buildcon Pvt. Ltd.
- xv. M/s Tripoli Investment & Trading Pvt. Ltd.
- xvi. M/s Volga Management & Consultancy Pvt. Ltd.
- xvii. M/s Zolton Properties Pvt. Ltd.
- xviii. M/s Fern Healthcare Pvt. Ltd.
- xix. M/s Tara Alloys Pvt. Ltd.

2.16. By way of the said supplementary chargesheet, details of the transactions relating to the loans disbursed to the 5 Group-2 companied referred to in Para 2.12 hereinabove were placed on record.

Role of the Applicant



3. The applicant was associated with REL from 13.07.2006 to 06.09.2017. During that period, he was appointed as a Director on 19.07.2006; as the Chief Executive Officer and Managing Director on 09.04.2007; Chairman and Managing Director on 06.04.2010; Whole Time Director & Chief Executive Officer on 29.07.2016. He resigned from his position as Chief Executive Officer ('CEO') on 21.10.2016 and finally, resigned as the Whole Time Director on 06.09.2017.

3.1. By virtue of his position as the Chairman and Managing Director ('CMD') of REL, the applicant had an instrumental role to play in the functioning of RFL as well. Many of the emails seeking loan approvals were marked to the applicant. He was also responsible for approval of many of the loans. Several of the loans in the CLB portfolio of RFL were disbursed on the instructions of the applicant on the basis that the borrower company was known either to him or to Malvinder Mohan Singh and Shivinder Mohan Singh.

3.2. The applicant was the member of the Related Party Transaction Committee (RPT). Based on the minutes of the meetings of the RPT Committee dated 24.02.2016 and 31.08.2016, it was alleged that loans were illegally extended to companies known to the promoter group, on the instructions of the applicant without any due diligence or proper documentation.

3.3. The applicant, in his capacity as the CMD, alongwith accused Kavi Arora addressed a letter dated 12.07.2016 to the RBI stating as under:

“as advised during the captioned meeting we wish to confirm that RFL will not further increase its exposure under corporate loan book (CLB) beyond Rs. 1719.65 crores (loan outstanding as on



June 30th 2016). We also confirm that RFL will not roll over any of its existing CLB loans effective immediately.”

3.4. It is alleged that the applicant signed financial statements of REL which gave an overview of the CLB and thus, he had full knowledge of the transactions.

3.5. It was alleged that the applicant held key managerial positions in the organization and played an instrumental role in the conspiracy alongwith other co-accused persons which led to misappropriation of funds. He used to draw a considerable sum of money as salary was entitled to several other benefits. He turned a blind-eye to the issues with the CLB and the siphoning-off of money in favour of the company owned by Malvinder Mohan Singh and Shivinder Mohan Singh.

3.6. During the course of investigation, co-accused Malvinder Mohan Singh claimed that the applicant had received a loan of approximately Rs. 40 crores from Fern Healthcare Pvt. Ltd. which belonged to RHC Holdings Pvt. Ltd. in 2012. He further disclosed that the loan documents were executed by the applicant himself alongwith a demand promissory note. Investigation with regard to the said loan revealed that the loan extended by Fern Healthcare Pvt. Ltd. to the applicant on 30.03.2012 were actually disbursed by RFL. It was routed and re-routed through various entities to conceal the transaction. The amount so disbursed is alleged to have been finally received by the applicant who used his influence to show the same as a loan from the shell entity, Fern Healthcare Pvt. Ltd. A diagrammatic representation of the disbursement of the said loan amount is as under:





Submissions on behalf of the Applicant/Sunil Naraindas Godhwani

4. Learned Senior Counsel for the applicant made the following submissions:-

4.1. The CLB on the basis of which the complainant company, RFL has sought an investigation into the erstwhile management of REL are nothing but loans taken by erstwhile promoters - Malvinder Mohan Singh and Shivinder Mohan Singh directly or on the basis of their express guarantees and this fact was duly mentioned at the time of taking loans. The applicant ensured that the said loans which were primarily unsecured loans, are admitted and repayment is secured by way of express guarantee of the Promoters.

4.2. RBI had been red flagging the CLB but no action was taken. RBI was discussing the CLB with the officials of RFL only and never red-flagged to REL. It is submitted that there was no illegality *per se* and only direction being given by RBI was for lowering of such loans and at no point of time RBI ever took any penal action or cancelled the NBFC license. It is submitted that if something is illegal the same could not have been allowed by RBI for such a long period and RBI would have cancelled the license of NBFC. Finally, in the year 2016 RBI called REL along with RFL and thus Petitioner being the chairman of REL attended the said meeting on behalf of REL on 08.07.2016. It was communicated to RBI that the repayment of CLB shall be done in the next 18 months and the said period was duly agreed and granted by RBI. *Vide* letter dated 12.07.2016 it was further undertaken that “*we wish to confirm that RFL will not further increase its exposure under Corporate*



Loan Book (CLB) bevond 1719.65 crore (loan outstanding as on June 30, 2016). We also confirm that RFL will not rollover any of its existing CLB loans, effective immediately”.

4.3. The applicant and his team started expediting the de-merger process. In the meantime, Malvinder Mohan Singh and Shivinder Mohan Singh sought information with regard to same *vide* letter dated 22.07.2016. The intention of the applicant can be gathered from the reply letter dated 28.07.2016 whereby he refused to divulge any such detail or schedule any meeting as desired by Malvinder Mohan Singh and Shivinder Mohan Singh. Thereupon petitioner was immediately removed from the post of Chairman and Managing Director and made CEO on 29.07.2016.

4.4. Even the post of CEO also did not last for long. There was disconnect on the minutes of the Board meeting dated 06.09.2016 and thereupon the applicant was once again demoted and removed from the position of CEO and whole time Director to Non Key Managerial Personnel on 21.10.2016 and was removed from all working committees. Immediately, the applicant's e-mail ID was blocked and office of the applicant was taken over and thereafter, the applicant ceased to have any executive post and he did not even attend office.

4.5. Till the time the applicant was in REL, he duly worked on lowering of CLB and also ensured that in compliance of undertaking given to RBI neither the exposure benchmark as undertaken is breached and also no CLB loan is rolled over. It was further submitted that 13 of the 19 loans objectionable loans were disbursed after the applicant resigned from his position as Whole-Time Director on 21.10.2016.



4.6. The applicant was also not a part of any of the committees responsible for sanctioning of loans.

4.7. The case of the prosecution against the present applicant, and more particularly, the suggestion that he was also responsible for approval of loans is based on e-mails in relation to approval of six out of the 19 loans. It was submitted that the applicant was working on lowering the CLB and thus, requested RFL to keep him abreast of the details of disbursement of any inter-corporate loans under the CLB portfolio.

4.8. It was submitted that Mr. Sachindra Nath, Group CEO, was of the opinion that such loans were not covered under the related party transactions and thus, as per the Companies Act, there was no impediment. In support thereof, attention of this Court was drawn to an e-mail dated 27.02.2016. One of the investors of REL desired that any such loans should be also put up to RPT Sub-Committee to be created at the level of holding company, i.e., REL. The said committee consisted of three individuals. It is submitted that RPI sub-committee technically has no power to approve or disapprove any such loan and was only for the purposes of compliance and information to the board in case of discrepancy. The applicant, as one of the members of the said committee considered some of the loans, and upon express advice of the Company Secretary that the same were at arm's length and in the interest of Company, the same were approved. But, the applicant ensured that the same does not breach the terms of undertaking given to the RBI by way of letter dated 12.07.2016. It has been alleged that the applicant approved the loans despite the objection of another member of the said committee, Mr. Monish Dutt was false and not borne from record, in as much as the record clearly showed that the objection of Mr. Monish Dutt was only



in respect to one loan transaction, which was already sanctioned by Loan sanctioning committee. Mr. Monish Dutt even after stepping down of petitioner continued granting loans and raised the CLB to Rs. 2,400 Crores, and as a matter of record 13 out of 16 objectionable loans have been sanctioned and disbursed after petitioner stopped going to REL. The said Mr. Monish Dutt was still there on the Related RPT subcommittee and he has passed all such loans. Thus it is apparent that it was not petitioner who was approving such loans, but the officials who were there in company, before and after petitioner left the company. The terms of reference of RPT subcommittee as formed and detailed in supplementary chargesheet reveals that nothing can be said to have been acted upon by Petitioner which was against the terms of the said committee and the transactions as considered by RPT Sub Committee during the term of Petitioner are well within the four corners of law. Interestingly other members of the RPT Sub-Committee, i.e., A C Mahajan, Rashi Dhir and Harpal Singh have not been arrested and were later chargesheeted without arrest, even though they all have given similar approvals.

4.9. In the chargesheet, the offence complained of and investigated, is in respect to the 19 entities to which allegedly loans were extended by RFL, but never repaid back and instead alleged to be misappropriated and siphoned off. Upon a perusal of the chargesheet, at best, the applicant can be said to have knowledge of only 6 out of 19 problematic loans mentioned in charge sheet, and even out of those 6 loans, 3 were secured loans against property and the remaining 3 unsecured loans were opined as arm's length transaction by the Company Secretary and approved by the relevant credit committees. Thirteen out of nineteen objectionable loans admittedly have been disbursed only after



21.10.2016, when the applicant was removed from the post of CEO and all committees and was made a Non-Key Managerial Person, having no executive powers.

4.10. As far as the amount of Rs. 34.20 Crores alleged to have been received by the applicant is concerned, it was submitted that the transaction of 30.03.2012 does not form part of 19 alleged loans entries of year 2016-17 under investigation. Secondly, the mala fide and bias in the investigation is writ large from the fact that charge sheet was filed on 10.01.2020 and along with charge sheet there was not even a single document/ bank statement proving either movement of money as alleged above; or reason for transfer of money from RFL to RHC; or document showing that the money was transferred from complainant to RHC in pursuance of illegal motives or on false pretext. Thirdly, the Investigating Officer deliberately, to prejudice the applicant, did not mention in chargesheet that the applicant, on same day had forwarded the said amount of Rs. 34.20 Crores to RHC Holdings Pvt. Ltd. It was submitted that the supplementary chargesheet records that the loans given to the applicant by RHC Holdings Pvt. Ltd. started from the year 2006, even before REL became a public listed company or RFL got established. It was submitted that the same continued form year to year and eventually in the year 2012, the promoters got the said loans transferred to their other company, i.e., Fern healthcare Private Limited. Even huge amount of interest/ repayments have been made by the applicant from his own funds in the said period and the said amount was a loan only. Any and every transfer of money between RFL and RHC cannot be said to be bad. Financial statements of audited balance sheets of RFL for the said period shows that RFL has taken loans from RHC and have made repayment of loans to RHC in the said year



and RFL also made payments to RHC Holdings Pvt. Ltd. on account of reimbursements/interest/interest on debentures, etc. Further RFL has given loans amounting to Rs. 1,013 Crores to RHC Holdings Pvt. Ltd. and around Rs. 813 Crores has been repaid. The bank statements of RFL-RHC-Today-Fern and the applicant show that on 30.3.2012, RFL had transferred a sum of Rs. 40 Crores to RHC Holdings Pvt. Ltd. and the said sum was immediately transferred by the next entry in the statement to Religare Corporate Services Limited. The money which was eventually received in the account of the applicant was transferred by RHC Holdings Pvt. Ltd. from its own funds. Thus, the whole premise of the allegation was *ex-facie* wrong and unsubstantiated. Therefore, there is no connection between the funds of RFL received by RHC Holdings Pvt. Ltd. and the transactions mentioned in the chargesheet. It was further submitted that the applicant has not held the amount or diverted the same for his own use. The same was immediately transferred to RHC Holdings Pvt. Ltd. and the same was done on account of consolidation of loans by the promoters in their company, i.e., Fern Healthcare Pvt. Ltd. It was further submitted that for recovery of the said amount alongwith interest, garnishee proceedings are pending. Lastly, it was submitted that it is not a case of the prosecution that Fern Healthcare Pvt. Ltd. is an entity related to the applicant and the loans disbursed to the same were proposed or approved by him.

4.11. It was further submitted that the FIR is based on a forensic audit done by AZB & Partners. A perusal of the report dated 27.09.2010 of the said forensic audit shows that the promoters were the beneficiaries of the said loans. No involvement of the applicant has been recorded in the report. It was



submitted that the report also confirms that the loans were orchestrated by Hemant Dhingra and Narendra Kumar Ghoushal.

4.12. It was further submitted that the applicant also satisfies the ‘triple test’ for grant of bail. He has duly joined the investigation as and when called for. Since his arrest on 10.10.2019, the applicant has been in custody for over three years. During the said period, he was released on interim bail on four different occasions and nothing has been placed on record to show that he misused the liberty granted to him. It was further submitted that the applicant has not attempted to influence the witnesses or tamper with evidence in any manner.

Submissions on behalf of the State and the Complainant Company/RFL

5. Learned Additional Standing Counsel (‘ASC’) appearing for the State alongwith learned Senior Counsel appearing on behalf of the complainant company/RFL, made the following submissions:-

5.1. At the outset, an objection was raised *qua* the maintainability of the present application. It was submitted that the first application seeking regular bail filed on behalf of the applicant has already been dismissed by a coordinate bench of this Court *vide* judgment dated 23.07.2020 passed in BAIL APPLN. 1100/2020. Since then, no material change in circumstances has taken place which would justify the maintainability of a second application.

5.2. It was submitted that several of the loans in the CLB portfolio of RFL were disbursed on the instructions of the applicant on the basis that the borrower company was known either to him or to Malvinder Mohan Singh and Shivinder Mohan Singh. It was also submitted that the applicant is responsible for misappropriation of a loan amount of approximately Rs. 40



Crores disbursed by RFL. The amount so disbursed is alleged to have been finally received by the applicant who used his influence to show the same as a loan from the shell entity, Fern Healthcare Pvt. Ltd.

5.3. At the outset, attention of this Court was drawn to the report of AZB & Partners, wherein the following observations have been made:

- i. REL is the holding company of RFL and presently holds approximately 85.64% of the equity share capital of RFL. Since REL is a public listed company, the funds of RFL are also public money and therefore, by committing the alleged offence and siphoning of the funds, the accused persons in the present case have caused loss of public money.
- ii. The following observations made in the aforesaid report also point towards the influence of the promoters over the process of disbursement of loans by RFL:

“2.4 We understand that while the primary business of RFL is SME Lending, one of the loan products offered by RFL included unsecured lending to corporate entities. These loans are classified by RFL as “Corporate Loan” or “CLB Loans” and the entire portfolio of CLB Loans is referred to as CLB or CLB portfolio. The total exposure of RFL Identified Loans in the CLB portfolio as of March 31, 2018 was approximately INR 2,086.7 crores (Indian rupees two thousand eight six crores seventy lakhs).

2.5 We understand that the CLB portfolio has been subject to regulatory scrutiny in the recent past. The RBI had during its inspection on RFL with respect to its financial position as on March 31, 2013 raised the following observation....”despite having a competent and highly qualified Top Management, its ability to oversee the professional functioning of the Company and general quality of Corporate Governance was not considered satisfactory by the Inspection, as exercise of undue influence of the promoter group was reflected, particularly in the conduct of its CLB.”



It was submitted that a bare perusal of the aforesaid paragraphs reflects that the promoter group of REL, i.e., Malvinder Mohan Singh and Shivinder Mohan Singh had an undue influence in conduct of the CLB. Concerns regarding the same were also raised by the RBI, which also observed that the general quality of corporate governance was not satisfactory.

- iii. It was submitted that even after that, the RBI continued to express concerns about the health of the CLB portfolio. The management of RFL and REL, by way of a joint letter dated 12.07.2016 provided an undertaking to the RBI to not increase its exposure in the CLB beyond Rs. 1,719.65 Crore. Despite assurances, because no action was taken, the RBI addressed a letter dated 27.01.2017 making specific observations regarding the CLB and asked for a month-wise plan for liquidating the CLB portfolio.
- iv. During audit of records of financial year 2017-18, the auditors of RFL also raised concerns about the CLB portfolio. In the said report, the auditors also identified certain material weaknesses, which are as under:

“a.) The Company’s internal financial control system over financial reporting is not operating effectively in respect of Corporate Loan Book, loan against property & loan against shares due to weak credit appraisal, no system for verification of end use of money after sanction. loan sanctioning mechanism & assessment of credit worthiness of the borrower, documents for follow up post disbursement were not operating effectively.



- b.) Updated documentation for Micro Small & Medium Enterprises as per MSMED Act 2006 and control over Information Technology General Controls.
 - c.) The Company's internal control process for its business in respect of the following needs to be strengthened in respect of regular updation of risk control matrix, comprehensiveness for coverage of all process."
- v. A preliminary review of the ledger of the subject loans suggested that certain loans were extended to repay twelve other loans extended by RFL to some entities which were disbursed prior to the review period, i.e., 01.09.2016 to 30.09.2017.
- vi. Disbursal of loans under the CLB portfolio was initiated on the basis of oral instructions received either from Hemant Dhingra or Narendra Kumar Ghoushal. These instructions would then be communicated to Kavi Arora (erstwhile CEO) or Bipin Kabra (erstwhile CFO). The said instructions, in some cases would also be routed through the senior management team at REL comprising of the applicant, Maninder Singh, Anil Saxena, Sunil Garg and Nalin Nayyar.
- vii. The report also lays out the relationship between the borrower entities and the promoters of REL. It is noted that while no direct relationship between the two existed, commonalities were found in shareholders, directors and registered offices. Circumstantial evidence *qua* a relationship between the promoters and borrower entities was uncovered
- viii. Evergreening of loans was enabled to prevent them from being categorized as an NPA. CLB loans were typically granted for a period of twelve months. A loan would be classified as an 'NPA' if the



principal/interest remained overdue for a period of time. It was noted that fifteen out of twenty loans were granted only to cause repayment of existing loans, which would have otherwise been categorized as an NPA. The cheque against the payment of an existing loan would be deposited only once specific instructions in that regard were received either from the concerned borrower or Hemant Dhingra. The said cheque would typically be cleared shortly after disbursal of another loan.

- ix. It was also noted that RFL did not execute loan agreements as a matter of practice. Instead a system generated document referred to as an MoU containing basic details such as loan amount, borrower's name, tenure and rate of interest etc. was printed and executed on a stamp paper.
- x. Attention of this Court was drawn to the final conclusion of the report, and in particular, to the following portions thereof:

“5.5.1 Subject to the specific area of reviews undertaken in line with the engagement and scope of work listed in Section III, the limitations set out in Section VII, the summary of our findings is as under:

(i) Based on the desktop RoC search carried out by us, we did not come across any direct shareholding or directorship of the Promoters in the 20 (twenty) borrower entities, the loans given to whom were outstanding as of March 31, 2018 (INR 2,086.7 crore). However, we are of the view that the circumstantial evidence suggests linkages between the above referred 20 (twenty) borrower entities and the Promoters.

(iii) The RBI had regularly been making adverse remarks against the CLB portfolio of RFL since the Financial Year 2012-13. RFL had on more than one occasion committed to RBI that (i) it will not roll-over any of its existing loans; and (ii) there will be no



additional increase to the principal amount of the CLB. The RBI Exposure Limit was however breached from time to time and despite concerns being raised and discussed during the RMC meetings, loans were ultimately disbursed to the proposed borrower based on a convenient interpretation, as discussed in paragraph 5.4.3 above.”

5.4. It was submitted that in the present FIR, a coordinate bench of this Court, *vide* judgment dated 14.06.2021 passed in CRL.MC. 796/2021 titled ‘Religare Finvest Ltd. v. State of NCT of Delhi & Anr.’ cancelled the bail granted by the learned Trial Court to co-accused Shivinder Mohan Singh in the present FIR. It was held as under:

“55. In the present case, nature and gravity of accusation against respondent No.2 is serious. The grant of bail in a case involving cheating, criminal breach of interest by an agent of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only on the progress of the case but also on the trust of the criminal justice system that people repose. Thus, the parameters set out by the Hon’ble Supreme Court for cancellation of bail in *Kanwar Singh Meella (Supra)*, have been met out.

56. Keeping in mind the factual matrix of the present case as also the pertinent observations of the Hon’ble Supreme Court in various decision, I have no hesitation to hold that the impugned order suffers from serious infirmities, resulting in miscarriage of justice. Moreover, continued detention of respondent No.2 in this FIR case is necessary not only to unearth the conspiracy hatched by him, but also to derive out/trace the siphoned money which he has credited for his personal benefit.

57. In view of afore-going narration the impugned order dated 03.03.2021 passed by the learned trial court is set aside. Consequentially, the bail granted to respondent No.2 in this FIR case by the trial court is also set aside.



58. With aforesaid observations, the present petition is allowed and is accordingly disposed of. Pending applications are disposed of as infructuous.

59. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information.”

5.5. Learned Senior Counsel appearing for the complainant company, RFL submitted that before the learned National Company Law Tribunal (‘NCLT’), the companies named in the present case were proceeded against and in the said proceedings, it has come on record that the loans disbursed to them were a sham. Attention of this Court was drawn to the reply filed by Modland Wears Pvt. Ltd., which is one of the nineteen entities named hereinabove, to a petition filed by RFL for initiation of Corporate Insolvency Resolution Process before the learned NCLT, Principal Bench at New Delhi, wherein the said company has come on record to state that the money advanced to them by RFL was towards their own purpose and not as a financial aid. It has further come on record that the moneys were advanced to Modland Wears Pvt. Ltd. by RFL with specific instructions as to where it was to be deployed. The said company was a mere vehicle for disbursement used by RFL to advance moneys to intended recipients.

Rejoinder on behalf of the Applicant/Sunil Naraindas Godhwani

6. In rejoinder to the preliminary objection *qua* the maintainability of the present second application for bail, learned Senior Counsel for the applicant submitted that the fact that the sum of Rs. 34.20 Crores was in fact transferred to RHC Holdings Pvt. Ltd. was not brought to notice before the coordinate bench of this Court during the hearing of the first application for bail. It was further submitted that while dismissing the application, the coordinate bench had categorically recorded that the investigation *qua* the alleged transaction



was still ongoing. It was contention of the learned Senior Counsel that since then, the investigation has been completed and a supplementary chargesheet has been filed, which in itself amounts to a change in circumstance and therefore, the present application would be maintainable.

Discussion

7. Heard learned counsel for the parties and perused the record.
8. As far as the maintainability of a second application for bail is concerned, it was the contention of learned Senior Counsel appearing on behalf of the applicant that the coordinate bench of this Court, while dismissing the first application for bail *vide* judgment dated 23.07.2020 passed in BAIL APLN. 1100/2020 titled Sunil N. Godhwani v. State, had observed as under:

“27. On perusal, the Petitioner received an amount of Rs. 34 crores from Fern Healthcare Private Limited, one of the shell companies, as part of the benefits for working closely with the Promoters. Fern Healthcare is an entity related to petitioner and loans to the same were proposed and approved by him. The chargesheet clearly records that the real source of the said money was the complainant company. The bank statements filed by the I.O. pursuant to Order dated 02.07.2020 shows that the Petitioner used the abovementioned funds to clear his outstanding liabilities towards RHC Holdings on the very same day on which the money was disbursed by the Complainant Company and was finally routed to the Petitioner.”

It was submitted that subsequently, by way of supplementary chargesheet, it came on record that the loans given to the applicant by RHC Holdings Pvt. Ltd. started from the year 2006, even before REL became a public listed company or RFL got established. It was submitted that the same continued form year to year and eventually in the year 2012, the promoters



got the said loans transferred to their other company, i.e., Fern Healthcare Private Limited. It was submitted that interest/ repayments have been made by the applicant from his own funds in the said period and the said amount was a loan only. It was the contention of learned Senior Counsel that this in itself, amounts to a change in circumstance in support of the maintainability of a second application for bail. On a pointed query from this Court, the Investigating Officer stated that the aforesaid sum of Rs. 34.20 Crpres does not form a part of any of the 19 loans which are a subject matter of the chargesheet in the present case. In view thereof, and in view of the averments made by the learned Senior Counsel with respect to change in circumstances, this court is of the opinion, second application for bail is maintainable.

9. The role of the present applicant, as has been detailed hereinbefore, is that during the time that he held key managerial positions at REL, the applicant in conspiracy with Malvinder Mohan Singh and Shivender Mohan Singh enabled the disbursement of loans to companies known to them without any due diligence or proper documentation. It is also alleged that he received a loan of approximately Rs. 40 Crores from Fern Healthcare Pvt. Ltd. which is an entity belonging to RHC Holdings Pvt. Ltd., in the year 2012. The said amount is alleged to actually have been disbursed by RFL and that it was finally received by the applicant who used his influence to show the same as a loan received from a shell entity, i.e., Fern Healthcare Pvt. Ltd. On the other hand, it was contended on behalf of the applicant, that the applicant and his team had started expediting the de-merger process and on account on differences with the promoters, the applicant was removed from the post of CMD and was



made CEO on 29.07.2016. It was further contended that even the said post of CEO did not last long and thereafter, the applicant was once again removed from the position of CEO and Whole Time Director to non-key managerial personnel on 21.10.2016 and was also removed from all working committees. It is pointed out that being in a non-key managerial position, the applicant did not have any executive post. It is also the case of the applicant that thirteen out of the nineteen loans which are subject matter of the chargesheet were disbursed after the aforesaid date, i.e., 21.10.2016. It is further contended on behalf of the applicant that out of the remaining six loans, three were secured against property and the remaining were found as arms' length transaction by Company Secretary and were approved by relevant Credit Committees. It is also contended that the aforesaid sum of Rs. 34.20 Crores was taken as a loan from RHC Holdings Pvt. Ltd., way back in 2006 and the said loan is not part of the nineteen transactions, which form part of the chargesheet.

10. It has been contended that the applicant was arrested on 10.10.2019 and the chargesheet *qua* him was filed on 06.01.2020. Two supplementary chargesheets were filed on 20.01.2021 and 15.12.2021. The investigation *qua* the applicant stands complete. In the main chargesheet and the first supplementary chargesheet, the prosecution has cited 78 witnesses and the list of accused includes 34 persons. It was further urged that the documentary evidence in the present case is voluminous in nature and the trial is not likely to conclude in the near future and admittedly, the trial is at the stage of scrutiny of documents. On the other hand it has been contended that the filing of the chargesheet does not lessen the allegations of the prosecution. Instead, it establishes that incriminating evidence has come on record against the accused person and therefore, it further strengthens the case against grant of



bail. It has been further contended that since the offence under Section 409 of the IPC provides for life imprisonment, therefore, the period of custody in the present case will not give any benefit to the applicant for grant of bail. It is further submitted that the present offence being of a socio-economic nature, the consideration for bail is on a different pedestal.

11. Learned Senior Counsel appearing on behalf of the complainant company, RFL had placed reliance on **Virupakshappa Gouda and Anr. v. State of Karnataka and Anr., (2017) 5 SCC 406** and **State of Bihar and Anr. v. Amit Kumar alias Bachcha Rai, (2017) 13 SCC 751** to contend that the principle - 'bail is a rule and jail is an exception' has to be read in the context of the offences for which the accused person seeking bail has been charged with. It was submitted that socio-economic offences are a class apart and stand at a different footing as compared to other offences while deciding an application for bail. It was further submitted that both the above judgments have distinguished the judgment in **Sanjay Chandra v. CBI, (2012) 1 SCC 40**, on the ground that **Sanjay Chandra (supra)** was applicable to a case where the offence was punishable with a maximum of 7 years. It was pointed out that in the present case, Section 409 of the IPC has been invoked, which is punishable with life. A perusal of the aforesaid judgments reflects that the judgment in **Virupakshappa (supra)** was rendered in relation to a case of murder, punishable under Section 302 of the IPC. In **Amit Kumar alias Bachha Rai (supra)**, it has been recorded that investigation in the said case was still continuing.

12. Learned Senior Counsel for the complainant sought to distinguish **Sanjay Chandra (supra)** on the ground that the offences for consideration before the Hon'ble Supreme Court therein did not include Section 409 of the



IPC, which carries a sentence of life imprisonment. It is pertinent to note that a similar contention was raised before a learned Single Judge of this Court in **Sharad Kumar and Ors. v. Central Bureau of Investigation, 2011 (126) DRJ 525**, wherein the other co-accused persons had claimed parity in terms of bail granted by the Hon'ble Supreme Court in **Sanjay Chandra (supra)**. After taking note of the said contention raised, it was held as under:

“22. Seen in the aforesaid backdrop, the question which arises for consideration is as to whether the petitioners who are charged for an offence of conspiracy under Section 120B IPC read with Section 409 IPC apart from other offences etc., which carry life imprisonment ought to be released on bail notwithstanding the fact that the order of the Apex Court is silent about the life imprisonment which the offence carries. In this regard, I feel merit in the contention of Mr. Ahmed, the learned senior counsel for the petitioners that although the Apex Court order does not find the mention of the word 409 IPC or the factum of life imprisonment which could be imposed for the said offence in the order, but it was cognizant of the fact that the all co-accused persons in the bail applications which were under its consideration were charged so. In addition to this, while dealing with the facts of the case in the batch of applications of *Sanjay Chandra's case*(supra) it had taken the charges against all the co-accused as a whole and not individual charges, therefore, if that be the position, this Court ought not to deny the bail to the petitioners on account of the omission, though inadvertent, in the order of the Apex Court. I am of the view that when the Supreme Court has reproduced the facts of the case, given the magnitude of the offence, the severity of the punishment which it entails, it has taken into note of the fact of the accused persons in general being charged for an offence under Section 409 IPC or the conspiracy thereof which carry life imprisonment. If despite the aforesaid facts, the Supreme Court has released the co-accused persons *Sanjay Chandra's case* (Supra) on bail, the said benefit cannot be denied to the petitioners on the grounds of parity. Moreover, the offences of which the petitioners in general have been charged, carries a punishment of five years under Prevention of Corruption Act or the IPC in comparison to the accused persons in *Sanjay Chandra's case* (supra) where it carried 7 years. So in a way petitioners stand is on better footing, therefore, they ought not to be denied the benefit of bail. Moreover, the Supreme Court order, which is



passed in *Sanjay Chandra's case* (supra) is binding on the High Court. The High Court cannot while considering the bail applications of the present accused persons do hair splitting of the order of the Supreme Court and make out a distinction when there is none so as to deny the benefit of said order to the petitioners by saying that the petitioners are charged for the offence of conspiracy under Section 120B IPC read with section 409 IPC which carries the life imprisonment. It will be also in my view would be violative of Article 141 of the Constitution, which lays down that the High Court being the subordinate to the Supreme Court must show compliance and the respect to the orders, of the Apex Court. In this regard, I am tempted to reproduce para 6 of the case titled *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd.*, (1985) 1 SCC 260, wherein it has been stated as under:—

“.....It will never be necessary for us to say so again that “in the hierarchical system of courts” which exists in our country, “it is necessary for each lower tier”, including the High Court, “to accept loyally the decisions of the High tiers”. “It is inevitable in hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary..... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted.” The better wisdom of the court below must yield to the higher wisdom of the court above. This is the strength of the hierarchical judicial system.”

XXX

24. Mr. Altaf Ahmed, the learned senior counsel has also cited number of other judgments to impress on this Court, the question that the omission to mention of Section 409 IPC or the absence of the word “life imprisonment” in the Supreme Court order cannot be interpreted in a manner which may be detrimental to the interest of the petitioners on account of Article 141 of the Constitution of India as the Supreme Court has dealt with the facts of the case as a whole and was cognizant of the fact that the charges against all the petitioners had crystallized. It Was also aware that common charges with regard to the commission of offence were framed against all the accused persons, which entailed imposition of life imprisonment, yet it consider the case of the co-accused *Sanjay Chandra's Case* (supra) fit to grant bail. These judgments are *Official Liquidator v. Dayanand*, (2008) 10 SCC 1, *State of Bihar v. Kalika Kuer @ Kalika Singh*, (2003) 5 SCC 448, *Ajmer Singh v. State of Haryana*, (2010) 3 SCC 746, *Izharul Haq Abdul Hamid*



Shaikh v. State of Gujarat, (2009) 5 SCC 283, *Dinbandhu, Sharma v. State*, 87 (2000) DKT 149 : 2000 (55) DRJ 96, *Director of Settlements, A.P. v. M.R. Apparao*, (2002) 4 SCC 638, *Saganthi Suresh Kumar v. Jagdeeshan*, (2002) 2 SCC 420 and *Indian Airlines v. Union of India*, 128 (2006) DLT 505 (DB) : 2006 (88) DRJ 316 [DB].”

The learned Single Judge, in the aforesaid decision, granted bail to co-accused therein, following the judgment of the Hon’ble Supreme Court in *Sanjay Chandra (supra)*, wherein Section 409 of the IPC had been invoked. It is further pertinent to note that in **Awanish Kumar Mishra v. State, 2021 SCC OnLine Del 4786**, a coordinate bench of this Court, while following **Sanjay Chandra (supra)**, granted bail in a case where Section 409 of the IPC was invoked.

13. Undoubtedly, the allegations *qua* the present applicant are grave in nature, for which he claims to have a defence, as noted in the preceding paragraphs. The veracity of the case of the prosecution as well as the defence will be determined during the course of the trial.

14. At this stage, it would be relevant to refer to the following judicial precedents in relation to bail:-

14.1. In **Satender Kumar Antil v. CBI, (2022) 10 SCC 51**, the Hon’ble Supreme Court held as under:

“Economic offences (Category D)

90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in *P. Chidambaram v. Directorate of Enforcement* [*P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] , after taking note of the earlier decisions governing the field. 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. Suffice it to state that law, as laid down in the following judgments, will govern the field:

Precedents

91.*P. Chidambaram v. Directorate of Enforcement* [*P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646] : (SCC pp. 804-805, para 23)

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. 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.”



92.*Sanjay Chandra v. CBI* [*Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] : (SCC pp. 62-64, paras 39-40 & 46)

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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.

46. 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 jeopardise 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 allay the apprehension expressed by CBI.”

Role of the court



93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

95. This Court in *Arnab Manoranjan Goswami v. State of Maharashtra* [Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427 : (2021) 1 SCC (Cri) 834] , has observed that : (SCC pp. 471-72, para 67)

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC ‘or prevent abuse of the process of any court or otherwise to secure the ends of justice’. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and



limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

(emphasis supplied)

96. We wish to note the existence of exclusive Acts in the form of Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:

“General right to bail of accused persons and others.—



4. (1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.”

97. Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.

98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.

99. The Bail Act, 1976 of United Kingdom takes into consideration various factors. It is an attempt to have a comprehensive law dealing with bails by following a simple procedure. The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence. They also include Special Acts as well. We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom. Our belief is also for the reason that the Code as it exists today is a continuation of the pre-Independence one with its modifications. We hope and trust that the Government of India would look into the suggestion made in right earnest.”

14.2. In *Sanjay Chandra v. CBI, (2012) 1 SCC 40*, the Hon’ble Supreme Court held as under:

“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 is 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 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 unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

14.3. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565, a Constitution Bench of the Hon’ble Supreme Court, while determining the scope of Section 438 of the CrPC, held as under:

“**27.** It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra v. King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar v. Emperor* [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section



498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor v. Hutchinson* [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.”

14.4. In Vaman Narayan Ghiya v. State of Rajasthan, (2009) 2 SCC 281,
the Hon’ble Supreme Court held as under:

“7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others



to keep off from us, the more liberty we have. (See *A.K. Gopalan v. State of Madras* [1950 SCC 228 : AIR 1950 SC 27])

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.”

14.4. In Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42, the Hon’ble Supreme Court had held as under:

“18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so.”

Conclusion

15. After an examination of the aforesaid judgments, it can be said that gravity of an offence would be a factor at the time of consideration for grant



of bail, but, at the same time, it cannot be the only criteria for denying bail either. As laid down in the aforesaid precedents, the object of bail is neither punitive or preventative and the same is to secure the presence of the accused at the trial. The underlying principle in the aforesaid judicial pronouncements is that a person, who otherwise has roots in the society and is satisfying the other general conditions for grant of bail should, after completion of investigation, should not be kept in continued judicial incarceration as a matter of punishment, even before the conclusion of trial. In the present case, this Court is of the opinion that no possible prejudice can be caused to the case of the prosecution before the learned Trial Court if the applicant is released on bail with necessary considerations, safeguarding the interests of the prosecution, especially when other co-accused persons have also been granted bail.

16. In the present case, co-accused Maninder Singh was granted bail *vide* order dated 05.05.2021, passed by a co-ordinate bench of this Court in BAIL APPLN. 3952/2020. The Hon'ble Supreme Court, *vide* order dated 12.07.2021, passed in SLP (CRL.) 4948/2021, dismissed a challenge to the said order granting bail to Maninder Singh. Co-accused Anil Saxena was granted bail *vide* order dated 17.06.2020, passed by a co-ordinate bench of this Court in BAIL APPLN. 1074/2020. The Hon'ble Supreme Court, *vide* order dated 17.07.2020, passed in SLP (CRL.) 13106/2021, dismissed a challenge to the said order granting bail to Anil Saxena and observed that the order granting bail to the said co-accused would not be a precedent for grant of bail to other co-accused persons in the case. Co-accused Krishnan Subramaniam was granted bail *vide* order dated 10.05.2022, passed by a co-ordinate bench of this Court in BAIL APPLN. 679/2022. Co-accused



Narender Kumar Ghoushal was released on bail *vide* order dated 14.01.2021, passed by the learned ASJ. The said order was challenged by the complainant company RFL in CRL.M.C. 128/2021 and the same is pending adjudication. It was further submitted that Pankaj Sharma, Avinash Chander Mahajan, Sunil Kumar Garg, Rashi Dheer and Harpal Singh who were all members of the CC-II, RMC and RPT Committee and were also responsible for approval of the subject loans, have been chargesheeted in the second supplementary chargesheet, without arrest. The learned ASJ granted bail to Sunil Kumar and Harpal Singh *vide* order dated 06.04.2022 and to Pankaj Sharma *vide* order dated 04.05.2022. It is not the case of the prosecution that any impediment has been caused in the trial in the present case on account of bail being granted to the said co-accused persons.

17. Admittedly, the investigation in the present case in complete and the main chargesheet, as well as the supplementary chargesheets stand filed before the learned Trial Court. It is also an admitted case that the evidence in the present case, primarily, is documentary in nature; all material documents have been recovered and are in the custody of the prosecution. It is also pertinent to note that no material has been placed on record to demonstrate that while the applicant was on interim bail, he tried to influence the witnesses, tamper with evidence or misuse his liberty in any manner. In view of the law laid down in the judicial precedents cited hereinabove and in view of the facts and circumstances of the present case, the present application is allowed.

18. The applicant is directed to be released on bail upon his furnishing a personal bond in the sum of Rs. 10,00,000/- alongwith two sureties of like



amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at A-2, Inayat Farms, Asola, Fatehpur Beri, Mehrauli, Delhi - 110074. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.
 - ii. The applicant shall not leave India without the prior permission of the learned Trial Court.
 - iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - v. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
19. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
20. The application stands disposed of along with all the pending application(s), if any.
21. Let a copy of this judgment be communicated to the concerned Jail Superintendent.
22. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

JUNE 02, 2023/bsr