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# IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 02<sup>nd</sup> June, 2023

+ BAIL APPLN. 1059/2022 & CRL.M.A. 6244/2022

KAVI ARORA

..... Petitioner

Through: Mr. Madhav Khurana and  
Mr. Kartikeye Dang, Advocates.

versus

STATE

..... 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  
Saroja, 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 - Sunil Naraindas Godhwani (BAIL APPLN. 1005/2022), 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 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 in the present case is that Sunil Godhwani, 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

**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 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, Sunil Godhwani, Anil Saxena and the applicant 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 Sunil Godhwani, 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, the applicant, Sunil Naraindas Godhwani, Anil Saxena 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 companies referred to in Para 2.12 hereinabove were placed on record.

***Role of the Applicant***

**3.** The applicant was appointed as the President, Consumer Finance with RFL on 09.04.2008 and held various managerial positions including that of Chief Executive Officer and Managing Director. He was appointed as the Managing Director of RFL on 14.11.2011 and resigned on 12.11.2017.

**3.1.** The applicant was a member of various committees, including the Loan Investment and Borrowing Committee ('LIABC'), the Risk Management Committee ('RMC') and the Credit Committee-II ('CC2') and had approved various CLB loans to entities without any financial standing. Majority of the CLB loans of the said entities mentioned hereinabove were alleged to have been approved by the applicant.

**3.2.** It was alleged that during the course of investigation, an e-mail dated 21.09.2016 was provided by RFL confirming round-tripping of funds. The said e-mail stated that the CLB reduction calendar required new loans to be given in January, 2017 and June, 2017 in order to avoid reporting NPAs. Similarly, ICRA Limited ('ICRA'), in an e-mail dated 06.09.2019 reached out to the applicant seeking information regarding reductions of ICDs etc.

**3.3.** The applicant, in his capacity as the Managing Director and Chief Executive Officer of RFL, alongwith co-accused Sunil Godhwani, 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 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 favor of the company owned by Malvinder Mohan Singh and Shivinder Mohan Singh.

**Submissions on behalf of the Applicant/Kavi Arora**

**4.** Learned counsel for the applicant made the following submissions:-

**4.1.** The applicant was arrested on 10.10.2019. The applicant was released on interim bail. While on interim bail, the applicant has not violated any of the conditions for bail or tried to flee. He did not make any attempts to tamper with the *evidence* or influence the witnesses either. The investigation in the present case is complete. The main Chargesheet as well as two supplementary chargesheets stand filed and therefore, it was submitted that no useful purpose would be served by keeping the applicant in custody any further. It was submitted that the applicant duly joined the investigation, as and when required. Thereafter, he travelled abroad on five different occasions and returned each time. Therefore, the applicant is not a flight risk.

**4.2.** It was submitted that no material has been placed on record to show that the applicant is likely to influence witnesses or tamper with *evidence*. He resigned from RFL on 12.11.2017 and thereafter, he has no links with RFL or its employees. It was submitted that a bare perusal of the chargesheet



demonstrates that none of the witnesses cited by the prosecution have made any allegations of influence *qua* the applicant. It was further submitted that the entire *evidence* in the present case is documentary in nature and is already in possession of the investigating agency thereby eliminating any scope of tampering with *evidence*.

**4.3.** It was submitted that the applicant joined investigation on 24.05.2019 and continued to do so on four subsequent occasions, i.e., 27.05.2019, 25.06.2019, 19.08.2019 and 19.10.2019. Despite that, the applicant was arrested on 10.10.2019. It was submitted that the applicant has also cooperated with the investigation being conducted by the SFIO. In relation to the same, he was interrogated in jail on three different occasions. Even while the applicant was on interim bail, he visited the SFIO office on 09.02.2021 and 10.02.2021 to cooperate with their ongoing investigation.

**4.4.** It was submitted that the applicant has also fully cooperated with the investigation in case FIR No. 189/2019, registered at P.S. EOW. In the said FIR, the applicant was not named as an accused. Instead, he was kept in column no. 12 of the chargesheet. Attention of this Court was drawn to an order dated 20.10.2020, whereby the learned ASJ granted bail to the applicant in the said FIR and recorded that he is not a flight risk and satisfies the 'triple test' as he was chargesheeted without arrest. Similarly, the applicant has also cooperated with the investigation in case FIR No. 226/2020, registered at P.S. EOW. In the said FIR as well, the applicant was not named as an accused and has been released on bail *vide* order dated 12.10.2022, passed by the learned Chief Metropolitan Magistrate.

**4.5.** It was submitted that in the present case, the applicant is not required by the Investigating Officer for any further investigation as he was not served



with any notice to join the investigation from the date on which he was sent to judicial custody, i.e., 14.10.2019 till the date of filing of the supplementary chargesheet on 15.12.2021.

**4.6.** Learned counsel made a case for bail on the ground of parity as well. It was submitted that the applicant did not approve even a single loan in his individual capacity. All the other employees of RFL who were also responsible for approving the subject loans alongwith the applicant have already been granted bail. 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. 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 was stayed. However, by that time, Narender Kumar Ghoushal had already been released from jail. It was further submitted that Pankaj Sharma, Avinash Chander Mahajan, Sunil Kumar Garg, Rashmi 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.

**4.7.** It was further submitted that while dismissing the application for bail, the ground taken by the learned ASJ is that the nature of offence is serious. However, the settled principle of law is that the gravity of an offence cannot be the sole criteria to deny bail. Reliance in that regard was placed on **Awanish Kumar Mishra v. State, 2021 SCC OnLine Del 4786** and **Sunder Singh Bhati v. State, 2022 SCC OnLine Del 134**.

**4.8.** Reliance was further placed on the following judgments:

- i. P. Chidambaram v. Central Bureau of Investigation, 2019 SCC OnLine SC 1380.
- ii. Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40.
- iii. Sharad Kumar & Ors. v. Central Bureau of Investigation, 2011 (126) DRJ 525.
- iv. Dataram Singh v. State of Uttar Pradesh & Anr., (2018) 3 SCC 22.
- v. Karti P. Chidambaram v. Central Bureau of Investigation, 2018 SCC OnLine Del 7999.
- vi. R. Vasudevan v. CBI, 2010 SCC OnLine Del 130.
- vii. Mahesh Kumar & Ors. v. Central Bureau of Investigation, 2013 (138) DRJ 288.

**4.8.** The applicant is also not an accused in the case registered by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 *qua* other co-accused persons.

**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, a preliminary objection *qua* the maintainability of the present application was raised. It was submitted that the applicant was on interim bail when the present application was filed and as such, until such time that the applicant surrenders, his application for regular bail cannot be considered. In support of the said objection, reliance was placed on **Roop Chand Bajaj v. State, 2009 SCC OnLine Del 55**, wherein it has been observed as under:

“12. The Petitioner is present in Court. He has been identified not only by his counsel but by the IO. The requirement of the law that the Petitioner should surrender to the Court before regular bail can be granted to him, therefore, stands satisfied. The technical objection is therefore rejected.”

It was the contention on behalf of the prosecution and the complainant company, RFL that in the present case, the applicant is not present in Court and therefore, the requirement that he should surrender before the court is not satisfied and thus, the application is not maintainable.

5.2. It was submitted that the applicant, during his tenure at REL, held various Key Managerial Positions. He was responsible for approving fifteen out of the nineteen loans which are a subject matter of the chargesheet in the present case.

5.3. The 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 the applicant (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 Sunil Godhwani, 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/Kavi Arora**

6. In rejoinder to the preliminary objection *qua* maintainability of the present application raised on behalf of the State and the complainant company, RFL, learned counsel for the applicant submitted that the requirement of 'custody' in Section 439 of the Cr.P.C. is satisfied. It was submitted that though the applicant is on interim bail, he is still in the custody of the Court as he appeared at the time of furnishing his bail bonds. In support of the said contention, reliance was placed on the following judgments:

- i. Niranjana Singh & Anr. v. Prabhakar Rajaram Kharote & Ors., (1980) 2 SCC 559.
- ii. Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623.
- iii. Kanaksinh Mohansinh Mangrola v. State of Gujarat, (2006) 9 SCC 540.

### **Discussion**

7. Heard learned counsel for the parties and perused the record.
8. At the outset, this Court will deal with the objection taken by the respondents with respect to the maintainability of the present application, inasmuch as that the applicant is on interim bail since 14.10.2021.
9. It is on record that the applicant was arrested by the EOW on 10.10.2019. He was granted interim bail on 14.01.2021 and while on interim



bail, he moved an application for regular bail and the interim bail granted to him was extended till 01.03.2021. It was pointed out that on 09.04.2021, the learned ASJ passed an order to the effect that the application under Section 439 will be heard only if the applicant surrenders. The said order was challenged before this Court in W.P.(CRL.) 834/2021 and was set aside on 13.04.2021. His interim bail was extended till 16.04.2021. Thereafter, the interim bail granted to the applicant was extended till 16.07.2021 by a full bench of this Court *vide* order dated 20.04.2021. In view of the aforesaid order of the full bench, the learned ASJ extended interim bail till 16.07.2021 *vide* order dated 22.04.2021. The said order of the learned ASJ dated 22.04.2021 was challenged by the complainant company and the challenge was dismissed. Thereafter, it was submitted that the application for regular bail moved on behalf of the applicant was pending and the interim bail granted to him was extended from time to time. Finally, on 02.04.2022, the learned ASJ, while dismissing the application for regular bail, directed the latter to surrender on or before 06.04.2022. The present application was filed and *vide* an order dated 05.04.2022, a coordinate bench extended the interim bail granted to the applicant. The said order was never challenged by the State or the complainant company and the applicant continues to remain in interim bail. It was submitted that in terms of **Roop Chand Bajaj (supra)**, the applicant continues to be in the custody of the Court as the bail bonds have been submitted before the learned Trial Court. The requirement of the applicant to remain present at the time of furnishing bail bonds is a matter of practice and therefore, the technical objection raised by the respondents is misplaced. After a bail bond has been furnished, requirement of law of surrendering stands satisfied, in terms of **Roop Chand Bajaj (supra)**. The



applicant surrendered at the time of furnishing bail bonds and therefore, the objection with respect to the maintainability of application is rejected. In **Niranjan Singh (*supra*)**, it was held as under:

“8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.”

In terms of the aforesaid judgment, the present application for bail in maintainable.

**10.** The role of the present applicant, as has been detailed hereinbefore, is that he held a key managerial position in the organisation and played an instrumental role in the conspiracy alongwith the other co-accused persons which allegedly led to misappropriation of funds. In his capacity as a member of the LIABC, CC2 and RMC he, amongst others was responsible for approving the loans which are a subject matter of the chargesheet in the present case. So far as the present applicant is concerned, it was submitted that he was employed as President of the Consumer Finance Division of RFL on 15.05.2008 as an employee solely as a qualified professional. It was contended on his behalf that the applicant was a *bonafide* employee of REL and strictly acted in his professional capacity. He had no shareholding in RFL or any of the other companies associated with the Religare Group. It was further contended that similarly placed co-accused persons, who were also responsible for approval of loans have already been granted bail.

**11.** 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.

12. 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.

**13.** 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 red 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.”

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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.

14. 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.



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

**15.1.** 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.

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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.”

**15.2. 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.



**15.3. 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.”



**15.4. 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.”

**15.5. 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**

16. 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 nor 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, 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 conditions, safeguarding the interests of the prosecution, especially when other co-accused persons have also been granted bail.

17. 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.

**18.** Admittedly, the investigation in the present case is 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.

**19.** The interim bail granted to the applicant is confirmed upon his furnishing a fresh 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 356, Escape Nirvana Country, Sector 50, Gurugram, Haryana - 122018. 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*.



20. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
21. The application stands disposed of along with all the pending application(s), if any.
22. Let a copy of this judgment be communicated to the concerned Jail Superintendent.
23. Order be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA**  
**JUDGE**

**JUNE 02, 2023/sn/bsr**

