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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***RESERVED ON : 14th March, 2023***

% ***PRONOUNCED ON : 6th April, 2023***

\+ **CRL.M.C. 1632/2022 & Crl.M.A.13191/2022**

**SERIOUS FRAUD INVESTIGATION OFFICE THROUGH SENIOR ASSISTANT DIRECTOR SH RAJESH DAHIYA**

**..... Petitioner**

Through: Mr. Kirtiman Singh, CGSC
Ms. Vidhi Jain, Adv.

versus

**AARTI SINGHAL** **..... Respondent**

Through: Mr. N Hariharan, Sr. Adv. with Ms. Ranjana Roy Gawai, Mr. Akshdeep Singh Khurana, Ms. Ujjmal Jain, Ms. Shambhavi Kashyap, Mr. Vijay Poonia & Ms. Janvi Sharma, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**J U D G M E N T**

**DINESH KUMAR SHARMA,J :**

**Overview**

1. Present petition under section 482 Cr.P.C. has been moved on behalf of the petitioner SFIO seeking to impugn and set aside the order dated 28.03.2022 passed by the Ld. ASJ -03, Spl. Judge (Companies Act), Dwarka, New Delhi. Vide the impugned order, Ld. Spl. Judge, has granted regular bail to the respondent/accused herein, namely Aarti Singhal in the

case titled *SFIO v. Bhushan Power & Steels Ltd* with respect to offence under Section 447 Companies Act, 2013, investigated by SFIO.

2. Ld. Spl. Judge has enlarged the respondent/accused on bail taking into account salient factors namely the beneficial proviso contained under Section 212 (6) Companies Act, 2013; the role attributed to the respondent/accused in the said fraud; as three major functionaries of the company have been granted interim protection by the Hon'ble Apex Court in another ED matter pertaining to same/ similar allegations which is still subsisting. Ld. Spl. Judge thus while opining that since the offence is by and large documented and there is no likelihood that the respondent/accused would flee from justice or evade trial, held that no purpose would be served in keeping the respondent/accused in JC and enlarged her on bail.

3. It has been submitted that it is settled law that economic offences constitute a class apart and are far more serious to the society as compared to individual criminal offences and they tend to seriously prejudice/destroy the economy of the country, thereby causing immense irreversible damage to the larger public interest. It has been submitted that the Ld. Spl. Judge while granting bail has diluted the mandatory twin conditions as stipulated u/s 212(6) of the Companies Act, 2013, which is contrary to the spirit and object of the Act.

4. Petitioner SFIO thus aggrieved has challenged the said order on the salient grounds which are as under:

a) Ld. Spl. Judge has wrongly interpreted and applied the beneficial proviso under section 212 (6) Companies Act, 2013;

b) Ld. Spl. Judge has failed to consider the detailed role played by the respondent/accused in the present fraud;

c) Ld. Spl. Judge erred while accepting the contention of respondent/accused that she was merely a dutiful/obedient wife acting on the instructions of her husband;

d) Ld. Special Court ruled out the respondent/accused is a flight risk after wrongly relying upon the findings and developments in ED cases (which has a separate mandate) rather than relying exclusively on the SFIO findings, despite the fact that the scope and ambit of investigation under the PMLA and the Companies Act are vastly different, being separate statutes altogether.

e) Ld. Spl. Court has granted bail to the respondent/accused after relying on the order of the Hon'ble Supreme Court granting interim protection to various individuals including the husband of the respondent/accused in another ED matter pertaining to similar allegations. It has been however submitted that the said matter is different and the respondent/accused is not even a party to the said proceedings.

5. It has been submitted that the Ld. Spl. Judge erred while granting bail to the respondent/accused as the SFIO investigation is still underway and at a very crucial stage thus releasing the respondent/accused is detrimental, given that several witnesses associated with the company where she was a director, are being examined and thus, possibility of tampering of evidence cannot be ruled out.

6. Before proceeding further, it is necessary to allude to the background facts leading to the present case.

**Background Facts**

7. The genesis of the case stems from order No. 5/5/2016/CL-II dated 03.05.2016 issued by the Cent. Govt. – Ministry of Corporate Affairs (hereinafter referred to as MCA)in exercise of its powers u/s 212 (c) of the Companies Act, 2013, vide which investigation into the affairs of Bhushan Power and Steel Ltd. (hereinafter referred to as "BPSL") and Bhushan Steel Limited (hereinafter referred to as "BSL") along with their associated group companies were assigned to SFIO.A team of Inspectors was constituted for conducting the investigation. Thereafter, MCA, vide order No. 5/5/2016/CL-II dated 08.01.2018 granted approval u/s 219 (b) & (c) of the Companies Act, 2013 to investigate into 20 group companies associated with BPSL.

8. The respondent/accused joined the investigation in 2016 pursuant to the above-mentioned order of MCAdated 03.05.2016.

9. Briefly stated the case of the petitioner SFIO is that BPSL (a company manufacturing flat, round and long steel products), following a split in the family business, was managed and controlled by one Sh. Sanjay Singhal who was also the Chairman & MD of BPSL. Investigation into the affairs of BPSL & Ors. (total 31 Companies) revealed that the corporate structure of BPSL was repeatedly abused for various fraudulent purposes. The books of accounts of BPSL were manipulated and various paper/shell companies were used for routing of funds in a deceptive manner. It has been alleged that using a complex web of transactions the affairs of the companies were

conducted so as to perpetuate fraud of massive proportions. Investigation till date has revealed a fraud amounting to Rs. 5,431 crores approx.

10. Respondent/ accused herein, namely Aarti Singhal, is the wife of Sh. Sanjay Singhal, who is said to be the main mastermind behind the present fraud. Admittedly she was the director of BPSL from 2006 - 2019. It has been alleged that in her capacity as a director, she attended 12 board meetings during the relevant period and even chaired 5 such meetings. Admittedly, she and her husband Sh. Sanjay Singhal were authorized signatories in all bank accounts of BPSL along with its 30 associated companies, which are under investigation. It has been alleged that being an authorized signatory in all bank accounts of BPSL and its group companies, she actively partook in all the fraudulent activities undertaken by the company.

11. It has been alleged that investigation revealed that the respondent/accused being an authorised signatory in all bank accounts of BPSL and other associated companies, was actively involved in the following fraud:

i. Siphoning of materials from BPSL Plant, Sambalpur, Orissa to sell it in the open market without issuing sale invoices.
ii. Diversion of funds from BPSL in the form of bogus capital advances and routing the same as equity or unsecured loans in related entities of BPSL
iii. Bogus advances to suppliers
iv. Issue and negotiation of Inland Letters of Credit by BPSL

v. Diversion of BPSL funds for purchase of Shares by Promoters & Family Members for Long-Term Capital Gains

vi. Bogus purchase of capital goods

vii. Purchase of property at Mumbai by Assurity Real Estate LLP and property at Amrita Shergill Marg

12. It has been alleged that the respondent/accused was actively involved in the fraudulent activities of the Company and was a beneficiary of the fraud. She did not join investigation initially despite repeated summoning and only joined investigation from 2021 onwards, but did not cooperate and always remained evasive.

13. It has been submitted that Corporate Insolvency Resolution Process (CIRP) was initiated by PNB against BPSL. Pursuant to which, JSW Steel Ltd has taken over BPSL on 26.03.2021.

14. The respondent/accused along with 3 other senior functionaries of the company were arrested by SFIO on 21.03.2022. An application was moved by SFIO seeking remand of the respondent/accused along with three other persons to SFIO custody and vide order dated 22.03.2022 they were remanded to SFIO custody till 24.03.2022. Thereafter, vide order dated 24.03.2022, the respondent/accused and 1 other individual was remanded to SFIO custody till 28.03.2022, whereas others were remanded to judicial custody. A bail application was moved by the respondent/accused, whereby, vide order dated 28.03.2022 the Ld. Special Court allowed the bail application of the respondent/accused.

15. It has been stated that the SFIO investigation report was submitted to MCA and pursuant to the directions of MCA, Ct. No. 374/2022 was filed before the Ld. Special Court ASJ-03 District South-west Dwarka Delhi,

wherein the Petitioner was arrayed as accused No. 37. It has been submitted that Cognizance has been taken by the Ld. Court vide its order dated 20.09.2022 and the respondent/accused has been summoned for offences u/s36 (c), 447 of the Companies Act, 2013 and sections 417, 420 and 120B IPC.

16. It has been submitted that the husband of the petitioner Sh. Sanjay Singhal along with 2 other persons namely Hardev Chand and RP Goel have preferred WP No. 36/2020challenging constitutional validity of certain provisions of Companies Act, 2013, whereby, vide order dated 17.02.2020, the Hon'ble Supreme Court while issuing notice has granted interim protection of no coercive steps.

17. It has been stated that the interim protection granted to the above mentioned persons is still subsisting without any change or modification.

18. It has been submitted that parallelly in another ED matter whereby similar allegations had been levelled, Sh. Sanjay Singhal, who was also initially arrested, was granted bail by the Ld. ASJ vide order dated 24.01.2020. It has been submitted that however the respondent/accused namely Aarti Singhal who is the wife of Sh. Sanjay Singhal was neither named as an accused and nor was she charge-sheeted against in the said proceedings.

**Submissions on Behalf of SFIO Petitioner**

19. Learned counsel for the petitioner submits that the respondent accused has been charged under sections 447/36(c) of Companies Act, 2013 and sections 417/420/120B of IPC. Section 447 and 36 (c) attract the twin conditions of bail as enumerated u/s. 212(6) Companies Act, 2013.Investigation till date has revealed fraud to the tune of Rs.

5431crores (approx).Respondent accused was the Director of BPSL w.e.f.2006 to 2019**,** in which period she attended 12 Board Meetings during the relevant period and chaired 5such meetings. Respondent accused, along with her husband Sh. Sanjay Singhal, was the authorized signatory in the bank accounts of BPSL and 30 other associated companies.

20. It has been submitted that investigation has revealed the detailed role played by the respondent/accused in the following transactions of fraud:

**A. <u>Siphoning of materials from BPSL Plant, Sambalpur, Orissa</u>**

i. Finished goods lying in the plant of BPSL worth 1023 Crore were systematically removed and without issuing sale invoices were sold in the open market. Funds so generated were not given to BPSL/ reflected in the books of accounts. It has been submitted that such goods were security for BPSL loans.

ii. Respondent was the authorized signatory of all bank accounts of BPSL from where payment for freight to Railways was made and such payments were capitalized in the account's books of BPSL instead of debiting to the revenue account.

iii. Respondent at two instances, she issued cheques/instructions to banks for issuing DDs for payment of freight charges of railway rakes through which goods were siphoned.

**B. <u>Diversion of funds from BPSL in the form of bogus capital advances and routing the same as equity or unsecured loans in related entities of BPSL</u>**

i. BPSL funds were diverted to paper companies as 'Capital advances' which, through a web of other companies, infused back into the associated companies from the F.Y 2009-2010 to 2017-18. Funds were infused as share capital, diverted for purchase of shares or purchase of assets in the name of the Respondent, her husband and the partnership firm of which her daughters are partners. As per balance sheet of BPSL for the F.Y 2016-17, a provision of Rs. 2606 crore of capital advances and raw material was made.

ii. Respondent was the authorized signatory in all the bank accounts of BPSL through which funds were siphoned. It was under her instructions/signatures that the funds were transferred to paper companies managed and controlled by various entry-operators.

**C. <u>Bogus advances to suppliers</u>**

i. BPSL funds were also diverted under the garb of 'advances to suppliers' to bogus paper entities managed and controlled by different entry-operators. As per balance sheet of BPSL for the F.Y 2016-17, a provision of Rs.471 crores were made for advances to supplier.

ii. Respondent was the authorized signatory in all the bank accounts of BPSL through which funds were siphoned. It was under her instructions/signatures that the funds were transferred to paper companies managed and controlled by various entry-operators. On her instructions to banks, payments were made as bogus advances to supplier's parties through which funds of BPSL were siphoned off.

D. **Issue and negotiation of Inland Letters of Credit by Bhushan Power & Steel Limited**

i. The instrument of Letter of Credit was misused through which BPSL availed credit facilities from banks on the strength of fabricated documents. The beneficiaries were group companies of BPSL and paper entities used by BPSL for availing the funds

ii. Respondent is the authorized signatory in the bank account wherein the proceeds of Letter of Credit had been credited after rotating through the accounts of group companies and paper entities.

E. **Diversion of BPSL funds for purchase of. Shares by Promoters & Family Members for Long-Term Capital Gains**

i. Aarti Singhal, along with her husband, family members etc., availed bogus LTCG to the tune of Rs. 1084.93 crores during the F.Y 2009-10 to 2016-17.

F. **Bogus purchase of capital goods**

i. Cenvat Credit was availed from various parties on the strength of Cenvatable invoices only, without any actual delivery of goods. Aarti Singhal was the authorized signatory in all the bank accounts of BPSL from which the funds were transferred to the suppliers of paper invoices without actual delivery of goods.

**G. <u>Purchase of property at Mumbai by Assurity Real Estate LLP</u>**

i. BPSL funds (Rs. 167.75 crores) was siphoned off by respondent to acquire property at Mumbai which was later transferred to Assurity Real Estate LLP, which had obtained accommodation entries in the form of loans and advances amounting to Rs.189.25 crores from BPSL siphoned funds.

ii. Respondent purchased a residential property at 4, Amrita Shergill Marg, New Delhi after taking housing loan of Rs.60 crore from Bank of Maharashtra and repayment of this housing loan was done by siphoning BPSL funds. A loan of Rs.200 crore was taken against mortgage of the said property, for equity infusion to meet lender requirements. Repayment of this loan was also done from BPSL funds. For availing loan, rental income of 7.05 Crore was projected as rental income from BPSL and associated companies by leasing out the same property.

21. Petitioner SFIO thus seeks to set aside the impugned order dated 28.03.2022 predominantly on the grounds that the Ld. Special Court has failed to consider the gravity of offence, committed by the petitioner and the material on record and also the applicable law in the correct perspective;

a) The active role of Petitioner and the fact that she was not merely a dutiful and obedient wife working on behest of her husband as she was present in the board meetings and was authorized signatory of BPSL is also not duly considered by the Ld. Special Court while passing the impugned order and granting her bail;

b) The Ld. Special Court has failed to consider the mandatory twin conditions of bail as provided in section 212(6) of the Companies Act, 2013 which ought not have been cast aside completely;

c) The Ld. Special Court erroneously relied upon the fact of not impleading the respondent as an accused by other agencies such as Enforcement Directorate etc. The Ld. Special court failed to consider that the ambit and scope of the investigation conducted by SFIO is at larger footing and as per Companies Act, 2013 and investigation conducted by SFIO has clearly established the role played by the respondent in commission of serious economic offence;

d) The Ld. Special Court has wrongly relied upon the Interim order of Hon'ble Supreme court where the constitutional validity of provisions of Companies Act,2013 are challenged by her husband Sanjay Singhal, in which Aarti Singhal/Respondent is not a party; and

e) The Ld. Court failed to consider the judgments by the Hon'ble Supreme court and Hon'ble High courts in various cases where the law regarding granting of bail under twin conditions and proviso to section 212(6) has been settled, such as ***Serious Fraud Investigation Office Vs. Nittin Johari & Anr.*** **2019 SCC Online SC 1178,** ***Shivani Rajiv Saxena Vs Directorate of Enforcement***

**2017 SCC Online DEL 104,** ***Priyanka Modi Vs Serious Fraud Investigation Office*** **(CRM-M No. 22815 of 2021).**

**<u>Submissions on Bhelaf of the Respondent/Accused – Aarti Singhal</u>**

22. Ld. Senior Counsel for the respondent submits that the present petition u/s 482 Cr.P.C. seeking to exercise inherent jurisdiction of this Court to set aside the impugned order is not maintainable, as the provision for cancellation of bail is specifically provided under Section 439 (2) Cr.P.C.

23. Ld. Senior Counsel submits that no ground has been made out to show that there has been an abuse of process of law warranting exercise of inherent powers by this Court u/s 482 Cr.P.C. It has been submitted that as the impugned order has been passed by the Ld. Special Court after taking into consideration all the relevant facts and circumstances and is based on cogent reasoning after duly considering the parameters of granting of bail.

24. Ld. Senior Counsel submits that the petitioner, SFIO has not placed on record the relevant material documents filed by the respondent before the Ld. Special court which are necessary for adjudication of the present matter and has concealed the same. Reliance is placed on ***MCD Vs.*** **State** (2005) 4 SCC 605 wherein the Hon'ble Supreme Court has held that a person suppressing material document amounts to playing fraud upon the court and is not entitled to any relief. Reliance is also placed on ***Oswal Fats and Oils Ltd. Vs. Addl.Commissioner (Administration)*****, (2010) 4 SCC 728**, whereby, the Hon'ble Supreme Court held that a person approaching a Court has to reveal all material facts and failure to disclose the same amounts to polluting the stream of justice and playing fraud upon the court.

25. Ld. Senior Counsel submits that very cogent and overwhelming circumstances are required for an order directing the cancellation of the bail already granted. Petitioner, SFIO has failed to bring out any reasons warranting cancellation of bail of the respondent, hence the present petition is not maintainable. Reliance has been placed upon the following judgments: ***Dolat Ram and Others Vs. State of Haryana***, *1995 SCC (Cri) 237;* ***Subhendu Mishra Vs. Subrat 'Kumar Mishraand another***, *2000 SCC (Cri) 1508(3 MemberBench);* ***Enforcement Directorate Vs Ratul Puri***, *CRL.M.C. 6466/2019;* ***Sandeep Singh Vs Simran Sodhi and Ors.***, CRL.M.C. 1769/2020 dated 18.05.2022; ***CBI, Hyderabad Vs. Subramani Gopalkrishnan & Anr***, 2011 (5) SCC 296; ***Rajan Mahajan And Anr. vs State And Anr.,***2002 [1] JCC 557; ***Directorate of Revenue Intelligence Vs HarshVasant & Anr,***2010 [1] JCC 109.

26. It is settled law that the conduct of the accused is material while deciding whether bail granted needs to be cancelled. It has been submitted that bail to the respondent was granted subject to fulfilment of several stringent conditions which were imposed. It has been submitted that the said conditions have been complied with and there is no specific allegation to the effect that the present Respondent has breached any of the said conditions.

27. Ld. Senior Counsel submitted that the Ld. Special Judge has rightly granted bail to the respondent accused on the following succinct grounds:

a) Respondent accused is merely a housewife and senior citizen aged 62 yrs. She was not involved in affairs of the Company and was merely signing cheques, acting as signatory on instructions of Company officials. It is a matter of record that she did not act independently and only followed the instructions of her husband.

b) Respondent was not charge sheeted in the ED case wherein similar allegations were made against the husband of the respondent.

c) Respondent satisfied the triple test for grant of bail. Necessary condition of visiting SFIO daily till next 20 working days and thereafter thrice for two weeks and twice for two weeks subsequently, has been imposed by Court to take care of the apprehension that the respondent may flee from justice. Further, no allegation has been made by the SFIO to claim that the accused is influencing witnesses. Reliance has been placed upon ***P. Chidambaram vs CBI*** 2012 (13) SCC 337. Further reliance has been placed upon ***Sai Chandreshekar vs Directorate of Enforcement*** 2021 SCC Online Del 1081,wherein this Court enlarged the accused in the said case on bail under section 439 Cr.P.C. for offence allegedly committed under section 3/4, PMLA, 2002, on the ground that no material was placed on record to show any supervening circumstances necessitating arrest. The court held that vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse the bail.

d) Respondent joined the investigation on multiple occasions and cooperated in the investigation. She has appeared before the SFIO on 27.07.2021, 23.11.2021, 07.02.2022, 11.03.2022 and 15.03.2022.Recently, the respondent upon being summoned has duly cooperated and appeared on 23.01.2023 & 31.01.2023.

e) Respondent is not a flight risk and her presence can be secured through the bail conditions already imposed.

f) All the documents are in the possession of various agencies. SFIO has already conducted custodial interrogation/investigation of the

Accused extensively for 6 days and further custodial interrogation is not required.

g) Certain accused including the husband of the Accused has been granted 'No Coercive Steps' by the Hon'ble Supreme Court.

h) Respondent being a woman, is entitled to the beneficial proviso under Section 212 (6) of Companies Act. It has been submitted that the first proviso of S.212 (6) is akin to the first proviso of S. 437 Cr.P.C. (S.497 of the old Code)in terms of the enabling provision for women. Reliance has been placed on ***Mt. Choksi vs The State*** 1957 Cri.L.J. 102, wherein the Hon'ble High Court of Rajasthan granted bail to the accused in the said case who was a woman alleged to have committed offences under section 302/34 IPC, thereby upholding the constitutional validity of the benefit provided to certain categories of persons mentioned in Section 497 Cr.P.C (old code which is *pari-materia* to the proviso u/s 437 of the new code) and held that it is open for the Courts under Section 497 (Old code) to grant bail to a woman even in cases where she is accused of an offence punishable with death or transportation of life.

28. Learned Senior counsel for the respondent states that in the case investigated by ED on similar allegations as in present case, where respondent has not been made an accused, it has been stated under various statements recorded u/s 50, PMLA, that the respondent is a housewife and was merely a namesake director. As a result respondent/accused has not been arraigned as an accused in the said ED case, whereby her husband has been already granted bail in 2020.

29. It has been submitted that the co-accused persons vide order dated 17.02.2022 in WP (Crl) No. 36/2020 titled "***Hardev Chand & Ors. vs Union of India & Anr.***" have been granted an interim protection in the ED matter, which is still subsisting.

30. Learned counsel submits that subsequent facts have emerged after the respondent has been granted bail. SFIO has filed its detailed complaint on 19.05.2022 and the Ld. Spl. Judge has taken cognizance on 20.09.2022 thereby summoning 92 accused person.

31. Respondent was also summoned for 17.01.2023 and has duly appeared before the Ld. Special Court on the said date. It has been submitted that the next date of hearing in the said matter is on 09.05.2023 and the same is pending scrutiny of documents/ grants of bail to other accused/ service of summons to the unserved accused which may take long.

32. It is submitted that SFIO is now conducting further illegal investigation even after filing of Complaint on 19.05.2022, contrary to the provisions of Companies Act.

33. Learned Senior counsel submits that bail once granted can only be cancelled if there are cogent and overwhelming supervening circumstances or misuse of the liberty of bail by the accused. Reliance has been placed on ***Dolat Ram & Ors. v. State of Harvana***, (1995) 1 SCC 349 and ***Directorate of Enforcement v. Ratul Puri*****,** (2020) SCC OnLine Del 97.Learned Senior counsel submits that in the present case no supervening circumstances have been pointed out since the bail was granted and there is nothing on record to show that the accused has misused her bail and has adhered to all the conditions imposed therein.

34. Learned Senior counsel for the respondent submits that in light of the aforesaid, the petition moved by the SFIO deserves to be dismissed.

**Findings of the Impugned Order**

35. Upon a careful perusal of the impugned order passed the Ld. Spl. Judge, (Companies Act), Dwarka Courts, granting bail to the respondent accused, it reveals that the bail was granted to the respondent accused in terms of the beneficial proviso contained under section 212 (6) of the Companies Act. Ld. Spl. Judge *inter alia* held that there is no independent offence pertaining to her except that she and her husband were authorised signatories, had signed cheques or issued instructions to the banks for issuance of DDs and payment of freight was also paid by her and her husband from their joint bank accounts. Ld. Spl. Judge opined that the respondent accused being a dutiful wife was in all probability acting at the behest of her husband.

36. Ld. Spl. Judge with respect to the allegations levelled at the respondent accused pertaining to the properties in Bombay, whereby she has been alleged with her husband for conspiracy to acquire the same by siphoning of funds from the company, it was observed that the respondent accused has not been named in the complaint before the Adjudicating Authority, only her husband and 2 other companies namely M/s Assurity Real Estate LLP and M/s Millenium Developers Pvt. Ltd. were named as accused.

37. Ld. Court observing parity in the proviso contained under section 437 Cr.P.C., 45, PMLA and 212 (6) Companies Act, held that the jurisprudence behind adopting the same language as contained under section 437 proviso

Cr.P.C is to also extend the same benefit to certain categories prescribed under the Companies Act such as persons under 16 yrs of age, women, infirm or sick. Ld. Court thus held that a liberal effect may be given to the proviso.

38. Ld. Court then proceeded to deal with the aspect whether the respondent accused satisfied the triple test i.e. flight risk, tampering of evidence and influencing of witnesses. Without delving into the detailed merits of the case the respondent accused was enlarged on bail in terms of the proviso contained under section 212 (6) Companies Act, on the following predominant grounds:

a) the main accused i.e. husband of the respondent along with 2 major functionaries have been granted interim protection by the Hon'ble Supreme Court which is still subsisting. Ld. Court held that with respect to influencing of witnesses and tampering of evidence is concerned since the husband of the accused is protected, this aspect cannot be taken against the wife. Ld. Court held that keeping the accused in JC would not serve any purpose and necessary conditions may be imposed that the accused is to report regularly to SFIO in order to prevent the influencing of witnesses

b) respondent accused has not evaded justice w.e.f. 2016 till 2022 and necessary conditions such as may be imposed to ensure the same. Exhaustive custodial interrogation of the respondent accused for 6 days has already taken place.

c) the offence is by and large documented. Charge-sheet in ED case has been filed. All documents are in the possession of the departments. Seizures have also been effected. She has not been charge-sheeted in the ED case

d) She has not been proceeded against, in the cases pertaining to properties at Bombay.

**Conclusion**

39. Ld. Spl. Judge has predominantly granted bail to the respondent on the basis of proviso to section 212 (6) of the Companies Act, 2013, which reads as under:

> *"212. (1) ...*
>
> * * * * *
>
> *(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—*
>
> *(i) the Director, Serious Fraud Investigation Office; or*
>
> *(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government."*

40. A perusal of the aforesaid provision makes it clear that no person, accused of an offence under section 447 of Companies Act, which is a

cognizable offence, shall be released on bail or on his own bond unless the twin conditions as stipulated in Section 212(6) of Companies Act are fulfilled. The first being that Ld. PP has to be given an opportunity; and second being that in case Ld. PP opposes the application, the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The first proviso is an exception to the above rule and vests the discretion with the Court to release certain categories of persons including woman, infirm, sick or persons under 16 yrs on bail.

41. The aspect of the beneficial proviso contained under section 212 (6) of the Companies Act, 2013, has been further considered in detail in BAIL APPL N 1740/2022 titled ***Komal Chada vs. SFIO***, whereby this Court in a similar matter enlarged the accused on bail in terms of the enabling provision of section 212 (6) and *inter alia* held as under:

> *"30.6 Most importantly, the proviso to section 212(6) of the Companies Act cannot be treated as nugatory or dead letter. By way of the proviso, the Legislature has specifically carved-out an exception to the otherwise strict provision for bail, to say that though the twin conditions in section 212(6)(i) and (ii) of the Companies Act must otherwise be satisfied before a person is released on bail, those conditions would not apply inter-alia to a woman. In view of the proviso, it would be anathema to the legislative intent to not grant the benefit of the relaxation to a woman accused;*
>
> *30.7. Insofar as the SFIO"s apprehension that the petitioner is a flight-risk is concerned, suffice it to say that theoretically every undertrial who is granted bail is a flight-risk; but unless there is any specific risk cited and shown to exist, bail must not be denied only by reason of a perceived theoretical risk. No specifics of the apprehension of flight-risk have been presented*

> *in the present case. The apprehension of flight-risk would of course be addressed by imposing appropriate conditions on grant of bail"*

42. Further, in an appeal challenging the order of the Punjab and Haryana High Court refusing to grant bail to the accused who is a woman in economic offences pertaining to SFIO, the Hon'ble Supreme Court vide its order dated 07.02.2022 in Crl. A. 189/2022 titled ***Priyanka Modi vs. Serious Fraud Investigation Officer***, enlarged the accused on bail in terms of the **proviso under 212 (6) of Companies Act.**

43. Furthermore, the Hon'ble Supreme Court in ***Satender Kumar Antil v. CBI***, (2022) 10 SCC 51, regarding certain categories of persons as mentioned in the proviso to section 437 Cr.P.C observed as under:

> *"69. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offences are poor and illiterate.*
>
> *****
>
> *78. .....While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors."*

44. The rigours of Section 212 (6) Companies Act will not apply as a precursor to the categories of persons, as mentioned in the proviso as the

same would render the proviso nugatory, in as much as, an accused will be entitled to be released on bail only if he satisfies the twin condition laid down in the said section. The object and purpose behind the legislature in carving out this exception for certain categories of people would in essence be dead letter if the twin conditions set out are interpreted to be a precursor for the grant of bail even in cases pertaining to the said categories in the proviso.

45. This Court is of the considerate view that said proviso is only an enabling provision which vests discretion with the Courts to grant bail to certain categories of person. The said discretion is not to be used as a rule of thumb but rather depends on special circumstances and facts necessitating such release on bail while also considering the nature, gravity and seriousness of the offence.

46. The consequences and ramifications of under trial detentions are grave. The respondent in the present case is a woman aged 62 yrs. and stated to be a senior citizen. It has been contended that she is in fact a housewife who was merely a figurehead in the company and has acted at the behest of her husband and the other senior functionaries of the company. As per the impugned order granting bail, no independent offence has been ascertained to her except that she was the authorized signatory in all bank accounts related to BPSL and its associated companies and that she signed the cheques in question. Petitioner SFIO has vehemently opposed the contentions of the respondent. As such these are the matters of trial and cannot be considered by this Court.

47. Before delving further, it is imperative to consider the ambit and scope of the provision under which the petitioner has approached this Court

and the relief sought. Petitioner SFIO has approached this Court under section 482 Cr.P.C. seeking to set aside the order dated 28.03.2022, by which the respondent was granted bail. Petitioner further seeks a direction for surrender and remand of the respondent to JC.

48. At the outset it is pertinent to highlight that the law distinguishing between cancellation of bail, rejection of bail and quashing of the bail order is no longer *res integra*. While all of them directly affect the personal liberty of a person which is a fundamental right guaranteed under Article 21 of the Constitution of India. However, Courts have to adopt different parameters and mechanisms while adjudicating the three. For instance, while rejecting a bail plea, the Courts need not delve into the nitty gritty and details of the case and the same may be adjudicated simpliciter basis the nature and gravity of offence. However, while cancelling a bail already granted to an accused pending Trial, the Courts should be slow and circumspect and should take away the liberty already granted only in the wake of grave and supervening circumstances which warrants such cancellation of bail. The onus to prove is on the party seeking such cancellation. The liberty cannot be withdrawn mechanically without taking into account whether the accused has misused his liberty or whether any supervening circumstances have rendered it no longer conducive for the accused to enjoy his liberty.

49. It has been held in a catena of judgements that while cancellation of bail under section 439 (2) Cr.P.C. the Courts must see whether the order granting bail was vitiated by any serious infirmity. Cogent and overwhelming circumstances are required for an order seeking cancellation of bail. Even where prima facie case is made out, the approach of the Courts

is not to detain the accused by way of punishment, but to ensure if his presence would be readily available during trial or whether he is likely to abuse the liberty by tampering or influencing the witness.

50. ***In State (Delhi Administration) Vs. Sanjay Gandhi*** [1978 (2) SCC 411] the Hon'ble Supreme Court held as under:

> *"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial"*

51. In ***Central Bureau Of Investigation Vs Akhand Pratap Singh,* 2008 11 AD (DELHI) 139,** it was *inter alia* held as under:

> *"14……The cancellation of the bail necessarily involves the review of a decision already made and can by and large be permitted only, if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. Generally speaking the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference orattempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom. Where, ignoring the material and the evidence on record a perverse order granting bail is passed in a heinous*

> *crime and that too without giving any reasons, such order would be against the principles of law. Interest of justice would also require that such perverse order beset aside and bail be cancelled."*

52. **In *The State (NCT of Delhi) Vs Sanjeev Kumar Chawla* Crl. M.C. No. 1468/2020 and*State (Govt Of Nct Of Delhi) Vs Rupak Rana* 2016 (226)DLT 605,** it has been held that the bail once granted cannot be cancelled mechanically in absence of supervening circumstances which will render the trial not conducive. It cannot be cancelled on a mere request from the other side unless it is established that the liberty granted is being misused.

53. In ***Charu Soneja v. State (NCT of Delhi),*** 2022 SCC OnLine Del 5, this Court held that, courts while deliberating revocation of an undertrial's bail, must proceed with due care and circumspection as personal liberty of an individual is a core constitutional right that should be taken away only under the most compelling and serious circumstances. Courts should be cautious while cancelling bail already granted, as the same entails review and possible cancelling of a reasoned order based on material evidence on record. It is settled law that Courts should only interfere and revoke the liberty so granted if new facts and supervening circumstances reveal that the accused has been abusing his freedom, tampering with evidence, or influencing witnesses. The onus is on the party seeking such cancellation to present compelling evidence depicting that the accused poses a threat to the victim or their family, or is tampering with evidence, or influencing witnesses so that would jeopardize or hamper the trial. However, the parameter is quite different when the Court is exercising its inherent power

under section 482 Cr.P.C to set aside the bail order as in this case, the Courts can only interfere if there is an infirmity with the order granting bail, or if the order is perverse, illegal, or finding are contrary to material on record. It is pertinent to note that the Courts cannot intervene and set aside the order under section 482 Cr.P.C in the absence of any infirmity or perversity.

54. In ***Puran v. Rambilas***, (2001) 6 SCC 338, the Hon'ble Supreme Court held as under:

> *"10……..One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.*
>
> *11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation."*

55. At the outset it is imperative to note that the petitioner SFIO has not pointed out even one instance of any supervening or grave circumstance that has rendered the continuance of bail granted to the Respondent no longer conducive to fair trial. There is nothing on record to show that the respondent has abused the liberty of bail granted to her or has tampered with evidence or has influenced the witnesses. Moreover, there is nothing on the record to suggest that arrest and further custody of the respondent/accused

would be essential for conducting the investigation, especially given that the other main accused including her husband have been granted interim protection in a ED matter pertaining to the same company and similar set of allegations. It is also not the case of the petitioner that the respondent has been found tampering with evidence. Moreover, admittedly the SFIO in the present case has already filed the detailed complaint on 19.05.2022, thus it is safe to say that the evidence which was to be collected already stands collected by the various departments. Cognizance has been taken on 20.09.2022 and the accused along with 92 others have been summoned. It has been stated that the respondent was summoned to appear on 17.01.2023, which was duly complied with and the next date fixed is 09.05.2023.Thus, petitioner SFIO has failed to point out any cogent reason behind seeking remand of the respondent to JC. Petitioner SFIO has merely in a vague and cursory manner stated that the respondent is a flight risk, or may tamper with the evidence, but in absence of any cogent, compelling reason this court cannot interfere with the said order and cancel the bail so granted. Moreover, the respondent has appeared on several dates before the SFIO and has adhered to all the conditions imposed vide the impugned order granting bail. Thus the mere allegation of the petitioner that the respondent has joined the investigation but is being evasive does not hold force.

56. Be that as it may, it is pertinent to note that the petitioner SFIO has not sought to cancel the bail under section 439 Cr.P.C., instead he has approached this Court invoking its inherent jurisdiction under section 482 Cr.P.C seeking to set aside the order dated 28.03.2022 granting bail to the respondent accused and seeks her surrender /remand to JC.

57. It is a trite law that the inherent power of this Court under section 482 Cr.P.C. to quash or set aside a bail order, works on a different footing as compared to cancellation and rejection of bail. This Court under section 482 Cr.P.C. can only interfere and entertain an order of the subordinate court if such order is unreasonable, illegal, perverse or based on irrelevant materials/evidence on record. High Courts will not exercise its jurisdiction to interfere with an order of bail granted by Special Judge if there is no serious infirmity in it. This Court does not sit as a court of appeal and thus cannot reappreciate evidence and substitute its view with that of the subordinate court merely because another possible view was taken.

58. It is well settled that in exercising its jurisdiction under Section 482 CrPC, the High Court does not in absence of perversity upset the judgement of the courts below. Power under section 482 Cr.P.C. can only be used to prevent the abuse of the process of the Court or to secure the ends of justice.

59. A perusal of the impugned order reflects that the same is a well-reasoned order based on relevant materials and evidence on record. There is neither any infirmity nor perversity with the order which would require interference of this Court under its inherent jurisdiction. Ld. Spl. Judge has propounded cogent reasoning for granting bail to the respondent accused in terms of the beneficial proviso in section 212 (6) of the Companies Act.

**Finding & Analysis**

60. In the present case the petitioner has sought to invoke the inherent jurisdiction of this Court under section 482Cr.P.C. This Court thus has to analyse if the order granting bail is perverse, without jurisdiction or based on irrelevant material on record. A perusal of the impugned order reflects that the order is neither unsubstantiated nor perverse. The order granting bail

is a well-reasoned order and has been based on proper material on record taking into account several incidental aspects around the case. There is no infirmity with the order which so requires the interference of this Court.

61. The Ld. Special Court has after correctly appreciating the special benefit conferred on a woman and after considering the role of the Respondent and upon its satisfaction, has duly exercised its discretion in favour of the present Respondent thereby granting her bail. Moreover, it is not in dispute that SFIO complaint has been filed, cognizance taken and accused persons have been summoned. Thus in absence of any legal infirmity or perversity, this Court cannot interfere with the order of the Ld. ASJ granting regular bail to the respondent/accused. This Court does not sit as a court of appeal and cannot reappreciate evidence and substitute its view with that of the subordinate court merely because another plausible view was taken. Further, in absence of any cogent, supervening circumstances necessitating cancellation of bail of the respondent/accused, this Court cannot merely cancel the bail so granted. There is nothing on record to show that the accused has misused her bail or has not adhered to the conditions so imposed.

62. Accordingly, the order dated 28.03.2022 of the Ld. ASJ granting bail to the respondent/accused is upheld. The petition is dismissed.

**DINESH KUMAR SHARMA, J**

**APRIL 06, 2023**