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

Reserved on: 17.01.2023
Pronounced on: 17.02.2023

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\+ **BAIL APPLN. 2347/2022**

TARANJEET SINGH BAGGA@SONU SINGH...Petitioner

Through: Mr. Abhik Kumar and Mr. Rinku Mathur, Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICE ...Respondent

Through: Mr. A. Ansari, Prosecutor with Mr. Tarun Srivastava, Advocate.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") by the applicant seeking regular bail in C.C. No. 245 of 2021 titled "*Special Fraud Investigation Office v. Parul Polymers Pvt. Ltd. & Ors*." pending before the learned Special Judge (Companies Act), Dwarka Court, South-West, New Delhi (hereinafter "Trial Court") for the offence punishable under Section 447 of the Companies Act, 2013 (hereinafter "Companies Act").

2. The present applicant was summoned in the instant case by virtue of summoning order dated 07.03.2022 *vide* which cognizance of offences *inter-alia* under section 447 of the Companies Act, 2013 was taken by the Court concerned in C.C. No. 245 of 2021, wherein present applicant was arraigned as accused no. 10, among 12 accused persons. The applicant was summoned to appear on 25.05.2022, and upon entering his appearance, he was sent to judicial custody by the learned Trial Court. Subsequently, his application for grant of regular bail was dismissed by the learned Trial Court vide order dated 14.07.2022.

3. The background of the present complaint against Parul Polymers Private Limited (hereinafter "PPPL") is that the said company had availed various credit facilities from Central Bank of India, due to non-payment of same as per terms and conditions, appropriate proceedings were initiated by the concerned Bank. During the course of litigation between the parties, this Court on 07.12.2015 had issued directions to Serious Fraud Investigation Office (hereinafter "SFIO") to investigate certain issues, and pursuant to same, SFIO conducted an investigation in limited scope and the report was submitted to this Court on 20.05.2016 as well as to the Ministry of Corporate Affairs. Thereafter, the Ministry of Corporate Affairs ordered investigation into the affairs of PPPL on 14.03.2017. The said investigation led to the filing of present complaint case.

4. The case of prosecution is that the main accused Suman Chadha (accused no. 2 in complaint) i.e. Director of PPPL used to procure plastic granules from large scale public sector undertakings as well as from local suppliers, and this was sold in cash to local vendors without

any tax invoices, whereas tax invoices for these cash sales were issued to various entities including many related parties to adjust the purchases. Similarly, tax invoices without any underlying goods were also issued to non-related parties who required it for availing credit of duty (VAT). In order to carry out this deception, several sham entities were formed by accused no. 2 in the name of his relatives and employees. The bank accounts and name of the entities were misused by Suman Chadha for routing of funds in the guise of sale/purchase of plastic granules and also for adjustment of sales of material sold in local market in cash without tax invoice. The cash so generated were deposited in the bank accounts of such entities, and PPPL received RTGS/cheques against the tax invoices raised in the name of such entities showing normal sales against tax invoices. However, no goods under these invoices were dispatched. Huge amount of money was also transferred through the banking channel from one company/entity to another entity for ballooning/inflating the turnover and to adjust the cash received against cash sales. This was done by PPPL by issuing fake/fictitious/bogus invoices of plastic granules and tax-free items like food grains. As there was no correlation between actual sales and purchase, the company did not fill up the particulars of purchases, order details, lorry number, dispatch details etc. Further, the total cash sales shown in VAT Returns for PPPL for the period from financial year 2012-13 to 2014-15 was Rs. 16.44 crore which was much lower than actual cash deposited of Rs. 73.60 crore by PPPL in its bank account in the same period.

5. The present applicant/accused is shown to be the proprietor of Kewal International, one of the entities in which the funds were routed by the accused Suman Chadha. It is alleged that co-accused Deepak Jha (accused no. 4) in his statement admitted that person in whose name bank accounts were opened, were arranged by middlemen, such as present applicant/accused, and they were paid Rs. 5-10 thousand for every account. It is further alleged that present applicant had also admitted in his statement on oath that he had introduced certain persons to accused Suman Chadha for opening of bank accounts. In brief, the allegations against the applicant are that he used to arrange documents and people in whose name fake entities and bank accounts were opened, which were subsequently used to route the funds of PPPL.

6. Learned counsel for applicant/accused states that main accused Suman Chadha created a fictitious proprietorship firm in the name of Kewal International by using the documents of the applicant, and the applicant is totally ignorant about the operation of the bank account of Kewal International, as the same was operated by Ms. Komal Chadha. It is stated that applicant is an illiterate person and was working as an office boy in the main accused company. It is also submitted that one of the main accused Komal Chadha, who is the Director of PPPL and wife of Suman Chadha, has already been granted regular bail by a Co-ordinate bench of this Court *vide* order dated 21.12.2022 in *Bail Application No. 1740/2022*. It is stated that as also held by the Co-ordinate bench while granting bail to co-accused Komal Chadha, the twin conditions and bar under Section 212(6) of Companies Act shall not come in way of present application since the applicant was not

arrested consciously by investigating agency during the course of investigation. In this regard, reliance is also placed upon the decision of Apex Court in ***Satender Kumar Antil v. CBI*** *(2022) 10 SCC 51*.

7. It is argued by learned counsel for applicant/accused that the applicant had joined the investigation and after completion of investigation, charge-sheet was filed without his arrest. It is stated that investigating agency did not arrest the applicant during the entire period of investigation i.e. for around 06 years, but applicant was arrested at the instance of Court without assigning any reasons. It is further stated that present applicant has no previous criminal antecedents and thus, no purpose will be served in keeping the accused behind bars. Further reliance was placed on ***Sanjay Chandra v. CBI*** *AIR 2012 SC 830*; ***Gurcharan Singh v. State*** *AIR 1978 SC 179*; ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor*** *AIR 1978 SC 429*; ***Gurbaksh Singh Sibbia v. State of Punjab*** *AIR 1980 SC 1632;* and ***Anil Mahajan v. Commissioner of Custom & Anr.*** *84 (2000) DLT 854*.

8. Learned Standing Counsel appearing for SFIO submits that the role of applicant was to arrange the documents and people in whose name fake entries and bank accounts were opened which were subsequently used to route the funds. It is further submitted that the allegations squarely fall under the provisions of Section 212 (6) (ii) of the Companies Act, 2013, and reliance was placed on ***Serious Fraud Investigation Office v. Nitin Johari & Anr.*** *(2019) 9 SCC 165*. Further reliance was placed on ***State of Madhya Pradesh v. Kajad*** *(2001) 7 SCC 673*; ***Bianco Singh v. Md. Abacha*** *2004 (10) SCC 151*; ***Rohit***

***Tandon v. Directorate of Enforcement** (2018) 11 SCC 46*; and ***State of Gujarat v. Mohanlal Jitamalji Porwal** (1987) 2 SCC 364*.

9. I have heard the arguments advanced by learned counsels for both the sides and have perused the material placed on record.

10. Before going into the merits of the case, since the applicant herein has been accused of commission of offence under Section 447 of Companies Act, it will be appropriate to refer to Section 212 (6) of the Companies Act, 2013 which reads as under:

> "(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, [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
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> (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:
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> 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..."

11. As per Section 212(7), the limitation or bar to grant of bail under Section 212(6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for grant of bail. The aforesaid principles were held to be mandatory in nature by the Hon'ble

Apex Court in ***Serious Fraud Investigation Office v. Nitin Johari & Anr.*** *(2019) 9 SCC 165.*

12. However, the applicant in the present case was not arrested during the course of investigation, but was taken into custody at the instance of Court when the accused persons were summoned by the learned Trial Court to appear for trial. In the present context, it will relevant to take note of the recent decision of Hon'ble Apex Court in ***Satender Kumar Antil v. CBI*** *(2022) 10 SCC 51* wherein it has been observed as under:

> "Section 170 of the Code:
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> "170. Cases to be sent to Magistrate when evidence is sufficient.—(1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."
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> 36. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2021) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. **In a case where the prosecution does not require custody of the accused, there is no need**

for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. **Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required.** We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.

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65. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. **To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court.** Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code..."

(Emphasis supplied)

13. The issue at hand was also considered by a Co-ordinate Bench of this Court in ***Rana Kapoor v. Directorate of Enforcement*** *2022 SCC OnLine Del 4065*, where under similar circumstances, the accused therein was never arrested during the period of investigation and at a later stage, after the concerned Court took cognizance, he was taken into custody in a case under Prevention of Money Laundering Act, 2002. The relevant portion of the said order reads as under:

> "33. The applicant was not implicated in FIR bearing RC No. 2232021A0005 registered by CBI. The applicant was implicated in present criminal complaint filed by the respondent/ED and arrayed as accused no 2. The investigating officer consciously did not arrest the applicant. The applicant participated in investigation as his three statements under section 50 PMLA were recorded. The respondent also did not allege that the applicant neither participated nor cooperated in investigation. The concerned Special Court after taking cognizance on present criminal complaint ordered for summoning of the accused persons including the applicant. The investigating officer even after filing of present complaint did not apply for custody of the applicant. The co-accused Gautam Thapar was arrested consciously by the investigating officer during investigation and was denied bail by the Special Court and High Court and as such the applicant is standing on different footing from co-accused Gautam Thapar. The applicant was taken into custody due to dismissal of bail application vide order dated 20.01.2022 passed by the court of Sh. Sanjeev Aggarwal, Special Judge (PC Act)(CBI)-02 Rouse Avenue District Court, New Delhi. **The applicant primarily not seeking bail on merit but on basis of observation made by the Supreme Court in para no 65 of *Satinder Kumar Antil* decision and as such applicant is not required to pass the test of section 45 PMLA. The conditions as per section 45 PMLA would be applicable, had the applicant filed an application either under section 439 of the Code after**

arrest during investigation or under section 438 of the Code apprehending his arrest during investigation. As mentioned in present criminal complaint filed by the respondent, the applicant was not arrested during investigation by the investigating agency. There is legal force in argument advanced by the learned Senior Counsel of the applicant that applicant is entitled to bail in view of observations/legal proposition as laid down by the Supreme Court in *Satinder Kumar Antil*. It is not mandate of section 170 of the Code that if the accused is not taken into custody or arrested during investigation can be arrested or taken into custody after appearance in court post summoning order particularly when neither investigation agency nor prosecution agency sought arrest of accused.

34. The arguments advanced by the learned Special Counsel for the respondent that the applicant has misinterpreted para no 65 of Satinder Kumar Antil is misplaced. **There is no force in argument advanced by the learned Special Counsel for the respondent that the applicant before grant of bail required to pass test of 45 of PMLA. The position would have been different, had the applicant arrested during investigation. The investigating agency as mentioned hereinabove consciously preferred not to arrest the applicant during investigation or post filing of charge sheet.** The arguments advanced and case law relied on by the Special Counsel for the respondent are considered in right perspective to the given facts and circumstances but they do not provide much legal help to the respondent in opposing present bail application."

(Emphasis supplied)

14. A perusal of order dated 25.05.2022 reveals that the applicant had not filed any bail application while entering his appearance, and simply because of the said reason, the applicant was sent to judicial custody without assigning any reason whatsoever as to why his custody

was necessary, even though the same was not sought by the investigating agency. The relevant portion of order dated 25.05.2022 qua the present application reads as under:

> "...**No any bail application is moved by other accused persons who are present before the Court today**. It is submitted on behalf of accused persons that none of the accused persons who are present before the Court is having any protection from their arrest from any Hon'ble Superior Court. Therefore, all the accused persons who are present in person today in the Court i.e. A-2, A-3, A-4 and **A-10** are hereby taken into custody and sent to J/C..."
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> (Emphasis supplied)

15. As held by the Hon'ble Apex Court in ***Satender Kumar Antil*** *(supra)*, when an accused, who has not been arrested during investigation, and investigating agency does not require his/her custody, and the accused appears pursuant to summoning order before Trial Court, there is no need to file any bail application since there is no need to arrest the said accused. It has also been clarified by the Hon'ble Apex Court that if the Court taking cognizance is of the opinion that remand of accused is necessary, an opportunity to be heard has to be given to the accused. By virtue of para 65 of ***Satender Kumar Antil*** *(supra)*, these observations have been made applicable in cases of bails under Special Acts also, which includes Section 212(6) of Companies Act.

16. A reference can also be made to decision of Co-ordinate Bench of this Court in *Bail Application No. 1740/2022* whereby co-accused

Komal Chadha has been enlarged on bail. The relevant portion of the said order dated 21.12.2022 is reproduced as under:

> "...27. In fact, it is interesting to note that in order dated 25.05.2022, the learned Special Judge refers to the stringent twin conditions contained in section 212 of the Companies Act, going-on to say that merely because the petitioner is a woman, does not justify "grant of bail" to her. **However, this was not a case of grant of bail since the petitioner had not been arrested and was not in custody at all. This was a case of either remanding the petitioner to judicial custody, or of allowing her to go through the trial while not in custody. Evidently, the learned Special Judge misdirected himself in applying section 212(6) of the Companies Act, which is not a section that deals with the question of remanding the petitioner to judicial custody**..."
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> (Emphasis supplied)

17. It is an admitted position, that even at the stage when the applicant appeared before the learned Trial Court upon being summoned, the Investigating Officer never sought his remand to judicial custody. It is not the case of prosecution that applicant did not join or did not co-operate in the investigation. The Director of accused company Komal Chadha has already been granted bail by this Court, and present applicant is allegedly an employee of accused company. There is no allegation that applicant can either intimidate any witnesses or tamper with the evidence. Even otherwise, the alleged fraudulent transactions in the present case relate to the years 2012 to 2015 and investigation qua the same is complete and cognizance has already been taken by the concerned Court. A perusal of complaint also shows that

accused no. 2 i.e. Suman Chadha had created several entities in the name of his employees, including the present applicant. In fact, the driver of the said accused is named as proprietor in one such entity namely S.K. Enterprises.

18. Considering the aforesaid discussion, and the fact that petitioner is in judicial custody since 25.05.2022, this Court is inclined to grant bail to accused/applicant on furnishing a personal bond in the sum of Rs.50,000/- with one surety of like amount to the satisfaction of Trial Court/ Successor Court/ Link M.M/ Duty M.M concerned on the following terms and conditions:

i. The applicant shall surrender his passport, if any, before the learned Trial Court and shall not leave the country without prior permission of Trial Court;
ii. The applicant shall remain available on mobile number, shared by him with the Investigating Officer/SFIO, which shall be kept active at all the times;
iii. In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Court as well as to the Investigating Officer/SFIO;
iv. The applicant shall not contact, or visit, or offer any inducement, threat or promise to any of the prosecution witnesses, and shall in no way, tamper with evidence or otherwise indulge in any act or omission that would prejudice the proceedings in the pending trial.

19. Accordingly, the present bail application stands disposed of.

20. It is, however, clarified that this Court has not given any opinion on merits of the case.

21. A copy of this judgment be given *dasti* under the signatures of Court Master.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 17, 2023/kss