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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.07.2024

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. No.2007 of 2023

Dineshchand Surana .. Petitioner

- Vs -

The Senior Assistant Director,
Serious Fraud Investigation Office (SFIO),
Corporate Bhavan,
No.29, Rajaji Salai, Ground Floor,
Chennai – 600 001. .. Respondent

Criminal Revision Case filed under Section 397 r/w Section 401 of the Cr.P.C., 1973 to set aside the order dated 04.08.2023 passed by the Hon'ble XV Additional Sessions Judge, Spl. Court, Chennai to deal with trial of offences under Companies Act in Crl. M.P. No.10259 of 2023 in Spl. CC No.1 of 2023 in F. No.3/61/2018/CL-II(SR).

For Petitioner : Ms. S.Ramya Subramaniam

For Respondent : Mr.A.Sriram for Mr.B. Mohan, Spl. PP

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ORDER

This revision has been filed to set aside the order dated 04.08.2023 passed by the XV Additional Sessions Judge, Spl. Court, Chennai to deal with trial of offences under Companies Act in Crl. M.P. No.10259 of 2023 in Spl. CC No.1 of 2023 in F. No.3/61/2018/CL-II(SR).

2. The short facts leading to filing of this case are as follows :-

The case of the prosecution is that the petitioner was never a Director of M/s.Surana Corporation Ltd. (SCL). On the other hand, he was the Managing Director of two Companies, viz., M/s.Surana Industries Ltd., (SIL) and M/s.Surana Power Ltd., which were under liquidation. Based on a complaint lodged against the petitioner for the serious crime of economical offence viz., swindling of huge money from the public sector bank, he was arrested for the offences under Section 447, 36(c) of Companies Act and Section 420 r/w 120 B of IPC. Initially, PT warrant was issued pursuant to the orders of the Court, dated 29.07.2022 and subsequently, he was

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arrested on 02.08.2022 and is in judicial custody. Upon taking cognizance, the learned Additional Judge, Special Court under Companies Act issued summons on 12.01.2023. Thereafter, the remand was extended and continuing as such. Aggrieved over the said extension of remand, the petitioner filed miscellaneous petition before the XV Additional City Civil Court, Chennai, raising objections. The petitioner sought cancellation of the said remand extension order and prayed for keeping the petitioner under house arrest. In such circumstances, the impugned order, dated 04.08.2023 had come to be passed dismissing the plea of the petitioner. Challenging the same, this revision case has been filed before this Court.

3. Learned counsel appearing for the petitioner submitted that personal liberty and rights of the petitioner was affected due to passing of the impugned order. She vehemently argued that the petitioner has been under incarceration for over a period of 440 days and the age and ailments suffered by the petitioner were not taken into consideration while passing the impugned order, which is perverse. Further, she submitted that the

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remand extension was mechanically passed and at no point of time, the grievances of the petitioner were considered.

4. In support of her submissions and her plea for house arrest, she drew the attention of this Court to the decision rendered by the Hon'ble Supreme Court in the case of ***Gautam Navlakha v. NIA, 2021/INSC/295***, wherein it has been observed that judicial custody under Section 167 Cr.P.C. shall also include House Arrest.

5. She further argued that the lengthy period of incarceration suffered are matters of record and further it is submitted that the petitioner's assets were frozen and, therefore, there would be no impediment for the Court to grant house arrest as the petitioner would not be in a position to play any mischief, as alleged by the respondents. Holding the petitioner under judicial custody leads to loss of reputation for the petitioner in the society and his livelihood is also getting affected. Therefore, the prayer sought for by the petitioner for grant of house arrest may kindly be considered.

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6. Per contra, the learned Special Public Prosecutor appearing for the respondent submitted that the petitioner was indulged in siphoning of funds, diversion of funds and thus major part of fraud / misappropriation has been played by him, that too, when the petitioner was holding a high position as vertical head. Further, he placed his arguments based on the objections filed and submitted that due to misappropriation/fraud committed by the petitioner, the shareholders/investors in the company have lost faith in such Company viz., Surana Groups, which undermines the goodwill of the company. He also submitted that misusing the power of authorisation, vested on the petitioner, he had misused the same and thus caused serious economic irregularity, leading to perpetuation of fraud on the investors to the tune of Rs.8,000 crores. He further contended that the Special Court took cognizance of the issue based on the evidence available on record as the enormity of money swindling in the present case had affected the investors at large and the investigation has led to the filing of the final report, which runs to several pages. Moreso, after satisfying the

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triple tests, the Special Court has passed the impugned order, which is legally sustainable and thus interference by this Court is unwarranted and prays for dismissal of this case.

7. Heard the submissions made by the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the respondent. This Court has perused the materials placed on record .

8. Economic offence is an offence not only against the society but it also erodes the confidence of the public in the company, as it is a leech sucking the blood of the public at large through clandestine means. When such economic offences are committed by persons at the helm of the affairs in the company, it is not only detrimental to the affairs of the company, but the goodwill of the company through its investors and shareholders is shaken and shattered.

9. Coming to the issue before this Court, the petitioner seeks the

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indulgence of this Court for granting house arrest. A perusal of the materials available on record reveal that the list of witnesses, who have deposed about the role played by the petitioner has been placed in the final report before the court. Emphasis is laid on the decision of the Apex Court in *Gautam Navlakha case* and plea is made to extend the very same relief to the petitioner.

10. In a plea seeking grant of house arrest, this Court has to bear in mind the points which are necessary to be considered and which would otherwise have a lasting effect on the accused. In the present case, the allegation against the accused/petitioner relates to misappropriation/fraud by siphoning off the money and assets of the company, which money is public money invested by individuals. Normally, the Directors of the Company play a predominant role and should not act fraudulently. Whenever, huge public funds are invested in a company, the officials should take sincere efforts to maintain account for even a single paisa. Digital explosion has led to large scale financial scams where funds are siphoned

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off and the digital trace is erased by the individuals perpetrating the said corporate frauds. The mechanism which is available and the work force to monitor the said mechanism is a drop in the ocean considering the population of our country and the Governmental machinery is burdened with extensive materials from which the trace has to be detected and the culprits apprehended. Leaving the alleged accused outside would lead to manipulation/erasing of the digital records and tampering with witnesses, till the trial comes to an end, as otherwise, it would be utterly difficult for the prosecution to prove the case and retrieve the amounts so fraudulently usurped by the unscrupulous elements. Therefore, the Courts should be very circumspect while considering a plea for grant of house arrest.

11. In this regard, it is to be noted that the issue of grant of house arrest has to be considered on case to case basis and it cannot be on the basis of precedence. Precedence is only to the extent of application of law to a particular case and not to the facts of the case as each and every case falls under a different set of facts and no two cases would be fully identical.

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Therefore, this Court has to consider whether on the present set of facts, the petitioner could claim the relief of house arrest.

12. There could be no quarrel with the law, as laid down in *Gautam Navlakha case* that *'House Arrest'* would also fall within the periphery of judicial custody. However, it is to be pointed out that extending the said relief could be only in rarest of rare cases as otherwise the concept of judicial remand in prison would lose its relevance as each and every citizen, who is under judicial custody would knock on the doors of this Court seeking remand under house arrest. The Court is ordained with the task of finding out whether on the set of facts placed before it, a case is made out for grant of house arrest.

13. Turning back to case on hand, the claim of the petitioner is premised on his age and ailments suffered by the petitioner and also the period of incarceration. It is to be pointed out that the age of the petitioner is not a determinant factor while considering the case for grant of house

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arrest. Ailments, though could be a basis for grant of house arrest, but it could not be a predominant factor in grant of house arrest, as within the confines of the prison, facilities are provided to the inmates for availing medical facilities. The petitioner has to spell out the medical ailments for which there is no medical facilities available within the prison so that it requires keeping the petitioner under house arrest. However, by no stretch, the period of incarceration, that too in the present case, could be held to a factor in considering house arrest.

14. In the case on hand, the economic fraud alleged to have been committed is to the extent of about Rs.8000 Crores towards which investigation has been taken up by SFIO and final report has been filed. However, the mere fact that final report has been filed and investigation has been completed cannot be the basis to grant house arrest as still the witnesses, who have been shown as witnesses to depose at the time of trial are at large, who could very well be manipulated if the accused comes out of prison. The main reason for keeping an accused in prison is for the

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purpose of not tampering with the evidences, both oral and documentary. Merely because investigation is complete and documentary evidence has been collected by the investigating agency cannot be a ground to grant house arrest, as on an accused coming out of prison, tampering an ocular witness would have a detrimental effect on the documentary evidence, which is sought to be marked through the said witness at the time of trial. Hostility of such witnesses at the time of examination during trial would have a cascading effect on the outcome of the prosecution case and only for the said purpose, in white collar offences, the courts weigh the case before granting the relief of house arrest.

15. A perusal of the decision of the Apex Court in *Gautam Navalkha case* reveals that the said case was under the sedition law, which has a national interest angle and even in the said case, the accused therein was not granted house arrest anterior in point of time and only after a substantive period of about three to four years, on the ground of age of the accused and the ailments suffered, the accused therein was allowed to be

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kept under house arrest. Even in the said case, the Supreme Court was very circumspect while granting house arrest and it was not granted as a matter of routine.

16. However, as aforesaid, the petitioner herein is seeking grant of house arrest on the ground of age, ailments suffered and his reputation in the society. The records on hand reveal that the petitioner is not even a senior citizen to claim the benefit of age for the purpose of house arrest. Further, there are no particulars with regard to the ailment suffered along with the requisite medical records, which warrants a specialised treatment, which is not available inside the prison.

17. The loss of reputation in the society, submitted by the petitioner as a ground for grant of house arrest is too large a pill to swallow for this Court, as giving house arrest on the said ground would open a Pandora's Box where every accused would come and knock the doors of this Court seeking the said relief, as criminal jurisprudence is premised on the saying that

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"Every accused is presumed innocent until proven guilty". Therefore, every accused would claim to be innocent and pointing out his reputation being damaged in the society, would seek the indulgence of this Court.

18. Further, merely because all the assets of the petitioner and attached immovable assets are alleged to have been frozen by the respondents, that cannot be a ground for the petitioner to seek house arrest nor could this Court extend its plenary powers to grant the wish to the petitioner, who, even as on date, is an accused, alleged to have committed a crime against the society.

19. Only when there are materials which, when seen with a naked eye, *prima facie* exculpate the accused from the rigours of the crime, the Court considers grant of bail and equally for house arrest, the said ratio has to be followed as otherwise it would work great hardship to the law enforcing agency to monitor the accused and the manpower with the law enforcing agency would not be sufficient enough to monitor the persons

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under house arrest.

20. In the present case, the enormity of the financial fraud alleged against the petitioner is of such a proportion that in the absence of any *prima facie* material, which casts a serious doubts in the prosecution version, the plea for house arrest as claimed by the petitioner could not be granted.

21. All the citizens are equal before the eyes of law and every citizen has to be treated equally and only in exceptional circumstances, could this Court, without tilting the balance, grant relief to a citizen in the interest of justice. However, this is not such a case, where this Court, without tilting the balance, could grant the relief as granting the relief would tilt the scales very much in favour of the petitioner by undermining the efforts of the prosecution and, therefore, this Court is not inclined to accede to the prayer sought for by the petitioner.

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22. Considering the gravity and severity of the allegations and the involvement of large amount of public money, the plea of the petitioner cannot be considered affirmatively by this Court and this Court finds no perversity in the impugned order.

23. In the result, no case is made out for grant of relief sought for and, accordingly, this revision petition is dismissed, confirming the impugned order, dated 04.08.2023 passed by the Sessions Judge, Special Court, Chennai in Crl. M.P. No.10259/2023 in Spl. C.C. No.1 of 2023.

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Index : Yes/No

GLN

M.DHANDAPANI, J.

GLN

To

1. The XV Additional Sessions Judge
Spl. Court, Chennai.

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2. The Public Prosecutor
High Court, Madras – 104.

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