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2024:PHHC:052903

CRM-M-2651-2024
Date of decision : 19.04.2024

Versus

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Ms. Punita Sethi, Sr. Panel Counsel
for respondent-SFIO.

Petitioner herein prays for grant of regular bail pending complaint bearing No.COMA/05/2019 dated 18th of May, 2019 titled as “Serious Fraud Investigation Office vs. Adarsh Buildtech Limited” filed by the respondent under Section 58A, 58AAA, 211(7), 227, 628, 233 of Companies Act, 1956 and Sections 74(3), 76A, 447, 448, 147, 143, 144, 141(3)(e) of Companies Act, 2013 read with Section 406, 417, 418, 420, 467, 468, 471, 477A, 474 and Section 120-B of IPC pending before the court of Ld. Special Court, Gurugram, District Gurugram.

2. Ld. Senior Counsel representing the petitioner has taken this Court to the precise allegations levelled against the petitioner in the complaint which read as under :

- “11. That the investigation into the affairs of CUIs, has revealed as under: -
- 1. That Adarsh Group of Companies, a group of 126 companies (AGC&L), were being managed/controlled by Mukesh Modi/co-accused, his family members, including present applicant and associates.
 - II. ACCSL, a credit cooperative society registered under the Multi State Cooperative Societies ACT, 2002, (MSCS Act, 2002) was found to be the fund mobilization arm of the Adarsh Group. It accepted deposits from its members, who are mostly low to middle income individuals. ACCSL has 800+ branches, 20 Lakh members, 3.7 lakh advisors and Rs. 9,253 Crore of outstanding deposit as on 31.05.2018.
 - III. That the 70 of the aforesaid 126 companies under investigation (CUIs) secured loans from ACCSL to the tune of Rs. 1700 crore fraudulently & illegally. It is revealed that a total amount of Rs. 4120 crores were the outstanding balance against the loans as on 31.03.2018 in 70 CUIs.
 - IV. It is revealed that the petitioner was amongst the directors of six (6) companies belonging to the Adarsh Group of Companies wherein illegal/fraudulent funds were secured from ACCSL. The details of directorship of the applicant along with details regarding signatory to the falsified financials of the said companies are as under :-

S.No.	Company/CUI	Period of Directorship of the Petitioner	Illegal funds obtained from ACCSL (In Crores)	Signatory to Loan Application form/ Projected financials	Signatory to the falsified/ misstated Balance Sheet of the Company
1.	ARYARTH CAPITAL ENTERPRISES PVT LTD	20.11.13 to 08.07.15	6.50 [Outstanding Rs.23.92 crores]	-	2013-14
2.	GOVINDAM BUILDESTATE PVT LTD	13.07.11 to 08.07.15	16.96 [Outstanding Rs.58.45 crores]	Yes	2012-13 & 2013-14
3.	MASCOT INFRABUILD PVT LTD	13.07.11 to 08.07.15	34.85 [Outstanding Rs.90.62 crores]	-	2011-12 to 2013-14

4.	RAGHUVANSHI REALESTATES PVT LTD	14.07.11 to 08.07.15	32.87 [Outstanding Rs.63.51 crores]	Yes	2011-12 to 2013-14
5	VASUDHA REALCON PRIVATE LIMITED	12.07.11 to 08.07.15	28.52 [Outstanding Rs.122.34 crores]	Yes	2011-12 to 2013-14

- V. That as detailed above, major portion of the aforesaid illegal loans taken by aforesaid six companies remained outstanding.
- VI. In this regard it is revealed that aforesaid 70 CUIs, at different times, filed applications with ACCSL in order to obtain funding from ACCSL. It was revealed that the mandatory conditions, fulfillment of which was adhered to in grant of loans of entities and individuals other than the CUIs, were never fulfilled in the case of AGC&L and other CUIs. The CUIs filed unverified and baseless projected financials with no specific repayment schedule as part of these applications. On examination of the loan files it is found that no physical verification and viability reports of projected financials of the projects proposed by CUIs were available. The loan application form was a merely formality as the full control over ACCSL was exercised by Mukesh Modi/co-accused, his family and associates. No examination or verification of the documents was carried out and loan was sanctioned on the same day of the receipt of application.
- VII. It is revealed that ACCSL, being a credit cooperative society under the MSCS Act, 2002, can give loans/credit to its members only. ACCSL projected that the definition of “person” in the Byelaws approved by the Central Registrar of Cooperative Societies, Ministry of Agriculture, Government of India includes companies and, therefore, companies can be members. However, the specific proposal for amendment of the bye-laws of ACCSL for making 'persons' eligible to be members of ACCSL was rejected by the Central registrar vide its letter no. L11016/11/2005-

L&M, dated. 19.04.2012 on the ground that some of the categories mentioned under the definition of person at byelaw no. 2(k) of the society are not permissible for membership of a Multi-State Cooperative Society.

The Companies (Acceptance of Deposit) Rules, 1975 notified under Section 58 A of the Companies Act, 1956 states that "deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include certain amounts received from entities and individuals stated therein. Any amount received by a company from a credit cooperative society or a financial institution (except specific financial institutions specified in the said Rules) is not excluded from the definition of "deposit."

Thus, the aforesaid loans received by the CUIs from ACCSL fall under the category of 'deposits', accepted under the Companies Act, 1956 & 2013. Such loans were, therefore, received by CUIs violating the provisions of section 58A of the Companies Act, 1956.

It is revealed that the CUIs despite being ineligible, were made members of ACCSL and thereafter only secured the illegal loans from ACCSL which were actually the funds collected by ACCSL from the lower to middle income group individuals/its members.

VIII. Investigation revealed that the aforesaid loans taken from ACCSL have been shown as loans taken from a "Financial Institution" in the Financial statements of the aforesaid CUIs, and the interest charged on the loans have been shown as bank interest/bank charges in their financial statements. Further, the loans obtained from ACCSL by CUIs, which actually falls under the definition of 'deposit', were shown as "secured loans" in their financials.

IX. The above has resulted in misstatements, non-depiction of True and Fair View of financial statements and have resulted in materially false financial statements of the said

CUIs from FY 2006-07 till FY 2016-17 as filed with the respective Registrar of Companies, as neither the ACCSL was a financial institution nor the funds/loans obtained from it were falling within the permitted categories of loans as provided under the Companies (Acceptance of Deposit) Rules, 1975/ Companies (Acceptance of Deposit) Rules, 2014. Thus, the signatories to the said financial statements, including the petitioner herein, are liable for offence u/s 448 of the Companies Act, 2013.”

3. He further relies upon the order passed by Co-ordinate Bench in CRM-M No.25084 of 2022 dated 29th of March, 2023 whereby one of the co-accused namely Deepak Shrimali was granted pre-arrest bail. Ld. Senior counsel submits that the allegations being faced by the petitioner are similar to those which are being faced by Deepak Shrimali. Both being employees signed the financial statements and thus the petitioner would be entitled for grant of regular bail especially when he has already undergone actual custody of 5 months and 10 days and the complaint stands filed that indicates towards completion of investigation.

4. Per contra, the bail plea is being opposed by the counsel appearing for SFIO. Reliance is being placed upon order passed by this Court in CRM-M No.15759 of 2023 dated 9th of November, 2023 whereby regular bail plea of co-accused Rajeev Kumar Rana was rejected observing as under:

“8. Having heard rival contention of the parties and after going through the records of the case, this Court finds that the present petitioner has been arraigned as accused qua offence punishable under Section 447 of the Companies Act. The same reads as under:-

“Section 447: Punishment for fraud.

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud 1[involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

1[Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to 2[fifty lakh rupees] or with both.]

Explanation.—For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.”

9. The allegation against the petitioner is of having misused his position as an authorized signatory of ABL-the company. It has also come on record that the amounts which were being used by ABL for its project which the petitioner is accused of having misused in fact were the amounts that form liability of ACCSL-a cooperative society. Meaning thereby, that ultimately it is the lower income group innocent persons who were investing these monies in the hope of getting their own house.”

5. Ld. Senior Counsel however submits that the petitioner cannot be equated with Rajeev Kumar Rana against whom the allegation was that almost an amount of Rs.74.00 crores travelled to his private account. There being no such allegation against the petitioner the said order will not be applicable to the case of the present petitioner.

6. I have heard counsel for the parties and have gone through records of the case.

7. The whole issue involved in the present case is of usurping the money collected from the persons belonging to lower middle class by creating a Cooperative Society under the name of ACCSL and using the cash collected for siphoning off those funds of the Cooperative Society on pretext of extending loan to the company. Petitioner remained Director of 6 companies of the Adarsh Group for the period ranging from 13th of July, 2011 till 8th of July, 2015. The precise allegation against the petitioner is that during that course he not only signed the falsified/misstated balance sheets of the company but also was signatory to the loan application form/projected financials of the company. Though the Senior Counsel claims that the petitioner was merely an employee. However, this Court cannot loose sight of the fact that in corporate offences the persons managing the company while serving at the level of Director are the one who act as arms, hands and mind of the company. Thus to say that the petitioner cannot be held guilty for offence punishable under Section 447 only for the reason that he merely signed the loan applications, cannot be considered at this stage.

8. Keeping in view the extent of fraud and the money involved, this Court does not find it to be a case for grant of regular bail. Resultantly, the same is dismissed.

April 19, 2024

Dpr

Whether speaking/reasoned

Whether reportable

(Pankaj Jain)

Judge

: Yes/No

: Yes/No