

CRM-M-18429-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204-1 CRM-M-18429-2022
Date of Decision: 04.03.2024

PRAVEEN SHARMA -PETITIONER

V/S

SERIOUS FRAUD INVESTIGATION OFFICER -RESPONDENT

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sandeep Jain, Advocate
for the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel and
Mr. J.S. Lalli, Deputy Solicitor General of India
for the respondent.

KULDEEP TIWARI, J.

1. Through the instant petition, as cast under Section 438 of the Cr.P.C., the petitioner, who claims himself to be an “Independent Director” of SRS Finance Limited, craves for him being granted the relief of anticipatory bail, in Criminal Complaint No.17 of 2021, titled as “Serious Fraud Investigation Office Vs. SRS Limited and others”.
2. The principal cause behind the petitioner rushing to this Court, is the issuance of warrants of arrest against him in the complaint (supra), owing to his non-appearance before the learned Special Judge concerned, despite him being summoned vide order dated 16.08.2021.
3. Though the learned counsel for the petitioner, in his beseeching the grant of relief (supra), has made manifold arguments, however, the essence of his arguments is embedded in the petitioner being safeguarded

by the provisions of Section 149(12) of the Companies Act, 2013. By taking shelter under this Section, he has argued that when the petitioner, who is an “Independent Director”, neither had any knowledge about any acts of omission or commission by the company, nor such acts were done with his consent or connivance, nor anything suggestive *qua* him not acting diligently is available on record, therefore, he cannot be held liable for any such acts. Moreover, the complaint (*supra*) is also totally silent about the petitioner having any knowledge in the above regard.

4. In the present case, since the complaint (*supra*) derives its origin from the alleged commission of a huge financial fraud, wherein huge sums of money are alleged to have been siphoned off by the accused(s) for their personal use, therefore, it is deemed imperative to first deal with the allegations in detail.

5. Consequent upon forming of an opinion by the Ministry of Corporate Affairs (hereinafter referred to as ‘M.C.A.’) that investigation into the affairs of SRS limited and its Group Companies is necessary to be conducted by the Serious Fraud Investigation Office (hereinafter referred to as the ‘S.F.I.O.’), it drew an order of investigation on 01.08.2018, in exercise of its powers, as conferred under Section 212(1)(a) of the Companies Act, 2013. Accordingly, the Director, S.F.I.O., vide order dated 08.08.2018, designated officers of S.F.I.O. as Inspectors to carry out the investigation. The investigation was conducted by various officers, whereupon it transpired that total 88 companies belonging to SRS Group were in existence since 01.04.2010. Therefore, investigation into the affairs of those 88 CUIs, including the eight companies which have been arrayed as accused No.1 to

8 in the complaint (supra), was conducted and on completion of the investigation, an Investigation Report dated 05.06.2021 was presented before the M.C.A. This Investigation Report constituted the backbone of the order dated 10.06.2021, where through, the M.C.A. directed the S.F.I.O. to file complaint and to initiate prosecution against the accused for commission of various offences/violations, i.e. under Sections 36(c) read with Section 447, 448, 92, 137, 134, 188, 128, 129, 143 of the Companies Act, 2013, and, Sections 209, 217, 211, 227, 297, 628 of the Companies Act, 1956.

6. The sum and substance of the complaint (supra), besides the crux of the investigation carried out by the S.F.I.O., is extracted hereinafter:-

“(I) SRS Group consisted of two categories of companies with the nomenclature 'SRS companies' and 'Non-SRS companies'. It is revealed that the affairs of these companies were managed and controlled by Anil Jindal, Jitender Kumar Garg, Praveen Kumar Kapoor, Bishan Bansal, Nanak Chand Tayal, Rajesh Singla and Sushil Singla. The said persons were the actual controlling "mind and will" and in control of the affairs of the SRS Group. The degree of their control was such that the directors in these companies were appointed or removed as per their whims and fancies.

(II) That in case of Non-SRS companies, it is revealed that the directors were mostly the employees, known persons, or relatives of the controllers of the SRS Group. However, the total control over the operations of these companies was in the hands of the controllers of the SRS Group.

(III) It is revealed that five companies belonging to SRS Group i.e., SRS Limited, SRS Modern Sales Limited, SRS Healthcare & Research Centre Limited, SRS Finance Limited & SRS Real Estate Limited obtained loans to the tune of Rs. 528 crores (after 12.09.2013) from public sector banks/financial institutions. The outstanding bank loans with respect to nine of the SRS Group of

companies, as per the latest financial statements filed with MCA, are Rs. 1596.94 Crores.

(IV) It is further revealed that the directors of SRS Ltd. and its four other Group Companies had presented falsified financial statements (after 12.09.2013) containing falsified statements of debtors, inflated Purchase & Sales figures, deliberately concealed the material facts in obtaining aforesaid credit facilities from public sector banks/financial institutions. In this regard, non-SRS companies were used for the purpose of inflating the sale, purchase, and profit of the SRS Companies, adjusting cash sales of jewellery and building material of declared SRS Companies, showing these Non-SRS companies as debtors in the books of accounts of SRS Companies.

(V) It is further revealed that the controllers of the CULs connived and Siphoned Off funds of Rs. 671.48 Crores and diverted funds amounting to Rs. 645.86 Crores from SRS Group of Companies by way of separate/distinct transactions. Further, the unlawful gain to the family members or Companies of the controller of SRS Group was by way of siphoning off the public funds from SRS Group of Companies and it was to the tune of Rs. 21.11 Crores after the period 11.09.2013.

(VI) Investigation also revealed that the auditors of the SRS Companies had deliberately suppressed the actual figures & entries in the accounts of the company and had given wrong, false, and misleading statements in the financial statements, knowing it to be false in a material particular and had omitted to state the material facts, knowing to be material to hide the true nature of the financial statements.

(VII) The SRS Group - where mostly the directors were the Controllers of SRS Groups and their family members in these companies, the employees were also made directors. The directors of these companies were employees of SRS Group or their relatives. Many of these directors were the past directors in the SRS Group.

(VIII) Whenever Anil Jindal/co-accused wanted to incor-

porate a company either in SRS Group or as a Non-SRS Company, the Secretarial Department was provided the basic details such as a Name, Main objects, place of registered office, authorized capital, and directors, etc. by him. Based on information/instruction given by Anil Jindal, the Secretarial Department use to fill the form for incorporation after preparing the MOA and AOA as per the main objects through Ms. Savita Trehan, Practicing Company Secretary.

(IX) In this regard it is pertinent to mention here that Ms. Savita, in her statement on oath, stated that she either got incorporated or filed forms concerning many companies.

(X) As per the requirement, Anil Jindal conveys which person is to be appointed or resigned as director from any company and provide them the documents of the appointee director and accordingly they file the Form -32 / Form DIR- 12 of the concerned persons.

(XI) Anil Jindal or Accounts Department conveys which person/firm is to be appointed or has resigned from any company and further he provided them the documents of the appointee auditors. Accordingly, they filed forms for the appointment and resignation of concerned auditors.

(XII) No board meetings of most of the SR Group companies/were held, however, in compliance with Company Law or for other requirements such as the opening of bank accounts, etc., the Secretarial Department prepares the minutes of all such companies. AGMs of SRS Group companies were not held physically. However, documents of these AGMs were prepared in compliance with company law on the instructions of Anil Jindal.

(XIII) Financial statements of SRS and Non-SRS companies were prepared by the accounts departments and they get the balance sheets signed by auditors, preparing notices, director reports, MDA, etc. After the preparation of the notice, director reports, MDA, etc., they use to handed over it to the accounts department or Anil Jindal for signing by Directors. After receiving the signed annual reports, they use to file the same with ROC as

generally digital signatures of all the directors were kept with the Secretarial Department with the knowledge of the concerned Directors.”

7. Consequent upon filing of the complaint (supra) by the S.F.I.O., since the learned Special Judge concerned, vide order dated 16.08.2021, summoned the accused(s) named therein, including the present petitioner, to face trial, an apprehension *qua* arrest cropped up in the mind of the petitioner and resultantly, he moved an anticipatory bail application before the learned Special Judge concerned, however, it was dismissed vide order dated 15.03.2022, both on the ground of maintainability as well as on merits. Resultantly, this dismissal order has driven the petitioner to this Court, thereby seeking the relief of anticipatory bail.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

8. The learned counsel for the petitioner has, at the very outset, drawn attention of this Court towards the provisions of Section 149(12) of the Companies Act, 2013, to argue that the petitioner, being an “Independent Director”, cannot be held liable for any acts of omission or commission by the company, inasmuch as, neither he had any knowledge about any such acts, nor such acts were done with his consent or connivance. To lend vigour to his above made argument, he has drawn attention of this Court towards the complaint (supra) and argued that when even the complaint (supra) itself is lacking the attribution of any precise role to the petitioner in commission of the alleged offence(s), and/or, is lacking any allegation *qua* the petitioner reaping illegitimate benefits from his acts, therefore, the petitioner enjoys immunity from his prosecution, in pursuance of the summon-

ing order (supra).

9. The learned counsel for the petitioner has further argued that neither the complaint (supra) carries any explicit allegation *qua* the petitioner deliberately making any specific false statement, nor it carries the details of any purported incorrect or inflated balance sheet(s), which is alleged to have been signed by the petitioner. Consequently, no offence under Section 448 of the Companies Act, 2013 is made out against the petitioner.

10. Furthermore, by taking shelter under the provisions of Section 2(76) of the Companies Act, 2013, he has argued that when the complaint (supra) does not make even any slightest disclosure, as to which company, recital whereof is allegedly not made by the petitioner in the financial statement(s) concerned, falls in the domain of “related party” with SRS Finance Limited, therefore, for want of any cogent material, the petitioner cannot be prosecuted or punished.

11. The learned counsel for the petitioner, though has tried to secure the relief of anticipatory bail for the petitioner, by assailing the veracity of the allegations, as levelled in the complaint (supra), on the ground of them remaining unsubstantiated by any cogent substantive material, however, he has also thrown a challenge to the observation(s) of the learned Special Judge concerned, who had, while declining anticipatory bail to the petitioner, observed that “*when warrants of arrest have been issued against a person, anticipatory bail application under Section 438 of the Cr.P.C. is not maintainable*”.

12. Concluding his arguments, the learned counsel for the petitioner has submitted that since the matter pertains to documentary evidence and the petitioner had cooperated with the investigating agency by joining

the investigation, therefore, his custodial interrogation is not at all required.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPON-
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13. The learned counsel for the respondent has, by placing reliance upon various judicial pronouncements of the Hon’ble Supreme Court as well as of this Court, tried to defend the observation(s) of the learned Special Judge concerned that, consequent upon issuance of warrants of arrest, an anticipatory bail application under Section 438 of the Cr.P.C. is not maintainable.

14. The learned counsel for the respondent has also drawn attention of this Court towards the provisions of Section 212(6) of the Companies Act, 2013, which starts with a non-obstante clause, to argue that when neither of the twin conditions, as prescribed therein are satisfied, therefore, the petitioner does not deserve the concession of bail. She has further argued that when, in view of Section 212(7) of the Companies Act, 2013, the limitation on granting of bail, as specified in Section 212(6) of the *ibid* Act, is in addition to the limitations enclosed under the Code of Criminal Procedure, 1973, or, any other law for the time being in force on granting of bail, therefore, the rigor of Section 212(6) is required to be applied for a person, who is accused and is seeking the relief of anticipatory bail. Sub-sections (6) and (7) of Section 212 of the Companies Act, 2013, are reproduced hereinafter:-

“212. Investigation into affairs of Company by Serious Fraud Investigation Office.—

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(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:*

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

15. The learned counsel for the respondent has next argued that there are specific allegations against the petitioner that, he being “Director” of the accused entity/company, i.e. SRS Finance Limited, had signed its falsified financial statements for the period 2015-16, and as such, his act (supra) clearly attracts the provisions of Section 448 of the Companies Act, 2013, inasmuch as, his act (supra) can be termed as “*making of a statement, which is false in material particulars, and/or, omission of any material fact, knowing it to be material*”.

16. Lastly, the learned counsel for the respondent has opposed the grant of anticipatory bail to the petitioner, on the ground that, his co-accused, who are on a co-equal pedestal as him, have already been declined the relief of bail by this Court. Moreover, the dismissal orders, as passed by this Court upon their bail petition(s), have also attained finality, inasmuch as, the challenge made thereagainst before the Hon’ble Supreme Court has not yielded any fruits, as there also they have been declined the relief of bail. The details of petitioner’s co-accused, who have been declined bail, are extracted hereinafter in a tabulated form:-

NAME OF CO-AC- CUSED	POSITION/ DESIG-NA- TION	WHETHER TAKEN INTO CUS- TODY DUR- ING IN- VESTI- GATION	STATUS OF BAIL FROM THIS HIGH COURT	STATUS OF BAIL FROM HON’BLE SUPREME COURT
Rajesh Singhla	Director	Yes	Dismissed on 17.10.2022	Dismissed on 13.03.2023
Sushil Singhla	Director	Yes	Dismissed on 17.10.2022	Dismissed as with- drawn on 17.03.2023
Bhagwan Dass Gupta	Director	No	Dismissed on 09.12.2022	Dismissed on 10.07.2023
Deepak Gupta	Director	No	Dismissed on 22.12.2022	Dismissed as with- drawn on 01.09.2023
Sanjay	Director	No	Dismissed on 30.01.2023	Not approached Hon’ble Supreme Court. Filed 2 nd Bail application before this Court.

ANALYSIS

17. To gauge the merits or demerits of the instant petition and re-sultantly, penning down any opinion thereon, this Court has made a studied survey of the entire record and has also considered the rival submissions ad-vanced by the learned counsels appearing for the contesting litigants. *Prima facie*, the instant case involves commission of a serious financial fraud, which has now swell upto Rs.1596 crores (approx.).

18. Succinctly stated, what *prima facie* emerges from the record available before this Court, is that, SRS Limited and its Group Companies are having outstanding liability towards banks concerned to the tune of Rs.1596.91 crores. The petitioner’s co-accused, namely, Anil Jindal, J.K. Garg, P.K. Kapoor, Bishan Bansal, Sushil Singla @ Sushil Kumar, Rajesh Kumar and Nanak Chand Tayal, with a common intention to siphon off and divert the funds received as loans from banks/financial institutions, public

deposits and booking amounts from customers against flats with respect to the CUIs, got incorporated many non-SRS companies in the coterie of SRS Group, by designating their own employees/relatives etc. as the Directors/shareholders thereof. The key design behind incorporation of non-SRS Companies (supra) was to use them for inflating the sale/purchase/profit of the SRS Limited, by carrying out circular trading to increase the net worth of the SRS limited. Moreover, these non-SRS Companies were also used to adjust cash sales of gold/jewellery by the SRS Limited.

19. Insofar as the role of the petitioner is concerned, this Court had, on the previous date of hearing, directed the learned counsel for the respondent to file detailed factual notes, by narrating therein the role of the petitioner, besides narrating therein the details of the incriminating material, as collected against the petitioner by the investigating agency. Accordingly, the learned counsel for the respondent has placed on record the requisitioned notes, perusal whereof makes the hereinafter extracted revelations *qua* role of the petitioner in the instant case.

ROLE OF THE PETITIONER

20. The precise allegation against the petitioner is that, he, in the capacity of one of the Directors of the accused entity/company, i.e. SRS Finance Limited, had signed and supplied a falsified financial statement for the financial year 2015-2016. Consequently, his act (supra) falls in the domain of “*knowingly making a statement, which is false in material particulars, and/or, omitting any material fact, knowing it to be material*”.

21. The notes (supra) reveal that the accused entity/company (supra) had made 90% of investments in SRS Companies from the financial year period of 2010-2011 to 2016-2017, and, also gave more than 75% of

loans and advances to non-SRS Companies from the period 2015-2016 to 2016-2017. However, the accused entity/company (supra) did not make any recital of the transactions (supra), as carried out with its group companies, i.e. SRS Companies and non-SRS Companies, as “related party transactions” in its financial statements concerned, based whereupon, it had secured loans and cash credit limit from banks concerned from the period 2010-2011 to 2016-2017. Had the accused entity/company (supra) made disclosure about “related party transactions” in its financial statements, the banks concerned would not have advanced loans to it.

22. Not only this, what further emerges from the notes (supra), is that, loans to certain other entities (out of SRS Group), i.e. Kumud Gupta, Classic Lamp Industries Pvt. Ltd., Goyal Education and Welfare Society, Rattan Polychem Ltd., Crown Realtech Pvt. Ltd. and Fraternal Investments P. Ltd., were sanctioned without the execution of any loan agreement. Shockingly enough, a major portion of the said loans (except Rattan Polychem Ltd.) remains outstanding. The factum *qua* grant of loans, without execution of any agreement, was also not deliberately mentioned in the books/documents of the accused entity/company (supra), otherwise, it would have alerted the banks/financial institutions from giving any further loans to it.

23. What *prima facie* emerges from the record available before this Court is that the petitioner, who is one of the Directors of the accused entity/company, had, in collusion with his cohorts, furnished false financial statements, inasmuch as, recitals of “related party(ies)”, details whereof are furnished before this Court by the respondent, are not mentioned therein.

24. From the allegations discussed hereinabove, this Court is impelled to draw an inference that, *prima facie*, the petitioner has actively participated in commission of a huge financial scam, by knowingly filing inflated financial statement(s) pertaining to his entity/company.

REASONS FOR DISMISSING THE INSTANT PETITION

25. Before commencing to record the reasons for dismissing the instant petition on merits, it is deemed appropriate to initially adjudicate the issue of maintainability of a petition under Section 438 of the Cr.P.C. post the issuance of warrants of arrest. This issue has arisen from the learned Special Judge concerned, while declining anticipatory bail to the petitioner, recording an observation that “*once warrants of arrest have been issued by it against a person, it cannot, in exercise of its powers under Section 438 of the Cr.P.C., review its own order and grant the relief of anticipatory bail*”.

26. This Court has examined in *toto* the order dated 15.03.2022, whereby, anticipatory bail was declined to the petitioner by the learned Special Judge concerned. This Court has no hesitation to conclude that the issue of maintainability does not arise at all, inasmuch as, the learned Special Judge concerned has not declined the relief of anticipatory bail to the petitioner, merely on the ground of maintainability, but has recorded a dis-affirmative opinion on merits also. Owing to active participation of the petitioner becoming surfaced during investigation, the relief of anticipatory bail was declined to the petitioner on merits. Consequently, the argument made by the learned counsel for the petitioner that, the matter be remanded to the learned Special Judge concerned for afresh adjudication on merits, is a highly misplaced argument and deserves negation.

bail provided under Section 212(6) of the Companies Act, 2013, in the instant case is concerned, the learned counsel for the petitioner has argued that this Section does not have any applicability on the issue of “anticipatory bail”, rather it imposes restrictions upon Court only while adjudicating the issue of “regular bail”.

28. *Per contra*, the learned counsel for the respondent has vehemently opposed the above made argument, by placing reliance upon the judgment rendered by the Hon’ble Supreme Court in case titled as “***Vijay Madanlal Choudhary & Ors. V/s Union of India & Ors.***” (2022 SCC On-Line SC 929), wherein, the Hon’ble Supreme Court has, while dealing with the constitutional validity and the applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2002 [akin to conditions laid down under Section 212(6) of the Companies Act, 2013], held that the term “bail” as occurring in the provisions concerned include “anticipatory bail” as well, and that, the limitations of Section 45 of the *ibid* Act are also applicable in respect of “anticipatory bail”. For ready reference, the relevant paragraphs of the judgment (*supra*) are reproduced hereinafter:-

“...Sub-section (6) of Section 212 of the Companies Act imposes similar twin conditions, as envisaged under Section 45 of the 2002 Act on the grant of bail, when a person is accused of offence under Section 447 of the Companies Act which punishes fraud, with punishment of imprisonment not less than six months and extending up to 10 years, with fine not less than the amount involved in the fraud, and extending up to 3 times the fraud.

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This Court has been restating this position in several decisions, including Gautam Kundu and Amit Kumar. Thus, while considering the application for bail under Section 45 of the 2002 Act, the Court should keep in mind the abovementioned principles governing the grant of bail. The limitations on granting bail as prescribed under Section 45 of the 2002 Act are in addition to the limi-

tations under the 1973 Code.

As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis.

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Another incidental issue that had been raised is about the non-application of rigors of Section 45 of the 2002 Act in respect of anticipatory bail filed under Section 438 of the 1973 Code. This submission presumably is linked to the observation in paragraph 42 in the case of Nikesh Tarachand Shah. Similar argument was considered in The Asst. Director Enforcement Directorate vs. Dr. V.C. Mohan. We are in agreement with the observation in this decision that it is one thing to say that Section 45 of the 2002 Act refers to a scheduled offence under the general law, but, as noted earlier, the offence under this Act in terms of Section 3 is specific to involvement in any process or activity connected with the proceeds of crime which is generated as a result of criminal activity relating to a scheduled offence. It is also true that Section 45 does not make specific reference to Section 438 of the 1973 Code, but it cannot be overlooked that sub-section (1) opens with a non-obstante clause and clearly provides that anything contained in the 1973 Code (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond, unless the stipulations provided therein are fulfilled. On account of the non-obstante clause in Section 45(1) of the 2002 Act, the sweep of that provision must prevail in terms of Section 71 of the 2002 Act. Further, the expression “anticipatory bail” is not used either in the 1973 Code or the 2002 Act. The relief granted in terms of Section 438 of the 1973 Code is one of directing release of the person on “bail” in case of his arrest; and such a relief has been described in judicial pronouncements as anticipatory bail. Section 45(1) uses generic expression “bail” without reference to any provision of the 1973 Code, such as Sections 437, 438 and 439 of the 1973 Code. Concededly, Section 65 of the 2002 Act states that the provisions of the 1973 Code shall apply to the provisions under the Act insofar as they are not inconsistent with the provisions of the 2002 Act. Further, Section 71 of the Act gives overriding effect to the Act. Section 45 of the Act begins with a non-obstante clause, thus excluding the application of the 1973 Code in matters related to “bail”. The word “anticipatory bail” has not been defined under the

1973 Code. In *Sushila Aggarwal*, it was held as under:

“7.1. At the outset, it is required to be noted that as such the expression “anticipatory bail” has not been defined in the Code. As observed by this Court in Balchand Jain, “anticipatory bail” means “bail in anticipation of arrest”. As held by this Court, the expression “anticipatory bail” is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. An application for “anticipatory bail” in anticipation of arrest could be moved by the accused at a stage before an FIR is filed or at a stage when FIR is registered but the charge sheet has not been filed and the investigation is in progress or at a stage after the investigation is concluded. Power to grant “anticipatory bail” under Section 438 of the CrPC vests only with the Court of Session or the High Court. Therefore, ultimately it is for the court concerned to consider the application for “anticipatory bail” and while granting the “anticipatory bail” it is ultimately for the court concerned to impose conditions including the limited period of “anticipatory bail”, depends upon the stages at which the application for anticipatory bail is moved. A person in whose favour a pre-arrest bail order is made under Section 438 of the CrPC has to be arrested. However, once there is an order of pre-arrest bail/anticipatory bail, as and when he is arrested he has to be released on bail. Otherwise, there is no distinction or difference between the pre-arrest bail order under Section 438 and the bail order under Section 437 & 439 CrPC. The only difference between the pre-arrest bail order under Section 438 and the bail order under Sections 437 and 439 is the stages at which the bail order is passed. The bail order under Section 438 CrPC is prior to his arrest and in anticipation of his arrest and the order of bail under Sections 437 and 439 is after a person is arrested. A bare reading of Section 438 CrPC shows that there is nothing in the language of the Section which goes to show that the pre-arrest bail granted under Section 438 has to be time-bound. The position is the same as in Section 437 and Section 439 CrPC.” (emphasis supplied)

Thus, anticipatory bail is nothing but a bail granted in anticipation of arrest, hence, it has been held in various judgments by this Court that the principles governing the grant of bail in both cases are more or less on the same footing, except that in case of anticipatory bail the investigation is still underway requiring the presence of the accused before investigation authority. Thus, ordinarily, anticipatory bail is granted in exceptional cases where the accused has been falsely implicated in an offence with a view to harass and humiliate him. Therefore, it would not be logical to disregard the limitations imposed on granting bail under Section 45 of the 2002 Act, in the case of anticipatory bail as well.

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Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail.

Suffice it to observe that it would be preposterous and illogical to hold that if a person applies for bail after arrest, he/she can be granted that relief only if the twin conditions are fulfilled in addition to other stipulations predicated in the 1973 Code; but another person, who is yet to be arrested in connection with the same offence of money-laundering, will not be required to fulfil such twin conditions whilst considering application for grant of bail under Section 438 of the 1973 Code. The relief of bail, be it in the nature of regular bail or anticipatory bail, is circumscribed by the stipulations predicated in Section 45 of the 2002 Act. The underlying principles of Section 45 of the 2002 Act would get triggered in either case before the relief of bail in connection with the offence of money-laundering is taken forward. Any other view would be counterproductive and defeat the purposes and objects behind the stringent provision enacted by the Parliament for prevention of money-laundering and to combat the menace on account of such activity which directly impacts the financial systems, including the sovereignty and integrity of the country.

As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

XX XX XX”

29. In view of the law laid down by the Hon’ble Supreme Court, in the judgment (supra), this Court can safely conclude that the restrictive conditions, as enshrined in Section 212(6) of the Companies Act, 2013, do have an applicability on the issue of grant of “anticipatory bail” also.

30. Now the issue arises: “whether, in the instant case, the twin re-

strictive conditions provided under Section 212(6) of the Companies Act, 2013, are satisfied or not”.

31. This Court has no hesitation to conclude that the first restrictive condition provided under Section 212(6) of the *ibid* Act is duly satisfied, inasmuch as, the Public Prosecutor has been given adequate opportunity to oppose the instant anticipatory bail petition, by filing reply and by making oral and written submissions.

32. Insofar as the second restrictive condition is concerned, it imposes an obligation upon the Court to record its satisfaction that, there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

33. Gainful reference in this regard can again be made to ***Vijay Madanlal Choudhary’s case (supra)***, wherein, it has also been held that the duty of the Court, at this stage, is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. It has been further held therein that the Court is also required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail. The relevant extract of the judgment (*supra*) is reproduced hereunder:-

“.....Notably, there are several other legislations where such twin conditions have been provided for. Such twin conditions in the concerned provisions have been tested from time to time and have stood the challenge of the constitutional validity thereof. The successive decisions of this Court dealing with analogous provision have stated that the Court at the stage of considering the application for grant of bail, is expected to consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused

had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.....”

34. Section 128 of the Companies Act, 2013, makes it obligatory for every company to prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year.

35. Section 129 of the *ibid* Act promulgates that financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under Section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III. Sub-section 7 of the *ibid* Section, which is reproduced hereinafter, enunciates that in the event of a company contravening the provisions of this Section, its Managing Director, Whole-time Director in charge of finance, Chief Financial Officer or any other person charged by the Board with the duty of making the requisite compliance and in the absence of any of the officers (*supra*), all the directors shall be liable for punishment.

“129.(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less

than fifty thousand rupees but which may extend to five lakh rupees, or with both.”

36. In the present case, it is not under dispute that the petitioner has, rather than disclosing the true picture of the financial health of his company, furnished under his signatures a financial statement containing false material particulars. Consequently, since the act (supra) of the petitioner *prima facie* contravenes the provisions of Section 129 of the Companies Act, 2013, therefore, by virtue of sub-section (7) thereof, he is amenable for punishment. Moreover, this Court has, in the preceding paragraphs of this verdict, elaborately and based on broad probabilities examined the allegations levelled against the petitioner, however, is unable to record that *prima facie* the petitioner is not liable to be held guilty under Section 448 of the Companies Act, 2013. The allegations against the petitioner are so grave that this Court cannot even form any inference that the petitioner has been falsely entangled in the alleged economic offence(s).

37. The Hon’ble Supreme Court, in case titled as “*P. Chidambaram vs. Directorate of Enforcement*”, (2019) 9 SCC 24, while dealing with economic offences, has held that the power of anticipatory bail should be sparingly exercised in economic offences. The relevant extract of this judgment is reproduced under:-

“77. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar, the Supreme Court held as under: (SCC p.386, para 19)

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.

Economic Offences

78. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement v. Ashok Kumar Jain*, it was held that in economic offences, the accused is not entitled to anticipatory bail.

XXX

XXX

XXX

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

84. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in *Anil Sharma*, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant. (emphasis supplied)”

36. The view (supra) was reinforced and reiterated by the Hon’ble Supreme Court in **“Serious Fraud Investigation Officer V/s Nittin Johari and another”, (2019) 9 SCC 165**, wherein, it set aside the order of High

Court of Delhi granting bail to the accused therein and held that “...it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences.....”

FINAL ORDER

37. As an upshot of the discussion made hereinabove, especially: (i) attribution of specific role to the petitioner; (ii) the gravity and magnitude of offence(s); (iii) the petitioner’s co-accused, who are on a co-equal pedestal as him, being already declined the concession of bail upto the Hon’ble Supreme Court; this Court does not find any merit in the instant petition and is constrained to dismiss the same. Therefore, the instant petition is **dismissed** being devoid of merits.

38. It is made clear that the observations made hereinabove are only for the purpose of deciding the instant petition and the same shall not be construed to have any bearing on the merits of the case.

04.03.2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No