IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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204-12 **CRM-M-32335-2023**
Date of Decision: 04.03.2024

SANJAY **-PETITIONER**

V/S

SERIOUS FRAUD INVESTIGATION OFFICE **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Gaurav Gupta, Advocate
for the petitioner.

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

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<u>KULDEEP TIWARI, J.</u>

1. Through this second petition, as cast under Section 439 of the Cr.P.C., the petitioner, who is alleged to be "Director" of SRS Shining Ornaments Limited, craves for him being enlarged on regular bail, in Criminal Complaint No.17 of 2021, titled as "Serious Fraud Investigation Office Vs. SRS Limited and others".

2. 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.

3. 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, wherethrough, 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.

4. 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 incorporate 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."

5. Consequent upon filing of the complaint (supra) by the S.F.I.O., the learned Special Judge concerned, vide order dated 16.08.2021, summoned the accused(s) named therein, including the present petitioner, to face trial.

6. It would be apt to record here that earlier also the petitioner had accessed this Court, through filing CRM-M-14229-2022, thereby seeking the concession of regular bail, however, the petition (supra) was dismissed by a Co-ordinate Bench of this Court, vide order dated 30.01.2023.

<u>SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER</u>

7. The learned counsel for the petitioner has, at the very outset, argued that the petitioner was in fact an employee of the accused entity/company- SRS Shining Ornaments Limited, however, he was appointed as an

"Artificial Director" thereof, by co-accused Anil Jindal. Moreover, despite him being appointed as "Director", the petitioner never participated in the affairs or management of the accused entity/company (supra), inasmuch as, he neither can read, nor write English, rather he was made to sign documents, contents whereof were not even understandable to him.

8. Nonetheless, the learned counsel for the petitioner has drawn attention of this Court towards the provisions of Section 2(76) of the Companies Act, 2013, to argue 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 Shining Ornaments Limited, therefore, for want of any cogent material, the petitioner enjoys immunity from his prosecution, in pursuance of the summoning 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. The learned counsel for the petitioner has also assailed the veracity of the allegations, as levelled in the complaint (supra), on the ground of them remaining unsubstantiated by any cogent substantive material.

11. Concluding his arguments, the learned counsel for the petitioner has submitted that since the matter pertains to documentary evidence, therefore, the petitioner, who has already undergone incarceration of more than 02 years, deserves the concession of regular bail.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

12. 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, opposed the arguments made by the learned counsel for the petitioner.

13. The learned counsel for the respondent has argued that there are specific allegations against the petitioner that, he being "Director" of the accused entity/company, i.e. SRS Shining Ornaments Limited, had signed its falsified financial statements for the period 2014-2015 to 2016-2017, 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*".

14. Lastly, the learned counsel for the respondent has opposed the grant of regular bail to the petitioner, on the ground that, petitioner's co-accused- Bhagwan Dass Gupta, who is on a co-equal pedestal as him, has already been declined the relief of bail by this Court, vide order dated 09.12.2022, drawn upon CRM-M-25345-2022. Moreover, since there is no material change in circumstances, after dismissal of the petitioner's earlier regular bail petition by this Court, therefore, there is no ground for reconsideration of this second regular bail petition, wherein becomes canvassed similar pleas, as already raised by the petitioner in his earlier petition.

ANALYSIS

15. 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 advanced 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.).

16. 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.

17. 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 requisi-

tioned notes, perusal whereof makes the hereinafter extracted revelations *qua* role of the petitioner in the instant case.

ROLE OF THE PETITIONER

18. The precise allegation against the petitioner is that, he, in the capacity of Director of the accused entity/company, i.e. SRS Shining Ornaments Limited, had signed and supplied its falsified financial statements for the financial years 2014-2015 to 2016-2017. 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"*.

19. The notes (supra) reveal that the accused entity/company (supra) had entered into certain transactions with some non-SRS Group Companies, w.e.f. 2010-2011 to 2016-2017, however, the said transactions have not been reflected as "related party transactions" in the financial statement(s) concerned.

20. 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 (supra), had, in collusion with his cohorts, furnished false financial statement(s), inasmuch as, recitals of "related party(ies)", details whereof are furnished before this Court by the respondent, are not mentioned therein.

21. 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

22. The issue, which arises in this case is: *"whether, in the instant case, the twin restrictive conditions provided under Section 212(6) of the Companies Act, 2013, are satisfied or not"*.

23. 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 bail petition, by filing reply and by making oral and written submissions.

24. 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.

25. 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…….”*

26. 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.

27. 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.”***

28. 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 financial statements 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).

29. The Hon'ble Supreme Court in ***"Serious Fraud Investigation Officer V/s Nittin Johari and another", (2019) 9 SCC 165,*** after setting aside the order of High Court of Delhi granting bail to the accused therein, 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.....*"

30. Though the learned counsel for the petitioner has also assailed the validity of the complaint (supra), owing to non-impleadment of his entity/company (supra) as accused therein, however, the learned counsel representing the respondent has made a rebuttal to this argument, by placing reliance upon the hereinabove extracted provisions of Section 129(7) of the Companies Act, 2013, which renders the Director, in the absence of any other specifically charged person by the company, amenable for prosecution

and punishment. To the considered mind of this Court, the argument (supra) of the learned counsel for the petitioner pales into insignificance, in the light of provisions (supra).

FINAL ORDER

31. 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 is on a co-equal pedestal as him, being already declined the concession of bail; 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.

32. 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.

(KULDEEP TIWARI)
JUDGE

04.03.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No