
DEVINDER YADAV
2024.05.06 16:20
I attest to the accuracy and
authenticity of this
order/judgment

mission of a serious economic offence. Consequently, the instant petition, as cast under Section 482 read with Section 439(2) of the Cr.P.C. and wherein becomes assailed the order (supra), aims at securing the relief of cancellation of bail granted to the respondent.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

3. The principal argument of the learned counsel for the petitioner stems from there being utter defiance of the stringent conditions, as envisaged under Section 212(6) of the Companies Act, 2013 (hereinafter referred to as the 'Act of 2013').

4. The second limb of argument made by the learned counsel for the petitioner, is that, non-arraignment of respondent's company has been erroneously projected as one of the grounds by the learned trial Court behind release of the respondent on bail. He counters this observation by arguing that, since Section 448 of the Act of 2013 is applicable only in the case of maker of a falsified statement, therefore, when in the instant case, the signatory(ies) to the falsified balance sheet(s) concerned is only the respondent, therefore, there was no necessity for his company becoming arraigned. Moreover, since Section 448 of the Act of 2013 is applicable in the case of maker of a falsified statement only, therefore, when in the instant case, the signatory to the balance sheet(s) concerned is the Director (petitioner), therefore, his company was not liable to be made an accused for offence under Section 448. Furthermore, the use of falsified balance sheet(s) to derive any benefit is not a precondition for invoking the provisions of Section 448, inasmuch as, mere making of a misstatement and/or false statement itself is

sufficient to invoke the provisions (*supra*).

5. Furthermore, the learned counsel for the petitioner has argued that Section 2(76) of the Act of 2013 has also been illegally deployed in favour of the respondent by the learned trial Court while drawing the impugned order (*supra*), inasmuch as, it has been wrongly recorded therein that, in the present case, none of the director(s), manager(s) or their relative(s) was a director or manager in either of the companies, with which “related party transactions” allegedly occurred. He assails this observation by arguing that, in the investigation report, co-accused Anil Jindal (kingpin of the scam) has been unveiled to have exercised significant control and influence over all the entities/companies forming part of “SRS Group”. In fact, the respondent has himself, in his statement on oath, besides making an admission in the above regard, also admitted that he became a director in the company concerned at the behest of co-accused Anil Jindal. Moreover, though the balance sheet(s) carried entries depicting transactions *inter se* the respondent’s company and SRS Group Companies, however, non recital thereof specifically as “related party transactions” makes the disclosure of such entries to be futile for the relevant purpose and tantamount to omission of material facts.

6. Concluding his arguments, the learned counsel for the petitioner has argued that, the learned trial Court has failed to appreciate that, the respondent was admittedly having acquaintance with the co/main accused Anil Jindal since 2004 and he was entering into transactions with the latter’s companies to inflate the profits of such companies and moreover, bills were also issued in the names of companies other than those companies with which transactions occurred.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT

7. *Per contra*, the main thrust of the arguments advanced by the learned counsel for the respondent is directed at defending the observations recorded by the learned trial Court in the impugned order (*supra*).

8. The first and foremost argument of the learned counsel for the respondent, is that, the respondent had joined as Director of M/s Sampooran Natural Resources Limited on 01.08.2016 and had resigned therefrom on 05.05.2017 and during his tenure, he had signed only one balance sheet of the said company, i.e. for the financial year 2015-16. Therefore, when during the financial year 2015-16, wherein the alleged transactions occurred, the respondent was not even the Director of the said Company, therefore, he cannot be held responsible for any transactions occurred during that period.

9. The learned counsel for the respondent has drawn attention of this Court towards the provisions of Section 2(76) of the Act of 2013, to argue that, when the complaint (*supra*) does not make even any slightest disclosure, as to which company, whose recital is allegedly not made by the petitioner in the financial statement(s) concerned, falls in the domain of “related party” with respondent’s company-M/s Sampooran Natural Resources Limited, therefore, for want of any cogent material, the respondent cannot be put to prosecution. Nonetheless, all the “related party transactions” of M/s Sampooran Natural Resources Limited have been duly reflected in the balance sheet(s) concerned. Even the entries, which have been alleged to be concealed, have in fact been duly reflected in the balance sheet concerned.

The amount advanced to M/s SRS Knowledge and Technologies Limited has been duly reflected in the balance sheet under the head ‘Long Term

Loans and Advances’. Had such transactions occurred with any “related party”, it would have definitely been reflected under the head “related party transactions”, inasmuch as, non-reflection thereof under this head was not going to benefit the Director(s).

10. The learned counsel for the respondent has further argued that neither the criminal complaint carries any explicit allegation *qua* the respondent 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 respondent. Consequently, no offence under Section 448 of the Act of 2013 is made out against the respondent.

11. Moving forth, the learned counsel for the respondent has argued that, although neither the balance sheet(s) concerned has been inflated in any manner nor any benefit has been derived therefrom, yet if it is assumed that “related party transactions” have not been recited under the appropriate head in the said balance sheet, even then also such non-recital cannot be said to be a material particular, as material particulars/facts would constitute such information, which could be relevant for a decision to be made and is distinguishable from an insignificant or trivial detail. Consequently, Section 448 of the Act of 2013 is not attracted towards the respondent and as a natural corollary thereof, the rigor of Section 212(6) of the Act of 2013 is not applicable upon the respondent.

12. Furthermore, the learned counsel for the respondent has argued that, even if the inculpatory version of the petitioner is taken to be true, yet the provisions of Section 448 of the Act of 2013 are not attracted against the respondent, inasmuch as, in the Act of 2013, there is a specific provision and punishment prescribed under Section 129, according to which, if the fi-

nancial statement does not complies with the Accounting Standards, then its punishment is prescribed in Section 129(7), i.e. maximum punishment of one year or fine or both.

13. Concluding his arguments, the learned counsel for the respondent has submitted that since the matter pertains to documentary evidence, therefore, subjecting the respondent to prolonged incarceration would not have served any gainful purpose and consequently, he has rightly been enlarged on regular bail.

JURISDICTION OF SUPERIOR COURT/APPELLATE COURT TO INTERFERE IN A BAIL ORDER, IN THE EVENT OF ITS BEING DRAWN PERVERSELY

14. Before embarking upon the process of gauging the merits/demerits of the instant petition and consequently evincing any opinion upon the validity of the impugned order (supra), it is deemed apt to begin with some of the significant legal pronouncements, which set up certain guidelines for testing the correctness of an order granting bail to the accused and if such order is perverse, to make interference therein and cancel the bail so granted.

15. Although it is trite law that, ordinarily the superior courts should not interfere in an order of bail, however, in the event of such an order *prima facie* emitting smell of arbitrariness or illegality, its validity can be tested on the anvil of whether there was an improper or arbitrary exercise of discretion in grant of bail. The relevant judgment to cite at this juncture would be the one rendered by the Hon'ble Supreme Court in case titled as ***“Mahipal Vs. Rajesh Kumar @ Polia and another”, (2020) 2 SCC 118,***

whose relevant extract is reproduced hereinafter:-

“15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.....”

16. Another relevant judgment would be **“Neeru Yadav v. State of U.P. and anr.”, (2014) 16 SCC 508**, wherein, the Hon’ble Supreme Court has rendered the following relevant observations:-

“13.It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Likewise, in **“Deepak Yadav v. State of U.P. and another”, (2022) 4 S.C.R. 1**, the Hon’ble Supreme Court has categorically held that cancellation of bail cannot be limited to the occurrence of supervening circumstances. The relevant paragraph of the judgment (supra), wherein certain illustrative circumstances for cancellation of bail are quoted, is ex-

tracted hereinafter:-

“31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

18. The judgment rendered by the Hon’ble Supreme Court in **“Jagjeet Singh and ors. v. Ashish Mishra @ Monu and anr.”**, (2022) 4 S.C.R. 536, also propounds similar principles, inasmuch as, it speaks about cancellation of bail by an appellate Court, if it is illegal or is anchored upon irrelevant materials. The relevant paragraph of this judgment is reproduced hereinafter:-

“29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse, or is founded upon irrelevant materials adding vulnerability to the order granting bail,

an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of Kanwar Singh Meena v. State of Rajasthan, wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:

“10....Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. ...The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

(Emphasis Supplied)

30. It will be beneficial at this stage to recapitulate the principles

that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., after taking into account several precedents, elucidated the following:

“9...However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

(Emphasis Supplied)”

19. Another significant judgment rendered by the Hon’ble Supreme Court, in the above regard, would be **“Ansar Ahmad v. State of Uttar Pradesh and anr.” (2023) 4 S.C.R. 577**, wherein, it has been explicitly propounded that likelihood of an abuse of bail cannot be interpreted as the only ground for cancellation of bail, rather the court seized of a challenge to such bail order is empowered to critically analyse the soundness of the bail order. The relevant paragraphs of the judgment would be 15 and 16, which are reproduced hereunder:-

“15. We are not at all impressed by the aforesaid submission of Mr.

Basant as it is well settled position of law that cancellation of bail is not limited to the occurrence of any supervening circumstances. In Ash Mohammad vs. Shivraj Singh @ Lalla Babu and Another, reported in (2012) 9 SCC 446, this Court has observed that there is no defined universal rule that applies in every single case. Hence, it is not the law that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of an abuse of bail. The Court before whom the order of grant of bail is challenged is empowered to critically analyse the soundness of the bail order. The Court must be wary of a plea for cancellation of bail order vs. a plea challenging the order for grant of bail. Although on the face of it, both situations seem to be the same yet, the grounds of contention for both are completely different. Let's understand the different conditions in both the situations.

16. In an application for cancellation of bail, the court ordinarily looks for supervening circumstances as discussed above. Whereas in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. The illegality of due process is questioned on account of improper or arbitrary exercise of discretion by the court while granting bail. So, the crux of the matter is that once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if there is any illegality in the order, or can apply for cancellation of bail if there is no illegality in the order but a question of misuse of bail by the accused. In Puran v. Rambilas and another, reported in 2001 (6) SCC 338, this Court has observed, "The concept of setting aside as unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself, are because of some supervening circumstances warranting such cancellation".

20. The last judgment to cite in above context would be **"Vipan Kumar Dhir v. State of Punjab and anr."** (2021) 6 S.C.R. 1137, which speaks about a bail order becoming legally untenable in the event of its being granted on irrelevant factors or by ignoring the relevant material avail-

able on record. Paragraph 10 of this judgment is reproduced hereinafter:-

“10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.”

21. In view of the legal propositions discussed hereinabove at length, this Court does not have any hesitation to analyze the legality of the impugned order (supra), especially when it has been challenged on the ground of its becoming drawn in utter disdain to the relevant materials available on record.

ANALYSIS OF THE IMPUGNED ORDER

22. For the sake of convenience, the grounds behind grant of bail to the respondent, which can be culled out from a studied survey of the impugned order (supra), are succinctly extracted hereunder:-

- (a) *The respondent was never arrested during investigation, rather straightaway sent to judicial custody;*
- (b) *The petitioner-S.F.I.O. has not arrayed the respondent's company as an accused;*
- (c) *No money transaction took place during the Directorship of the respondent;*
- (d) *The petitioner-S.F.I.O could not elicit any illegality in the balance sheet(s) concerned, nor could point out as to how the said balance sheet(s) was used for deriving any benefit;*

- (e) *There is nothing on record which could establish that, as per Section 2(76) of the Act of 2013, the respondent's company falls within the ambit of "related party" with other SRS Group Companies, which are the main accused in the present case. Nonetheless, all transactions as occurred inter se the respondent's company and SRS Group Companies have been reflected in the balance sheet(s) concerned;*
- (f) *There is no specific allegation in the complaint and in the investigation report that the respondent was instrumental in siphoning off the funds;*
- (g) *The petitioner-S.F.I.O. has conceded that it is not its case that the respondent siphoned off the amounts and is liable for punishment under Section 447 of the Act of 2013;*
- (h) *The rigor of Section 212(6) of the Act of 2013 is not applicable to the respondent.*

FACTUAL BACKDROP

23. Now, in order to ascertain the correctness of the observations extracted hereinabove, it is deemed imperative to initially deal with the allegations, as levelled by the petitioner against the respondent and other accused. It is undoubtedly clear that, it is not only the individual role of the respondent that has to be analyzed, but the entire facts and circumstances have to be borne in mind, inasmuch as, serious allegations *qua* 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, have been levelled in the present case.

24. 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.

25. 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.”

26. 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.

27. Based upon the material/evidence, as surfaced during investigation of the petitioner-S.F.I.O., the following offences have been invoked in the complaint (supra), in accordance with the role/period of involvement of each of the accused.

“a) False statement in balance sheets/books of SRS group of companies: [Offences invoked against signatories/Directors to the balance sheets - s.448 of the Companies Act, 2013 and/or s. 628 of the Companies Act, 1956].

b) Fraudulent representation before banks for obtaining credit facilities: [Offences invoked against loan taking companies and the controllers of the said companies who submitted falsified balance sheets signatories/directors to the balance sheets - s.36(c) of the Companies Act, 2013].

c) Siphoning and diversion of funds received as loan from banks/

financial institutions: [Offences invoked against respective companies and the individuals involved - s.447 of the Companies Act, 2013].

d) Material mis-statements in the financial statements of the SRS group companies: [Offences invoked against respective Statutory Auditors - s.143 r/w 147, 448 of the Companies Act, 2013 and/or s. 227 r/w 233, 628 of the Companies Act, 1956].

e) Form & contents of balance sheet, profit & loss account not giving true & fair view of the affairs of the companies, deficient Director's report and not keeping proper books of accounts: [Offences invoked against respective Directors/controllers/officers in default of the Companies- 209, 211, 217 of Companies Act, 1956 and Section 128, 129, 134 of Companies Act, 2013).

f) Non-declaration of 'related parties' in Financial Statements: [Offences invoked against respective Companies & its controllers - u/s 188 (5) of the Companies Act, 2013 and/or S. 297 r/w 629A of the Companies Act, 1956].

g) Non-filing of annual returns and financial statements: [Offences invoked against respective Companies & its directors/controllers/officers in default - 92(5) & 137(3) of Companies Act, 2013].”

ROLE OF THE RESPONDENT

28. Insofar as the peculiar role of the respondent is concerned, paragraph 12 of the present petition, whose relevant portion is reproduced hereinafter, makes detailed revelations in this regard.

“12. That the investigation into the affairs of CUIs vis-à-vis role of the respondent, has revealed as under:-

a. it is respectfully submitted that the case of the respondent falls in categories “a”, “e” & “g” above (as reproduced in para 23 of this verdict). In this regard the investigation revealed that the respondent was amongst the directors in one of the CUI i.e., Sampooran Natural Resources Limited during period 01.08.2016 to 05.05.2017, and he signed balance sheet of the said company for the F.Y 2015-16 which were either false in material particulars and/or was omitting material particulars as detailed hereinafter.

b. In this regard it is revealed that sale of sand was made to other SRS Group Companies. However, neither the said companies nor the said transactions with said SRS Group companies were shown as 'related party' transaction in the financial statements of Sampooran Natural Resources Limited in the year 2015-16.

(In Crores)

Particulars	2015-16	2016-17	Total
Satmaya Trading Company Co. Ltd.	0.16	0.00	0.16
Swami Hitech Projects Limited	1.07	0.00	1.07

- c. In addition to the above, another related party transaction i.e., giving of advances to group company i.e., SRS Knowledge & Technologies Ltd to the tune of ₹ 3 crores & 64 lacs during F.Y 2015-16, was also revealed during investigation.
- d. The abovesaid transactions were not shown as related party transaction in the financial statements of Sampooran Natural Resources Limited in the year 2015-16.”

29. It would also be worthwhile to record here that, during the course of investigation, the respondent had suffered a statement on oath (Annexure P-6), whose relevant portion is extracted hereunder:-

“.....He was a trader of Iron & Steel. **He knew Anil Jindal since 2004 and also he resides in his neighborhood Sector-14, Faridabad. In the meantime, in the year 2009, Anil Jindal had asked him to open a Branch of SRS Real Infrastructure Ltd at Jalandhar (Punjab for Trading Iron & Steel and offered a Salary with 0.5% commission on the sales. He accepted his offer. Later in the year 2010, the same work was started in Faridabad and Bhiwadi on the same terms & Conditions. He was doing the job of trading at Jalandhar, Faridabad, and Bhiwadi.**

They used to buy iron and steel, pig iron, scrap, ingot, billet, TMT bar, etc. from the traders and the manufacturer like MMTC and sold it to traders and users like Rathee TMT saria, etc. **The material was also sold in cash and on the instructions of Anil Jindal, the bills against these cash sales were made in the name of other companies of Anil Jindal. The cash was handed over to Anil Jindal on weekly basis.**

*In Mani Mahesh Limited and Neelkanth Steels, they had traded iron and steel in the form of sale and purchase. In these companies, they had made trading of more than Rs.200 Crore approximately during the period of our association. On this turnover, Anil Jindal had guaranteed an incentive because Mani Mahesh Metals Ltd and Neelkanth Steels had given his buyers to SRS Real Infrastructure Limited and Mani Mahesh Metals Ltd / Neelkanth Steels used to sell the products to SRS Real Infrastructure Ltd at the purchase price and the goods were further sold by SRS Real Infrastructure Limited at a profit margin of more than 10%. **On account of surrendering their purchasers to SRS Real Infrastructure Limited, they had to receive an amount of Rs. 15-20 Crore from Anil Jindal as an incentive and on the other hand, he had an outstanding balance of Rs.15 Crore approx. in his companies. These transactions were entered into inflating the profits in SRIL on the instructions of Anil Jindal.** Since Anil Jindal was imprisoned in the year 2018, therefore, his account/incentive remained unsettled. In his company MPN Fincap Pvt Ltd, they had received Rs. 5 lakhs from Rajat Fincap Limited, a company of SRS Group of companies, which were still outstanding in their books of accounts. **Further, many times, on the instructions of Anil Jindal, the goods were sold in cash, and cash was handed over to Anil Jindal and the bills were issued in the name of other companies of SRS Group. He did not remember how much of these bills were against cash sale but as far as he remembers, the amount might be between 10-20 Crore....."***

30. Not only this, in a similar fashion, co-accused Anil Jindal (kingpin of the scam) had also suffered a statement on oath, thereby making inculpatory disclosure about role of the respondent. The relevant portion of his statement is also reproduced hereunder:-

*".....SRS Group was also trading building material mostly in TMT Saria, PIG Iron, Cement, etc. There were many branches for trading in building material. The work at Jalandhar and Bhiwadi branches was looked after by **Shri Sanjay Aggarwal**. The work of Swastik Trading Pvt. Ltd. (a unit of SRS Real Infrastructure Ltd) was looked after by Pradeep Singhal. Sushil Singla was looking after the*

*trading of SRS RMC and another trading of building material at Faridabad. SRS Real Infrastructure Ltd and SRS Modern Sales Ltd had traded in building material. **The building material was also sold in cash. Many companies were incorporated where known persons were made directors to avoid cash sales in SRS Real Infrastructure Ltd and SRS Modern Sales Ltd and to increase the net worth of the companies.....***"

REASONS FOR ALLOWING THE INSTANT PETITION AND CANCELLING THE BAIL GRANTED TO THE RESPONDENT

31. The *prima facie* inference, as becomes generated from the hereinabove discussed allegations and peculiar role of the respondent, is that, the respondent being Director of "M/s Sampooran Natural Resources Limited" had, in collusion with his cohorts, furnished false financial statement(s) under his signatures, thereby inviting the rigor of Section 448 of the Act of 2013. The concomitant effect of this *prima facie* inference is that, this Court is impelled to draw a belief that, *prima facie*, the respondent has actively participated in commission of a huge financial scam by knowingly filing falsified financial statement(s) of his company.

32. *Prima facie*, the instant case involves commission of a serious financial fraud, which has now swell upto Rs.1596 crores (approx.), and, this fraud has been executed with a calculated mind and its execution would not have been possible without the respective contribution of each of the accused.

33. It would be apt to, at this stage, refer to the provisions of Section 447 and 448 of the Act of 2013, which are extracted hereinafter, and, which respectively enunciate the punishment for fraud and punishment for false statement.

"447. Punishment for fraud.— Without prejudice to any liability in-

cluding 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, 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.

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.

448. Punishment for false statement.— *Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—*

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 447.”

34. A conjoint study of both the above extracted provisions makes it lucidly apparent that, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of Act of 2013 or the rules made thereunder,

any person makes a statement, which is false in any material particulars, knowing it to be false, or, which omits any material fact, knowing it to be material, he/shall be liable for punishment for fraud, as prescribed in Section 447.

35. The explanation attached to Section 447 defines “fraud” for the purpose of this Section. This definition explicates that it is not necessary to array the company as accused along with a person, who is responsible for commission of offence punishable under Section 447.

36. Moreover, Section 129 of the Act of 2013 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.”

37. In the present case, it is not under dispute that the respondent has, rather than disclosing the true picture of the financial health of his company, furnished under his signatures financial statement(s) containing false material particulars. Consequently, since the act (supra) of the respondent *prima facie* contravenes the provisions of Section 129 of the Act of 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 respondent, however, is unable to record that *prima facie* the respondent is not liable to be held guilty under Section 448 of the Companies Act, 2013. The allegations against the respondent are so grave that this Court cannot even form any inference that the respondent has been falsely entangled in the alleged economic offence(s).

38. Since from the hereinabove discussed peculiar role of the respondent, his act is squarely covered under Section 447, therefore, the twin restrictive conditions prescribed under Section 212(6) of the Act of 2013 are required to be satisfied. Section 212(6), which starts with a non-obstante clause and prescribes the twin stringent conditions for releasing a person on bail, is reproduced hereunder:-

“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 op-

pose 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:

39. Sub-section (7) of Section 212 of the *ibid* Act further prescribes that the limitation on grant of bail, as specified in sub-section (6), is in addition to the limitations provided under the Code of Criminal Procedure.

40. The Hon'ble Supreme Court, in case titled as "***Vijay Madanlal Choudhary & Ors. V/s Union of India & Ors.***" (2022 SCC OnLine SC 929), 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, 2022 [akin to conditions laid down under Section 212(6) of the Act of 2013], has made the hereinafter extracted relevant observations:-

"131. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.....

132. 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. The Court in Nittin Johari, while justifying the stringent view towards grant of bail with respect to economic offences held that-

"24. At this juncture, it must be noted that even as per [Section](#)

[212\(7\)](#) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in *Y.S. Jagan Mohan Reddy*: (SCC p.449, paras 34-35)

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

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134. 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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139. 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.

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141. 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.”

41. To the considered mind of this Court, the learned trial Court has structured the impugned order (supra) in utter oblivion of the relevant materials available on record. Moreover, the impugned order (supra) also does not manifest that the learned trial Court had even bothered to record any satisfaction regarding compliance being met to the dual statutory conditions encapsulated in Section 212(6) of the Act of 2013, satisfaction whereof was in fact mandatory for grant of bail. Consequently, the impugned order (supra) warrants interference of this Court.

42. Furthermore, the observation recorded by the learned trial Court that, since there is no allegation of siphoning off of funds against the

respondent, therefore, he is not liable for punishment under Section 447 of the Act of 2013, is also a totally incorrect observation. The reason for forming this conclusion ensues from there being specific allegations against the respondent, which are extracted in preceding paragraphs of this verdict, that he had, in the capacity of “Director”, furnished under his signatures falsified financial statement(s) of his company and as such, his act is covered under the provisions of Section 448 of the Act of 2013, which consequently renders him liable for punishment under Section 447. The learned trial Court ought to have read the provisions of Sections 447 and 448 conjointly, rather than disjunctively.

43. Moreover, the learned trial Court has, while extending the relief of regular bail to the respondent, not borne in mind the seriousness and magnitude of the offence committed, which is in fact one of the predominant factors to be taken into consideration.

44. Gainful reference in the above regard can be made to **“Sushil Singla v. The Serious Fraud Investigation Officer”, (2022:PHHC:136677)**, wherein, this Court has held that economic offences, being against the Society at large, are required to be strictly dealt with, as such offences affect the sovereignty and integrity of the country.

The relevant portion of this judgment is reproduced hereinafter:-

*“The economic offences, being against the Society at large, have been strictly dealt with in the recent past. Very recently, the Hon'ble Apex Court in **Vijay Madanlal Choudhary & Ors. V/s Union of India & Ors.** (2022 SCC OnLine SC 929), while considering the constitutional validity and applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2002, has held that money laundering is an offence against the sovereignty and integrity of the country.”*

45. In view of the above, this Court finds that the impugned order (supra) suffers from mis-appreciation/non-appreciation of the materials available on record and it has been passed without adhering to the stringent conditions encapsulated in Section 212(6) of the Act of 2013. Consequently, this Court is constrained to allow the instant petition and to set aside the impugned order (supra).

FINAL ORDER

46. In summa, the instant petition is **allowed** and the order dated 01.06.2023 (Annexure P-1) is hereby set aside.

47. In case, the respondent has been released from judicial custody, the S.H.O. of the jurisdictional Police Station concerned is directed to forthwith arrest him and thereupon produce him before the learned trial Court for his becoming re-confined to judicial custody.

48. 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.

49. Pending application(s), if any, stand disposed of accordingly.

30.04.2024
devinder

(KULDEEP TIWARI)
JUDGE

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