



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Order reserved on : 24 June 2024**
Order pronounced on : 26 June 2024

+ **W.P.(CRL) 1879/2024**

DR.SHIVINDER MOHAN SINGH Petitioner
Through: **Mr. Amit Sibal, Sr. Adv. with**
Mr. Aditya Dewan, Mr. Shiven
Varma, Ms. Neeha Nagpal and
Mr. Vishvendra Tomar, Advs.

versus

SERIOUS FRAUD INVESTIGATION OFFICE & ANR.
..... Respondents
Through: **Ms. Arunima Diwedi, CGSC**
with Mr. Piyush Kumar, Sr.
Prosecutor, Mr. Anand Kumar,
Asst. Director, Mr. Vibhav
Singh and Ms. Pinky Pawar,
Advs. for R-1/SFIO

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
24.06.2024

1. The petitioner has preferred the present petition under Section 482 of the Cr.P.C.¹ read with Article 226/227 of the Constitution of India for setting aside the impugned order dated 05.06.2024 passed in MISC/DJ/ASJ No.218/2024 by the learned Additional Sessions Judge-03& Special Judge (Companies Act), Dwarka Courts, South West District, New Delhi (*for short 'learned Special Judge',*) whereby the

¹ Code of Criminal Procedure, 1973



prayer of the petitioner for suspension of LOC² and permission to travel abroad for the period from 14.06.2024 to 04.07.2024 and then again from 20.08.2024 to 10.09.2024, was declined.

2. The present petition was instituted on 07.06.2024 and notice was issued to the respondents *viz.*, respondent No.1-SFIO³ and respondent No.2-Bureau of Immigration, Ministry of Home Affairs, Government of India. A reply has already been filed on behalf of the respondent No.1, which is the main contesting party.

3. Mr. Amit Sibal, learned Senior Advocate appearing for the petitioner has submitted that the investigation by the SFIO into the affairs of Fortis Healthcare Limited [**"FHL"**] and Religare Enterprises Limited [**"REL"**] and other sister concerns besides role of various individuals associated with such companies including that of the petitioner commenced from 17.02.2018 purportedly under Section 212(8) of the Companies Act, 2013 but till date no complaint/final report has been filed by the SFIO against the petitioner. It is submitted that the petitioner has not been arrested so far and even in December, 2021 when an application was filed by the petitioner for surrendering himself before the Court, the same was opposed by the SFIO, and rather, in its reply, it was stated that the status of the petitioner was not that of an accused "as of then".

4. It is submitted that the petitioner has extended full cooperation at all times during the investigation by the SFIO. It is further submitted that the petitioner's two sons, namely Mr. Anhad P. Singh

² Look Out Circular

³ Serious Fraud Investigation Office



and Mr. Vivaan P. Singh are studying in the UK⁴ at University College London and Durham University, respectively and they are completing their education in the concerned courses in June, 2024; and that the petitioner wishes to attend the graduation ceremony of his son Vivaan P. Singh on completion of his Bachelor's degree in Physics and Maths from Durham University, which is scheduled on 01.07.2024 as also the graduation ceremony of his other son Mr. Anhad P. Singh on completion of his Bachelor's degree in Maths and Economics from University College, London, which is scheduled on 02.09.2024.

5. Mr. Sibal, learned Senior Advocate has invited the attention of this Court to the judicial orders passed by the different Courts in the criminal proceedings *sub-judice* against the petitioner, thereby granting him permission to travel abroad, for attending the aforesaid events, the details of which are as under:-

- (i) FIR No. 50/2019 PS EOW South East under Section 419/420/120-B IPC by the learned ASJ-02, South East, Saket Courts, Delhi;
- (ii) Misc. CrI. Appl. No. 366/2024 under Section 44 of the PML⁵ Act in complaint No. ECIR/DLZO/II/05/2019 vide order dated 22.05.2024 by the learned ASJ-02, South East, Saket Courts, Delhi;
- (iii) FIR No. 189/2019 PS EOW vide order dated 27.05.2024 by the learned CMM, South East District, Saket Courts, New Delhi;
- (iv) Special Case No. 1044/2020 and 1045/2020 by the SEBI Special Judge, Greater Mumbai vide order dated 21.03.2024;
- (v) Ct. Case 4162/2020 titled Yes Bank Ltd. v. Oscar Investments Ltd. by the learned MM (NI Act)-03, New Delhi District, Patiala House Courts, New Delhi vide order dated 18.04.2024;
- (vi) Ct. Case titled as India Bulls Housing Finance Ltd. v. RHC

⁴ United Kingdom

⁵ Prevention of Money Laundering Act



Holding Private Limited vide order dated 04.05.2024 by the learned JMFC, Gurugram.

6. Needless to state that reliefs in the nature of grant of bail and permission to go abroad have been granted subject to certain conditions, which are not relevant for consideration, except for buttressing the plea that permission to go abroad has been granted in all other pending cases before different Courts except by the learned Special Judge.

7. Mr. Sibal, learned Senior Advocate also pointed out that even the co-accused Mr. Kavi Arora, who is under investigation by the SFIO has been granted permission to go abroad in W.P. (Crl.) 12852/2023 by this Court *vide* orders dated 06.11.2023, 22.03.2024, 01.05.2024 and lastly on 17.05.2024.

8. It is vehemently urged that the investigation has been ongoing for the last more than six years but the petitioner is no longer in control of the affairs of the companies which are under investigation. It has been urged that the wife of the petitioner has been residing with him in India all along and only recently she has gone to the UK to attend the graduation ceremony of her son *inter alia* acknowledging that all the four sons of the petitioner are presently living abroad.

9. Attention of this Court is also invited to a short affidavit of the petitioner dated 18.06.2024 filed pursuant to directions of the learned Single Judge(Vacation Judge) of this Court dated 14.06.2024, to the effect that he is neither a share holder nor a Director in 'REL' and/or any of its group/associate companies; and that he was a shareholder/Director in RHC Holding Private Limited [**"RHC"**],



which was a holding company of 'REL'. However, RHC itself lost control of 'REL' in 2017-2018, consequent to which the deponent stepped down from the Board of 'REL', which fact is also reflected in the reply of the SFIO *vide* paragraph 3.6 at page 11.

10. It is submitted that **the petitioner has no overseas business interests, much less in the UK**. It is also pointed that in the period prior to the commencement of investigation by the SFIO or around the same time, had travelled to Singapore frequently, from April, 2018 till January, 2019 and infact travelled in January, 2019 to UK as well and returned back to India, and thus, he can be branded as a 'flight risk'.

11. Challenging, albeit half-heartedly the legality of the "LOC" itself at the instance of the SFIO, it is also deposed *vide* paragraph (4) of the short affidavit dated 18.06.2004 as under:

"4. That the Deponent further submits that the Deponent does not have any immovable properties in his name nor he has any source of income. In any case, in the execution proceedings filed by Daichi before this Hon'ble Court, the Deponent's movable and immovable assets, if any, have already been attached. The Applicant's sister-in-law (Mrs. Arundhati Singh) and mother-in-law (Mrs. Rajshree Singh) however jointly own Unit bearing No. 604 situated at 7th floor, Plot No. 212, Block III, Tulsiani Chambers, Mumbai, 40021 and the original title deeds of the said immovable property can be deposited before this Hon'ble Court in the from of security. The value of the said immovable property is in the range of 4 cores approx. and the in-laws family's share is 3/4"

12. *Per contra*, Ms. Arunima Diwedi, learned Central Government Standing Counsel has opposed the reliefs sought by the petitioner *hammer and tongs*, justifying the legality of the impugned order dated 05.06.2024 passed by the learned Special Judge, pointing out that the plea that surrender of the petitioner was opposed by the SFIO is ill-



conceived, inasmuch as the petitioner during the relevant time was under the custody of different agencies and surrender in the present investigation would not have been purposeful. It is submitted that the petitioner, pursuant to directions of the learned Single Judge of this Court dated 14.06.2004, has given a vague reply stating that he does not own any properties in India or elsewhere. It is vehemently urged that the said deposition (referred above) is false, inasmuch as it was the petitioner who was holding 99% shareholding in Shiv Holding Private Limited (“SHPL”) which was holding 50% stakes in RHC and it was pointed out that the investigation has so far revealed that funds have been diverted to various off shore companies.

13. Attention of the Court has been invited to the Income Tax Returns [“**ITR**”] filed by the petitioner for the assessment year 2022-23 (filed on 28.07.2022) wherein the petitioner himself has accounted for his shareholding in different companies based in India as well as abroad. At this juncture, it is pertinent to indicate that a careful perusal of the ITR shows that the petitioner has himself claimed that he has shareholding in three companies based abroad viz. in Forthill International Limited and RHC based on the book value of the shareholding.

14. Learned Standing Counsel also pointed out that during the investigation, it has come forth that equity and preference shares of RCML were been found to be long term investment in the companies viz., Religare Capital Market International (Mauritius) Limited; Religare Capital Market International (UK) Limited, Tobler (UK) Limited, Religare Investment Holding (UK) Limited apart from



Religare Capital Market (Europe) Limited based in UK; and Religare Capital Market (UK) Limited apart from having such long term investment in other sister concerns based in Singapore, USA⁶, Hongkong and China.

15. Learned Standing Counsel submitted that although the petitioner has justifiable emotional and personal reasons to attend the graduation ceremony of his sons, the paramount economic interest of the company cannot be brushed aside, particularly when there are *prima facie* findings of the investigation carried so far suggesting that more than Rs. 1800 crores have been siphoned off out of India. In this regard, learned Standing Counsel alluded to the observations by the learned Special Judge *vide* paragraphs (32) and (33), which read as under:-

“32. The interest of the nation, whether economic or strategic, is paramount. In the present case, economic/national interest of the country is involved. Therefore, this case falls under the exception. In this case, SFIO has not disclosed properly as to whether LOC has been reviewed or not but in the backdrop of facts discussed above, this fact does not assume much significance. The application has been moved by the applicant for attending graduation ceremony of his son. Three other children of applicant are already in U.K., one of whom is also working/running business there. Though it cannot be said that attending graduation ceremony of his son by the applicant is not important, however, a balance has to be struck between national interest and the individual interest. The national interest vis-à-vis individual interest of the country has to be given the priority.

33. The mere fact that all other Courts have granted permission to the applicant to travel abroad does not have any bearing on this case. Each case has to be assessed separately on its facts. In those cases, chargesheet has been filed and applicant is already on bail whereas in the present case, the investigation is on going and in its midst, where the complete role of the applicant into the affairs of

⁶United States of America



companies under investigation and its subsidiaries is yet to be ascertained. The investigation conducted so far by the IO indicates that the applicant is a serious flight risk.”

16. During the course of arguments, the learned Standing Counsel has relied on the decisions in **Sumer Singh Salkan v. Assistant Director, CBI**⁷; **Hemanta Kumar Banka v. UOI**⁸; and **Mr. Chaitya Shah v. UOI**⁹ and it was vehemently urged that in case liberty is granted to the petitioner to go abroad, in all likelihood he would not return to India since his entire family is now happily settled abroad with sound financial base.

17. In rebuttal, Mr. Sibal, learned Senior Advocate has reiterated that the petitioner does not own any properties abroad much less in the UK or anywhere else. It submitted that that petitioner is willing to provide sufficient securities so as to ensure that he would be returning back to India after attending the graduation ceremony of his sons. Heavy reliance is placed on the plethora of judicial orders passed by the learned Judges of the District Courts as well as orders of this Court, particularly **Sanjana Desai v. Bank of India**¹⁰; **Uday Jayant Desai v. UOI**¹¹; **Parvin Juneja v. Directorate of Enforcement**¹²; **Raghav Bahl v. Enforcement Directorate Ministry of Finance**¹³; and **Prateek Chitkara v. UOI**¹⁴.

⁷ 2010 SCC OnLine Delhi 2699

⁸ Writ Petition (Crl.) 53/2021 vide judgment dated 23.02.2021 by Calcutta High Court

⁹ Criminal Writ Petition No. 3058/2021 vide judgment dated 17.11.2021

¹⁰ W.P. (C) 1872/2021 dated 01.03.2021

¹¹ W.P. (C) 10540/2022 dated 02.05.2023

¹² Crl. M.C. 5143/2023 dated 09.08.2023

¹³ W.P. (Crl.) 2392/2021 dated 22.08.2023

¹⁴ W.P. (C) 10998/2022 dated 26.09.2023



ANALYSIS & DECISION

18. I have bestowed my thoughtful consideration to the elaborate submissions advanced at the Bar. I have meticulously perused the relevant records of the case as well as the case laws cited at the Bar.

19. It is borne out from the record that SFIO is investigating into the affairs of the 'FHL' and 'REL' and other associated/sister concerns in exercise of its plenary powers under Section 212(4) of the Companies Act, 2013 in larger "public interest" as the matter involves allegations of fraud, misappropriation and siphoning off of the funds through use of multiple conduit companies, ever-greening of loans from the financial institutions and alleged losses caused to the companies and the public.

20. It is also brought to the fore that the petitioner was a promoter of 'REL' having 16.31% shareholding through 'RHC', of which he was the non-executive director from 13.12.2004 to 06.04.2010. Thereafter, he held the post of non-executive director as well as Vice Chairman from 29.07.2016 to 14.02.2018 and was the Managing Director of 'FHL' from 13.11.2003 till 01.01.2016. Thereafter, he held the post of Director w.e.f. 01.01.2016 till 08.02.2018 thereby, controlling and managing the key operations of the 'REL' and 'FHL' throughout the said period. Evidently, the alleged cases of misappropriation and siphoning off of funds occurred during his tenure in such capacities which resulted in losses assessed approximately to be Rs. 3780/- & Rs. 450 crores to 'REL' and 'FHL' respectively.



21. It is also evident from the records that when instances of financial improprieties came to light, the petitioner resigned from 'REL' on 14.02.2018 and from 'FHL' on 08.02.2018. The plea raised by the learned senior counsel for the petitioner that he has *bonafidely* stepped down from the Board of the aforesaid companies and has no control in the interest or stakes in the aforesaid companies, is a matter of trial but then, his plea that he neither has any immovable properties in his name nor has any source of income in the affidavit dated 18.06.2024, is not palatable considering his ITRs for the assessment years 2021-22, 2022-23 and 2023-24, which *prima facie* bring out that he has assets/shareholding in the form of equity & preference shares in the company viz., Forthill International Limited, RHC Holding Pte. Limited situated in United Kingdom of Great Britain and Northern Ireland and Singapore.

22. As highlighted by the learned Standing Counsel, the investigation conducted so far also brings out that during the relevant time i.e. 2010-11 to 2017-18 when the petitioner was at the helm of affairs of 'REL' and 'FHL', it had invested funds amounting to Rs. 700/- crores in wholly owned subsidiary, namely Religare Capital Market Limited ["RCML"] and subsequently RCML invested these funds in its stepped down subsidiary, namely Religare Capital Market International (Mauritius) Limited ["RCMIML"], based in Mauritius. The investigation also *prima facie* brings out that such investments were made in the 'RCMIML' during the financial year 2011-12 to financial year 2016-17.



23. It is pertinent to note that evidently, a Tripartite Agreement dated 13.02.2012 had been entered between RCH Holding Limited, 'REL' and RCML pursuant to which, RCH Holding Limited was enjoined upon to provide financial support to 'RCML' for its financial commitments till 30.09.2015. It is urged that the terms of agreement were such that they were apparently prejudicial to the interests of 'REL', which was a public company. As a matter of fact, the books of account and voluminous documents with regard to as many as 37 subsidiaries of REL Group of Companies since 2013-14 have been the subject matter of investigation and at the cost of repetition, some of the companies are based in USA, Singapore, Sri Lanka and Mexico apart from UK and Mauritius.

24. Without delving into the merits of the allegations, the long and short of the aforesaid discussion is that the deposition by the petitioner in his affidavit dated 18.06.2024 that he has no assets or properties in India is manifestly not bringing forth the correct facts. The deposition is flawed with incomplete disclosure, and thus, not inspiring confidence. The aforesaid narrative coupled with the documents placed on the record invite a strong inference that the petitioner has a huge financial base outside India and he has not come to the Court with clean hands and that by itself disentitles him to grant of any discretionary relief.

25. Although much mileage is sought to be drawn from the judicial orders passed in other proceedings pending against the petitioner, as referred hereinabove, the magnitude of the investigation being conducted by the SFIO in public interest so as to safeguard the



economic and national interest of the country which stands at a much higher pedestal. Indeed, attending the graduation ceremony of his son, which event is a once in a lifetime experience, is a momentous occasion in one's life and the sentiments of fatherly love for the son cannot be brushed aside, but the same has to be given way in order to further the paramount national interest and fundamentally safeguard the interests of the stakeholders who have been deprived of their hard earned investments in 'REL' and other companies.

26. To sum up, this Court finds that having regard to the fact that *prima facie* it appears that the petitioner has sizeable assets and properties, directly or indirectly, outside India in foreign jurisdictions as discussed hereinabove and there is a strong inference that if liberty to go abroad is granted to him, he may not come back to India to face the investigation and trial, as and when it commences.

27. The plea by the learned Senior Advocate for the petitioner that the petitioner is willing to provide sufficient security by nominating any member of the family to remain in India coupled with the fact that the mother and mother-in-law of the petitioner are already residing in India, is only noted to be rejected. To my mind, any such disposition would be utterly sham and illusionary since in the event the petitioner misuses the liberty to go abroad, what would the SFIO or the State do with such human security except to raise a plea to forfeit their undertakings/bonds, which would be insufficient.

28. The plea by the learned Senior Advocate for the petitioner that superior Courts have granted permission to go abroad wherein thousands of crores of rupees have been allegedly siphoned off, does



not cut any ice either. The decision in the case of *Sanjana Desai (supra)* was one where the accused was facing investigation by the CBI¹⁵ and permission was granted by the Court to enable the accused to have medical treatment in USA/UK. The decision in the case of *Uday Jayant Desai (supra)* was one where the accused was facing proceedings under Section 420/467/468/471 read with Section 120-B of the IPC besides 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 and the petitioner-accused was merely a director/guarantor in some of the accused-companies. It was under such circumstances that his son stood as a surety for the accused also undertaking that he shall not leave the country while the petitioner-accused was abroad. The case of *Parvin Juneja (supra)* was one where the petitioner facing prosecution in respect of certain offences under the Indian Penal Code, 1860 and Prevention of Corruption Act, 1988 was shown to have travelled abroad on as many as 20 occasions in the past with the permission of the Court and it is in such circumstances that he was allowed to travel to Canada for the purpose of admission of his son for 15 days. The decision in the case of *Prateek Chitkara (supra)* was one where the petitioner was facing prosecutions under the Income Tax Act, 1961 and the Black Money Act, 2015 and considering his young age, family ties in India and his otherwise clean financial track record, the LOC issued against him was allowed to be suspended so as to enable him to travel abroad for a limited period.

29. Indeed, in the instant case as espoused by the learned Senior Advocate for the petitioner, although he has travelled abroad to

¹⁵ Central Bureau of Investigation



Singapore and UK during the period April, 2018 to February, 2019, however, the said visits had taken place when the investigation by the SFIO had barely commenced.

30. In view of the foregoing discussion, unhesitatingly, this Court finds that the reliefs claimed by the petitioner seeking permission to go abroad to attend the graduation ceremony of his two sons on the scheduled dates cannot be allowed. There are sufficient grounds to raise an inference that in case such liberty is granted to the petitioner, he may abuse the same and may not come back to India so as to scuttle the entire investigation and the ensuing process. Thus, this Court finds no illegality, perversity or incorrect approach adopted by the learned Special Judge in passing the impugned order dated 05.06.2024.

31. The present Writ Petition is accordingly dismissed.

DHARMESH SHARMA, J.
(VACATION JUDGE)

JUNE 26, 2024

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