2025:PHHC:177496

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-31296-2024
Date of decision: 22nd December, 2025

Rahul Virendra Modi

...Petitioner

Versus

Serious Fraud Investigation Officer

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vikram Chaudhary, Senior Advocate with
Mr. Keshavam Chaudhary, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Ms. Puneeta Sethi, Senior Panel Counsel for SFIO.

Mr. J. S. Lalli, Deputy Solicitor General of India with
Mr. Manish Verma, Advocate
for the respondent – UOI.

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MANISHA BATRA, J :-

The instant petition has been filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in Criminal Complaint No. 3 of 18.05.2019, bearing CIS No. COMA/05/2019, titled as ***SFIO vs. Adarsh Build Estate Ltd. and others***, filed under Sections 120-B, 417, 418, 420 and 477A of IPC, Sections 211(7), 227 and 628 of the Companies Act, 1956 and Sections 147, 447 and 448 of the Companies Act, 2013(For short, '***Companies Act'***), pending before the Court of learned Special Judge, under Companies Act, Gurugram.

2. The aforementioned complaint has arisen out of order dated

20.06.2018 passed by the Central Government through Ministry of Corporate Affairs **(hereinafter referred to as '*MCA*')** whereby MCA in exercise of the powers conferred under Section 212(1)(c) of the Companies Act and Section 43(2)and (3)(c)(i) of the Limited Liability Partnership Act, 2008 (**For short, '*LLP Act*'**), ordered investigation into the affairs of Adarsh Group of Companies and its 125 Limited Liability Partnership Companies (hereinafter referred to as '*companies under investigation' **'CUIs')*** by Serious Fraud Investigation Office (for short '*SFIO')* on the allegations of siphoning off funds of Adarsh Credit Cooperative Society Limited (For short, **'*ACCSL*'**). As per the investigation conducted, funds of the ACCSL, which actually belonged to 22 lakhs depositors and were of amount of several crores of rupees, were received by the CUIs on unsubstantiated and questionable projected balance sheets and financial statements. Both ACCSL and CUIs were found to be controlled by the accused Mukesh Modi along who with his nephew Rahul Virender Modi, i.e. the present petitioner and other family members, was found to be involved in economic fraud. After conducting inquiry and investigation, the petitioner along with the co-accused Mukesh Modi was arrested on 10.12.2018 after recording reasons to believe that they had committed an offence punishable under Sections 447 of the Companies Act by utilizing the CUIs in corporated by the accused Rahul Virender Modi in conspiracy with the petitioner and others on siphoning off the funds deposited by 22 lakh depositors with ACCSL. In the complaint, the petitioner was arrayed as accused No. 114. This complaint has to be considered as a report presented under Section 173 of Code of Criminal Procedure (For short, '**Cr.P.C**.') in terms of provisions of Section 212(15) of the Companies Act.

3. Vide order dated 03.06.2019, passed by the learned Sessions Judge-cum-Special Judge, under Companies Act, the petitioner was summoned under Section 447 of the Companies Act read with Sections 406, 417, 418, 420, 467, 468, 471 and 474 read with Section 447 of Indian Penal Code. Process was also issued against the other individuals and companies arraigned as accused for commission of offences punishable under Section 447 of the Companies Act and under different provisions of Indian Penal Code. Allegations against the petitioner are that he was founder of ACCSL. He along with his family members and associates had incorporated 70 CUIs who in connivance with each other fraudulently secured loans from ACCSL. Loans of more than 1700 crore were availed by the above said CUIs (during the financial years 2010-2011 till financial year 2017-18). The investigation also revealed the manner in which funds belonging to the society had been siphoned off in active connivance with the petitioner.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He was Managing Director of ACCSL and various CUIs and subsidiary companies of ACCSL. In order to secure the interest and stake of ACCSL, he had become Non-Active Executive Director in few of the CUIs who were loanee members of ACCSL. He had fully cooperated with the investigation conducted by the respondent. He was arrested on 10.12.2018 in complete violation of the procedure established by law despite co-operating with the investigation. Most of the co-accused have been extended benefit of bail. He is in custody since long. There is no

prospects of conclusion of trial in near future as even charges have not been framed so far. No fruitful purpose would be served by detaining him in custody anymore. On parity with the co-accused also, he deserves to be extended benefit of bail. His prolonged incarceration militates against the most precious fundamental right guaranteed under Article 21 of Constitution of India. It is, thus, urged that the petition deserves to be allowed and he deserves to be extended benefit of bail. To buttress his arguments, learned counsel for the petitioner has relied upon authorities cited as ***Sujay U Desai vs. SFIO, 2022 SCC OnLine SC 1507; Jainam Rathod vs. State of Haryana, 2022 SCC OnLine SC 1506, Amarjeet Sharma vs. Serious Fraud Investigation Office, 6921/2025; Ranjit Singh Brhamsing Sharma vs. State of Maharashtra and another (2005) 5 SCC 294; Union of India vs. K.A. Najeeb (2021)3 SCC 713; Ashish Mittal vs. SFIO, 2023 SCC Online Del 2484*** and ***Satender Kumar Antil vs. CBI and another (2022) 10 SCC 51.***

5. The respondent-SFIO has filed reply. Learned Senior Panel Counsel for SFIO and learned Deputy Advocate Solicitor General of India for UOI have argued that there are serious allegations against the petitioner who in connivance with the co-accused Mukesh Modi and their other family members and associates had committed a big fraud through the CUIs controlled by him by diverting/siphoning off huge amount of money. He was Managing Director and CEO of ACCSL and was actually exercising all the powers along with the co-accused Mukesh Modi. He was director of 22 companies of Adarsh Group and was director in 12 CUIs of Adarsh Group wherein loans were secured fraudulently and illegally from ACCSL during

the tenure of the petitioner. He signed falsified balance sheets of certain companies. He being the Managing Director/CEO of ACCSL was also instrumental in grant of approval to loan applications/ moratorium requests of 70 CUIs of Adarsh Group of Companies. Funds obtained from ACCSL by 30 CUIs were siphoned off by way of share application of money. Huge withdrawals had been made. He was actively involved in modus operandi of siphoning off the funds. He in connivance with the co-accused had arranged false accommodation entries. Loans were given in fraudulent manner. His act and conduct constitute *prima facie* case for commission of offence of a great magnitude.

6. Learned counsel has further argued that as many as 443 of cases have been registered against the petitioner in different States of the country. He is a habitual offender. There are chances of his absconding if extended benefit of bail. It is, hence, stressed that the petition does not deserve to be allowed. In support of these arguments, reliance has been placed upon the authorities cited as ***Rohit Tondon v. The Enforcement Directorate, 2018(5) RCR (Criminal) 35 (SC)***, ***Narcotic Control Bureau vs. Mohit Agarwal, 2022 INSC 730*** **and** ***Tarun Kumar vs. Assistant Director Directorate 2023, INSC 1006***.

7. Arguments addressed by learned Senior counsel for the petitioner and learned Senior Panel counsel for SFIO as well as Deputy Solicitor General of India have been heard and material placed on record has been carefully perused.

8. At the outset, it would be apt to note that apart from being

summoned under various provisions of Indian Penal Code, the petitioner has been booked for commission of offence punishable under Section 447 of the Companies Act which pertains to the "punishment for fraud" and which reads as under:-

> "**447. Punishment for fraud.**—Without prejudice to any liability including repayment of any debt under this Actor any other law for the time being in force, any person who is found to be guilty of fraud, [1] [involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:
>
> Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
>
> [2][Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to [3] [fifty lakh rupees] or with both.]
>
> Explanation.—For the purposes of this section—
>
> (i) "fraud", in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
>
> (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

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

9. Then Section 212(6) of the Companies Act, is also relevant for the purpose since as per the provisions of this Section, the bail plea qua an offence under Section 447 of the Act has to be considered as per the requirement of this provision which starts with a non obstante clause. The same is reproduced as under:-

"(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1[offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

i. the Director, Serious Fraud Investigation Office; or

ii. any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government."

10. On going through the allegations as levelled in the complaint as well as the order dated 03.06.2019 passed by the Court of learned Special Judge, it is apparent that *prima facie* a case for commission of offences for

which the petitioner has been summoned, has been made out. At this stage, there is nothing on record to presume that the petitioner is not guilty of offence under Section 447 of the Companies Act or offences under the provisions of Indian Penal Code. As such, the provisions of Section 212(6) are prima facie attracted in this case. So far as the twin conditions as enumerated in this provision is concerned, the Hon'ble Supreme Court in several pronouncement has discussed this provision.

11. In ***Rohit Tondon's case (supra)***, the Hon'ble Supreme Court had observed that the sweep of Section 45 of the Prevention of Money-Laundering Act, 2002 (for short, '*PMLA')*, was limited to Section 212(6) of the Companies Act and it has overriding effect on the general provisions of Code of Criminal Procedure. It was observed that the conditions enumerated in Section 45 of PMLA, which are that the prosecution must be given an opportunity to oppose the application for bail, the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail, are mandatory and should be complied with even in respect of an application for bail moved under Section 439 of the Code of Criminal Procedure. It was also observed that the economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences.

12. As regards, the twin conditions for grant of bail contained in Section 45 of PMLA, the Hon'ble Supreme Court had made following observations in ***Vijay Madanlal Choudhary and others v. Union of India and***

others, 2022 SCC OnLine SC 929.

> "412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of the proceedings, be it under Section 438 of the Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of **Act, 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."

13. In ***Gautum Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act, Government of India, (2015) 16 SCC 1***, the Hon'ble Supreme Court observed that conditions specified under Section 45 of PMLA are mandatory and need to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C.

14. In ***V. Senthil Balaji vs. The Deputy Director, Directorate of Enforcement, 2024 INSC 739,*** the Hon'ble Supreme Court had observed that the stringent provisions for grant of regular bail do not take away the power of constitutional courts to grant bail on the grounds of violation of part III of Constitution of India.

15. The offences allegedly committed by the petitioner fall under the category of economic offences. In ***Y.S. Jaganmohan Reddy vs. Central Bureau of Investigation,*** **2013 (3)** ***RCR*** **(Criminal) 108 SC,** it was observed by Hon'ble Apex Court that economic offences constituted 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 effecting the economy of county as a whole and thereby causing serious threat to the financial health of the country. It was further observed that while granting bail, the court is required 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 possibilities of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with and the larger interest of public/State and other similar considerations. Similar observations were made by Hon'ble Apex Court in ***Nimmagadda Prasad Vs. Central Bureau of Investigation 2013 (3) RCR (criminal) 175 (SC)*** and in ***State of Gujarat vs. Mohan Lal Jeetamalji Parwal and another, (1987) 2 SCC 364***.

16. In ***Serious Fraud Investigation Office vs. Nittin Johari, 2019 SCC OnLine SC 1178***, it was observed by Hon'ble Apex Court that the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in Cr.P.C. and that it is thus necessary to advert to principles governing grant of bail under Section 439 of Cr.P.C.. Specifically, heed must also be paid to the stringent view taken by the Court towards grant of bail with respect to economic offences. In ***Sujay U. Desai's case (supra),*** which has been relied upon by learned counsel for the petitioner, the accused was arrested for alleged violation of provisions of Section 212(6) of the Companies Act. While taking into consideration, the period of custody of the petitioner and while applying Section 212(6), it was held that twin conditions

thereunder must yield where prolonged incarceration and trial delay infringes fundamental rights. In ***Jainam Rathod's case (supra)***, the Hon'ble Supreme Court was dealing with the case of one co-accused of this very complaint. He was extended benefit of bail by observing that while the provisions of Section 212(6) of the Companies Act must be borne in mind, it is equally necessary to protect the constitutional right to an expeditious trial in a situation, where a large number of accused implicated in a criminal trial would necessarily result in delay in its conclusion.

17. On going through the principles as laid down in the above cited cases, it emerges that the twin conditions as enumerated under Section 212(6) can be diluted in peculiar circumstances. Now adverting to the factual context, as already discussed, the petitioner has been summoned for commission of offences punishable under Section 447 of the Companies Act and 120-B, 417, 418, 420 and 477A of IPC, on the allegations that he was Managing Director and CEO of ACCSL and was amongst directors of 22 companies of Adarsh Group. He along with the co-accused Mukesh Modi founder of ACCSL was infact the main brain behind the entire transactions whereby loans to the tune of Rs. 1700 crore were fraudulently and illegally availed from ACCSL by 70 CUIs of Adarsh Group of companies and the petitioner was director in those companies. Unverified and baseless projected financials were filed by CUIs with no specific repayment schedule. Loans were given to CUIs by projecting them as members of ACCSL though no company could be made a member of the society. The petitioner had filed false financial statements of one of the CUIs during the financial years 2011-12 to 2015-16. He being Managing

Director of ACCSL had been granting approval of loan applications /moratorium requests of 70 CUIs. Funds were siphoned off from the CUIs by way of share application money by active connivance of the petitioner and co-accused Mukesh Modi lost to the tune of several crores of rupees had in fact been caused innocent investors in ACCSL. The case of petitioners squarely falls under Section 212(6) of the Companies Act. As such, this Court finds no sufficient reason for holding that the petitioner deserves to be extended benefit of bail.

18. It also requires mention that custody certificate/reports from District Prison, Gurugram and Central Jail, Jodhpur have been sought by this Court and a perusal of the report of District Prison, Gurugram reveals that the petitioner has been remained in custody for the period from 05.04.2019 to 10.06.2019 and another case at Police Station SOG, Jaipur had been pending against him, whereas, according to the report received from the Central Jail, Jodhpur, the petitioner is involved in 477 cases. As per these reports, he has remained in custody for a period of over six years and four months. On perusal of *zimni* orders passed by learned Special Court, it is apparent that charges have not been framed so far on account of non-appearance of some or the other accused. The delay cannot be attributed to the respondent-complainant. Taking into consideration the nature of accusations, the severity of the punishment, the number of cases in which the petitioner is involved and the above discussed circumstances peculiar to this case, this Court is of the considered opinion that the petition does not deserve to be allowed. Accordingly, the petition is dismissed.

19. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall not influence the outcome of the trial.

20. It is further clarified that since as per the custody certificate, the petitioner is on interim bail till 17.03.2026, in pursuance of some orders passed by Rajasthan High Court at Jodhpur, but as he has not been extended any such benefit by this Court at any point of time, therefore, the Court of learned Special Judge may proceed against the petitioner in accordance with law to secure his presence. The trial Court is also directed to expedite the trial by making all possible efforts which may include separation of trial against the accused whose presence has not been secured so far.

21. Since the main petition has already been decided, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

22nd December, 2025
Parveen Sharma

1. Whether speaking/ reasoned	:	*Yes / No*
2. Whether reportable	:	*Yes / No*