

Sujay U. Desai vs Serious Fraud Investigation Office on 25 July, 2022

Bench: D.Y. Chandrachud, A.S. Bopanna

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1023 of 2022
(Arising out of SLP(Crl) No 1185 of 2022)

Sujay U Desai

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Versus

Serious Fraud Investigation Office

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ORDER

1 Leave granted.

2 On 11 April 2022, the following order was passed by this Court:

“1 The petitioner has been arrested on 19 March 2020 in

connection with an alleged violation of the provisions of Section 447 of the Companies Act 2013. A complaint has been filed by the Serious Fraud Investigation Office (SFIO) on 15 May 2020 before the competent court naming, inter alia, 69 persons as accused. Bail has been declined.

2 The petitioner has been granted bail on 25 November 2021 by a Single Judge of the High Court of Judicature at Allahabad at the Lucknow Bench in connection with certain proceedings initiated by the Enforcement Directorate.

3 In the counter affidavit which has been filed by the Additional Director, SFIO, it has been stated that out of 69 accused, 41 are companies and 28 are individuals. The number of foreign accused who are yet to appear comprising of 10 entities and 8 individuals. The Special Court has issued summons for the third time which has been made returnable on 4 June 2022. 4 We place the SFIO on notice that by the next date of listing of these proceedings, this Court shall be apprised on affidavit of the

steps which have been taken to effect service of the summons on the remaining accused who are yet to appear as noted above. Failing adequate steps being taken in that regard, this Court would consider the prayer of the petitioner for the grant of bail. The petitioner has remained in custody for a period of over two years at the present stage.

5 We accordingly direct that these proceedings be listed before the Court on 15 July 2022, when the prayer for the grant of bail be considered.” 2 In pursuance of the above order, an affidavit of the Additional Director, SFIO, in the Ministry of Corporate Affairs has been filed. The affidavit indicates that twenty accused are abroad, out of which, nine are in UAE, six in Hongkong, four in Singapore and one in UK. The affidavit indicates that the Special Court has issued summons on 11 September 2020, 1 February 2021, 15 November 2021 and 16 February 2022. The position as it emerges is that despite successive summons, service has not been effected on the foreign entities. 3 Mr Mukul Rohatgi, Senior Counsel appearing on behalf of the appellant, submits that the appellant has been in custody as an under-trial for two years and five months. Moreover, it has been submitted that except for the appellant, no other private accused continues to be in custody. 4 As noted in the previous order dated 11 April 2022, the appellant has been granted bail by the Lucknow Bench of the High Court of Judicature at Allahabad in connection with a complaint lodged by the Enforcement Directorate on 25 November 2021.

5 Having regard to the position as it remains regarding non-service of the summons on foreign entities, the period of custody already undergone and no immediate possibility of the trial commencing, we are of the considered view that the appellant would be entitled to the grant of bail.

6 Having duly considered the provisions of Section 212(6) of the Companies Act 2013, we are of the view that in the facts of the present case, the appellant ought to be granted the benefit of bail under Section 439 of the Code of Criminal Procedure 1973 since the right to an expeditious trial is protected under Article 21 of the Constitution. We accordingly direct that the appellant shall be released on bail, subject to such terms and conditions, as may be imposed by the Sessions Judge, Kanpur in connection with Sessions Trial No 577 of 2020. 7 The appeal is accordingly disposed of.

8 Pending application, if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [A S Bopanna] New Delhi;

July 25, 2022

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ITEM NO.18

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.)

No(s).1185/2022

(Arising out of impugned final judgment and order dated 28-01-2022 in CRMBA No. 36790/2021 passed by the High Court of Judicature at Allahabad) SUJAY U. DESAI Petitioner(s) VERSUS SERIOUS FRAUD INVESTIGATION OFFICE Respondent(s) (WITH IA No. 19478/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 95852/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 35743/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 25-07-2022
This petition was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE A.S.
BOPANNA For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.

Mr. Malak Manish Bhatt, AOR Ms. Neha Nagpal, Adv.

Mr. Amar Gehlot, Adv.

Mr. Vishvendra Tomar, Adv.

For Respondent(s) Mr. K.M.Nataraj, ASG Mr. Arvind Kumar Sharma, AOR Ms. Kanu Agrawal, Adv Ms. Deepabali Dutta, Adv Ms. Sharath Nambiar, Adv Mr. Sughosh Subramanyam, Adv Mr. Anuj Srinivas Udupa, Adv.

UPON hearing the counsel the Court made the following O R D E R 1 Leave granted.

2 In terms of the signed order, we are of the view that in the facts of the present case, the appellant ought to be granted the benefit of bail under Section 439 of the Code of Criminal Procedure 1973 since the right to an expeditious trial is protected under Article 21 of the Constitution. We accordingly direct that the appellant shall be released on bail, subject to such terms and conditions, as may be imposed by the Sessions Judge, Kanpur in connection with Sessions Trial No 577 of 2020.

3 The appeal is accordingly disposed of.

4 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
COURT MASTER