

Manoranjana Sinh @ Gupta vs Central Bureau Of Investigation on 6 February, 2017

Equivalent citations: 2017 AJR 843, 2017 (5) SCC 218, (2017) 2 KCCR 169, (2017) 4 MH LJ (CRI) 411, (2017) 99 ALLCRIC 346, (2017) 1 ALLCRIR 664, (2017) 1 DLT(CRL) 561, (2017) 1 CURCRIR 256, 2017 (2) SCC (CRI) 520, (2017) 1 UC 472, (2017) 1 CRIMES 302, (2017) 172 ALLINDCAS 157 (SC), (2017) 2 ALLCRILR 192, (2017) 2 SCALE 223, AIR 2017 SUPREME COURT 769, AIR 2017 SC (CRIMINAL) 444, 2017 (1) AJR 843, 2017 CRILR(SC MAH GUJ) 190, (2017) 1 CRILR(RAJ) 190, (2017) 66 OCR 1100, 2017 CRILR(SC&MP) 190

Bench: Amitava Roy, Arun Mishra

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 240 OF 2017
(ARISING OUT OF S.L.P (CRIMINAL) NO.7899 OF 2016)

MANORANJANA SINH @ GUPTA

....APPELLANT

VERSUS

CENTRAL BUREAU OF INVESTIGATION

....RESPONDENT

O R D E R

Leave granted.

2. The appellant, a charge-sheeted accused in judicial custody in connection with the infamous “Chit Fund Scam” involving the Saradha Group of Companies (for short “Saradha Group”) has impeached the rejection of her prayer for bail by the judgment and order impugned hereinabove and seeks her release pending further investigation by the Central Bureau of Investigation (hereafter also referred as “ the CBI”) into the said Ponzi scheme.

3. We have heard Mr. A. Sharan, learned senior counsel for the appellant and Mr. K. Raghavacharyulu, Special Public Prosecutor for the respondent.

4. As the preface to this investigation had been laid by this Court in its verdict in Subroto Chatteraj vs. Union of India & Ors. (2014) 8 SCC 768, allusion thereto is indispensable. This Court therein was seized with the issue of transfer of several cases registered in connection with the above scam and

registered in different police stations in the State of Bengal and Odisha from the State police agency to the CBI. In traversing the recorded facts, this Court took note, inter alia, of the imputed modus operandi of the persons and the entities allegedly involved in the illicit operations to allure unsuspecting depositors to make investments in the scheme with the promise of awarding them with attractive rewards and returns, which was never intended and thereby swindle the gullible members of the public belonging to the middle class, lower middle class and the poorer sections of the society. The interim report(s), taken note of by this Court, amongst others disclosed violation of the Securities and Exchange Board of India Act, 1992, The Companies Act, 1956, The Reserve Bank of India, 1934 and The Income Tax Act, 1961 and revealed as well fraudulent certification, non-compliance with accounting standards, material misstatements of facts and gross-negligence on the part of statutory auditors and divulged that the estimated collection made by the Saradha Group was of several thousand crores. The exercise undertaken by the Commission of Inquiry appointed by the Government of West Bengal, which received nearly 18 lakh complaints and claim petitions was also noted. Involvement of high dignitaries did not miss the attention of this Court as well. This Court noted with concern too, the failure of the Regulators like SEBI, Authorities under the Companies Act and the Reserve Bank of India. It was recorded that the scam had spread its roots in the States of West Bengal, Tripura, Assam and Odisha and had by then devoured Rs.10,000 crores approximately from the public in general specially the weaker sections of the society, having fallen prey to the temptations of handsome returns, extended by the companies involved. That the collection of such huge amounts from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity to generate the high returns as promised to the depositors was noted. Having regard to the gravity of the situation and the inter-state ramifications of such notorious venture, this Court acceded to the prayer for transfer of investigation from the State Police to the CBI. This Court underlined in the conspectus of the attendant facts that the investigation ought to be undertaken in particular to unearth the larger conspiracy angle and the money trail which had since remained unexplored.

5. Pursuant to the above decision, FIR in RC-04/S-2014-(SIT) Kolkata was registered by the CBI, Special Crime Branch, SIT, Kolkata. In course of the investigation that followed, charge-sheets have been submitted on 17.11.2014, 18.02.2015, 17.04.2015, 14.08.2015 and 3.12.2015 under Sections 120B, 420, 409 IPC and Sections 4 & 6 of the Prize Chits and Money Circulation (Banning) Act, 1978 against various accused persons including in particular Sudipta Sen of M/s Saradha Reality India Ltd. and three other companies namely; M/s Saradha Tours and Travels (P.) Ltd., M/s Saradha Garden Resorts and Hotels (P.) Ltd. and M/s Saradha Housing (P.) Ltd. involved principally in the raising of funds from the public under different investment schemes.

6. In the said process, the appellant herein was arrested on 07.10.2015 and was remanded to the police custody upto 13.10.2015. Meanwhile, however the appellant having complained of chest pain and attendant complications, and on medical advice was shifted to Government Hospital, S.S.K.M. Hospital, Kolkata and since then, for various ailments, as conveyed by her, she had remained in different hospitals from time to time as on date.

7. Eventually the 5th supplementary charge-sheet under the aforementioned Sections of law has also been laid against the appellant, Sudipta Sen and Santanu Gosh and M/s Global Automobiles Ltd. on

4.1.2016. As the forwarding report in connection therewith would disclose, investigation is still continuing, under Section 173(8) of Cr.P.C. The charge-sheet reveals the accusation that Sudipta Sen and others as named therein together with M/s Saradha Reality India Ltd. in pursuance of criminal conspiracy amongst others had collected a staggering amount of Rs.7,74,33,59,929/- from various depositors under several investment schemes in favour of Sardha Reality India Ltd., by falsely promising them high returns but did not pay to the tune of Rs.569,26,28,095/- , thus defrauding them.

8. The charge-sheet so far as is relevant for the present adjudication disclose in substance that Sudipta Sen with a motive of expanding the illegal deposit collection business of Shardha Group acquired T.V. Channels and Newspapers and entered into several business deals in furtherance thereof. In the process, the appellant, who claims to be a Journalist and at the relevant time was not only associated with the Media but had some clout on her business in the North Eastern states, where such illegal exaction of Saradha Group was expanding, executed on 09.06.2010, a Memorandum of Understanding (MOU) with Sudipta Sen representing M/s Bengal Media (P.) Ltd. In the MOU, the appellant, along with her father, was depicted to be the absolute owner of M/s GNN India Limited. conducting the T.V. Channel (Rajdhani & Frontier T.V.). Under the said MOU, the appellant and her father agreed to sell and transfer 50% share of M/s GNN India Limited to M/s Bengal Media Private Limited at a consideration of Rs. 50 crores, in return whereof , she was to be appointed as the Chief Executive Officer of the latter company and further to be entitled to a remuneration of Rs. 15 lakhs per month. An agreement between the parties followed on 21.6.2010, substantially in the same lines with the elaboration that M/s GNN Indian Private Limited would issue fresh shares to M/s Bengal Media Private Limited valued at Rs. 30 crores and further would transfer a portion of the existing shares for an additional amount of Rs. 12.5 crores. The payments were to be made between 21.6.2010 to 15.9.2010 as per the schedule agreed upon. As the charge-sheet mentions, investigation disclosed that in terms of the agreement, the Saradha Group paid Rs. 21,05,48,136/- to M/s GNN India Private Limited. It is referred to in clear terms that the payment thus made was from the illegal collections from the depositors as at that point of time M/s Bengal was a loss making company and was thus not in a position to discharge such heavy monetary financial liability and thus the whole transaction was a dubious and counterfeit deal only to launder the ill-gotten deposits with ulterior motive.

9. That during 2009-2010, M/s GNN India (P) Limited had almost no business activity and that it had been recording loss during the financial year 2010-2013, was also noted. The charge-sheet further discloses that the balance sheet of M/s. Sarada India Reality Limited was fudged so much so that it fraudulently disclosed that an amount of Rs. 24,68,85,200/- had been advanced to M/s GNN India (P) Limited as Inter- Corporate Deposits, which was patently false. According to the CBI and as recorded in the charge-sheet, the petitioner entered into the above sham deal with a motive of extracting undue financial benefit being fully aware of the illegal deposit collection business of Saradha Group, which, amongst others was demonstrated by the emails exchanged by her. The charge-sheet further divulges that the liasion between Sudipta Sen and the appellant was with a view to use the latter's connection to negotiate the enquiry contemplated against illegal deposit business and also to utilise her influence in the media to counter any negative publicity against the illegal business activity of Saradha Group and that the appellant actively associated herself in such

activities and criminally misappropriated the ill-gotten funds, as a party to the criminal conspiracy.

10. The charge-sheet also records an agreement for sale between Sudipta Sen on behalf of Saradha India Reality Limited and Santanu Ghosh of M/s. Global Automobiles for purchase of 58 lakhs equity shares of the former company at a consideration of Rs. 25 crores. That there was also a separate agreement between them, whereunder the liabilities of M/s. Global Automobiles Limited were agreed to be taken over at a price of Rs. 220 crores in all, figured as well in the charge-sheet. This, the CBI has in specific terms recorded on the basis of the investigation that Santanu Ghosh had indulged in such transactions being fully aware of the illegal deposit collection business of the Saradha Group. The supplementary charge-sheet mentions, to reiterate that further investigation is continuing as per Section 173(8) of the Code of Criminal Procedure, 1973 (for short, hereinafter to be referred to as "Code") in respect of influential accused persons, role of regulatory bodies like SEBI, ROC, RBI and other agencies to unravel the larger criminal conspiracy angle and the money trail. Admittedly, this supplementary charge-sheet had been submitted on 4.1.2016, as noted above and though the investigation is continuing, there has been no further supplementary charge-sheet in between. Records reveal that meanwhile, the appellant has been interrogated by the CBI in the hospital on 29.12.2015, 20.6.2016 and 14.10.2016.

11. In the above imposing factual backdrop, however, in the interregnum, Sudipta Sen had been granted bail as the CBI had failed to file charge-sheet within 90 days of his arrest. Subsequent thereto, several other persons arrested have also been released on bail. The High Court has also granted bail to Santanu Ghosh, who was also arrested on 07.10.2015, in connection with the above case.

12. It has been insistently urged on behalf of the appellant that as she is in judicial custody for over 15 months and is suffering from various ailments requiring constant medical attention, she deserves to be extended the benefit of bail. Further as charge-sheet against her has been submitted and she is fully cooperating with the investigation, her further confinement in judicial custody is inessential. This is more so, as though the investigation is claimed to be continuing, no further charge-sheet has been submitted for the last over one year and that having regard to the visible delay in the initiation and conduct of the trial in the face of innumerable witnesses cited, her further detention would be travesty of justice. Mr. Sharan has urged that MOU dated 9.6.2010 and the agreement dated 21.06.2010, referred to in the charge-sheet demonstrate transactions which are purely of civil nature and in no way furnish the ingredients of any criminal offence whatsoever. According to the learned senior counsel for the appellant, not only the evidence collected in course of the investigation does not make out any offence as alleged, in the teeth of the release of the principal accused persons on bail, the appellant's detention amounts to deprivation of her right to life and liberty enshrined in Article 21 of the Constitution of India.

13. Per contra Mr. K. Raghavacharyulu, Special Public Prosecutor has assiduously urged that having regard to the mandate of this Court to unfailingly investigate the larger conspiracy angle and determine the money trail of the deep-rooted counterfeit affecting lakhs of innocent depositors, release of the appellant at this stage would be inexpedient. In controversion, it has been asserted that the MOU and the agreement mentioned in the charge-sheet, in the facts of the case are only a

front to indulge in criminal activities as divulged in the investigation. While emphasizing that the appellant since her arrest has managed to remain housed in hospitals, by feigning ailments, without suffering any incarceration in the real sense, it has been asserted that lastly, she has also given up her plea based on medical ground and thus it is of no avail or significance for the present. According to Mr. K. Raghavacharyulu, her hospital bills also do not endorse her plea of illness and treatment in connection therewith. He has urged that as the investigation is in progress, notwithstanding the release of some of the accused persons, it is not a fit case to grant bail to the appellant, more so when the Trial Court as well as the High Court have rejected her prayer to that effect on a consideration of all relevant aspects.

14. We have closely analyzed the competing contentions and have perused as well the pleadings and documents presently available on records. In course of the arguments, having noticed the emphasis on the ongoing investigation as a factor against grant of bail, we had required the learned counsel for the CBI to furnish a status report with regard thereto disclosing the updates, for a fair decision.

15. Accordingly, a status report had been laid before us in a sealed cover, which apart from the background facts leading to the registration of the case, arrest of the accused persons including the appellant and the submission of the charge-sheets as on date, has not in very clear and persuasive terms indicated the specific issues/areas, presently being pursued in the investigation, so much so to impellingly justify further detention of the appellant in judicial custody. Though traces of the initiatives undertaken are available in the status report, those, in our comprehension, too general in nature. For obvious reasons, we refrain from dilating further on the contents of the said report.

16. The recorded facts demonstrate admittedly that the appellant is continuously in judicial custody since 07.10.2015 and that the supplementary charge-sheet against her along with others as mentioned therein, had been filed on 04.01.2016 incorporating the evidence collected against those incriminated. Having regard to the magnitude and canvass of the investigation, it is likely that the exercise would take further time. Though according to the CBI, the ailments of the appellant are not worth any weight as a factor to grant her the privilege of bail, the medical records nevertheless suggest that she is suffering from a variety of ailments. Noticeably, the medical records have been issued by the hospitals in which she is undertaking treatment. We are not unmindful, at this juncture, of the nature of the hospital bills of hers as highlighted by the learned counsel for the respondent. Though it is the plea of the respondent that the appellant at times adopts a disposition to avoid interrogation by the CBI, no convincing material has been brought on record to demonstrate any misuse of her liberty qua the investigation while in the hospitals since her arrest. As per the medical records, her ailments range from ischemic heart disease to asthma, unstable angina, dysfunctional uterine bleeding, constant nausea and lower back pain.

17. This Court in *Sanjay Chandra vs. Central Bureau of Investigation* (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is

neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted.

18. In the above factual premise and on an in-depth balancing of all relevant aspects and chiefly the competitive imperatives of investigation and the right to liberty, we are disposed, for the present to grant bail to the appellant, subject to the conditions, as enumerated hereinafter. To reiterate, having regard to the materials available, we are of the opinion, mainly in the face of the disclosures in the latest status report, that presently further confinement of the appellant in judicial custody is not an indispensable necessity for the unhindered investigation, that is in progress.

19. In the above view of the matter, the appeal is allowed and the appellant is ordered to be released on bail in FIR RC-04/S/2014-(SIT) Kolkata of Rs.1 (One) crore and on furnishing two local sureties each of the like amount to the satisfaction of the Additional Chief Judicial Magistrate Alipore, Kolkata, West Bengal and also subject to the following conditions :

- 1) The appellant would surrender her passport to the Trial Court.
- 2) She would not leave the territorial limits of the city Kolkata without the written permission of the Trial Court and without informing the investigating agency.
- 3) She would report before the Trial Court and the investigating officer once a month, till the investigation in the case is completed in full.
- 4) She would not in any way hinder or try to influence the investigation in any manner whatsoever and would not endeavor to either tamper with any evidence or induce/influence/dissuade/intimidate any witness or deal with any record relevant to the case.
- 5) She would cooperate with the investigation and would always be available to be interrogated by the Investigating Agency.
- 6) Any other condition as the Trial Court may consider to be appropriate if and as and when necessary.

7). We hereby clarify that breach or non-compliance of any of the above conditions would entail immediate cancellation of the bail granted, either suo motu or on any complaint made by any quarter whatsoever.

8). Apart therefrom, such a breach or non compliance would be viewed very seriously and would visit the appellant with stringent adverse consequences as contemplated in law. The Trial Court as well as the Investigating Agency are directed to keep continuous vigil in the matter so as to, if need be, bring to the notice of this Court any conduct or action of the appellant warranting recall of this order.

20. We make it clear that this order has been rendered in the singular facts of the case and would not be cited as a precedent.

.....J. (ARUN MISHRA)J. NEW DELHI
(AMITAVA ROY) FEBRUARY 6, 2017.

ITEM NO.1A

COURT NO.10

SECTION IIB

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). 7899/2016 (Arising out of impugned final judgment and order dated 09/09/2016 in CRM No. 473/2016 passed by the High Court Of Calcutta) MANORANJANA SINH @ GUPTA Petitioner(s) VERSUS CENTRAL BUREAU OF INVESTIGATION Respondent(s) Date : 06/02/2017 This petition was called on for Judgment today.

For Petitioner(s) Mr. Amit Kumar, Adv.

For Respondent(s) Mr. K. Raghacharyulu, Adv.
Mr. Kailash Pandey, Adv.
Mr. Ranjeet Singh, Adv.
Mr. K. V. Sreekumar, Adv.

Hon'ble Mr. Justice Amitava Roy pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Arun Mishra and His Lordship.

Leave granted.

The appeal is allowed and the appellant is ordered to be released on bail in FIR RC-04/S/2014-(SIT) Kolkata of Rs.1 (One) crore and on furnishing two local sureties each of the like amount to the satisfaction of the Additional Chief Judicial Magistrate Alipore, Kolkata, West Bengal and also subject to the conditions as indicated in the judgment.

| (NEELAM GULATI)
| COURT MASTER

| (TAPAN KR. CHAKRABORTY)
| COURT MASTER

(Signed Non Reportable Judgment is placed on the file)