

# Deepak Jha vs State Nct Of Delhi & Anr on 6 February, 2023

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

\$~4

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 2633/2022 &CRL.M.A. 21757/2022  
DEEPAK JHA

..... Petition

Through: Mr. Ashutosh Lohia, Advocate with  
Mr. Varun Raghavan, Advocate,  
Gaurav Anand, Advocate, Mr. Ro  
Saraswat, Advocate and Ms. Sim  
Gupta, Advocate.

versus

STATE NCT OF DELHI & ANR.

..... Responden

Through: Mr. Shrey Sharawat, Advocate for  
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 06.02.2023 At the outset, Mr. Ashutosh Lohia, learned counsel for the petitioner seeks liberty to place on record order dated 25.05.2022, whereby the learned Special Judge was pleased to remand the petitioner to judicial custody and rejected his first bail application. The order has been shown to court. Let it be placed on record.

2. By way of the present petition under section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the petitioner, who is accused in CC No.245/2021 titled SFIO vs. Parul Polymers Pvt. Ltd & Ors. pending trial before the learned Special Judge (Companies Act), Dwarka Courts, New Delhi, seeks regular bail.

3. The petitioner is arraigned as accused No. 4 before the learned trial court, among 12 other accused.

4. Notice on this petition was issued on 02.09.2022; whereupon the respondent/Serious Fraud Investigation Office ("SFIO" for short) has filed reply/counter-affidavit dated 15.11.2022 opposing grant of bail.

5. Briefly, the petitioner was summonsed in the matter vide summoning order dated 07.03.2022, whereby the learned trial court took cognisance of offences inter-alia under section 447 of the Companies Act, 2013 ("Companies Act" for short), the essential imputations arising from the fact that the petitioner was an employee of accused No. 1/M/s Parul Polymers Pvt Ltd. („company ).

6. The gravamen of the offences alleged in the complaint inter-alia under section 447 of the Companies Act, is that the company, which was engaged in the trade of plastic granules, indulged in cash sales; in fictitious sale of food grain; and in creation of accommodation/adjustment accounting entries, apart from misusing cheque discounting facilities. It is also the allegation that the company manipulated financial statements, to project substantial growth in its revenues, and mislead banks inducing them to extend and enhance credit limits; which monies were however not used towards the business activity of the company but were diverted and siphoned-off to other entities, with no genuine underlying business transactions; thereby indulging in fraudulent diversion of funds to sister concerns.

7. Mr. Lohia submits that the petitioner was employed with the company as a mere assistant/office boy; that he was not even on the pay-roll of the company; and was paid salary of only about Rs.10,000/- per month in cash. It is further pointed-out that, as summarized in reply dated 15.11.2022 filed by the SFIO to the present petition, the role attributed to the petitioner in the criminal complaint is the following:

"8. That the applicant was a regular employee of PPPL and a close confidant of Suman Chadha (A-2).

9. That the applicant had admitted on oath that he had helped Suman Chadha (A-2) in opening of bank accounts in the name of other persons. He has further admitted on oath that he used to perform all banking activities like opening of bank accounts, opening of LCs etc. and field work for Suman Chadha (A-2). In this regard, kind attention of this Hon'ble Court is invited to Section 217(7) of the Companies Act 2013 which is as under:

"The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the persons examined and may thereafter be used in evidence against him."

The above referred sub-section makes his statement recorded on oath as evidence before the court of law wherein he has admitted that he helped Suman Chadha (A-2) in opening of various banks accounts in the name of other persons. Further the investigation established that these bank accounts were used for the purpose of siphoning off/routing the money of PPPL for various illegal purposes as explained in detail in the investigation report."

(emphasis in bold supplied;

underscoring in original)

8. It is argued that the petitioner was never arrested during the course of investigation over 06 years; he was investigated and made a true and honest statement, as summarized in the reply filed by the SFIO; and has been charged only under section 447 of the Companies Act, without there being any charge against him under sections 467, 468 or 471 of Indian Penal Code 1860 („IPC ).

9. It is also brought to the notice of the court, that a co-accused in the matter, viz. Komal Chadha, who is the wife of the promoter, and was herself a Director in the company, has already been admitted to bail vide judgment dated 21.12.2022 made by this court in Bail Appl. No.1740/2022 1 on grounds which apply a-fortiori to the petitioner, since the petitioner had a very peripheral, limited and non-voluntary role in the matter.

10. Upon being queried as to the allegation that the petitioner had subscribed the names/signatures of various persons on the account opening forms, Mr. Lohia submits, that being a petty employee of the company, the petitioner had no choice in the matter. In any case, it is the submission on behalf of the petitioner, that in relation to the filling-up of the forms for opening bank accounts, there is no allegation against the petitioner of forgery or fabrication of documents in the chargesheet.

11. It is the admitted position, that even at the stage when the petitioner appeared before the learned Special Judge upon being summonsed, the Investigating Officer never sought his remand to judicial custody.

12. On the other hand, opposing grant of bail, Mr. Shrey Sehrawat, learned counsel appearing for respondent No. 2/SFIO submits, that the petitioner was a „conduit who played an active role in opening of 30 fake bank accounts, which were then used to siphon-off monies from the company, which is the foundation of the allegations contained in the chargesheet.

Komal Chadha vs. SFIO : 2022/DHC/005738

13. It is however the admitted position, that the petitioner was never arrested in the course of the 06-year long investigation; that he was remanded to judicial custody by the learned Special Judge only at the stage after cognizance was taken and the petitioner appeared before the court against summons issued, purportedly in view of the provisions of section 212 of the Companies Act; in particular considering that section 212(6) bars the grant of bail unless the twin conditions contained therein are satisfied.

14. As held by this court in Komal Chadha (supra) however, other things apart, in mechanically remanding the petitioner to judicial custody, the learned Special Judge misdirected himself in applying section 212(6) to the situation in as much as that provision relates to a stage where the court is considering grant or refusal of bail to a person who is in custody. Section 212(6) would not apply to a case where the I.O. has never sought police custody of the accused; and has not even asked that the accused be remanded to judicial custody after cognizance is taken. The decision whether to remand the petitioner to judicial custody upon his appearance, vests with the Special Judge; and that should have been considered and decided by the Special Judge in accordance with well-settled and restrictive principles as to pre-trial detention of an accused.

15. In the present case, as also in the case of Komal Chadha (supra), the order remanding the petitioner to judicial custody discloses no application of mind as to why, on what basis, for what reason, or for what purpose the learned Special Judge formed the view that the petitioner's judicial custody had become necessary, after the petitioner had been at liberty for the past 06 years. There

was no allegation of the petitioner having either intimidated any witnesses; or having tampered with evidence; or having otherwise interfered in the course of investigation. It is noteworthy that despite having the power to arrest the petitioner in the course of investigation under section 212(8) of the Companies Act, the investigating officer never arrested the petitioner, by which it can reasonably be inferred that the officer did not have reason to believe that the petitioner was guilty of any offence punishable under the concerned sections of the Companies Act. Also, since the complaint has already been filed, all the purportedly incriminating evidence and material has already been collected and placed before the learned Special Judge; and the trial will obviously take its own time.

16. As for the question whether the petitioner is a flight risk, it is noted that no specific risk has been cited or shown to exist; and the perceived theoretical risk which exists in the case of every accused on bail, can be addressed by imposing appropriate conditions on grant of bail.

17. In view of the above discussion, the court is persuaded to allow the present petition and admit the petitioner to regular bail, subject to the following conditions:

- a. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-Five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned Special Judge;
- b. The petitioner shall furnish to the Investigating Officer/SFIO a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- c. If the petitioner has a passport, he shall surrender the same to the learned Special Judge and shall not travel out of the country without prior permission of the learned Special Judge; d. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

19. A copy of this order be sent to the concerned Jail Superintendent forthwith.

20. The petition stands disposed-of.

21. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J FEBRUARY 6, 2023 Ne