

Anil Saxena vs State Of Nct Of Delhi on 17 June, 2020

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1074/2020

ANIL SAXENA

..... Petitioner

Through: Mr Abhimanyu Bhandari, Advocate
with Mr Neeraj Chaudhary, Ms
Nattasha Garg, Mr Arav Pandit, Mr
Yatin Savlani, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms Radhika Kolluru, APP for State.
Mr Mohit Mathur, Senior Advocate
with Mr Sandeep Das, Mr Anurag
Misha, Ms Srbhi Sharma, Advocates
for complainant

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER

% 17.06.2020 [Hearing held through videoconferencing]

1. The petitioner has filed the present petition seeking bail under Section 439 of the Criminal Procedure Code, 1973 (Cr.PC) in FIR No. 50/2019 under Sections 409/420/120B of the Indian Penal Code, 1860 (IPC), registered with PS EOW, Mandir Marg.

2. The said FIR was registered pursuant to a complaint filed by Religare Finvest Limited (RFL). RFL is a Non-Banking Finance Company and is engaged in the business of lending funds to its clients. Part of its funds are obtained by borrowing it from banks and other financial institutions. It is stated that RFL currently owes over 5,000 crores to its lenders. RFL is a subsidiary of Religare Enterprises Ltd. (hereafter 'REL') which is a public listed company.

3. It is alleged that at the material time, the petitioner was a part of the management of REL and RFL and in conspiracy with the promoters of REL

- Mr Malvinder Mohan Singh and Mr Shivender Mohan Singh (hereafter referred to as 'the Promoters') - had siphoned off funds from RFL into various shell companies controlled by the promoters for their benefit.

4. It is alleged in the chargesheet that the petitioner was working for the Religare Group since 2008 in various capacities. He was a director of RFL from 06.04.2010 to 14.11.2017. During this period, he was a Whole Time Director till 13.11.2011 and thereafter, held office as a Non-Executive Director. The petitioner was also the Group Chief Financial Officer (Group CFO) and Director of Religare Enterprises Ltd. He was appointed on 06.04.2010. He resigned as an Executive Director of REL on 24.01.2013, but continued to function as the Group CFO till his resignation on 14.11.2017.

5. It is alleged that during his employment with the Religare Group, he was part of various committees including the Risk Management Committee of RFL, which had approved loans to various entities controlled by the Promoters. It is alleged that the petitioner was holding a key managerial position in the Religare Group and was instrumental in siphoning off the money from RFL to entities held by the Promoters in conspiracy with them and various other persons.

6. It is alleged that a forensic audit was conducted by the Securities and Exchange Board of India (SEBI) and it was found that over 1,000/- crores had been transferred to RHC Holdings Pvt. Ltd. - a company held entirely by the Promoters.

7. It is also alleged that the Reserve Bank of India (RBI) had in the past raised several concerns about the Corporate Loan Book (CLB) of RFL which comprised of unsecured loans granted by RFL to various entities. It is alleged that as per the norms prescribed by the RBI, several loans were required to be classified as non-performing assets (NPAs). However, to avoid such classification, RFL had extended loans to various entities and part of the said funds were ultimately utilized for servicing extant loans extended by RHL to avoid such loans as being classified as NPAs. It is alleged that such ever-greening of loans was done in conspiracy with the Promoters and for their benefit.

8. It is alleged that despite the report of RBI, the petitioner had not taken any remedial measures, but on the contrary actively sought to misrepresent the financial position of RFL by concealing various NPAs.

9. Ms Kolluru, learned APP appearing for the State and Mr Mohit Mathur, learned senior advocate appearing for the complainant had submitted that the petitioner had participated in fraudulent acts by wrongfully approving various loans to shell entities known to the Promoters. The funds lent to these entities had subsequently found their way into entities wholly controlled by the Promoters. They contended that emails and other materials on record clearly established that the shell entities and companies to whom funds were lent by RFL were mere shell entities and not creditworthy. Mr Mathur pointed out that the financial position of some of these companies indicated that they had no sales and yet loans had been extended as working capital.

10. Next, it was submitted that the petitioner had signed the Financial Statements and Annual Reports of RFL certifying that the loans extended by RFL were not NPAs. This was false to the knowledge of the petitioner. He had also misrepresented that the transactions were not related party transactions, even though he was aware that the loans had been diverted to entities controlled by the Promoters including RHC Holdings Pvt. Ltd (hereafter RHL) - a company wholly held by the Promoters - through shell entities to whom loans were extended by RFL.

11. Mr Mathur had also referred to the email dated 21.09.2016 and contended that the said email indicated that the outstanding amount on the Corporate Loan Book (CLB) was discussed and the email indicates that the petitioner was a party to the discussion of not reporting NPAs by ever-greening of the said loans.

12. Lastly, Mr Mathur submitted that the petitioner's contention that he had received no benefits from the loans extended by RFL was incorrect as the chargesheet indicated that he was also granted a loan of approximately 1.4 crores by one of the entities owned and controlled by the Promoters.

13. Mr Abhimanyu Bhandari, learned counsel appearing for the petitioner submitted that the petitioner was not in day to day control and management of RFL. He submitted that the petitioner was a whole time director of RFL but had demitted the office way back in the year 2011. Thereafter, he continued to be a director of RFL in a non-executive capacity. He contended that the petitioner was a member of the loan approval committee which approved loans beyond the specified threshold limit. He did not act alone but acted as a part of the said committee. He submitted that all other members of the said committee have not been charged. Further, he submitted that in addition to the Loan Approval Committee and Risk Management Committee, there was yet another committee - Related Party Committee (RPT Committee). As a matter of procedure, RPT Committee, which consisted of well known persons, was also required to examine and approve the Corporate Loan Book (CLB) loans. He referred to the charge sheet and pointed out that there were nineteen loans which have been identified as questionable loans, which the borrowers have defaulted in servicing. He submitted that the petitioner was involved in approving only six of the said loans. He contended that three of the said loans were part of the Corporate Loan Book (CLB) and the said loans were also approved by the RPT Committee. The remaining three other loans were part of the SME Loans. At the time of approval of the said loans, it was expressly stipulated that the said loans would be secured by immovable property.

14. Mr Bhandari, referred to the report submitted by a firm of Advocates and Solicitors (AZB and Partners) - which forms a part of the chargesheet. He drew the attention of the court to paragraph 6.2.1 of the said report which states that loans were extended to Best Health Management; Devera; and Vitoba as loan against property for a period of two years. The said loans were based on the approvals received from the petitioner along with Mr Sunil Godhwani and Mr Sunil Garg who were erstwhile members of the credit approval committee of RFL. As per the loan proposal, the disbursement of the said loans was subject to the completion of legal due diligence in respect of Asola Land; creation of a charge on the Asola Land; and registration of the same with the Registrar of Companies. Mr Bhandari submitted that in view of the above, the approval of the loans granted to the said committee was on the basis that it would be duly secured by immovable property. However, the charge was not created and it is stated in the report that the documents relating to Asola land, which continued to be in the possession of RFL, were released on 11.01.2018. He earnestly contended that there was nothing culpable in the petitioner approving the said loans on the premise that the loans would be secured by the immovable property. He submitted that the documents pertaining to the said immovable property (Asola Land) continued to be with RFL and were returned much after the petitioner had resigned as a director of RFL and as an employee of REL. He stated that in the event the prosecution led any evidence to establish any culpability on the part of

the petitioner, the petitioner would also take steps to lead evidence in his defence and there is enough evidence available to establish that the petitioner was not culpably involved.

15. He further contended that there is no allegation that the petitioner had received any benefit of the loans approved by the credit committee/loan approval committee of which the petitioner was a member. He further stated that the loan documents also indicated that the borrowing entities enjoyed the confidence of the Promoters and that was also a valid consideration for granting loans to those entities as the Promoters also had a significant economic interest in REL and indirectly in RFL. He contended that the petitioner had discharged his duties as assigned with due diligence. He contended that even if any of the decisions made by the petitioner were questioned as erroneous, the same did not establish any culpability on part of the petitioner.

16. Next, Mr Bhandari referred to the allegation that part of his remuneration had been paid by companies that were held almost entirely by the Promoters. He submitted that the petitioner was an employee of REL and was responsible as the Group CFO. The petitioner was receiving part of his salary from FSSL (Finserve Shared Services Limited), which was a company formed to provide certain shared services to the Religare Group. He contended that FSSL was formed pursuant to a service agreement entered into between FSSL and REL. In terms of the agreement FSSL was required to provide support services in the area of administration, branding, finance and accounting, HR, information technology, legal compliance and corporate and secretarial affairs, customer support services etc. As a part of the same, FSSL was also required to bear the cost of certain salaries paid to various staff of the Religare Group and in turn FSSL would be provided service charges/remuneration for the same. He submitted that this was a part of the internal structure and this did not under any circumstances indicate that the petitioner was deriving any benefit from FSSL or from the Promoters indirectly.

17. I have heard the counsel for the parties.

18. In *Prahlad Singh Bhati v. NCT of Delhi*: (2001) 4 SCC 280, the Supreme Court had set out the factors required to be considered by the court while exercising the jurisdiction to grant bail, in the following words:

"8. ...While granting the bail, the court has 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, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations..."

19. Thus, the first and foremost consideration is the nature of accusations, the nature of evidence in support thereof and the severity of the punishment which conviction will entail.

20. The reading of the chargesheet indicates that the prosecution had identified nineteen questionable loan transactions where the borrowers had defaulted in repayment of the dues advanced to them. The chargesheet indicates that in all of those nineteen instances, the loan had been approved by the Risk Management Committee and in certain cases was also approved by the RPT (Related Party Transaction) sub-committee. The date on which the approvals were been granted are indicated in the chargesheet. All of these questionable transactions pertain to the period after the year, 2016. The learned APP could not point out any instance, referred to in the chargesheet, of any loan transaction pertaining to a period prior to the year, 2016. However, she submitted that there may be instances where the loans extended after the year 2016 may have been partly used to service loans provided earlier.

21. However, it cannot be disputed that most of the questionable loan transactions had been entered into after 2016. Undisputedly, the petitioner was employed with the Religare Group of Companies in various capacities since 2008. However, it is not disputed that the petitioner was not holding any executive position in RFL after 13.11. 2011. The chargesheet indicates that he had ceased to be a whole time director with effect from 13.11.2011. The petitioner acted as the Group CFO from 06.04.2010 till his resignation on 14.11.2017; thus, it prima facie appears that the petitioner may have supervised certain executive functions relating to RFL but he was not control of its day to day management. The extent of the involvement of the petitioner in the affairs of RFL is a matter of trial and it is not necessary to examine the same in any great detail at this stage. Suffice it to state that it is not disputed that the petitioner was involved in the affairs of RFL at least as a non-executive director till his resignation on 14.11.2017.

22. The tabular statement at pages 32 to 38 of the chargesheet lists out the nineteen questionable loans that were extended by RFL. The said tabular statement indicates that three of the said loans (loan of 165 crores to Artifice Properties Pvt. Ltd.; 155 crores loan approved to Modland Wears Pvt. Ltd. and 160 crores loan approved for Zolton Properties Pvt. Ltd.) had been approved by the Risk Management Committee which included the petitioner. The said loans have been mentioned at serial nos. 5, 10 and 19 of the said tabular statement. The statement also indicates that these loans were also approved by members of the RPT sub-committee. And, none of them have been charged as being complicit with the Promoters

23. In addition, the petitioner was also a part of the Risk Management Committee that had approved three other questionable loans (loans of 40 crores to Best Health Management Pvt. Ltd.; 40 crores to Devera Developers Pvt. Ltd. and 35 crores to Vitoba Pvt. Ltd.) which are mentioned at serial nos. 6, 7 and 17 of the said tabular statement. These loans were not considered by the RPT. Mr Bhandari had submitted that this was so because the said loans were approved as secured loans (part of the SME Loans) and were to be secured against valuable collateral and did not require to be approved by the RPT. It is important to note that the tabular statement does not indicate that the petitioner was involved in approving of any of the other thirteen loans.

24. It is contended on behalf of the petitioner that the reason for granting some of the loans was that the Promoters were comfortable with the borrowing entities and had also issued a letter agreeing to purchase the entire Corporate Loan Book with no cost or loss to RFL. At this stage, the Court is

refraining from examining the question whether any such defence is merited. However, it would not be apposite to observe that the petitioner does contend that he did not act in any culpable manner. Further the loan proposals also disclosed that the Promoters were comfortable with the same.

25. The petitioner had also contended that proposals for the six loans approved by the committee of which the petitioner was a party had been initiated by other employees.

26. It is also relevant to note that the prosecution is relying on the proposal documents to indicate that the entities to whom funds were lent by RFL were not creditworthy. Indisputably, these documents were also available to all members of the Risk Management Committee and the RPT Committee who had approved the said loans. Whilst the petitioner and some other officials of the company have been accused along with the Promoters, other members of the concerned committees that had approved the loans have not been charged. It is not an uncommon practice for lenders to extend loan on the strength of comfort provided by creditworthy and known persons.

27. While serious allegations of conspiracy had been made against the petitioner, there appears to be no substantiated allegation that the petitioner had derived any monetary benefit from the questionable loans that were approved by the petitioner. Mr Mohit Mathur had contended that the petitioner had derived monetary benefit as part of his salaries were paid by FSSL which was an entity owned by the Promoters. He had further stated that there was material to indicate that one of the entities controlled by the Promoters had extended a loan of 1.4 crores to the petitioner in the year 2012.

28. Prima facie, there does not appear to be any material which would establish that the petitioner had derived any monetary benefit from the Promoters other than what has been disclosed in the annual accounts of the companies in question.

29. Prima facie, it appears that FSSL was a company providing shared services. In other words, the said company was providing services to various Group companies and as a part of the arrangement, salaries of some of the staff of REL were paid by FSSL. However, FSSL had recovered the same from REL or group companies. The practice of the shared services being provided by a separate entity is quite common. And, the same does not necessarily indicate that the employees receiving salary from such entities are deriving any benefit from any third entity.

30. Having stated the above, it is necessary to clarify that the observations made by this Court are only prima facie and limited for the purposes of examining the question whether the petitioner should be released on bail. It does not in any manner preclude the prosecution from otherwise establishing that the petitioner had derived direct benefit from the Promoters or by virtue of the questionable loans granted by RFL.

31. The next aspect is to be examined is the nature of evidence against the petitioner. It is at once clear that the bulk of the evidence against the petitioner is documentary evidence which is available on record of the Religare Group of Companies as well as other entities. The petitioner had resigned from the Religare Group of Companies way back in the year 2017 and it does not appear that the

petitioner has ready access to any of the documents which may be used against him.

32. The petitioner is a qualified Chartered Accountant and there is no allegation that he had any other stake in REL or RFL except as an employee or an official of the said companies. It prima facie does appear that the petitioner was employed by virtue of his professional qualifications. There is also little material to establish that the remuneration paid to the petitioner was not commensurate with his position in REL. The above is also a vital aspect to be borne in mind while examining whether the petitioner should be granted bail.

33. This Court is not persuaded to accept that the petitioner has any propensity to tamper with the relevant evidence. As noticed above, the petitioner had left the employment of the REL almost three years ago. He had also resigned as a director of RFL.

34. The chargesheet against the petitioner has been filed. The petitioner has been in custody since 10.10.2019 - for over eight months.

35. This Court is informed that the petitioner was released on interim bail for a period of ten days and there is no allegation that the petitioner had misused his liberty.

36. This Court is also of the view that the petitioner does not present any flight risk. As noticed above, the petitioner is a professional accountant. His qualifications are recognized in India but not in most of other countries. He has been stationed in India and there is no material to indicate that he would present any flight risk. Although it was contended on behalf of the complainant (RFL) that the petitioner has the means to flee the country, there does not appear to be any cogent material to entertain any such apprehension.

37. This Court is also of the view that the alleged role of the petitioner in the alleged offence cannot be equated to that of the Promoters who are also alleged to be the beneficiaries of the funds allegedly siphoned from RFL.

38. Considering the above, this Court considers it apposite to allow the present petition.

39. The petitioner shall be released on bail on his furnishing a personal bond in the sum of 25,000/- to the satisfaction of the Trial Court/Duty Magistrate with one surety of the like amount. This is also subject to following further conditions:

- (a) That the petitioner shall not leave the National Capital Territory of Delhi without prior permission of the Trial Court;
- (b) That the petitioner shall not contact any of the employees of REL, RFL or any of the Religare group of companies.
- (c) That the petitioner shall provide a contact number to the SHO of the concerned Police

Station and ensure that he is reachable on the said number all the time;

- (d) That the petitioner shall ensure that he is present at all hearings/proceedings;

40. The petition is allowed in the aforesaid terms.

41. It is clarified that noting stated in this order should be construed as an expression of opinion on the merits of the allegations and all observations made are for the limited purpose of considering the present petition.

VIBHU BAKHRU, J JUNE 17, 2020 RK