

Sandeep Khosla vs Serious Fraud Investigation Office on 13 September, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 2734/2022 & CRL.M.A. 18400-18401/2022

SANDEEP KHOSLA

Through:

Mr. Siddharth Aggarwal

Advocate with Mr. Malak Bha

Neeha Nagpal, Ms. Tanishka

Khatana, Mr. Vishvendra Tom

Mr. Abhinav Sikhri, Advocat

versus

SERIOUS FRAUD INVESTIGATION OFFICE

Through:

Mr. Harish Vaidyanathan Sha

CGSC, Mr. Srish Kumar Mishr

Sagar Mehlawat, Mr. Alexand

Mathai Paikaday, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 13.09.2022 CRL.M.A. 18400/2022 (Ex.) Exemption allowed subject to all just exceptions. The application stands disposed of. BAIL APPLN. 2734/2022 & CRL.M.A. 18401/2022 The applicant, vide the present application seeks the grant of anticipatory bail in terms of Section 438 of the Cr.P.C. in the event of his arrest/remand to custody upon appearance in C.C. No.149/2020 titled "SFIO Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

vs. Rockland Hospital & Ors" pending in the Court of the learned Special Judge (Companies Act), Dwarka Courts (SW), New Delhi.

Notice of the petition is issued and is accepted by the learned CGSC on behalf of the respondent/ SFIO.

A bare perusal of the application itself indicates vide paragraph 9 thereof to the effect that the bail application filed by the applicant, is pending adjudication before the learned Special Judge for the date 06.10.2022. The applicant, however, submits that in view of the order that has been passed by the learned Special Judge under the Companies Act, a copy of which has been submitted dated

14.07.2022 in Bail Appln. No.1531/2022 titled as "SFIO Vs. Parul Polymers Pvt. Ltd. & Ors.", for reasons detailed in the said order to the effect:-

"....

Therefore, in view of the facts and circumstances and statutory provision under Section 212 of Companies Act, 2013 and in view of the observation of Hon'ble Supreme Court of India in case Satender Kumar Antil Vs. CBI & Anr. SLP (Crl.) No. 5191/2021 and SFIO Vs. Nittin Johari & Anr., Crl. Appeal No. 1381/2019 and further by Hon'ble Delhi High Court in case of Nittin Johari Vs. Serious Fraud Investigation Office in bail application no.1971/2019, Court finds that it is not a fit case for grant of bail and therefore, the present bail application moved by applicant/accused (A-

10) Taranjeet Singh Bagga @ Sonu Singh is hereby dismissed and disposed of.

.....", the applicant apprehends that the applicant could be taken into custody on the date of appearance before the Trial Court.

Inter alia, reliance is placed on behalf of the applicant on the verdict Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

of the Hon'ble Supreme Court in "Sushila Aggarwal and others Vs. State (NCT of Delhi) And Another" (2020) 5 Supreme Court Cases 1 with specific observations in paragraph 7.1 thereof, which reads to the effect:-

"7.1. At the outset, it is required to be noted that as such the expression "anticipatory bail" has not been defined in the Code. As observed by this Court in Balchand Jain [Balchand Jain v. State of M.P., (1976) 4 SCC 572 :

1976 SCC (Cri) 689] , "anticipatory bail" means "bail in anticipation of arrest". As held by this Court, the expression "anticipatory bail" is a misnomer inasmuch as it is not as if bail is presently granted by the court in anticipation of arrest. An application for "anticipatory bail" in anticipation of arrest could be moved by the accused at a stage before an FIR is filed or at a stage when FIR is registered but the charge-sheet has not been filed and the investigation is in progress or at a stage after the investigation is concluded. Power to grant "anticipatory bail" under Section 438 CrPC vests only with the Court of Session or the High Court. Therefore, ultimately it is for the court concerned to consider the application for "anticipatory bail" and while granting the "anticipatory bail" it is ultimately for the court concerned to impose conditions including the limited period of "anticipatory bail", depends upon the stages at which the application for anticipatory bail is moved. A person in whose favour a pre-arrest bail order is made under Section 438 CrPC has to be arrested. However, once there is an order of pre-arrest bail/anticipatory bail, as and when he is

arrested he has to be released on bail. Otherwise, there is no distinction or difference between the pre-arrest bail order under Section 438 and the bail order under Sections 437 and 439 CrPC. The only difference between the pre-

arrest bail order under Section 438 and the bail order under Sections 437 and 439 is the stages at which the bail order is passed. The bail order under Section 438 CrPC is prior to his arrest and in anticipation of his arrest and the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

order of bail under Sections 437 and 439 is after a person is arrested. A bare reading of Section 438 CrPC shows that there is nothing in the language of the Section which goes to show that the pre-arrest bail granted under Section 438 has to be time-bound. The position is the same as in Section 437 and Section 439 CrPC.", to contend to the effect that the apprehension of arrest and being taken into custody is not only simplicitor where the investigating agency or the prosecution seeks the arrest and it may also be by the Court concerned where the proceedings are pending.

Reliance is also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in "Satender Kumar Antil Vs. Central Bureau of Investigation and Another" 2022 SCC OnLine SC 825 to submit to the effect that in the instant case, the offence in question relates to the Companies Act qua provisions under Section 212(6) thereof, which reads to the effect:-

"212. Investigation into affairs of Company by Serious Fraud Investigation Office.--

1. ...

2. ...

3. ...

4. ...

5.

6. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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.", in as much as, the offence alleged in the instant case relates to the alleged offence punishable under Section 447 of the Companies Act.

It has thus been submitted on behalf of the applicant that in view of observations in paragraph 65 of the verdict of the Hon'ble Supreme Court in Satender Kumar Antil (supra) which directs to the effect:-

"65. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code.", the applicant not having been arrested consciously by the prosecution so far, there is no need for further arrest at the instance of the Court and it has thus been submitted that the applicant be protected.

Inter alia, a submission is made on behalf of the applicant that in proceedings dated 01.08.2022 in Bail Appln. No.2279/2022 in "Reena Tewari vs. SFIO" on an application filed by the applicant therein seeking the grant of anticipatory bail, wherein, also the stringent provisions of the Companies Act, Section 212(6) thereof were involved, submissions made on behalf of the applicant were taken into consideration and it was ordered to the effect:-

".....

3. This petition is filed for anticipatory bail. At the outset, the learned senior counsel for the petitioner relied upon the decision of the Supreme Court in Satnender Kumar Antil vs CBI & Others 2022 SCC OnLine SC 825 more specifically para No.65 which relates to offence punishable under Special Acts containing stringent provisions for bail like Companies Act- Section 212(6). The learned senior counsel for petitioner submit the petitioner was never arrested during investigation and she cooperated throughout the investigation, including appeared before the Investigation Officer whenever called for. It is stated the petitioner is a widow lady having a child of 15 years and her husband passed away in the year 2018. It is stated the complaint was filed before the learned Trial Court without the arrest of petitioner herein and now she has been summoned by the learned Trial Court.

4. It is stated despite the decision in Satender Kumar Antil Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.

(supra) dated 11.07.2022, the learned Trial Court has send the co-accused person in custody per its order dated 14.07.2022.

5. Issue notice.

6. The learned counsel for respondent accepts notice and intends to file a status report in this regard. Be filed before next date of hearing with an advance copy thereof to the learned counsel for petitioner.

7. List again on 07.10.2022 and till then no coercive steps be taken against the petitioner, including by the learned Trial Court."

It has further been submitted on behalf of the applicant that furthermore, in Bail Appln. No.2568/2022 titled "Neeraj Jain Vs. State Through Standing Counsel & Anr.", the Co-ordinate Bench of this Court qua this application filed by the applicant therein seeking grant of anticipatory bail in CC No.770/2019 has on request of the applicant thereof directed that subject to the orders of the Hon'ble the Chief Justice, the matter be placed before the Court of Hon'ble Mr. Justice Yogesh Khanna for the date 07.10.2022, where the bail applications of other co-accused persons are fixed.

On behalf of the respondent/ SFIO, it has been submitted that the bail application filed by the applicant is already pending before the learned Trial Court for the date 06.10.2022 and that the respondent/ SFIO does not seek to arrest the applicant herein.

It is, however, pointed out on behalf of the SFIO/ respondent that in the proceedings in Reena Tewari (Supra) in Bail Appln. No.2279/2022 which are fixed for 07.10.2022, wherein, there is an interim protection Signature Not Verified Digitally Signed By:SUMIT GHAI Signing

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granted, there was no bail application that was filed by Reena Tewari before the Court of the learned Special Judge dealing with the Companies Act cases.

The said submission made on behalf of the SFIO is not refuted on behalf of the applicant, however, it has been submitted on behalf of the applicant under instructions that though, the copy of the proceedings dated 30.08.2022 in Bail Appln. No.2568/2022, do not reflect that there was an application filed before the learned Trial Court by Neeraj Jain seeking the grant of bail, which is pending and it has thus, been submitted on behalf of the applicant that the aspect is thus identical to the issue involved in Bail Appln. No.2568/2022, which has, vide order dated 30.08.2022 been directed to be placed before the Co-ordinate Bench of this Court where Bail Appln. No.2279/2022 is pending.

It is informed on behalf of the SFIO that the said bail application of Neeraj Jain i.e. Bail Appln. No.2568/2022 relates to another matter but that the aspect of pendency of the bail application filed by Neeraj Jain before the Trial Court is not presently known to the SFIO.

In these circumstances, in view of order dated 30.08.2022 in Bail Appln. No.2568/2022 qua which learned senior counsel for the applicant under instructions submits and reiterates that there is a bail application that the applicant- Neeraj Jain had filed before the Trial court, which is pending consideration despite which this order dated 30.08.2022 in Bail Appln. No.2568/2022 directing that the matter be placed with similar matters as in Reena Tewari i.e. Bail Appln. No.2279/2022 has been passed, subject to orders of the Hon'ble the Chief Justice, the proceedings of the present bail
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application i.e. BAIL APPLN. 2734/2022 be placed before the Court of Hon'ble Mr. Justice Yogesh Khanna for the date 15.09.2022.

ANU MALHOTRA, J SEPTEMBER 13, 2022 Nc Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:14.09.2022 10:41:03 This file is digitally signed by PS to HMJ ANU MALHOTRA.