

Delhi High Court

Arun Kumar Aggarwal vs Serious Fraud Investigation ... on 1 June, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 01st June, 2023

+ BAIL APPLN. 3178/2022

ARUN KUMAR AGGARWAL

..... Applic

Through: Mr. Arvind K. Nigam, Senior Adv
with Mr. Abhir Datt, Mr. Manu
Padalia, Mr. Bhanu Sanoriya and
Mr. Rohit Hooda, Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICE

..... Respon

Through: Mr. Ripu Daman Bhardwaj, CGSC,
with Mr. Kushagra Kumar, GP, Mr.
Nitin Agnihotri, Prosecutor SFI
Mr. Shriram & Mr. Salman, Advoc

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 („CrPC) read with Section 212(6) of the Companies Act, 2013 seeks grant of regular bail in Complaint Case No. 374/2022 titled Serious Fraud Investigation Office v. Bhushan Airways Services Pvt. Ltd. & Ors., registered under Section 120B read with Sections 417 and 420 of Indian Penal Code („IPC), Section 36(c) read with Section 447 of the Companies BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 Act, 2013 („Companies Act); Sections 129 and 448 read with Section 447, and Sections 211 and 628 of the Companies Act, 1956, pending before the Court of the learned Additional Sessions Judge-03/Special Judge (Companies Act), Dwarka Courts, New Delhi.

Background

2. The Ministry of Corporate Affairs, Government of India („MCA), in exercise of its powers conferred under Section 212(1)(c) of the Companies Act, assigned the investigation into the affairs of Bhushan Power and Steel Ltd. („BPSL), its ten group companies and Bhushan Steel Limited („BSL) with its two group companies to Serious Fraud Investigation Office („SFIO), vide order F. No. 5/5/2016/CL-II dated 03.05.2016.

3. The Director, SFIO, appointed officers of the SFIO as inspectors to investigate the aforementioned companies. Thereafter, MCA vide order No. 5/5/2016/CL-II dated 08.01.2018 granted approval under Section 219(b) & 219(c) of the Companies Act to investigate twenty group companies associated with BPSL.

4. The applicant herein, a Chartered Accountant, was associated with BPSL since the year 2000 till May 2019, handling financial matters of the company.

5. As per the allegations leveled by the SFIO, during investigation, it was revealed that in furtherance of a fraudulent modus operandi, finished goods lying in the plant of BPSL were removed from the plant allegedly without issuing sale invoices and were sold in the open market. The funds generated from the said sale were never given to BPSL and were systematically never reflected in the books of account of BPSL. The alleged illegal movement of the goods worth Rs. 1,023 crores from the plant without raising invoices inter BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 alia caused wrongful loss to BPSL and wrongful enrichment of persons who were controlling the affairs of BPSL.

6. In the Status Report that as on 31.03.2017, BPSL had outstanding liability to the tune of Rs. 37,000 crores approximately, towards banks and financial institutions which were classified as Non-Performing Assets („NPAs ") in the books of said banks and financial institutions. The goods that were illegally removed from the plant, were the security for the said loans availed by BPSL from banks/institutions. Furthermore, the books of accounts were falsified by not accounting for sale of such goods valued at Rs.1,023 crores, while the freight payments of seventy railway receipts were booked under the head „Capital Work in Progress („CWIP ").

7. Upon examination of the bank accounts of BPSL and its associated companies, it has been alleged that a huge amount of funds was diverted to various paper companies and through a myriad of companies, it was infused back to associated companies of the former Chief Managing Director („CDM ") of BPSL, Sanjay Singal. The investigation revealed siphoning of monies by creating bogus capital advances to paper companies through a web of complex transactions by the controllers of BPSL. In pursuance thereof, the same funds were introduced in the accounts of Adarsh Infotech Pvt. Ltd. (A-

7) that made payment to BPSL on behalf of Shree Ankleshwar Pvt. Ltd. (A-

33) for purchase of immovable property from BPSL situated at Flat No. 109 to 112 at International Trade Tower, Nehru Place, New Delhi. The funds so siphoned were also given to Silver Star Commercial Company Pvt. Ltd. (A-

34) through BSN Enterprise Pvt. Ltd. (A-3), it has been alleged that both the end receiver companies are managed by Sanjay Singal, the former CMD of BPSL.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

8. The report alleges that the promoters and controllers of BPSL induced the banks to sanction loans on the basis of false financial statements and bogus infusion of equity that had been bought by diversion of BPSL money and materials to circumvent the BPSL bank accounts from being classified as NPAs. The SFIO, in its report, alleges fraudulent availing of credit facilities from banks also through the instrument of Inland Letter of Credits („LCs) issued on the basis of false documents from banks and then fraudulently discounting the said LCs, converting them into wrongful gains.

9. After placing sufficient material on record against the accused, for prosecution under Sections 447/36(c) read with Sections 447/129/448 of the Companies Act, Sections 211 and 628 of the Companies Act, 1956 and Sections 120B/417/420 of the IPC. The SFIO arrested the applicant on 21.03.2022 and produced him before the learned Special Court, Dwarka that granted 2 days judicial remand. Thereafter, the SFIO filed an application seeking 14 days Judicial Custody that was granted by the learned Special Court vide Order dated 24.03.2022. The applicant is in judicial custody since then.

10. The SFIO, in the complaint case, on the basis of the findings of the investigation report, has leveled the following charges of fraud, citing instances that associate the applicant herein to the alleged fraud with respect to public money to the tune of Rs. 5,435 Crores. The respondent has alleged a total number of twelve charges against the accused in the said complaint case. Charge 1 includes ten instances. Out of the twelve charges, seven charges have been alleged against the applicant, and out of the ten instances under the first charge, three instances have been alleged against him. The charges against the applicant are as under:-

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

10.1. CHARGE 1: Fraud with the intent to injure interest of company punishable under Section 447 of the Companies Act. The relevant instances are 2, 3 & 4:

10.1.1. Charge 1, Instance II: Siphoning off funds from BPSL in the form of bogus capital advances and routing the same as equity or unsecured loans to related entities of BPSL. The relevant allegations read as under:

"Arun Kumar Agarwal (Ex-CFO, BPSL)

136.Arun Kumar Agrawal, was CFO, BPSL and E&Y in its Forensic Report of BPSL has red flagged capital advances to certain parties wherein there was no supporting documents except the payment vouchers and the names of capital advances parties were in the E&Y report. On investigation, it was revealed that capital advance parties were not genuine. He, along with Amarjeet Sharma was coordinating on behalf of BPSL in conduct of Forensic Audit and supplying response/documents on behalf of BPSL to Forensic Auditor and he himself submitted response of BPSL vide its letter dated 21.06.2017 to SBI in response to clarifications sought on the issues related to Forensic Auditor, wherein he had justified that the capital advances made to parties were in the normal course of business for purchase of raw-material, equipment, and ongoing capex. However, these parties are not genuine and the funds transferred to

these parties were siphoned off from the accounts of BPSL for providing accommodation entries to BPSL group entities.

137. He had signed the balance sheet for F.Y 2016-17 knowing that the financials are not reflecting a true and fair view of BPSL. He used to attend the meetings of bankers held to discuss the forensic report of E&Y along with Sh. Sanjay Singal, Ex-CMD, BPSL and sometimes with sh. Amarjeet Sharma and sh. RP. Goyal also used to attend the meetings with the bankers."

10.1.2. Charge 1, Instance III: Siphoning off funds from BPSL in the form of bogus advances to suppliers. The relevant allegations read as under:

"Arun Kumar Agrawal

154. Arun Agrawal, CFO had signed the balance sheet for F.Y 2016-

17 knowing that the financials are not reflecting a true and fair picture of BPSL and wherein provision of Rs.471.78 crores was made and E BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 & Y in its Forensic Report of BPSL has red flagged advances to certain parties wherein there was no supporting documents except the payment vouchers and the names of 20 parties out of top 26 advances to suppliers were in the said list prepared by E&Y report. On investigation, it was revealed that advances to suppliers were not genuine. He, along with Amarjeet Sharma was coordinating on behalf of BPSL in conduct of Forensic Audit and supplying response/documents on behalf of BPSL to Forensic Auditor.

155. He submitted response of BPSL vide its letter dated 21.06.2017 the SBI in response to clarifications sought on the issues related to Forensic Auditor, wherein he had stated that the advances made to parties mentioned at Sr. No.5,8,13,14,15,17,20,22,23,24,30 & 36 of the letter were given in the normal course of business for supply of goods and services, however on investigation it is found that these parties are not genuine and the funds transferred to these parties were siphoned off from the accounts of BPSL for providing accommodation entries to BPSL group entities. He is also the signatory of the financials of BPSL as on 31.03.2017 wherein provision Rs.471.78 crores was made of advances to suppliers."

10.1.3. Charge 1, Instance IV: Siphoning of funds through purchase of property through Assurity Real Estate LLP at Mumbai. The relevant allegations read as under:

"Arun Kumar Agrawal

184. He was the CFO of BPSL and responsible for all loans and finance for BPSL. He was head of the finance department of BPSL and he was looking after all the financial matters. The issue of Advances to Suppliers were highlighted in the Forensic Report of E&Y, wherein he was assisting the forensic auditors on behalf of BPSL. In the forensic report, it was highlighted that the advances to suppliers were without any

documentation only payment vouchers were produced by BPSL in support of genuineness of the transactions. On behalf of BPSL, he justified all such transactions, whereas, on investigation payment to the suppliers were found to be bogus and routed back to Assurity Real Estate LLP as unsecured loans."

10.2. Charge 2: Fraudulently availing the credit facilities from banks through the instrument of LCs by using false documents and other fraudulent activities BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 punishable under Section 36(c) read with 447 of the Companies Act. The relevant allegations read as under:

"Arun Kumar Agrawal

259.Arun Kumar Agrawal, was CFO of BPSL and was looking after the loan and financing of the company. He was well aware that LCs as mentioned above, were accommodation LCs opened without any underlying transactions only in order to avoid NPA. He was also aware that there was no actual delivery of goods against those LCs as they were accommodation LCs. He along with R.K. Rastogi was authorized by committee on Borrowings in the meeting on 26.06.2013 to open the LCs and execute all LC related documents. He confirmed that on the advice of the banks and as per the instructions of Sanjay Singal, MD, BPSL and R. P. Goyal, Director (Commercial), they were undertaking those LC transactions only in order to avoid NPA."

10.3. Charge 3: Cheating upon the banks liable to be punished under Sections 120B, 417 and 420 of the Indian Penal Code, 1860. The relevant allegations read as under:

"Arun Kumar Agrawal

269. As submitted hereinabove, in order to achieve the said objective the funds of BPSL were diverted in form of capital advances, advances to suppliers and also the cash generated through the sale of theft material from BPSL Plant to various paper entities managed and controlled by aforesaid entry-operators and after placing and layering through web of entities, the funds were infused in the Companies including four front companies namely Diyajyoti, Jasmine, Marsh and Vision and ultimately infused in BPSL as share capital. Investigation revealed that through four front companies a total capital of Rs. 3689.89 crores (equity - Rs. 2681.31 crores and preference shares - Rs. 1008.58 crores) had been infused in BPSL. Through this modus- operandi BPSL used to maintain a healthy debt-equity ratio and thereby dishonestly induced the banks to sanction as well as disburse the loans to it.

270. Thus, Sanjay Singal, Amarjeet Sharma, Alkesh Sharma, R.K.

Gupta, R.P. Goyal, H. C. Verma, Arun Kumar Agrawal, R.K. Mehra (Deceased), Abhaychand Bardia, Abhishek Chokhani, Anand Kumar Sharma, Anil Kumar Khemk &, B. D. Agarwal, Praveen

Kumar Jain alias Pintoo, Sagarmal Nahata, Sirish Chanderkant shah, Subhash BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 Kumar Agarwal Dilip Nahata, Himanshu Verma, Krishan Kumar Khadaria, Narender Kumar Jain, Pankaj Agrawal, Pankaj Kasera,praveen Kumar Tavatiya, R. K. Kedia, Vikash Chowdhary, Diyajyoti Steel Ltd., Jasmine Steel Trading Ltd., Marsh Steel Trading Ltd, Vision Steel Limited., Aarti Iron & Power Pvt. Ltd., Adarsh Info Tech Pvt. Ltd., Adhunik Investment h/t. Ltd., ASL Investment Pvt. Ltd., fuomatic Steel kt. Ltd., Bhushan Airways Services Pvt. Ltd., Bhushan Information & Technology Ltd., BIC Investment Pvt. Ltd., BSN Enterprises Pvt. Ltd., Decor Investment and Finance Pvt. Ltd., Evergrowing Iron & Finvest Ltd., Flawless Holding & Industries Ltd., Gaindamal Chiranjilal Ltd., Kishorilal Construction Ltd., Marble Finvest Ltd., Nilanchal Investment Pvt. Ltd., Olympian Finvest Pvt. Ltd., Railtrack India Ltd., Reward capital Services Pvt. Ltd., Rockland Steel Trading Ltd., Shivalik view Steel Trading Ltd., Titanic Steel Industries Ltd., Vintage Steel P\rt. Ltd. committed cheating upon the banks and, hence, liable to be punished under Section 120B,417and420 IPC 1860."

10.4. Charge 4: Fraudulent inducement of banks as laid down in Section 36(c) of the Companies Act, punishable under Section 36(c) read with 447 of the Companies Act. The relevant allegations read as under:

"Arun Kumar Agrawal

271. As submitted hereinabove, during FY 2014-15 to 2016-17, Sanjay Singal (erstwhile CMD of BPSL) and Aarti Singal connived with KMPs/employees namely Amarjeet Sharma (the then Executive Director, BPSL), Alkesh Sharma (the then President Accounts- Finance of BPSL), R.K. Gupta, Company Secretary, R.P. Goyal (the then Director Commercial of BPSL), H. C. Verma (the then Director Marketing of BPSL), Arun Kumar Agrawal (the then CFO of BPSL),R.K. Mehra (Statutory Auditor, since deceased) and Entry Operators namely Himanshu Verma Devesh Upadhyaya, Krishan Kumar Khadaria and Vikash Chowdhary to commit the fraud upon banks inducing the banks to sanction loans on the basis of false financial statements and bogus infusion of equity or unsecured loans. In order to achieve the said objective, the funds of BPSL were diverted in form of capital advances as well as advances to suppliers to various paper entities managed and controlled by aforesaid entry-

operators and after placing and layering through web of entities, the funds were infused in the Companies including four front companies BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 namely Diyajyoti, Jasmine, Marsh and vision and ultimately infused in BPSL as share capital. Through four front companies a total capital of Rs 17.60 crores had been infused in BPSL during FY 2014-15 to 2016 L7 as preference shares.

272. Thus, Sanjay Singal, Aarti Singal, H C Verma, R P Goyal R.K. Gupta, Alkesh Sharma, Amarjeet Sharma, Arun Kumar Agrawal Himanshu Verma, Devesh Upadhyaya, Krishan Kumar Khadaria, Vikash Chowdhary, Diyajyoti Steel Ltd., Jasmine Steel Trading Ltd., Marsh Steel Trading

Ltd and Vision Steel Limited used false documents in order to induce banks for availing loans from the banks during the period covering F.Y. 2014-15 to 2016-17 and thereby, they are liable for fraudulent inducement of banks as laid down in Section 36(c) of companies Act 2013 and punished u/s 36 (c) r/w 447 of the Companies Act, 2013."

10.5. Charge 7: Liability for making false representations in the financials for the Financial Year 2017-18, under Sections 129 and 448 read with 447 of the Companies Act. The relevant allegations read as under:

"Arun Kumar Agarwal

286. Investigation revealed that Sanjay Singal (erstwhile CMD), R. P. Goyal (the then WTD of BPSL), Amarjeet Sharma (Director-Finance of BPSL), Arun Kumar Agarwal (the then CFO) and R.K. Gupta Company Secretary were at all material times, aware about the fact that SAP-ERP data did not crash, rather, a new client code was created and data in the old client was deleted, still signed the financials for the F.Y. 2017-18 mentioning therein crash of ERP data. The manipulation in the ERP data was only made to conceal the siphoning of stock amounting to Rs. 1023 crore.

287. Therefore, Sanjay Singal, Arun Kumar Agarwal, Amarjeet Sharma, R.P. Goyal, R.K. Gupta have falsified the books and accounts and financials of BPSL for FY 2017-18 and knowingly created false documents i.e. books of accounts and financials which did not reflect true and fair view about the affairs of BPSL and thereby, liable to be punished u/s. (s) 129 (7) and 448 r/w 447 of the Companies Act 2013."

10.6. Charge 8: Falsification of books of accounts for not providing true and fair view of financials of BPSL for the financial year 2009-10 to 2016-17, BAIL APPLN. 3178/2022 Digitally Signed By: ANITA BAITAL Signing Date: 01.06.2023 16:41:24 liable for penal action under Section 129, 448 read with 447 of the Companies Act and Sections 211 and 628 of Companies Act, 1956. The relevant allegations read as under:

"Arun Kumar Agarwal

288. As submitted, during the course of investigation, it was revealed that the ex-promoter of BPSL, Sanjay Singal with the connivance of R.P. Goyal (the then WTD of BPSL), Amarjeet Sharma (Director- Finance of BPSL) and Arun Kumar Agarwal (the then CFO) and statutory auditor of BPSL, R.K. Mehra (Deceased), Partner Mehra Goel & Co. for F.Y. 2009-10 to FY 2016-2017 and S.K. Mittal, partner S.K. Mittal & co. (2015-16 to 2016-17), knowingly manipulated the books of accounts & ledger accounts showing false entries, capital advances as well as advances to suppliers and not issuing invoices of the material dispatch through railways and booking the sales in the books of BPSL and capitalizing the freight charges paid to railways for dispatch of material without raising invoices. The financials of BPSL for F.Y. 2009-10 to FY 2016-2017 thus did not reflect true and fair view about the affairs of

BPSL.

289. All the signatories of the balance sheet of BPSL were well aware that amounts were fabricated with regard to Capital advances as well as advances to suppliers. The statutory Auditors of BPSL also failed to perform their duties as required under the Companies Act.

290. Therefore, the accused persons have falsified the books and accounts and financials of BPSL for F.Y. 2009-10 to F.Y. 2016-17 and hence, knowingly created the false documents i.e. books of accounts and financials which did not reflect true and fair view about the affairs of BPSL and are hence, liable to be prosecuted u/s. 129(7), 448 r/w 447 of the Companies Act, 2013 and u/s. 211 and 629 of the Companies Act, 1956 for the corresponding relevant financial years as follows:

i) Sanjay Singal (Managing Director) R P Goyal (Director) Amarjeet Sharma (Director), Arun Kumar Agrawal (CFO) only for F.Y.2012-13, R.K. Gupta Company Secretary and R K Mehra (Deceased) Statutory Auditor, Parbrer Mehra Goel & Co. u/s. 211 r/w 628 of Companies Act, 1956 for F.Y. 2009-10 to 2012-13;

ii).Sanjay Singal (Managing Director) R P Goyal (Director) Amarjeet Sharma (Director), Arun Kumar Agrawal (CFO) R.K.

Gupta (Company Secretary), R K Mehra (Deceased) Statutory BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 Auditor, Parfirer Mehra Goel & Co S K Mittal & Co through S.K. Mittal, Partner, Statutory Auditor (F Y 2015-16 to 2016-17)."

10.7. Charge 10: Other fraudulent transactions punishable under Section 447 of the Companies Act. The relevant allegations read as under:

"Arun Kumar Agarwal

294. During the F.Y.2013-14, Sanjay Singal (erstwhile CMD of BPSL)connived with KMPs/employees namely Amarjeet Sharma (the then Executive Director, BPSL), Alkesh Sharma (the then President Accounts-Finance of BPSL), R.P. Goyal (the then Director Commercial of BPSL), H. C. Verma (the then Director Marketing of BPSL), Arun Kumar Agrawal (the then CFO of BPSL), R.K. Mehra(Statutory Auditor, since deceased) and Entry Operator namely Narender Kumar Jain to commit the fraud upon BPSL.

295. In pursuance thereof, cash was handed over from BPSL to Narender Kumar Jain who placed and layered the same through a web of entities controlled and managed by him and thereafter, the same was rotated in the group companies of BPSL namely Vintage Steel Ltd and Olympian Finvest Pvt. Ltd. in the form of equity.

296. Thus, Sanjay Singal, Amarjeet Sharma, Alkesh Sharma, R.P. Goyal, Arun Kumar Agrawal, R.K. Mehra (Deceased), Narender Kumar Jain, Olympian Finvest Pvt. Ltd., Vintage Steel Ltd., with dishonest intention, had caused wrongful gain to themselves and are thereby, liable to be prosecuted for offence u/s. 447 of the Companies Act 2013."

10.8. Charge 11: liability under Section 447 of the Companies Act, for misuse and fraudulent abuse of the structure of audit committee. The relevant allegations read as under:

297. During the F.Y. 2016-17, Dinesh Kumar Behal, R.P. Goyal and Anil S. Supanekar were the members of the Audit Committee of BPSL. Investigation established that Anil S Supanekar resigned from the above committee on 30.06.2017. Further, the financial statements of F.Y. 2016-17 was put before the Audit Committee in a meeting held on 06.07.2017. Investigation also established that the said financials which were placed before the Audit Committee purportedly showed the provision for advances of Rs.3079.39 crore. Investigation BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 established that the provision made for parties under the head „Capital Advances and Advances to Suppliers, were found to be bogus.

298. The Board had entrusted the Audit Committee with specific duties in terms of Section 177 of companies Act, 2013 with regard to the correctness and completeness of financial results. Investigation established that Sanjay Singal erstwhile CMD of BPSL connived with R.P. Goyal, Ex- Whole Time Director, BPSL for misusing the structure of Audit Committee for perpetuation of fraud. Investigation also established that the Audit committee was not functioning independently and the committee members were merely following the instructions of Sanjay Singal and R.P. Goyal.

299. During investigation, Dinesh Kumar Behal, chairman of the Audit committee, vide his statement recorded u/s 217 (4) of the companies Act, 2013, has stated that he was the chairman for namesake and no extensive discussions regarding financials had taken place in the meetings of Audit committee. Since the Audit committee was functioning under the control of Sanjay Singal, therefore, it had never highlighted the irregularities which were going on in BPSL.

300. Thus, Sanjay singal in connivance with R.P. Goyal Member of the Audit committee and Ex Whole-Time Director, BPSL with an intent to deceive the shareholders/creditors and to conceal the true affairs of BPSL had misused the structure of Audit Committee and on their instructions, the Audit committee didn't properly examine the financials of BPSL and placed the false financials before the Board of Directors for its approval. The above said acts had caused misrepresentation of financials before the creditors and shareholders and injured their interest and therefore, Sanjay Singal and R.P. Goyal are liable to be punished u/s 447 of the Companies Act 2013.

Submissions on behalf of the Applicant/Arun Kumar Aggarwal

11. Learned Senior Counsel for the applicant submits that the applicant enjoyed an unblemished reputation in work place and social life and the SFIO's case is based upon conjectures and surmises by merely relying on allegations, without material facts.

12. Learned Senior Counsel has made his submissions with respect to each charge as under:

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

12.1. Charge 1, Instance II: The allegation of the respondent under this heading is that the funds of BPSL were siphoned off and shown as capital advances to various paper companies which were then rotated and ultimately infused into BPSL or its group companies or used in purchasing of shares or assets in the name of Sanjay Singal and his family members. Learned Senior Counsel for the applicant submitted that the said siphoning, as per the case of the respondent was done through various entry operators whose statements have been recorded by respondent. The attention of this Court has been drawn to statement of various entry operators including Praveen Kumar Tavatiya (A-54), Dilip Kumar Nahata (A-62), Praveen Kumar Agarwal, Himansu Verma (A-57), R. K. Kedia (A-58), B.D. Agarwal (A-88), Jagdish Prasad Purohit (A-70) and Vikash Chowdhary (A-56) recorded by respondent. It is pointed out that they have named Alkesh Sharma (A-42) as their immediate contact person from whom they received funds through BPSL or in cash. It is submitted that these entry operators do not name the present applicant in their statements. 12.1.1 It is submitted that the case of the respondent is that the balance sheets and financial reports were prepared at the Chandigarh office of the BPSL under the supervision of Amarjeet Sharma (A-43), whereas the present applicant was working from the Delhi office. The attention of this Court has been drawn to the various statements of Amarjeet Sharma and H.C. Verma recorded in the investigation report. 12.1.2. It is submitted that the present applicant, in his statement categorically states that he did not verify the figures in the balance sheets and relied upon co-accused Amarjeet Sharma (A-43) for their veracity. It was also pointed out that it is the case of the respondent itself that primary BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 accused Sanjay Singal (A-36) and Aarti Singal (A-37) were the authorized signatories to the bank account of BPSL and they gave directions for extending advances to paper companies.

12.1.3. It is argued that it is the case of the respondent that four group companies of BPSL, being accused nos. 14, 17, 19, 30, referred to as "four front companies" in the investigation report, received accommodation entries from several entry operators, and invested Rs. 3350.05 crores in BPSL. It is pointed out that Sanjay Singal (A-36) and Aarti Singal (A-37), along with their children Aniket Singal (A-38), and Priyanka Miglani (A-

39) were directors/shareholders in the said four front companies. Aniket Singal was not arrested during investigation and was granted anticipatory bail by the learned Special Judge vide order dated 16.03.2023, and Priyanka Miglani has not been arrested. It is pointed out that Aniket Singal and Priyanka Miglani have not even been made accused under the present charge.

12.1.4. It is argued by learned Senior Counsel on behalf of the applicant that the allegation of the respondent that he had supplied documents to forensic auditors which did not reflect the true and correct picture, does not, in isolation, make out an offence. The applicant in fact, assisted in the forensic audits of BPSL by duly providing documents required by the auditors. It was submitted that no material has been placed on record to show that the present applicant was aware of the falsity of the said documents.

12.2 Charge 1, Instance III: The allegation of the respondent under this head is that the funds of BPSL were siphoned off from BPSL through BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 Bogus Capital Advances shown as "advances to suppliers" to dummy entities.

12.2.1. Attention of this Court has been drawn to the fact that none of the entry-operators have named the applicant in this regard. It is submitted that none of the entry operators name the applicant in their statements recorded in the investigation report. One of the said entry operators, R.K. Kedia (A-58), stated that Sanjay Singal (A-36) instructed him to keep in touch with Amarjeet Sharma (A-43), Alkesh Sharma (A-42), and R.P. Goyal (A-41). Another such entry-operator being Dilip Nahata (A-62), named Alkesh Sharma (A-42) as the contact person for receiving funds and cash and for providing accommodation entries to entities of BPSL. 12.2.2. With regard to preparation of financial statements, it is submitted by learned Senior Counsel that such statements and balance sheets were prepared by Amarjeet Sharma (A-43), in his capacity as Executive Director (Finance). This fact has been recorded in the investigation report, on the basis of his own statements. It is argued on behalf of the applicant that the case of the respondent against the applicant concerns only his signing of balance sheets and providing documents to forensic auditors, and the same does not show his knowledge or involvement in relation to their falsity.

12.3. Charge 1, Instance IV: The allegation of the respondent under the present charge is that certain funds siphoned off from BPSL through capital advances and advances to suppliers were used to purchase a property situated at Worli, Mumbai through Assurity Real Estate LLP. 12.3.1. It is submitted that there is no finding against the applicant under the present charge in the investigation report and that the implication of BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 the applicant is on the basis of self-serving statements of Sanjay Singal (A-

36) and Aarti Singal (A-37), which have ultimately been disbelieved by the respondent. No other employee or person implicates the applicant in the present charge.

12.3.2. The allegation of the respondent under the present charge is that funds which were siphoned off from BPSL through capital advances and advances to suppliers were used to purchase a property situated at Worli, Mumbai through one Assurity Real Estate LLP (A-35), a firm incorporated in the name of Priyanka Miglani (A-39). The modus operandi alleged is to be similar to the previous instances. It has been submitted that none of the entry operators name the applicant. Attention of this Court has been drawn to the Statements of Dilip Nahata, Praveen Kumar Tavatiya, R.K. Kedia and Deepak Aggarwal recorded in the investigation report, wherein it has been stated that Alkesh

Sharma (A-42) and Sanjay Singal were the persons, on whose request they had provided loans to Assurity Real Estate Pvt. Ltd. and Aarti Singal in form of accommodation entries. It was pointed out that Priyanka Miglani (A-39), one of the designated partners in Assurity Real Estate LLP, and a direct beneficiary, was not arrested.

13. Charge 2: The present charge pertains to issuance and negotiation of LCs by BPSL. It is alleged that bogus LCs were opened by BPSL on the basis of forged and fabricated proforma invoices and bills of exchange, without any further underlying documents. Learned Senior Counsel submitted that the main accused under the present charge is one Ravinder Kumar Rastogi, Vice President (A-46) who gave a confessional statement and was directly involved in the commission of the offence. It is stated that he is also a director in one of the companies under investigation BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 („CUIs) Evergrowing Iron & Finvest Pvt. Ltd. (A-4). Attention of this Court has been drawn to the fact that despite the aforesaid, Ravinder Kumar Rastogi (A-46) was not arrested by the respondent even though he had no protection from any Court. Another accused, namely, Ankur Nagar (A-80), consultant for LC Discounting, who also allegedly played a crucial role and arranged false and fabricated documents for the opening of such bogus LCs, implicated Ravinder Kumar Rastogi by stating that he was approached by the latter for such purposes, but did not name the applicant anywhere in his statements on record in the investigation report. Ankur Nagar was also not arrested by the respondent. 13.1. It was submitted on behalf of the applicant that Ravinder Kumar Rastogi (A-46) also stated that the banks were aware of the bogus nature of the LCs and they also wanted to avoid the account from becoming an NPA, by regularizing them. However, the respondent has only vaguely referred to the role of bankers in the investigation report and no bank or banker was arraigned as an accused in the present case. Attention of this Court has also been drawn to the „Gist of Statements of Bankers in the investigation report, wherein it is stated that R.K. Rastogi used to come to the branches, and the applicant has not been named.

14. Charges 3 & 4: The investigation report alleges cheating and fraudulent inducement of banks. The learned Senior Counsel for the applicant has submitted that the present charge is an extension of the previous charges and alleges that financial statements and balance sheets of BPSL which did not reflect a true and fair picture of the affairs of the company were used to induce banks to sanction loans to BPSL. It is reiterated that the applicant did not have knowledge of the capital BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 advances and advance to suppliers as being bogus. There is no evidence linking the applicant to the present charge.

14.1. It is argued that the applicant had neither worked in the capacity of Chief Financial Officer („CFO), nor given any responsibility associated with the position and was just a namesake CFO or Key Managerial Personnel („KMP) as no board resolution was passed in his name by the Board of Directors. He had never been at the forefront of any alleged activities rendering his arraignment by SFIO in the capacity of CFO as incorrect.

15. Charges 7 & 8: Learned Senior Counsel has submitted that allegations under Charges no. 7 and 8 pertain to making false representation in the financials for the financial year 2017-18 and

falsification of books of accounts. It has been submitted that the balance sheets and financial reports of BPSL were prepared at the Chandigarh office of BPSL, under the supervision of Amarjeet Sharma (A-43), as per the case of respondent itself, the applicant was working out of the Delhi office of BPSL.

15.1. It has been submitted that the applicant did not verify the figures in the balance sheets and he relied on Amarjeet Sharma (A-43), who prepared them. It is submitted that Amarjeet Sharma (A-43) was the Vice President, Finance, BPSL and his department in Chandigarh looked after the day-to-day banking operations including LCs/BGs/fund management and payments related to properties of BPSL as well as the minutest material decisions like finalization of accounts, preparation of balance sheet and any other finance related matters.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

15.2. Learned Senior Counsel on behalf of the applicant submitted that, charge 6 relates to the destruction of SAP/ERP data in 2017, to falsify the balance sheets of the company and the applicant has not been named as an accused in the said charge.

16. Charge 10: In response to Charge no. 10 of the report alleging other fraudulent transactions, learned Senior Counsel submitted that the allegation under the present charge is that one Narender Kumar Jain (A-

71), entry operator, had given accommodation entries to BPSL in the form of infusion of share capital in CUIs. Pertinently, Narender Kumar Jain does not name the applicant, and in his statements mentions that Alkesh Sharma (A-42) used to provide cash and directions for providing such accommodation entries. There is no specific finding against the applicant under the present charge, neither in the investigation report nor in the complaint filed by the respondent.

17. Charge 11: Learned Senior Counsel has submitted that the present charge has not been alleged against the applicant. The allegations under the said charge are that the audit committee was not functioning independently. The audit committee of BPSL consisted of three members, namely, Anil S. Supanekar, R.P. Goyal (A-41) and one Dinesh Kumar Behal. It is alleged that the same was misused and manipulated by Sanjay Singal (A-36) and R.P. Goyal (A-41). It has been submitted that the applicant did not attend any of the board meetings or meetings of the audit committee. Reliance is placed on the statement of Anil S. Supanekar, an audit committee member, who does not name the applicant in any manner. 17.1. It is further submitted that by alleging that the audit committee was not functioning independently and committee members were merely BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 following the instructions of Sanjay Singal and R.P. Goyal, the respondent itself admits that there were no detailed discussions regarding the financials of the company in the audit committee meetings. The same clearly corroborates the contention of the applicant that majority of the activities were directly controlled by Sanjay Singal, and he was not involved in the preparation or verification of financial statements/balance sheets.

18. Learned Senior Counsel appearing on behalf of the applicant submitted that the applicant has been in judicial custody since 24.03.2022 in the aforementioned case, even after joining the investigation more than twenty times, conforming to the summons received from time to time. On 19.05.2022, SFIO filed the prosecution complaint under Section 447 of the Companies Act. The Learned Special Court, in order dated 19.05.2022, has recorded as under:

"Documents contained in nine trunks have been also filed along with the complaint"

Therefore, it is submitted that as per the provisions of Section 439 of the CrPC, the applicant deserves bail to prevent interference with personal liberty of the applicant as there will be a delay in trial, owing to the voluminous documents. To support the said contention, learned Senior Counsel for the applicant placed reliance on 'Jainam Rathod v. State of Haryana &Anr., Criminal Appeal No. 640 of 2022' and 'Sujay Desai v. SFIO, Criminal Appeal No. 1023 of 2022.'

19. Furthermore, it is submitted that the applicant satisfies the „triple test“ for grant of bail as there is no possibility of him tampering with evidence, influencing the witnesses or fleeing from justice as the BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 allegations are based solely on the prosecution's documents, in custody of the learned Special Court. Additionally, the statements recorded under Section 217 of the Companies Act, or any other disclosure statements, are to be tested during trial and are not sufficient ground to deny bail.

20. Learned Senior Counsel appearing for the applicant submitted that no apprehension of tampering with evidence or being a flight risk exists as the applicant is a permanent law-abiding citizen of Noida, Uttar Pradesh, India who has deep roots in society and is ready to abide by all conditions, if required, while granting regular bail as prayed for. It is the argument of the applicant that the insistence on rigours of Section 212(6) of the Companies Act, would be contrary to the presumption of innocence, which is a cardinal principal of criminal law.

21. In support of his arguments, learned Senior Counsel placed reliance on the following judgments:

21.1. In *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr.*, (2005) 5 SCC 294, it was held as under:

"35. Presumption of innocence is a human right. (See *Narendra Singh v. State of M.P.* [(2004) 10 SCC 699: 2004 SCC (Cri) 1893] , SCC para 31.) Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefore. Sub-Section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of sub-Section (4) of Section 21 must be given a proper meaning.

36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

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44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-Section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537-38, para

18) "18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8) „Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated. We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non- consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of

incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent."

21.2. The Hon'ble Supreme Court, in *Vijay Madanlal Choudhary and Ors. v. Union of India & Ors.*, (2022 SCC Online SC 929), after BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 examining the ratio in *Ranjitsing Brahmajeetsing Sharma* (supra) held as under:

"401. We are in agreement with the observation made by the Court in *Ranjitsing Brahmajeetsing Sharma*. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in *Nimmagadda Prasad*, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.

402. Sub-Section (6) of Section 212 of the Companies Act imposes similar twin conditions, as envisaged under Section 45 of the 2002 Act on the grant of bail, when a person is accused of offence under Section 447 of the Companies Act which punishes fraud, with punishment of imprisonment not less than six months and extending up to 10 years, with fine not less than the amount involved in the fraud, and extending up to 3 times the fraud. The Court in *Nittin Johari*, while justifying the stringent view towards grant of bail with respect to economic offences held that-

"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in *Y.S. Jagan Mohan Reddy*.

xxx BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the

country.

35. While granting 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 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/State and other similar considerations."

(emphasis supplied)

403. This Court has been restating this position in several decisions, including Gautam Kundu and Amit Kumar. Thus, while considering the application for bail under Section 45 of the 2002 Act, the Court should keep in mind the abovementioned principles governing the grant of bail. The limitations on granting bail as prescribed under Section 45 of the 2002 Act are in addition to the limitations under the 1973 Code.

404. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis."

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24
21.3. Similarly in Anil Vasantrao Deshmukh v. State of Maharashtra., 2022 SCC Online Bom 3150 while examining the ration in Ranjitsing Brahmajeetsing Sharma (supra) and Vijay Madanlal (supra) held as under:

"37. The aforesaid pronouncements, thus, indicate that the statutory restrictions in the matter of grant of bail are required to be considered reasonably. A finding that the accused is not guilty of the offence and that he is not likely to commit an offence if released on bail, are required to be recorded only for the purpose of arriving at an objective finding on the strength of the material on record to assess the entitlement for bail only. If the Court having regard to the material brought on record is satisfied that, in all probability, the accused may not be ultimately convicted, an order granting bail may be passed. Conversely, it is not peremptory that the Court must arrive at a positive finding that the Applicant has not committed an offence under the Act. Likewise, a satisfaction that the accused is not likely to commit an offence while on bail is qua the offence of the kind with which the accused is charged and not any other offence."

21.4. In *Jainam Rathod v. State of Haryana*, 2022 SCC OnLine SC 1506, it was held as under:

"7. The appellant is in custody since 28 August 2019. 187 accused are named in the criminal case by the prosecution. It is stated in the counter affidavit that all except 27 of them have appeared. It is evident that even as regards the balance, proclamation proceedings are intended to be initiated pursuant to the order of the Special judge dated 25 March 2022. The proceedings are now listed before the Special Judge in July 2022.

8. In this backdrop, in the absence of a fair likelihood of the trial being completed within a reasonable period, this Court must be mindful of the need to protect the personal liberty of the accused in the face of a delay in the conclusion of the trial. We are inclined to grant bail on the above ground having regard to the fact that the appellant has been in custody since 28 August 2019. In *Nittin Johari* (supra), this Court has held:

"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences."

9. While the provisions of Section 212(6) of the Companies Act 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial would necessarily result in a delay in its conclusion. The role of the appellant must be distinguished from the role of the main accused."

21.5. The Hon'ble Supreme Court in *Sujay U. Desai v. Serious Fraud Investigation Office* (2022 SCC OnLine SC 1507), held as under:

"7. 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.

21.6. The Hon'ble Supreme Court, in *Gurbaksh Singh v. CBI & Anr* (1980) 2 SCC 565, held as under:

"27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the „Meerut Conspiracy cases“ observations are to be found regarding the right to bail which deserve a special mention. In BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various Sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

21.7. A coordinate bench of this Court in Bindu Rana v. Serious Fraud Investigation Office, 2023 SCC Online Del 276 held as under:

"41. The economic offences are considered under the category of grave offences and is a factor which has to be kept in mind in addition to the triple test which is normally applied while considering the application for grant of bail.

42. It is, however, equally true that only because the allegations are one of the grave economic offences, it is not a rule that the bail has to be denied in every case. Every application has to be considered on its own merits and considering the factors which are relevant for the said case. The basic test, as reiterated by the Hon'ble Apex Court

from time to time, remains the same being:

(i) the chances of tampering with the documents and evidence, BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

(ii) the chances of influencing the witness, and

(iii) the flight risk.

43. It is not in dispute that the investigation in the present case is already complete, which has culminated into a criminal complaint filed before the concerned Special Court...

47. From the perusal of the complaint, it is apparent that even in relation to the charges which are alleged against the present applicant, there are various other accused persons who have been named as co-accused. The role assigned to them at this stage is no different than the Applicant. However, surprisingly the SFIO did not feel any need or ground to arrest those co-accused persons and proceeded to file the complaint praying the learned Special Court to take cognizance of the offences.

48. The investigation, even though is stated to have started in the year 2018, the applicant was called on few occasions in the year 2020, then in February 2021 and thereafter information was sought from the applicant in July and September, 2022 and she was ultimately arrested on 14.10.2022.

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55. All these aspects and the veracity of the allegations in my opinion would be considered during the course of trial and are not required to be commented upon at this stage. At this stage the Applicant does not appear to be the beneficiary of the alleged fraud. The allegation is that the Applicant helped in siphoning of some part of the amount from the companies under investigation...

62. The very fact that the SFIO did not feel the need to keep 53 out of 55 accused persons in custody and did not feel that their custody would be relevant in order to complete investigation, shows that it does not apprehend any tampering with the evidence or influencing of the witnesses. From the perusal of the complaint the role of Applicant does not appear to be graver than other co-accused persons. In fact the same has not even been contended by SFIO during the course of arguments.

63. As reiterated by the Hon'ble Apex Court from time to time, the object of bail is neither punitive nor preventive and deprivation of liberty must be considered as a punishment."

Submissions on behalf of the Respondent/SFIO

22. Per Contra, learned Central Government Standing Counsel („CGSC) appearing on behalf of the SFIO has opposed the bail based on BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 the charges made in the SFIO complaint filed before the learned

Additional Sessions Judge - 03/Special judge (Companies Act), Dwarka Court, New Delhi.

23. Learned CGSC advanced detailed arguments pertaining to each charge as under:

23.1. Charge 1, Instance II: It has been submitted that the present charge pertains to commission of fraud with the intent to injure interest of the company and is punishable under Section 447 of the Companies Act. The investigation established that Sanjay Singal (A-36), his wife Aarti Singal (A-37) and his associates namely R.P. Goyal (A-41), H.C. Verma (A-40), Amarjeet Sharma (A-43), Alkesh Sharma (A-42), R.K. Gupta (A-

45), Arun Kumar Agarwal (A-44) were the "directing mind and will" and evidence brought on record established that they colluded together and were involved in dubious transactions which caused loss to lenders and brought enrichment to themselves.

23.1.1. Learned CGSC asserted that even though the applicant says that he wasn't involved in the day-to-day activities of the company as regards the siphoning off funds of BPSL in the form of bogus capital advances, he connived with Amarjeet Sharma (A-43) by using the mode of capital advances, diverting funds to various paper companies, which were placed and layered through a web of entities and ultimately used for infusing in BPSL as share capital, hence, routing the same as equity or unsecured loans to related entities of BPSL. During the investigation, it was revealed that huge amount of funds was siphoned off from BPSL from financial year 2009-10 to 2017-18. During the examination of the balance sheet of BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 BPSL for the financial year 2016-17, it was found that the company provisioned Rs.3079.39 crores of capital advances and raw material. 23.2. Charge 1, Instance III: It is averred that the applicant played a paramount role in the company's affairs and day to day working. He along with Amarjeet Sharma (A-43) assisted the forensic team of Ernst & Young on behalf of BPSL. He signed the balance sheet for the financial year 2013-14 to 2017-18 knowing that the finances do not reflect the true and fair picture of the affairs of the BPSL. Moreover, applicant was always at the forefront but denies his liability by claiming to be a namesake CFO/KMP to evade the clutches of justice.

23.2.1. The present charge alleges that funds were siphoned off from BPSL also through advances to suppliers, wherein the applicant, together with the KMPs and twenty other CUIs provisioned doubtful advances to the tune of Rs. 471.78 crores by signing the balance sheet for financial year 2016-17 knowing that the financials do not reflect a true and fair picture of BPSL wherein provision for advances was made and was aware that the said advances to suppliers were not genuine business transactions and that there were no documents executed against these advances. SFIO's investigation revealed most directors and addresses of the receiving entities to be the same. It was further submitted that these entities were controlled by „entry-operators“, i.e., dummy persons as directors/proprietors.

23.3. Charge 1, Instance IV: Learned CGSC submitted that the KMPs of BPSL, including the applicant, together with Assurity Real Estate LLP were involved in committing fraud upon BPSL by rotating the funds through circuitous transactions and investing the same for creating an asset BAIL

APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 in the form of property at Ceejay House, Worli, Mumbai in the name of Assurity Real Estate LLP. With regard to the above, it has been submitted that in case of unsecured loans arranged from Kolkata based companies, Alkesh Sharma, President (Accounts) BPSL Kolkata (A-42) assisted Sanjay Singal (A-36), in managing funds through Kolkata based companies. Since the applicant plays a pivotal role in the BPSL and its group companies, he used to look after equity infusion with Amarjeet Sharma (A-43) and also used to attend the meetings with bankers on behalf of BPSL. He was completely aware of the affairs of the company. Thus, the applicant alongwith other accused persons connived with each other to commit a fraud upon BPSL.

24. Charge 2: Learned CGSC submitted that Sanjay Singal (A-36) had devised and adopted a mechanism and knowingly connived with the applicant and other KMPs of BPSL to fraudulently avail credit facilities from banks. Investigation established that during financial year 2014-15 and financial year 2015-16, Sanjay Singal (erstwhile CMD of BPSL) (A-

36) knowingly connived with Ravinder Kumar Rastogi (A-46), the then Vice President of BPSL and the applicant who was then the CFO of BPSL to get LCs issued on the basis of false documents from banks and then, fraudulently discounted the LCs for causing wrongful gain to themselves. In pursuance of aforesaid object, Ravinder Kumar Rastogi and the applicant were authorized by committee on borrowings of BPSL, in its meeting on 26.06.2013, to open the LCs and execute all related documents.

25. Charges 3 & 4: The present charges pertain to cheating banks by fraudulent inducement. Learned CGSC submitted that during financial BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 year 2009-10 to financial year 2013-14, Sanjay Singal (erstwhile CMD of BPSL) (A-36) entered into criminal conspiracy with KMPs/employees including the applicant (the then CFO of BPSL) to dishonestly induce the banks to sanction loans on the basis of false financial statements and bogus infusion of equity, including funds generated through LCs without actual supply of any materials. Investigation revealed that through four front companies a total capital of Rs. 3689.89 Crores (equity-Rs. 2681.3l Crore and preference shares - Rs. 1008.58 Crore) had been infused into BPSL. Through this modus operandi BPSL used to maintain a healthy debt-equity ratio and thereby dishonestly induced the banks to sanction, as well as disburse the loans to it.

26. Charges 7 and: Learned CGSC submitted that the applicant, with other co-accused persons is liable under Sections 129/448 read with 447 and Sections 211 and 628 of the Companies Act, 1956 on account of making false representations in the financials for the financial year 2017- 18 wherein, Sanjay Singal (A-36), together with the applicant (the then CFO) and others were, at all material times aware about the fact that the SAP-ERP data did not crash. Rather, a new client code was created and the old data was deleted. Conjunctively, the financials for financial year 2017- 18 were still signed mentioning therein crash of ERP in order to manipulate data and conceal the siphoning of stock of approximately Rs. 1023 crores. Therefore, the aforementioned persons falsified the books and accounts of BPSL for financial year 2017-18, by knowingly creating false documents which did not reflect a true and fair picture of the affairs of BPSL. Hence, it was submitted that they are liable

for punishment under the abovementioned Sections of the Companies Act.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

27. Charge 10: Learned CGSC submitted that the factual matrix and findings of the investigation with respect to the present charge revealed fraudulent transactions punishable under Section 447 of the Companies Act. Charge 10 demonstrates how Sanjay Singal (A-36) and the applicant, with others committed fraud upon BPSL, by way of handing over cash to Narendra Kumar Jain (A-71) who placed and layered it thorough a web of entities controlled and managed by him. Thereafter, the same was rotated in the group companies of BPSL namely Vintage Steel Ltd. and Olympian Finvest Pvt. Ltd. It has been submitted though the applicant denies the presence of any specific findings against him, his role of being responsible for handling financial matters of BPSL and raising funds from banks has to be considered. He was instrumental in obtaining loans for BPSL from various banks and financial institutions. An amount of Rs.37000 Crore was outstanding against such loans as on 31.03.2017. Additionally, the applicant was an authorized signatory to the bank accounts and he used to sign the cheques.

28. Charge 11: Learned CGSC has placed on record the statements of one Dinesh Kumar Behal, chairman of the audit committee for financial year 2016-17, to demonstrate Charge 11 against the applicant. It has been submitted that the applicant connived with other co-accused persons for misusing the corporate structure of these 30 companies for commission and continuation of the fraud. Investigation also established that the financials of these companies were knowingly manipulated for the purpose of equity infusion into BPSL. The financials of 30 companies for financial year 2009-10 to 2016-2017 did not reflect a true and fair picture of its affairs. It is the argument of the learned CGSC that in the aforesaid BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 statement of Dinesh Kumar Behal it is stated that the applicant had been a key person of BPSL and attended the audit committee meetings in the said capacity.

28.1 It was further submitted, on the basis of the Dinesh Kumar Behal's testimony and the signatures of the applicant on the proceeding book of passing resolution, that it is clear that the applicant was present in meetings of the audit committee and was the key controller of the committee, thereby giving rise to liability under Section 447 of the Companies Act, for misuse and fraudulent abuse of the structure of audit committee.

29. Learned CGSC submitted that the judgments cited by the applicant are not applicable to the case at hand as the aforesaid facts clearly demonstrate the involvement of the applicant in the affairs of BPSL, and was actively involved in the day-to-day functioning and fraudulent activities. The applicant cannot take the plea that he was not involved. The applicant was one of the perpetrators of the aforesaid larger conspiracy, which was ultimately used to perpetrate a massive fraud and thus, the applicant does not deserve any discretionary relief in the nature of of bail. Even though the applicant has claimed that he does not fail the triple test for grant of bail, Section 212 (6) of the Companies Act, starts with a non-obstante clause and the provisions stipulated under Sections 212(6)(i) and (ii) of the Companies Act, are mandatory in nature and as such, in the facts and

circumstances pertaining of the present case, the applicant is not entitled to be released on bail.

30. It is further submitted that the legislative intent in prescribing a higher threshold is amply clear from a bare perusal of the provisions of BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 Section 212(6) of the Companies Act, which mandates that the twin conditions therein be satisfied before a person accused for an offence under Section 447 of the Companies Act can be released on bail. It is also pertinent to note that Section 212(7) of the Companies Act, provides that the limitation on granting bail, under Section 212(6) is in addition to the limitation in the CrPC, or any other law for the time being in force, for granting the bail.

31. Attention of this Court was drawn to the fact that vide a common judgment dated 03.11.2022 in BAIL APPLN. 2707/2022 and BAIL APPLN. 2709/2022, a coordinate bench of this Court dismissed the bail applications filed on behalf of co-accused Amarjeet Sharma & Alkesh Sharma.

32. Since the complaint, along with the investigation report and annexures were filed within the stipulated time frame of 60 days from the date of first judicial remand of the applicant, learned CGSC submits that neither the general conditions for grant of bail are satisfied qua the applicant in the instant case nor has a case been made out for grant of bail in the case of a serious economic offence.

33. In support of his arguments, learned CGSC placed reliance on the following judgments;

33.1 The judgment in Vijay Madanlal Choudhary and Ors. v. Union of India & Ors., 2022 SCC Online SC 929 was cited for the proposition that provisions of Section 447 read with Section 212(6) of the Companies Act, have been upheld.

33.2. In Narcotics Control Bureau v. Mohit Aggarwal, 2022 SCC OnLine SC 891, it was held as under:

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 "18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced is by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

33.3 Reliance was placed on Serious Fraud Investigation Office v. Nittin Johari & Anr., (2019) 9 SCC 165, to demonstrate that non-arrest of other co-accused persons cannot replace the satisfaction of the mandatory requirements under Section 212(6) of the Companies Act. 33.4 Reliance was placed on Satender Kumar Antil v. CBI & Anr., (2021) 10 SCC 773, to contend that in case offences punishable under special acts, including, the Companies Act, additional conditions, as laid down therein, would be applicable.

33.5 Reliance was placed on The Directorate of Enforcement v. M. Gopal Reddy & Anr., Judgement dated 24.02.2023 in Criminal Appeal No. 534 of 2023, to contend that in case of economic offences which have an impact on the society, the Court must be very slow in exercising discretion in granting bail under Section 438 of the CrPC Rejoinder On behalf of the Applicant/Arun Kumar Aggarwal

34. By way of rejoinder, it is submitted that reliance of the respondent on the statement of Dinesh Kumar Behal to allege that the applicant was a key personnel in the audit committee meetings is misplaced, as in the attendance registers of the board meetings and that of the meetings of the audit committee, the name of the applicant does not BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 find mention. Pertinently, the first two statements of Dinesh Kumar Behal do not name the applicant. It is only after the arrest of the applicant on 21.03.2022 that improved statements of Dinesh Kumar Behal were recorded. It is argued that in any case, Dinesh Kumar Behal was the chairman of the audit committee and he ought to have been made an accused. His statements are not reliable and are currently of an unpardoned accomplice. Reliance of the respondent on the minutes of board meetings and minutes of audit committee meetings to show that the applicant attended such meetings is misplaced. The attendance registers are much more reliable as they were signed by the attendees, as opposed to the minutes of the meetings which only contained names without signatures. Analysis and Findings

35. Heard the learned counsel appearing on behalf of the parties and perused the record.

36. For the purpose of present bail application, to bring home the allegations with respect to commission of offence under Section 447 read with Section 212(6) of the Companies Act, the respondent SFIO relies on the ground that the applicant, a qualified chartered accountant was associated with BPSL from the year 2000 till 2019 and he was appointed as a Chief Financial Officer in the year 2007. It is alleged that Chief Financial Officer in terms of Section 2(19) is "Officer including any Director, Manager or Key Managerial Personnel or any person in accordance with whose directions or instructions, the board of directors or anyone or more of the Directors is or are accustomed to act."

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

37. The allegations with respect to the present application for commission of offence under Section 447 read with Section 212(6) of the Companies Act, are with respect to following charges: 37.1. Charge 1 Instance II relates to siphoning of funds from BPSL through capital advances and routing the same as equity of unsecured loans to related entities of BPSL. It is the case of respondent that the present applicant connived with Sanjay Singal, Aarti Singal, R.P. Goel, H.C. Verma, Amarjeet Sharma, Alkesh Sharma and R.K. Gupta in siphoning of the funds of BPSL by payments made to parties which were not genuine. It was further argued that the present applicant signed the balance sheets for financial year 2016-2017 knowing the finances were not reflecting a true and fair picture of BPSL. It is further urged that the present applicant used to attend the meetings of bankers to discuss the forensic report of Ernest & Young along with Sanjay Singal and some of his co-accused. It is further alleged that the present applicant comes under the category of „Key Managerial Personnel as defined under Section 2(51) of the Companies Act. It is thus, alleged that the present

applicant was in a strategic position in the aforesaid company and the financial statement and balance sheets of BPSL were fraudulently prepared and falsified by him, which were then used for raising funds. 37.2 Under Charge I instance III, it is alleged that the funds from BPSL were siphoned off through bogus advances to suppliers, which were Kolkata based companies/entities, having common directors and addresses. It is alleged that these entities were not having any genuine business and were controlled by „Entry Operators .

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24
37.2.1. It is alleged in the investigation report relied upon by the respondent that the said advances were given to various entities through entry operators. It is also alleged that four group companies of BPSL being accused nos. 14, 17, 19 and 30, referred to as "four front companies", received accommodation entries from several entry operators and that Sanjay Singal, Aarti Singal alongwith their children Aniket Singal (A-38) and Priyanka Miglani (A-39) were directors/share holders in the four companies.

37.3. Under Charge I instance IV, it is alleged that funds were siphoned from BPSL through purchase of property at Bombay through Assurity Real Estate LLP. It is alleged that by using mode of capital advances or advances to suppliers, cash generated through sale or theft of goods and by rotating those funds through those companies in circuitous transaction an asset was created in form of Ceejay House, Worli, Mumbai in the name of said Assurity Real Estate LLP. It is alleged that the entry operators connived with the present applicant for the said purpose.

38. A perusal of the record with respect to the aforesaid allegations made under Charge 1 Instance II with regard to the present applicant reflects that none of the entry operators through whom the aforesaid siphoning of funds was allegedly done named the present applicant. It is part of the record that the statements of the said entry operators named Alkesh Sharma (A-42) to be their contact person and from whom they received funds from BPSL or in cash. It is further on record that the balance sheet and the financial report, as per case of respondent were prepared at Chandigarh office of BPSL under supervision of Amarjeet Sharma (A-43) and the applicant was working out of Delhi office. It has BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 been the consistent stand of the present applicant in his statements to the respondent that he did not verify the financial figure and balance sheet and relied upon the aforesaid Amarjeet Sharma (A-43) for their veracity. Moreover, as per the role ascribed to Sanjay Singal and Aarti Singal, it is case of the respondent that they were the authorized signatories of BPSL and had given directions to extend advances to paper companies. 38.1. So far as the four front companies,(A-14, 17, 19 & 30) are concerned, it is pointed out that accused Aniket Singal (A-38) was not arrested during investigation and was granted anticipatory bail by learned Special Judge and Priyanka Minglani (A-39) has not been arrested and has not been made an accused in the present charge. It is pertinent to note that the aforesaid co accused were direct beneficiaries being the directors of the said companies. It is alleged that said companies received accommodation entries from several entry operators who do not name the present applicant.

38.2. The allegation with respect to the applicant supplying documents to forensic auditors, which did not reflect true and correct picture, has to be seen in the background of the applicant s

statement as well as the other evidence referred to hereinabove in order to impute the necessary mens rea regarding the same.

38.3. So far as Charge I Instance III is concerned, it is a matter of record again that the funds were siphoned off and shown as advance to suppliers to dummy entities through entry operators and directors of the paper companies. As stated herein before, none of the entry operators have named the applicant in their statements. Pertinently, one entry operator being R.K. Kedia (A-58) states that Sanjay Singal (A-36) instructed him to BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 keep in touch with Amarjeet Sharma (A-43), Alkesh Sharma (A-42) and R.P. Goel (A-41). Similarly, another entry operator being Dilip Nahata (A-

62) stated that Alkesh Sharma (A-42) was contact person for receiving funds and cash and providing accommodation entries to entities of BPSL. It is the case of the respondent that financial statements and balance sheets were prepared by Amarjeet Sharma (A-43) in his capacity as Executive Director Finance.

38.4. Charge 1 Instance IV relates to siphoning of funds from BPSL through purchase of a property at Mumbai through Assurity Real Estate LLP. A perusal of the investigation report with respect to the aforesaid charge reflects that there is no finding against the present applicant. For the purpose of this charge the fact that none of the entry operators name the present applicant would also be relevant. Statement of entry operators named Dilip Nahata, Praveen Kumar Tavatiya, R.K. Kedia reflect that they had provided loan to the said firm in the form of accommodation entries on the request of Alkesh Sharma (A-42) and Sanjay Singal. However, the aforesaid company Assurity Real Estate LLP (A-35) was a partnership firm incorporated in the name of Priyanka Miglani (A-39) as a Partner. As stated above, the said Priyanka Miglani (A-39) was not arrested by the respondent.

39. Charge-2 relates to issuance and negotiation of LCs by BPSL. It is alleged that bogus LCs were opened by BPSL on the basis of forged and fabricated proforma invoice, bills of exchange without any further underlying documents. It has been pointed out that it is the case of respondent itself that Ankur Nagar (A-46), consultant for LC discounting (A-80) had played a crucial role and arranged false and fabricated BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 documents for opening bogus LCs. However, he does not name the present applicant but takes the name of Ravindra Kumar Rastogi, Vice President (A-46). It has been pointed out that both the aforesaid accused persons namely Ravindra Kumar Rastogi (A-46), who as per the case of respondent in his confessional statement admitted direct involvement in the commission of the offence and aforesaid Ankur Nagar (A-80) have not been arrested by the respondent.

39.1. It has been further pointed out that with reference to the gist of Banker s statements in the SFIO report, during examination of bankers, it has come on record that aforesaid Ravinder Kumar Rastogi (A-46) used to come to the branches but do not name the present applicant.

40. Charge 4 relates to cheating banks by fraudulently inducing them to sanction loans to BPSL on the basis of financial statements and balance sheets of BPSL, which did not reflect true and correct

picture of the said company. It is alleged that the present applicant alongwith other accused persons including entry operators committed frauds upon the banks to sanction loans on the basis of financial statements which otherwise were created on the basis of modus operandi as alleged in charge 1 instance (II, III and IV). It is alleged that the present applicant signed the financial statements from 2014-2015 to 2016-2017. As stated hereinabove, since the statement of co-accused persons with respect to the modus operandi as mentioned in the aforesaid instances do not name the present applicant, therefore, signing the financial statements cannot be seen in isolation to presume the knowledge of the same to be fraudulent at this stage. It is argued that the applicant had neither worked in the capacity of CFO, nor BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 given any responsibility of CFO and was just a namesake CFO/KMP as no board resolution was passed in his name by the board of directors.

41. Charge 7 and 8 relate to the manipulation of balance sheets and fraudulent reports of the BPSL. It is alleged that the present applicant being the CFO was aware of fact that the SAP/ERP data did not crash rather new client code was created and data in the old client was deleted, but the applicant signed the financial report for the year 2016-2017 mentioning the crash of ERP data. It is alleged that the ERP data was manipulated only to conceal the siphoning of stock amounting to Rs. 1023 crores.

41.1. The attention of this Court has been drawn to the fact that the case of respondent was that the said balance sheets and financial reports were prepared at Chandigarh office and the applicant was working out of Delhi office. It was also pointed out that under charge 6 in the investigation report related to destruction of SAP/ERP Data 2017, in order to manipulate the records of the company, but the present applicant has not been named in the said charge as an accused.

42. Charge 10 relates to commission of fraud upon BPSL wherein it is alleged that cash was handed over to one entry operator namely Narender Kumar Jain (A-71), who then placed and layered the same through web of entities controlled and managed by him and subsequently rotating it in the group companies of BPSL namely Vintage Steel Ltd and Olympian Finvest Pvt. Ltd. in form of equity. Attention of this Court has been drawn to the statement of aforesaid Narender Kumar Jain (A-71) wherein he does not name the applicant but states that Alkesh Sharma (A-

42) used to provide cash and directions for provisioning such entries.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

43. Charge 11 is related to misuse and fraudulent abuse of structure of audit committee. It is stated in the SFIO investigation report that during financial year 2016-2017, there were three persons who were part of the audit committee namely Dinesh Kumar Behal, R.P. Goel (A-41) and Anil S. Supanekar. It is alleged, in the said report that although the board had entrusted said committee with specific duties in terms of Section 171 of the Companies Act, with regard to correctness and completeness of financial results but the structure of audit committee was used to perpetrate fraud. It is the case of the respondent itself that the said committee was not functioning independently and the committee members were following the instructions of Sanjay Singal and R.P. Goel.

43.1. Reliance was placed on statement date 30.03.2022 made by Dinesh Kumar Behal, who was chairman of the audit committee wherein he stated that the present applicant used to attend the meetings of the audit committee as well as board meetings and also played an active role in the said meetings. Perusal of the record reflects that the name of the present applicant does not find mention in the attendance register of the board meetings and that of the audit committee, placed on record by the respondent. Reliance by respondent was placed on the Proceeding books of the company's minutes of meetings showing applicant's name and signature. A perusal of the said minutes handed up in the court shows that the signature of the applicant is not contemporaneous to the meeting. The signature of the applicant is dated 26.03.2022 which was when he probably joined the investigation in the case 43.2. The Attention of this Court was also drawn to the statement made by Anil S. Supanekar, who was a member of the audit committee BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 wherein he does not name the applicant in any manner. So far as the statement of Dinesh Kumar Behal is concerned, it is pointed out in the first two statements made by him on 13.12.2017 and 15.02.2019, the applicant was not named. However, after the arrest of the present applicant, the statements of aforesaid Dinesh Kumar Behal have been recorded, who in response to pointed question by the respondent has named the present applicant. It is further pointed out that Dinesh Kumar Behal, who was the chairman of the audit committee has not been made an accused and therefore statement made by him is a self serving one and cannot be relied upon.

44. Perusal of the record further reveals that most of the co-accused persons in the present complain are on bail or were not arrested. It has been pointed out that Sanjay Singal (A-46), H.C. Verma (A-40) and R.P. Goel (A-41) have not been arrested by respondent in pursuance to interim protection granted to them by the Hon'ble Supreme Court vide order dated 17.02.2020, passed in Writ Petition (CRL.) 36/2020. Similarly, it has been pointed out that Aarti Singal (A-37) who was a direct beneficiary of the alleged siphoning of funds was released on bail by learned Special Judge. On the same lines, it has been argued that Aniket Singal (A-38), who was also a direct beneficiary has not been arrested during trial and was granted anticipatory by learned Special Judge. The other beneficiary Priyanka Miglani (A-39) has also not been arrested. It is further submitted that none of the entry operators (A-53 to A-92) and other employees of BPSL (A-45 to 47) and statutory auditors (A-48 to A-52) were never arrested by the respondent. As noted hereinbefore, Ravinder Kumar Rastogi (A-46) and Ankur Nagar (A-80) were also not arrested.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

45. It was further submitted that the present applicant has not been charged for certain allegations which are otherwise intrinsically linked to the involvement of inner circle of Sanjay Singal. These charges are related to theft of material from Sambhalpur plant, sale of Chennai land and destruction of SRP-ERP data. Finally, it has been vehemently argued upon that no material has come on record to show that the present applicant was beneficiary of the any of the alleged siphoned funds.

46. The Supreme Court while considering the provisions of Section 37 of the NDPS Act, in Mohd. Muslim alias Hussain v. State (NCT of Delhi), 2023 SCC Online SC 352, held as under:

"19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is

applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

(emphasis supplied)

47. A coordinate bench of this Court in Ashish Mittal v. SFIO vide judgment dated 03.05.2023 in BAIL APPLN. 251/2023 after exhaustively examining the law on the case with respect to satisfaction in terms of Section 212(6) of the Companies Act, has held as under:

"28. The above enunciation of the law clearly mandates that where additional conditions are stipulated in a statute for grant of bail relating to specified offences; it cannot be that the prosecution need only recite from its complaint, or simply say that it has material BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 against the accused in respect of such offences. The prosecution must show how the material collected during investigation supports the allegations in the complaint, and most importantly, how the allegations apply against the accused. To reiterate, the opposition by the public prosecutor must be reasoned opposition, supported by valid and relevant reasons. When the public prosecutor opposes a bail plea, he would have to establish foundational facts sufficiently to dislodge the presumption of innocence, and it is only then that the onus of satisfying the stringent twin-conditions would shift onto the accused.

To be clear, there is no statutory mandate for the court to depart from the presumption of innocence.

29. Coming back to the present case, Section 212(6) of the 2013 Act is actuated when the individual is accused of committing an offence as mentioned in the said Section, viz. Section 447 of the 2013 Act. However, what is stated in a complaint or the FIR are only allegations, which may or may not be founded on evidence or material. To borrow the words of the Supreme Court in Noor Aga (supra), superficially a case may have an ugly look and thereby, prima facie, shaking the conscience of any court but it is well settled that suspicion, however high it may be, can under no circumstances, be held to be a substitute for legal evidence. Unlike cases of preventive detention, this is not a jurisdiction of suspicion. Indeed, the more severe the punishment, the greater must be the care taken to see that all safeguards in a statute are scrupulously followed.(State of Punjab v. Baldev Singh, (1999) 6 SCC 172)

30. Therefore, to assess whether the State has been able to prima- facie make-out a case against an accused and for the additional twin conditions to apply, there must be (i) a specific allegation against the accused; (ii) which allegation must find place in the complaint/FIR;

(iii) there must be material in support of such allegation; and (iv) the combined reading of the material in support of the allegation must point towards the guilt of the accused as regards the

relevant offence. It would be necessary to note that the bulky nature of material annexed to the complaint is not a sufficient criteria, there must be something, as regards each specific allegation against the accused in the complaint, which point towards the guilt of the accused of the offence which attracts the additional twin-conditions.

31. After all, bail, not jail is the rule.(Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427)

32. While still on this point, it may be noticed that the 2013 Act specifically circumscribes even the power of an SFIO officer to arrest BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 an accused. Section 212(8) expressly stipulates that an arrest may only be made by an officer of the rank of Assistant Director or above; and further stipulates pre-conditions to making an arrest, viz. that the officer must be in possession of material, based on which he has formed the reason to believe that the accused has committed an offence under the 2013 Act, with a further requirement that the reason for the belief are to be recorded in writing. This adds further weight to the interpretation that the opposition offered by the prosecutor must also be based on material in the possession of the SFIO, from which the reason to believe for arrest has arisen, which reason must also have been recorded in writing.

33. It is also important to articulate here, that though the general principle is that parity with co-accused alone is not a ground to claim bail as a matter of right; however, that principle is nuanced. The nature of an offence may be such, that the fact that other accused have been granted bail, may persuade the court to exercise its discretion in favour of another co-accused in granting bail. (Totaram v. State of Madhya Pradesh and Anr., criminal appeal no. 1010/2023, order dated 06.04.2023(Supreme Court) "

48. In these circumstances for the limited purpose of the present application, this Court has to examine the case of the applicant with respect to the twin conditions contained in Sections 212(6)(i) and (ii) of the Companies Act, which are in addition to conditions for bail under Section 439 of the CrPC As mentioned hereinabove, the foundation of the case of the respondent with respect to the present applicant is that he was the Chief Financial Officer and being a Key Managerial Person had signed the financial statements of the year 2013-14 to 2016-17. The entire case of the respondent is primarily on the basis of aforesaid status of the present applicant. The material on record, by way of statements made by the entry operators, co-accused, employees of the companies, documents including the attendance registers of the board meetings as well as meetings of audit committee, as noted in the preceding paragraphs, prima facie indicates to BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 the contrary. Reliance placed by the respondent on the statement made by Dinesh Kumar Behal to show that the present applicant attended the meetings is contradictory to their own documents which are contemporaneous in nature, which shows that the present applicant never attended the board meetings as well as audit committee. The veracity of the statement made by aforesaid Dinesh Kumar Behal will be tested at the time of his examination.

49. It is also pertinent to note that the name of the applicant on the minutes of meeting sans his signature prima facie vindicates his stand that he was namesake CFO. In this context, it is pertinent to note that the case of the respondent as noted hereinabove is that the Chief Financial Officer in terms of Section 2(19) of the Companies Act, is "Officer including any Director, Manager or Key Managerial Personnel or any person in accordance with whose directions or instructions, the board of directors or anyone or more of the Directors is or are accustomed to act." A plain reading of the aforesaid provision indicates that if the board of directors has to follow the directions or instructions of the Chief Financial Officer then the presence of the latter in such meetings would be a necessity. In this background, the conspicuous absence of the present applicant's name from the attendance registers of board meetings and audit committee will have a bearing for the purposes of deciding the present application. It is pertinent to note that while grave allegations have been made qua the applicant with regard to connivance/conspiring with the promoters and other co-accused, but no allegation with regard to his receiving benefits have been made.

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24

50. Admittedly, the evidence in the present case is predominantly documentary in nature and it has been pointed out by learned Senior Counsel, the complaint is accompanied with documents contained in 09 trunks. It is common knowledge that the trial is likely to take a long time. The reliance placed by the respondents on the orders with regard to co-accused Amarjeet Sharma and Alkesh Sharma, dismissing their bail applications by a coordinate bench of this court is misplaced. The aforesaid order of the coordinate Bench was with respect to the contention of the said co-accused with regard to Section 167(2) of the CrPC. In any case the present application is being decided on the basis of its own facts.

51. Learned Senior Counsel has submitted that the present applicant joined the investigation on each and every occasion as and when called by the investigating officer and it is further noted that nothing has been brought on record by the respondent to show that the applicant is capable of tampering with the evidence or is a flight risk. It is further noted that the present applicant was granted interim bail during the pendency of the present bail application and he surrendered in time without misusing the liberty granted. In the present case, in view of the discussion made herein before, this Court is of the opinion that from the material brought on record, the requirements of Sections 212(6)(i) and (ii) of the Companies Act, are satisfied.

52. In view of the facts and circumstances of the present case, the application is allowed and the applicant is admitted to bail upon furnishing a personal bond in the sum of Rs. 5,00,000/- along with two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24 i. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court/Investigating Officer, with a prior notice of seven days.

ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times. iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

v. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

53. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.

54. The application stands disposed of along with all the pending application(s), if any.

56. Let a copy of this judgment be communicated to the concerned Jail Superintendent.

57. Order be uploaded on the website of this Court, forthwith.

AMIT SHARMA JUDGE JUNE 01, 2023/bsr BAIL APPLN. 3178/2022 Digitally Signed By:ANITA BAITAL Signing Date:01.06.2023 16:41:24