

Hari Sankaran vs Serious Fraud Investigation Office And ... on 7 March, 2024

Author: Prithviraj K. Chavan

Bench: Prithviraj K. Chavan

2024:BHC-AS:11095

ba-2937-2022.doc

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2937 OF 2022
a/w
INTERIM APPLICATION NO.4329 OF 2023
a/w
INTERIM APPLICATION NO.4422 OF 2023
IN
CRIMINAL BAIL APPLICATION NO.2937 OF 2022

Hari Sankaran] Applicant

Vs.

Serious Fraud Investigation Office]
Mumbai and another] Respondents

.....

Mr. Aabad Ponda, Senior Advocate a/w Mr. Vikrant Singh Negi, Ms. Ekta Tyagi, Ms. Anjali Shah, Mr. Pratik Thakkar, Ms. Priyamvada Singhania, Ms. Sneha Barange i/b D.S.K. Legal, for Applicant.

Mr. H.S. Venegavkar, Special Public Prosecutor a/w Mr. Ayush Kedia, Mr. Pradeep Yadav and Ms. Divya Gontia, for Respondent No.1.

Mr. A.A. Palkar, A.P.P, for Respondent No.2 - State.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 21st February, 2024.

PRONOUNCED ON : 7th March, 2024.

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ORDER:

1. By this application, the applicant seeks his release on bail who is being prosecuted by the Serious Fraud Investigation Office, Mumbai (for short, "SFIO") in connection with Criminal Complaint No.20 of 2019 in File No. SFIO/INV/UNIT - V/1003/IL & FS/2018-19 pending before the Special Judge for the offences punishable under Section 447 of the Companies Act, 2013 (for short "Act of 2013") and Sections 417, 420 r/w 120-B of the Indian Penal Code, 1860 (for short "I.P.C").

2. Shorn of unnecessary details, a few facts germane for disposal of this application, can be summarized as follows.

3. There are 30 accused arraigned by respondent No.1 - SFIO in the aforesaid criminal complaint. The applicant is accused No.3. The genesis of the case is an order of investigation passed by the Central Government i.e Ministry of Corporate Affairs whereby the said Ministry in the public interest on the basis of cogent material, framed it's opinion that investigation into the affairs of the several companies i.e Infrastructure Leasing and Financial Services Limited 2 of 28 ba-2937-2022.doc (IL & F.S) and it's subsidiary companies is necessary to be conducted by SFIO and accordingly passed an order bearing Order No. 03/679/2018/CL-II (WR) dated 30th September, 2018 in this regard in exercise of it's powers under Section 212 (1) (c) of the Companies Act, 2013.

4. Pursuant to an order of the Ministry, a team was appointed for carrying out the aforesaid investigation. During investigation, it revealed that IL&FS Financial Services Ltd (hereinafter referred to as "IFIN") is one of the subsidiary companies of the IL&FS Group, whose investigation has also been ordered by the Ministry of Corporate Affairs. Having conducted the investigation, a report dated 28th May, 2019 along with all it's annexures came to be filed.

5. As per Section 212 (15) of the Act of 2013, investigation report came to be filed in the Special Court for framing charges against all the accused.

6. The applicant came to be arrested on 1 st April, 2019 under Section 212 (8) of the Act of 2013. The Special Judge rejected his application for bail vide an order dated 3rd October, 2019.

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7. I heard Mr. Aabad Ponda, learned Senior Counsel appearing for the applicant as well as Mr. Venegavkar, Special Public Prosecutor at a considerable length.

8. Dehors merits, arguments of learned Senior Counsel revolves around two aspects viz: long incarceration of the applicant without any hope of commencing the trial at least for a few years and, secondly, serious ailments with which the applicant has been suffering at the age of 62 years.

9. Mr. Ponda would argue that the long incarceration of the applicant ever since his arrest on 1 st April, 2019 is in gross violation of his fundamental right under Article 21 of the Constitution despite rigours of twin conditions in view of section 212 (6) of the Act of 2013. By 31st March, 2024, he would be completing five years behind the bars and he is the only person in the custody out of the accused who are being prosecuted by the respondent No.1. Learned Senior Counsel would invite my attention to a number of medical reports to substantiate his contention as regards various ailments of the applicant and the nature of treatment being administered to him by specialized Doctors.

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10. Mr. Ponda would also invite my attention that maximum sentence for the offence under section 447 of the Act of 2013 as well as for the offences under Sections 417, 420 r/w 120-B of the I.P.C would be 10 years and, therefore, even otherwise having undergone half of the maximum sentence, the applicant is entitled to be released on bail. The Counsel would further argue that the trial Court itself has taken more than four and half years to take cognizance of the case and, therefore, the applicant is not at all responsible for the delay in commencing the trial.

11. As regards deteriorating health of the applicant, my attention is invited to the medical certificates by contending that as many as ten stents have been implanted in the heart of the applicant who is now 63 years old. It is further submitted that the respondent No.1 has not even arrested any of the accused. Learned Senior Counsel has placed reliance on multiple decisions of the Hon'ble Supreme Court and this Court in order to buttress his contention on the aspect of bail. It is a matter of record that ever since his arrest, the applicant would be completing five years on 1 st April, 2024. It is also a matter of record that cognizance has been taken by the jurisdictional Court, after more than four years and six months, 5 of 28 ba-2937-2022.doc more precisely on 28th November, 2023. The SFIO complaint was filed on 30th May, 2019. The record reveals that sixty six witnesses are enlisted in the complaint. It is a matter of record that one of the accused - Ramesh Bawa was granted bail on medical ground by this Court. Accused - Ramchand and Saha appears to have been arrested by the Enforcement Directorate based on SFIO's predicate offence and they have also been released on bail.

12. Mr. Venegavkar, learned Special Public Prosecutor while strongly objecting release of the applicant on bail vehemently urged to reject the application by contending that the accused has no exclusive right to seek his release on bail even after considering the judgment in the case of Union of India Vs. K.A. Najeeb looking to the gravity, seriousness and enormity of the offence. He would argue that an amount of Ninety Four Crores is involved in the fraud, comprising the entire IL & FS group. According to Mr. Venegavkar, applicant is instrumental, in the sense, had control and key

person. He would argue that application for bail, if considered on merits would indicate that the applicant is not entitled to be released on bail.

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13. It is a matter of record that on 28th August, 2023, this Court (Shivkumar Dige, J.) while considering an Interim Application for bail on medical grounds and having taken into consideration the decision of the Supreme Court in case of Satyendar Kumar Jain Vs. Directorate of Enforcement² and Vikram Singh Vs. Central Bureau of Investigation³ permitted the applicant to take treatment at Bombay Hospital, Breach Candy Hospital or Nanavati Hospital at his expenses.

14. There are several medical reports tendered on behalf of the applicant. However, a report dated 21st September, 2023 issued by the Bombay Hospital and Medical Research Centre depicts in detail, the several health issues being investigated and treated qua the applicant which are reproduced below;

"1) He is diagnosed to have Non-Sustained Ventricular Tachycardia (NSVT) waiting for Automated Implantable Cardioverter Defibrillator (AICD) Device Implantation which we have planned to do after 1 ½ months of Angioplasty.

Currently he is on medication for the same.

2) He was complaining of urinary issues, evaluated by Dr. Mukund Andankar sir who diagnosed him to have severe Phimosis and 2 2023 Supreme Court Cases Online SC 686 3 2018 Supreme Court Cases Online Supreme Court 3228 7 of 28 ba-2937-2022.doc advised Circumcision surgery. Before this surgery we need to stop blood thinner medicines, which is risky at present; will have to wait for six weeks from the day of Angioplasty.

3) He has severe dental issues seen by Dr. Siddhi Khinvasara who diagnosed him to have Periodontitis with maxillary bone loss. She has advised 3D CBCT of the jaw to assess and plan dental implants. To do this scan we need to send the patient to an outside nearby scan center and we seek permission to do so. For the dental issues patient needs bone implants in first stage followed by dental implants in second stage after a gap of four to six months".

This patient has persistent mild headache. The MRI brain shows mild ventriculomegaly which is evaluated by Dr. Vibhor Pardasani sir (Neurologist) Dr. Mahesh Choudhary sir (Neurosurgeon). This issue is not critical and to be managed medically.

He has persistent back pain more in morning hours and temporarily relieved by physiotherapy. So, for long terms relief he needs regular lower back physiotherapy for a long duration".

There is another medical report dated 26 th September, 2023. Relevant part is extracted below;

" He has serious cardiac illness with possibility of sudden cardiac death as Holter s/o III-sustained VT. As a treatment of this disease he is on appropriate medical therapy but he also needs AICD device implantation. Cardiac arrhythmias are unpredictable and serious

8 of 28 ba-2937-2022.doc complications seen in heart disease, need close monitoring. The device therapy is to be done after a gap of 6-8 weeks from the date of angioplasty as per scientific guidelines.

Right now he is having symptomatic orthostatic hypotension which is an additional crippling illness. He is being monitored closely and appropriate medical steps are being taken".

15. Learned Senior Advocate has placed reliance on the following decisions, however, it is needless to advert to each of the decision since the ratio decidendi in most of the case laws is similar.

(1) Jainam Rathod Vs. State of Haryana and another 4;

(2) Sujay U. Desai Vs. Serious Fraud Investigation Office 5

(3) Bindu Rana Vs. SFI06

(4) Union of India Vs. K.A. Najeeb (supra)

(5) Sujit Tiwari Vs. State of Gujarat and another7

(6) Naib Singh Vs. State of Haryana8

(7) Mohammad Salman Hanif Shaikh Vs. State of Gujarat9

(8) Chitta Biswas alias Subhas Vs. State of West Bengal 10

(9) Gopal Krishna Patra @ Gopalrusma Vs. Union of India11

4 Criminal Appeal No.640 of 2022

5 Criminal Appeal No.1023 of 2022

6 Bail Application No.3643 of 2022 & CrI. M. (Bail) 1488 of 2022

7 (2020) 13 Supreme Court Cases 447

8 CRM- M-29466-2022

11 Criminal Appeal No.1169 of 2022

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(10) Shariful Islam @ Sarif Vs. State of West Bengal¹² (11) Balvir Ram Vs. State of Punjab¹³ (12) Nitish Adhikary @ Bapan Vs. The State of West Bengal¹⁴ (13) Amit Singh Moni Vs. State of Himachal Pradesh¹⁵

14. Guruharan Singh and others Vs. State (Delhi Administration)¹⁶

15. Khemlo Sakharam Sawant Vs. State¹⁷

16. Ranjitsingh Brahmajeet Sharma Vs. State of Maharashtra¹⁸

17. Sushila Aggrawal Vs. NCT of Delhi¹⁹

18. Sanjay Chandra Vs. CBI²⁰

19. P. Chidambaram Vs. Directorate of Enforcement²¹

20. R. Vasudevan Vs. CBI, New Delhi²²

21. Menino Lopes Vs. State of Goa²³ 13 CRM-M31856-2020 16 (1978) 1 Supreme Court Cases 118 17 (2002) 1 Bom CR 689 18 (2005) 5 Supreme Court Cases 294 19 (2020) 5 Supreme Court Cases 1 20 (2012) 1 Supreme Court Cases 40 21 (2020) 13 Supreme Court Cases 791 22 2010 Supreme Court Cases Online Del 130 23 (1994) Mh.L.J 1803 10 of 28 ba-2937-2022.doc

16. The Hon'ble Supreme Court in case of Jainam Rathod (supra) has granted bail to the applicant who was being prosecuted for violation of the provisions of Section 447 of the Act of 2013 as well as various provisions of the Indian Penal Code, 1860, including Sections 406, 417, 418, 420, 467, 468, 471, 474 and 477A. A Special Leave petition preferred by the appellant was dismissed by the Supreme Court on 27th January, 2020 with observations that it was always open for the appellant to move a fresh application for bail. It would be apposite to extract paragraphs 7 to 9 of the said order which read thus;

"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 11 of 28 ba-2937-2022.doc 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 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."

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.

9. For the above reasons, we allow the appeal and direct that the appellant be released on bail, subject to such terms and conditions as may be imposed by the Special Judge in connection with Complaint No 3 of 2019. 10 Pending application, if any, stands disposed of.

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17. The Hon'ble Supreme Court has also noted it's judgment in the case of Serious Fraud Investigation Office V. Nittin Johari 24 while granting bail to the appellant Jainam. The appellant was released in light of the fact that in the absence of a fair likelihood of the trial being completed within a reasonable period, personal liberty of the appellant is to be protected in case of delay in conclusion of the trial.

18. In the case of Sujay U. Desai Vs. Serious Fraud Investigation Office (supra), the Supreme Court has granted bail to the accused who was in custody for two years and five months for the offence under Section 447 of the Act of 2013 and in light of the fact that no other accused was in custody. Having considered the provisions of Section 212 (6) of the Act of 2013, it is held that the accused was entitled to be granted benefit of bail since the right of expeditious trial is protected under Article 21 of the Constitution. Paragraphs 5 and 6 of the said order read thus;

"5. Having regard to the position as it remains regarding non-service of the summons on foreign entities, the period of custody already undergone and no immediate possibility of the trial commencing, we are of the considered view 24 (2019) 9 Supreme Court Cases 165 13 of 28 ba-2937-2022.doc that the appellant would be entitled to the grant of bail.

6. 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".

19. The next order pressed into service is in case of Bindu Rana Vs. Serious Fraud Investigation Office (supra). In that case, Delhi High Court has observed that it is not a rule that the bail has to be denied in every case where allegations are one of grave economic offences. There was no reason why similarly placed accused were not arrested and, therefore granted bail to the applicant. Paragraphs 47 and 56 to 62 are reproduced below;

"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 14 of 28 ba-2937-2022.doc 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.

56. Nothing has been pointed out to show that the arrest and further custody of the applicant would substantiate the process of investigation more so when the main accused person and other co accused having similar and in some cases graver role have not been arrested and the applicant has already joined the investigation.

57. It is also not alleged that the applicant has been found to be tampering with the evidence. The evidence relied upon has already been made part of the complaint.

58. From the very nature of investigation and the complaint filed by the SFIO, the evidence appears to be documentary in nature which is already in custody of SFIO.

59. The SFIO also has not been able to point out the need for continuing the custody of the applicant. Even though they have stated in cursory manner in the Status Report that the 15 of 28 ba-2937-2022.doc applicant is a flight risk, the same, however, can be taken care of by putting appropriate conditions.

60. The applicant is stated to be a 58 year old lady having no criminal antecedents. It is not denied that she lives with her family comprising of unmarried daughter, one son and a husband who retired from a government job.

61. The consequences of pre-trial detention are grave and the burden of such detention also causes severe effect on the other innocent members of the family, especially when it relates to a woman being in custody.

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".

20. It is well settled that if co-accused in the case are equally placed, meaning thereby, on the same pedestal then there is no 16 of 28 ba-2937-2022.doc reason to deny bail to the accused where other co-accused are not in custody.

21. Learned Senior Counsel has, therefore, placed reliance on a well known judgment in the case of Union of India Vs. K.A. Najeed (supra). In that case, the appellant was being prosecuted by National Investigation Agency for the offences punishable under sections 143, 147, 148.120-B. 341, 427, 323, 324, 326, 506 Part II, 201, 202, 153-A, 212, 307, 149 of the I.P.C and Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. Paragraphs 10,11,15 and 17 are extracted below;

"10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D (5) of UAPA.

11. The High Court's view draws support from a batch of decisions of this Court, including in 17 of 28 ba-2937-2022.doc Shaheen Welfare Association (1996) 2 SCC 616, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p.622, para 10) "10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20 (8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."

(emphasis supplied)

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (2021) 3 SCC 723, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, 18 of 28 ba-2937-2022.doc owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial

would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of the constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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22. It can thus be seen that even the rigours of Section 43-A in the UAPA Act were not considered by the High Court as to whether the respondent was being guilty or not? The High Court of Patna exercised its powers to grant bail owing to the long period of incarceration and unlikelihood of trial being completed any time in the near future. Indeed, the reasons assigned by the High Court were traceable back to Article 21 of the Constitution.

23. The Supreme Court in case of Union of India Vs. K.A. Najeeb (supra), observed that the High Court's view drew support from batch of decisions of the Supreme Court including the case of Shaheen Welfare Association Vs. Union of India²⁵ laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the under trial on bail.

24. The ratio laid down hereinabove by various pronouncements would attract to the case in hand and can be made squarely applicable. The respondent No.1 has not disputed long incarceration as well as serious health condition of the applicant who is now 63 years old. Rather, facts of the case in hand are more 25 1996 (2) Supreme Court Cases 616 20 of 28 ba-2937-2022.doc egregious than the instances referred in the case of Jainam Rathod and Sujay U. Desai (supra).

25. At the cost of repetition, it is borne out from the record that the applicant has been suffering from serious cardio Vascular diseases and serious co-morbidities including Type II Diabetes, Polycythemia, diabetes melitus, old ischemic heart disease, hypertension, blood pressure, triglycerides, cholesterol and fatty liver. It also appears that prior to his arrest, he had undergone heart surgery for placement of two stents in his heart. In the last few months, he appears to have been operated upon multiple times for placing stents in his heart. He was diagnosed with 100% blockage in both his arteries and consequently, seven more stents were placed in his heart. In view of such a fragile heart as well as overall health condition of the applicant, no purpose would be served in continuing his detention, else, it would frustrate the very object of Article 21 of the Constitution. In case, detention of the applicant is continued in judicial custody, perhaps it would

increase a risk of cardiac death in view of the medical reports placed on record. In order to have a proper and regular care and 21 of 28 ba-2937-2022.doc attention, as has been demonstrated by the learned Senior Counsel, it would be necessary to protect his liberty by releasing him on bail.

26. Learned Senior Counsel is at pains to invite my attention to various statistics/research papers/medical journals published globally to show that incarceration increases the risk of cardiac death. He would argue that in India, U.K and U.S.A cardiovascular disease was the leading cause of death among incarcerated individuals.

27. This Court in the case of Sant Lal Aggarwal Vs. Serious Fraud Investigation Office, 26 granted bail to an individual who was facing prosecution under Section 447 of the Act of 2013 and was in custody for eighteen months. It was observed that the applicant was 63 years old and was suffering from various health ailments which required constant medical attention. It was one of the considerations while granting bail. Relevant paragraph is quoted below for advantage;

"14. The applicant is 63 years of age. It is thus seen that the applicant needs constant medical treatment. No doubt the same is available and provided to the applicant at Sir J. J. Hospital and in 26 Criminal Bail Application No.785 of 2023 22 of 28 ba-2937-2022.doc prison hospital. However, I have no hesitation in opining that the applicant needs constant medical attention considering his age and ailment. The age and medical condition of the applicant is one of the circumstance which I have taken into consideration for enlarging the applicant on bail".

28. In a recent decision of the Supreme Court in case of Satyendra Jain Vs. Directorate of Enforcement (supra), Supreme Court granted bail to the accused on medical ground. It was observed that the citizen has a right to take treatment of his choice, at his own expenses, in a private hospital.

29. Indubitably, investigation is over and the applicant's detention is no more required in judicial custody. Nothing is to be recovered at the instance of the applicant. Almost all the evidence is in the form of documents, which is in the custody of the respondent No.1. Learned Senior Counsel would contend that there is no reasonable apprehension of the applicant absconding or fleeing away from justice since he has always been co-operating with SFIO's investigation for which he has been called for almost 30 times. A look out notice has already been issued against the applicant which shall deter him from leaving the country. Learned Senior 23 of 28 ba-2937-2022.doc Counsel submits that the applicant would surrender his passport.

30. Since the case is predominately based on documentary evidence and investigation will mainly involve analysis of accounting entries and financial statements and other documents, the Counsel submits that there would no question of tampering with the same.

31. Dehors merits and demerits as well as the statutory embargo as contemplated in Section 212 (6) (ii) of the Act of 2013, powers of this Court under Article 21 of the Constitution are unfettered, in the sense, while exercising constitutional jurisdiction, statutory restrictions, per se, do not oust the

ability of this Court to grant bail on the ground of violation of part - III of the Constitution; inarguably, statutory restrictions vis-a-vis constitutional jurisdiction will have to be harmonized. Having taken into account, the entire facts and circumstances and the material on record, I am inclined to grant bail to the applicant, albeit, by imposing certain conditions. Now, to the order.

24 of 28 ba-2937-2022.doc :ORDER:

(a) Application is allowed.

(b) The applicant - Hari Sankaran be enlarged

on bail upon executing a P.R bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount to the satisfaction of the Special Court in connection with Criminal Complaint No.20 of 2019 in File No. SFIO/INV/UNIT - V/1003/IL & FS/2018-19 for the offences punishable under Sections 447 of the Act of 2013 and Sections 417, 420 r/w 120B of the I.P.C.

(c) The applicant shall attend the trial Court scrupulously, unless exempted.

(d) The applicant shall surrender his passport before the Trial Court within a week from the date of passing of this order.

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(e) The applicant shall furnish his latest address of residence as well as contact details, forthwith to the Investigating Officer and the Special Court. In case of change of residential address or cell number (contact details), the same shall be forthwith informed to the Investigating Officer as well as the Special Court.

(f) The applicant shall not tamper with the evidence or attempt to influence or contact any of the witnesses or persons concerned with this case.

(g) The applicant shall keep the Investigating Officer and the Special Court informed, in case of his admission in any Hospital with details as regards date of admission and discharge.

(h) In case of breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of bail.

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32. The application stands disposed of in the aforesaid terms.

33. In view of disposal of the Bail Application, pending Interim Applications also stand disposed of.

[PRITHVIRAJ K. CHAVAN, J.]

34. After pronouncement of the order, Mr. Yadav holding for Mr. Venegavkar seeks stay to the order for one week in order to facilitate respondent No.1 - SFIO to approach the Supreme Court.

35. Mr. Ponda, learned Senior Counsel strongly opposes the prayer in light of the fact that the applicant has been incarcerated for nearly five years.

36. It would be unjustifiable to stay the order in light of the discussion made hereinbefore and, therefore, request made by Mr. Yadav cannot be granted.

37. At this stage, Mr. Ponda appearing for the applicant prays for releasing the applicant on furnishing cash security and undertakes to furnish surety within four weeks.

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38. The applicant is permitted to furnish cash security in the sum of Rs.1,00,000/-. Solvent surety shall be furnished within four weeks thereafter.

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