

Roop Singh Yadav vs Central Bureau Of Investigation on 16 November, 2022

Author: Dinesh Kumar Singh

Bench: Dinesh Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

AFR

Reserved on 01.11.2022

Delivered on 16.11.2022

Court No. - 10

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6700 of 2021

Applicant :- Roop Singh Yadav

Opposite Party :- Central Bureau Of Investigation

Counsel for Applicant :- Ratnesh Chandra, Purnendu Chakravarty, Sunit Kumar

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Dinesh Kumar Singh, J.

1. The present application under Section 439 of The Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") has been filed, seeking bail in Criminal Misc Case No.181 of 2021 (CBI Vs. Roop Singh Yadav and others), arising out of FIR No.RC0062017A0026, lodged at Police Station CBI/ACB, Lucknow under Sections 120-B read with Sections 420, 467, 468 and 471 of The Indian Penal Code, 1860 (hereinafter referred to as "IPC") and Section 13 (2) read with Sections 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and substantive offences, pending in the Court of Special Judge, Anti-Corruption, CBI (West), U.P., District Lucknow.

2. This bail application has been filed after the learned Special Judge, Anti-Corruption, CBI (West), Lucknow has rejected the bail application of the accused-applicant vide order dated 14.06.2021.

3. Initially, on 19.06.2017 an F.I.R. , at Crime No.0831 of 2017 was lodged under Sections 409, 420, 467, 468, 471 and 34 IPC and Sections 7 and 13 PC Act at Police Station Gomti Nagar, Lucknow, U.P. on the subject matter i.e. corruption and large scale irregularities committed in implementation of the Project "Gomti River Front Development" .
4. The State Government decided to handover the investigation to the CBI vide request letter dated 21.07.2017 sent by Mr. Arvind Kumar, Principal Secretary, Home, Government of U.P. The CBI took over the investigation and regular case got registered, as mentioned above.
5. The case pertains to corruption, irregularities, fraud and criminal intent in implementation of "Gomti River Channelization Project" and "Gomti River Front Development" implemented by the Department of Irrigation, Government of U.P.
6. A large number of irregularities in implementation of the Project to earn Crores of rupees illegally by committing fraud, forgery and corruption came to light and the government, initially, appointed an Inquiry Committee headed by a retired High Court Judge vide order dated 04.04.2017 issued by His Excellency, the Governor of U.P.
7. The said Committee included Justice Alok Kr. Singh, Former Judge of this Court, as Chairman and two members, Prof. U.K. Chaudhary, retired from I.I.T., B.H.U, Varanasi, who is an expert in Reverine Engineering, and Professor, A.K. Garg, from Faculty of Finance, I.I.M, Lucknow, as experts.
8. The said Committee submitted its detailed report dated 16.05.2017, pointing out several gross irregularities, misuse of powers and positions etc. committed by the officers/officials in implementing the said Project and causing huge loss to the State Exchequer.
9. Before the work was started, the concerned Minister, heading the Irrigation Department, Principal Secretary, Irrigation Department and the Senior Engineers of the said Department visited China, Japan, Malaysia, Singapore, Sough-Korea and Austria. An estimate of Rs. 747.49 Crores was submitted by the Irrigation Department to the Government on 04.02.2015, which was approved by the Cabinet on 17.03.2015.
10. A High Level Task Force, under the Chairmanship of Chief Secretary, which also included Principal Secretary of the Irrigation Department, was constituted on 25.03.2015. From 08.05.2015 to 22.02.2017, 23 meetings of this Task Force took place. A revised estimate of Rs.1990.24 Crores was submitted by the Irrigation Department to the Government. However, the Cabinet, after taking opinion from Finance & Expenditure Committee, approved the budget for the said project at Rs.1513.51 Crores which was communicated by the Government to the Irrigation Department on 25.07.2016.
11. In the revised plan, the time limit of two years was fixed, though in earlier plan no time limit was fixed. Thus, the work ought to have been completed by March/April, 2017 inasmuch as first budget of the Project was approved in March/April, 2015. For such a huge Project, involving thousands

crores of rupees, no consultancy firm/company was appointed.

12. The Committee, during its inquiry, took statements from Junior Engineers to Chief Engineers of the Department, Professors of I.I.T., Gandhinagar, Delhi and Roorki, Senior Vice-Chairman and Consultant of Gammon India, Proprietors and Consultants of M/s KK Spun and M/s Charoo Consultancy, Associated Directors and Associate of A.E. Com, Member Secretary of the Pollution Control Board and Chairman of S.E.E.A.A. The Committee was required to give its finding on following five points.

- "i. Verification of budget/cost of the project of Gomti River Channelization Project;
- ii. Responsibilities were to be fixed of the persons for spending 95% of the budget on the Project, but the work was completed only upto 60%;
- iii. Suitability/appropriateness of the Project for environment protection;
- iv. Position of payment in accordance with the rules against the sanctioned items; and v. Financial irregularities committed in implementation of the said Project."

13. The Committee opined that centage charge @ 6.875%, which came around 100 Crores, was not deposited. The Projected started in March/April, 2015 and after one year i.e. on 04.05.2016, the Engineer, In-charge in implementing the Project requested the High Level Task Force to waive 100 Cores as centage charge.

14. The High Level Task Force placed the matter before the Cabinet, however, the Cabinet rejected the proposal and vide letter dated 15.03.2017 Government intimated to the Chief Engineer and Head of Department that in view of the government orders, the deposition of centage charges was a must. It was further directed that after taking the necessary action, the Government should be informed accordingly.

15. The Committee found that no centage charge was deposited from March 2015 to December 2015 and during this period, the present accused-applicant, Roop Singh Yadav was the Executive Engineer, in-charge of the project. First time, in January, 2017 centage charge amounting to Rs. 14.42 Crores could get deposited by the then Executive Engineer in respect of works done during his tenure.

16. The accused-applicant was Executive Engineer from the very beginning till 31st December, 2016 and he did not get the centage charge amounting to Rs. 100 Crores deposited. The accused-applicant admitted before the Committee that centage charges were not deposited in anticipation of waiver from the Government. Even after the Government refused the waiver of the centage charges, centage charges were not deposited.

17. The Committee further opined that excluding amount for centage charges, labour-cess, maintenance charge and preliminary work, total Rs. 1314 Crores was allotted for different items of

the Project. However, against Rs.1314 Cores, Rs.1384 Crores had been spent. Thus, Rs. 72 Crores more was spent than what was sanctioned. The Committee was of the opinion that it was the accused-applicant who was responsible for not depositing the centage charges as per the government order as it was the responsibility of the concerned Executive Engineer.

18. The Committee further recorded the finding that the unqualified and un-experienced companies were chosen and whole tendering process was a complete eye-wash and bogus. The companies were chosen in per-determined manner for the work and for this, the present accused-applicant, who was also looking after the additional work of Superintending Engineer, was responsible and he only accepted the tenders in a mala fide and motivated manner, against the principles of just, fair and valid procedure. The payments were made for some items more than 100 times than the sanctioned budget for such items and for this also, the Committee found the present accused-applicant responsible. The Committee further found that work progress was extremely wanting despite spending more than sanctioned amount. In this gigantic corruption, the accused-applicant's involvement has been detailed vividly by the said Committee.

19. The CBI, in its charge-sheet, has found that the present accused-applicant, in pursuance to the decision taken by the High Level Task Force for construction of intercepting trunk drains on both banks of Gomti River, a note was put up by the accused-applicant, who was the then Executive Engineer for construction of the intercepting trunk drain on both banks of Gomti River in Lucknow city at an estimated cost of Rs. 230 Crores referring to the recommendation of the Chief Engineer's Committee. In spite of the prevalence of e-procurement system during the relevant period, the accused-applicant proposed that e-procurement system should not be followed as many experienced contractors registered with the department would not be able to take part in the tender process thereby depriving the benefit of competitive rates. The accused-applicant proposed to get the work done through the registered contractors of the department, and the said proposal was approved by Mr. S.N. Sharma, the then Chief Engineer on 06.08.2015. Mr. S.N. Sharma, the then Chief Engineer was not authorized to approve NIT for the work of intercepting trunk drain as only the Chief Minister was authorized to enhance the scope of the work and the project cost.

20. The CBI, in its investigation, further revealed that NIT in respect of the work of intercepting trunk drain was published in 7 newspapers on 11.08.2015. Tenders were to be submitted by 'AA' category of contractors, registered with the Irrigation Department till 20.08.2015 i.e. the date of opening of tender by the Tender Committee in presence of the tenderers.

21. The tender date was extended twice, first time upto 29.08.2015 and second time upto 07.09.2015 to accommodate L-1 i.e. M/s K.K. Spun Pipes Private Limited and L-2, M/s Brand Eagles Longjian JV which were not registered with the Irrigation Department earlier and were registered only on the last date of submission of tender and its opening i.e. 07.09.2015. These two firms stood L-1 and L-2. It has been alleged that both the said firms did not fulfill the eligibility qualifications at the time of submitting the tender and investigation revealed that the name & style of M/s K.K. Spun Pipes Private Limited had been changed as M/s K.K. Spun India Limited. The conditions were relaxed to make M/s K.K. Spun Pipes Private Limited as eligible and a note was put up on 21.08.2015 by the accused-applicant to allow the manufacturers also to participate in the tendering process along with

the registered contractors. The said note was to change eligibility the conditions of NIT which was already published. The said note was approved by the then Chief Engineer, Mr. S.N. Sharma even though he was not authorized to approve any relaxation pertaining to the registration of the contractors in terms of the relevant government orders. Any such relaxation could have been accorded only with the approval of the government. This relaxation in the tender conditions was not even published in any newspaper and only a notice was put up on the notice board of the office of the Irrigation Department.

22. The CBI further found that after relaxation of tender conditions, three parties, namely, (1) M/s K.K. Spun Pipes Private Limited, (2) M/s Brand Eagle Longjian JV; and (3) M/s Patel Engineering Limited were shown to have purchased the tender forms on 26.08.2015. All these firms were not registered with the Irrigation Department but tenders were given to them and the tender conditions were relaxed by the aforesaid note in order to facilitate them to participate in the tendering process and award the contract to M/s K.K. Spun Pipes Private Limited. It is stated that fake sale of tender documents was made to M/s Patel Engineering Limited on the same day. The tenders were sold by Mr. Raj Kumar Yadav, co-accused, who made an entry "sold by me to M/s Patel Engineering Limited" in his own hand-writing under his signatures. L-1 and L-2 firms applied for registration on 04.09.2015 and were registered on 07.09.2015 i.e. last date of submission of tender and opening of the tender .

23. It is alleged that pursuant to criminal conspiracy, Mr. Himanshu Gupta, Director, M/s K.K. Spun Pipes Private Limited vide his letter dated 26.08.2015 addressed to the Superintending Engineer, XII Circle illegally authorized his representative, Mr. Surjeet Srivastava, Company Secretary to purchase the tender documents even though the company was not registered with the Irrigation Department and was not eligible to participate in the tendering process. Similarly, vide his letter dated 25.08.2015, Mr. Badri Shreshtha, Senior Adviser of M/s Brand Eagles Longjian JV had illegally authorized his representative, Mr. Shahid to purchase the tender documents even though the company was not registered with the Irrigation Department and was not eligible to participate in the tender. It was a cartel formation between M/s M/s K.K. Spun Pipes Private Limited and M/s Brand Eagle Longjian JV. The bank guarantee of Rs.4.6 Crores of the L-2 firm i.e. M/s Brand Eagle Longjian JV was made from the bank account of the L-1 company, M/s M/s K.K. Spun Pipes Private Limited. On 03.09.2015, these companies executed a sub-contract agreement in which it was agreed that M/s Brand Eagles Longjian JV was intending to bid for the work of construction of intercepting trunk drain and pass-on the entire work to M/s K.K. Spun Pipes Private Limited for execution and in lieu thereof, M/s K.K. Spun Pipes Private Limited agreed to provide bank guarantee of Rs. 4.6 Crores for the bid contract.

24. The investigation conducted by the CBI also revealed that in order to award the work to M/s K.K. Spun Pipes Private Limited forged documents of the 3rd company, M/s Patel Engineering Limited were used in order to fulfill the quorum of three parties. The documents used in the tender documents of M/s Patel Engineering in the work of intercepting trunk drain were photocopies of documents submitted by the said company during its participation in tender procedure for work of construction of Diaphragm wall earlier. The company, M/s Patel Engineering Limited had denied having purchased/submitted the tender documents for the work of intercepting trunk drain.

25. The present accused-applicant directed Mr. Raj Kumar Yadav, the then Junior Assistant in the office, to show the sale of tender documents to M/s Patel Engineering Limited and put up forged papers. It is the accused-applicant, who put up forged papers on behalf of M/s Patel Engineering Limited by obtaining photocopies from the earlier tenders submitted by M/s Patel Engineering Limited for other work. No earnest money was found deposited by M/s Patel Engineering Limited, and it had also not filled the rates in the tender documents. The present accused-applicant was master-mind and responsible for this forgery to favour of cartel of M/s K.K. Spun Pipes Private Limited and M/s Brand Eagles Longjian JV.

26. The investigation further revealed that the bid of M/s Patel Engineering Limited was rejected on technical grounds and rates of M/s Brand Eagles Longjian JV and M/s K.K. Spun Pipes Private Limited were found to be L-2 and L-1 respectively. After opening of the tender on 07.09.2015, the rates were written on the comparative chart by said Raj Kumar Yadav on dictation of the present accused-applicant. The bids were not evaluated by Technical Evaluation Committee and despite being not qualified, the present accused-applicant invited M/s K.K. Spun Pipes Private Limited to execute the agreement. An agreement was executed between M/s K.K. Spun Pipe Private Limited and the present accused-applicant in the capacity of Superintending Engineer for completion of construction of intercepting trunk drain at an estimated cost of Rs.285.69 Crores within the stipulated period of one year. Against already high cost of Rs.285.69 Crores, the payment of Rs.337.32 Crores was made to M/s K.K. Spun Pipes Private Limited without obtaining any approval for the cost escalation from the Chief Minister or the Cabinet or any approval for increasing the length of the intercepting trunk drain from 27 kilometers to 32.8 kilometers. The accused-applicant did not obtain performance guarantee of Rs.5.77 Crores from M/s K.K. Spun Pipes Private Limited before execution of the agreement and he obtained earnest money of Rs.14.28 Crores instead of Rs.28.57 Crores, which was 50% of the earnest money.

27. The investigation had disclosed the commission of offences by Roop Singh Yadav, present accused-applicant, Raj Kumar Yadav, Himanshu Gupta and Kavish Gupta, Directors of M/s K.K. Spun Pipes Private Limited, Badri Shreshtha, Senior Adviser, M/s Brand Eagles Longjiyan JV, besides M/s K.K. Spun Pipes Private Limited punishable under Section 120-B read with Sections 420, 467, 468 and 471 IPC and Section 13(2) read with Sections 13(1)(d) PC Act and substantive offences thereof.

28. Heard Mr. Harshveer Pratap Sharma, learned Senior Counsel, assisted by Mr. Purnendu Chakravarty, learned counsel, appearing for the accused-applicant, as well as Mr. Anurag Kumar Singh, learned counsel, assisted by Mr. Akhilendra Singh, learned counsel, appearing for the respondent - CBI, and perused the entire record.

29. On behalf of the accused-applicant, Mr. Harshveer Pratap Sharma, learned Senior Counsel has submitted that the accused-applicant is in jail since 20.11.2020; investigation is complete and charge-sheet has been filed. It has been further submitted that the work of intercepting trunk drain done by M/s K.K. Spun Pipes Private Limited is of very good quality and leakages had been found at joint of barrel no. 14 and 18 in the length of 28 kilometers intercepting trunk drain. Only recovery of Rs.6,38,150/- under clause 18(A) of the contract has been recommended to be recovered from the

contractor M/s K.K. Spun Pipes Private Limited. It has been further submitted that the investigation against co-accused is still pending and conclusion of the trial will take a long time. The accused-applicant cannot be kept in jail till the trial gets concluded inasmuch as there is no likelihood of completion of the trial at an early stage.

30. On behalf of the accused-applicant, the learned Senior Counsel, has further submitted that the accused-applicant is not keeping good health and his further detention is neither desirable nor in the interest of justice. It has been further submitted that the delay in trial itself is an important factor for consideration while granting bail. Looking at the long custody of the accused-applicant, the accused-applicant may be enlarged on bail.

31. To buttress his submission, the learned Senior Counsel, appearing for the accused-applicant has placed reliance upon the judgment in the case reported in (2011) 1 SCC 784 (State of Kerala Vs. Raneef as well as judgment and order dated 9th September, 2022 passed by the Supreme Court in Petition for Special Leave to Appeal (Crl.) No.7844 of 2022 (Sidhique Kappan Vs. State of Uttar Pradesh).

32. On behalf of the respondent - CBI, it has been submitted by Mr. Anurag Kumar Singh that the bail application of co-accused has already been rejected by this Court vide judgment and order dated 29th April, 2022 reported in 2022 SCC OnLine All 249 (Raj Kumar Yadav Vs. State Thru CBI/ACB, Lucknow). It has been further submitted that the accused-applicant's involvement in commission of the irregularities, fraud and forgery has been found in four items i.e. (1) construction of diaphragm wall (2) construction of intercepting trunk drain, (3) construction of rubber dam and (4) preparation of vision document involving amount of Rs. 1055 Crores, covering 12 agreements executed under 4 NITs during 2015-16 and the accused-applicant has been signatory of those agreements. It has been further submitted that in this gigantic fraud and corruption, the accused-applicant has been one of the main architects in looting the public money in the name of Gomti River Channelization Project and Gomti River Front Development. Public money amounting to Rs.337.32 Crores had been transferred by the accused-applicant to a firm without requiring authorization by the competent authority and he has caused loss of huge proportions to the State Exchequer. The economic crimes of such mammoth scale and width are craftily planned and executed. It is well settled that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the Court has to keep in mind the nature of accusations, magnitude and gravity of offence and nature of evidence in support of accusations. The Supreme Court in the case reported in (2013) 7 SCC 439 (Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation) has opined in paragraphs 34 and 35 as under:-

"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."

33. The Supreme Court in the case reported in (2017) 13 SCC 751 (State of Bihar and another Vs. Amit Kumar alias Bachcha Rai) in paragraphs-9 and 13, while considering the bail application of an accused involved in economic offence of huge magnitude, has held as under:-

"9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.

13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disintitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] . Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously."

34. In the case reported in (2018) 11 SCC 46 (Rohit Tandaon Vs. Directorate of Enforcement) the Supreme Court has again reiterated the consistent view that 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. Paragraphs-21 and 22, which are relevant, are extracted hereunder:-

"21. The consistent view taken by this Court is that 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. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more *res integra*. The decision in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and *State of Maharashtra v. Vishwanath Maranna Shetty* [*State of Maharashtra v. Vishwanath Maranna Shetty*, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite *mens rea*. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. 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. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."

35. Again, in the case reported in (2019) 9 SCC 165 (*Serious Fraud Investigation Office Vs. Nittin Johari and another*), the Supreme Court has held that stringent view should be taken by the Court towards grant of bail with respect to economic offences. Paragraphs 24, 25, 26 and 27 of *Serious Fraud Investigation Office Vs. Nitin Johari and another's case* (*supra*) are extracted hereunder:-

" 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. In this regard, it is pertinent to refer to the following observations of this Court in *Y.S. Jagan Mohan Reddy* [*Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35) "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." This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement* [*Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] and *State of Bihar v. Amit Kumar* [*State of Bihar v. Amit Kumar*, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771] . Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

25. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent 1 both prior and subsequent to the filing of the investigation report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

26. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent 1 by observing that bail was justified on the "broad probabilities" of the case.

27. In our considered opinion, this vague observation demonstrates non-application of mind on the part of the Court even under Section 439 CrPC, even if we keep aside the question of satisfaction of the mandatory requirements under Section 212(6)(ii) of the Companies Act."

36. Mere languishing in jail, during trial, cannot be a ground for granting bail if the conspiracy and fraud is of very high magnitude. The Supreme Court in the case of *State of Bihar and another Vs. Amit Kumar alias Bachcha Rai* (supra) in paragraph-8 has held as under:-

"8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar."

37. The Court has to take into consideration while considering the bail application, nature of offence and the Court should refuse the bail if the offence is serious and is of huge magnitude, particularly, in economic offences. Corruption is a menace which is eating the vitals of economy of this country. Thousand of Crores of public money is looted by corrupt people in the system. Offence of the magnitude, as in the present case could not have been committed without involvement of the high-ups in the Government. The accused-applicant was enjoying the patronage and blessings of high-ups in the Government, which is evident from the forgery and fraud committed by him while allocating the work to ineligible persons, who allegedly committed corruption in conspiracy with others. The sentence provided under Section 467 IPC is upto life and, therefore, this Court is of the view that two years imprisonment is not as such which itself would warrant this Court to grant bail to the accused-applicant.

38. It is well settled that when the gravity of offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in near future cannot jointly entitle the accused-applicant to be enlarged on bail. The Supreme Court in the case reported in (2007) 1 SCC 242 (Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and another) in paragraph-16 has held as under:-

"16. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the appellant has committed offences under Section 3(2) or Section 24 of MCOCA. What is to be seen is whether there is a reasonable ground for believing that the appellant is not guilty of the two offences, he has been charged with, and further that he is not likely to commit an offence under MCOCA while on bail. As noted above, the circumstance which has weighed with the High Court to conclude that the appellant had the knowledge of the organised crime syndicate of Telgi, printing fake stamps, etc. and these were being sold under the protection of the appellant and hence he had abetted an organised crime, is the alleged conversation between him and Telgi in January 1998, after the kidnapping incident. In our view, the alleged conversation may show the appellant's acquaintance with Telgi but may not per se be sufficient to prove the appellant's direct role with the commission of an organised crime by Telgi, to bring home an offence of abetment in the commission of organised crime falling within the ambit of Section 3(2) of MCOCA and/or that he had rendered any help or support in the commission of an organised crime whether before or after the commission of such offence by a member of an organised crime syndicate or had abstained from taking lawful measures under MCOCA, thus, falling within the purview of Section 24 of

MCOCA. It is true that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail."

39. The Court is required to balance the individual interest viz.a.viz the interest of the society while considering the bail plea. No right is an absolute right and reasonable restriction can be placed on them. Mere long incarceration in jail as under-trial is not sufficient ground to enlarge an accused on bail if the facts & circumstances of the case and interest of the society do not warrant for enlarging the accused-applicant on bail. The Supreme Court in the case reported in (2004) 7 SCC 528 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and another) has held that three years incarceration would not itself entitle the accused-applicant to be released on bail nor the fact that the trial is not likelihood to be concluded in near future would be sufficient for enlarging the accused-applicant on bail considering the gravity of offence. Paragraph-14 of the said judgment, which is relevant, is extracted hereunder:-

"14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No. 745 of 2001 dated 25-7-2001 [Rajesh Ranjan v. State of Bihar, (2000) 9 SCC 222] . While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

40. Considering the magnitude of corruption, prima facie, involvement of the accused-applicant in commission of the offences in furtherance of the criminal conspiracy and the fact that Three Members Committee, headed by Former Judge of this Court, and the CBI, in their inquiries/investigation, have clearly found the accused-applicant's involvement in huge corruption, forgery, fraud and misusing his official position, this Court does not deem it appropriate to enlarge the accused-applicant on bail at this stage and, therefore, the bail application is hereby rejected.

[D.K. Singh, J.] Order Date :-

MVS/-16th November, 2022