

Gurmeet Singh & Anr. vs Central Bureau Of Investigation on 6 March, 2017

Author: Mukta Gupta

Bench: Mukta Gupta

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on: 28th February, 2017
Decided on: 6th March, 2017
+ BAIL APPLN. 1707/2016
GURMEET SINGH & ANR. Petitioners
Represented by: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Abhishek Amritanshu and
Mr. Amit Pawan, Advs. for P-1.
Mr. Dayan Krishnan, Sr. Adv.
with Mr. Abhishek Amritanshu
and Mr. Amit Pawan, Advs. for
P-2.
versus
CENTRAL BUREAU OF INVESTIGATION Respondent

Represented by: Ms. Rajdipa Behura, Spl. PP with Ms. Garima Singh Yadav, Adv. with IO Mr. Anil Rawat.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The petitioners Gurmeet Singh and Subrata Bhattacharya seek bail in RC-BDI/2014/E/0004 under Sections 120B r/w Sections 409/411/420/467/468/471/474 IPC & 4 & 5 read with Section 6 of the Prize Chits & Money Circulation Schemes (Banning) Act 1978.

2. Before proceeding in the matter, this Court brought to the notice of learned counsels for both sides, the order of the Hon'ble Supreme Court dated 2nd May, 2016 allowing prayer 'a' in IA No.5/2016 in Civil Appeal No.13301/2015. Prayer 'a' in the application before the Hon'ble Supreme Court was as under:-

"(a) pass an order directing that no Civil Court or other Authority or Forum shall entertain any suit or other proceedings in respect of any claim or related matter(s) pertaining to PACL Ltd. and/or its Directors/Promoters/ Group Companies / entities/ individuals etc., arraying therein as parties/Defendants/Respondents the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.), and/or its

Chairman and/or its Members and/or the Securities and Exchange Board of India and further no injunction shall be granted by any Court or other Authority or Forum in respect of any action taken or to be taken by the Justice (Retd.) R.M. Lodha Committee (in the matter of PACL Ltd.) and/or its Chairman and/or its Members and/or the Securities and Exchange Board of India, with respect to claims and/or matter(s) relating to investments/deposits etc. in/ with PACL Ltd. or its Directors/Promoters/Group/ Companies/Entities/Individuals etc."

3. Both learned senior counsels for the petitioners and learned Spl. PP for the CBI submit that the said prayer was allowed after a Committee under the chairmanship of Justice R.M. Lodha (Retd. Chief Justice of India) was constituted to sell up the properties of the company involved in the above noted FIR so that amounts could be disbursed to the investors. When the investors started filing claims against the Committee, various civil suits and petitions, the Hon'ble Supreme Court allowed prayer 'a' as noted above and directed that no other Court except the Hon'ble Supreme Court can entertain an application in terms of prayer 'a' noted above. The present petition relates to trial of the petitioners pursuant to the above noted FIR and the remedies available under the Code of Criminal Procedure during the course of trial are not affected by the order of Hon'ble Supreme Court dated 2nd May, 2016.

4. Learned Senior counsels for the petitioners as a brief background of the case submit that the company M/s Pearls General Finance Ltd. (in short 'M/s PGF') was incorporated as a public Company, limited by shares on 19th January, 1983 which was later changed to M/s Pearls Green Forests Ltd. (in short 'M/s PGFL'). The present FIR relates to M/s Pearl Agrotech Corporation Ltd. (in short 'M/s PACL') which was initially incorporated as M/s Gurwant Agrotech Ltd. on 13th February, 1996 and changed to M/s PACL on 2nd April, 1996. In 1998, a public interest litigation was filed before the Hon'ble Supreme Court alleging non-compliance of relevant provisions while initiating collective investment scheme by the company. Vide order dated 7th October, 1998 the Hon'ble Supreme Court restrained the company from alienating its assets. Finally a retired Judge was appointed to go into the irregularities of the company who submitted a final report on 20th September, 2002 stating that there was no violation committed in the collective investment schemes run by M/s PGFL and M/s PACL. The interim order was thus vacated on 3rd March, 2003. The proceedings were also initiated by the Securities and Exchange Board of India (in short 'SEBI'). Notices issued by SEBI were challenged before the Hon'ble High Court of Rajasthan which quashed the same against which SEBI approached the Hon'ble Supreme Court. Though SEBI sought for an interim order from the Hon'ble Supreme Court that M/s PACL be restrained from further collecting amounts from the investors however no stay was granted. Finally the matter was remanded back to SEBI to inquire into whether M/s PACL was running collective investment schemes or not. On 22nd August, 2014 SEBI held that M/s PACL was running collective investment schemes and directions were issued to M/s PACL to pay to the investors. Appeal filed by M/s PACL to the Appellate Tribunal was dismissed and finally on 2nd February, 2016 the Hon'ble Supreme Court appointed a Committee under the chairmanship of Justice R.M. Lodha, retired Chief Justice of India to sell the assets and pay the investors. Directors of the Company were directed to assist the Committee. It is thus prayed that since the petitioners are required to assist the Committee constituted by the Hon'ble Supreme Court for sale of assets and repayment to the investors, the

participation of the petitioners is essential for which they should be granted bail.

5. Learned Senior Counsels for the petitioners further contend that after the above noted FIR was registered on 19th February, 2014, all bank accounts of the company were frozen on 22nd February, 2014 and title documents were seized on 15th March, 2014. Thus, all the hard discs, documents etc. which are required for the purpose of trial are already in the custody of CBI and the petitioners are not required to participate in any further investigation. Despite the fact that charge sheet had been filed, the bail application filed by the petitioners was rejected by learned Additional Sessions Judge vide order dated 18th April, 2016. Even prior to registration of the FIR and the petitioners being taken into custody, the petitioners were called to join the investigation for nearly 100 times and every time the petitioners participated in the investigation. After the police custody remand was over, no further interrogation was done from the petitioners and hence they are no more required for custodial interrogation. Since all the documents and necessary material have been collected by the CBI, there are no chances of tempering with the evidence. Moreover, the petitioners were only employees of M/s PACL and had no financial control thereon.

6. It is contended that the only ground on which the CBI opposes the bail application is the gravity of offence however Hon'ble Supreme Court in its various decisions has held that gravity of offence is not the only circumstance to be considered while granting bail and has granted bail even in cases involving alleged fraud of huge amounts. Reliance is placed on the decision of the Hon'ble Supreme Court reported as (2012) 1 SCC 40 Sanjay Chandra Vs. Central Bureau of Investigation and 2017 SCC OnLine SC 96 Manoranjana Sinh @ Gupta Vs. Central Bureau of Investigation. In respect of allegations of the CBI that the petitioners are likely to influence the witnesses, reliance is placed on the decision of the Hon'ble Supreme Court reported as (2005) 8 SCC 21 State of U.P. Vs. Amarmani Tripathi wherein it has been held that bail cannot be refused on the ground that witnesses are likely to be influenced unless there is credible material with the prosecuting agency and the CBI has failed to produce any credible material to show that the petitioners have influenced the witnesses.

7. Learned counsel for the CBI has taken me through the salient portions of the charge sheet. It is contended that the petitioners are not only employees of M/s PACL, they had participated in the major decisions and signed the relevant documents. Even documents where major funds have been diverted to commission agents or other sister concerns have been signed by the petitioners. During the custody itself, the petitioners have successfully transferred the funds of M/s PACL through the company called PIPL to Gold Coast, Australia by selling a hotel of the company. During the course of investigation it has been revealed that funds of more than 3400 crores obtained from the investors of M/s PACL were diverted to 638 sister concerns and around 5500 properties were purchased. Further though the investments were taken on the pretext that 36% money would be invested in the properties sold to the investors and 64% in development of the properties ostensibly sold to the investors, sale deeds executed in favour of the investors were mostly forged and fabricated. Purported sale deeds were executed of the lands which were not owned by M/s PACL and were Government lands of which M/s PACL was not the owner. Reliance is placed by learned counsel for the CBI on the decisions reported as (1987) 2 SCC 364 State of Gujarat Vs. Mohanlal Jitamalji Porwal & Anr., (2013) 7 SCC 439 Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, (2013) 7 SCC 466 Nimmagadda Prasad Vs. Central Bureau of Investigation, (2013) 7 SCC 452 Central

Bureau of Investigation Vs. V. Vijay Sai Reddy, 2015(1) JCC 451(SC) Neeru Yadav Vs. State of U.P., 2015 (2) JCC 1127 (SC) Vinod Bhandari Vs. State of M.P., 2012(3) JCC 2183 Sunil Grover Vs. State , 234 (2016) DLT 392 Sunil Dahiya Vs. State (Govt. of NCT of Delhi) and 2004 CrLJ 2318 Jasdeep Singh Bains Vs. The State of Union Territory of Chandigarh. It is thus prayed that no bail be granted to the petitioners.

8. Allegations against the petitioners who are the two directors of M/s PACL Ltd. have been crystallized in the charge sheet. In the charge sheet, instances have been given of ostensible sale of properties and sale deeds so executed have been found to be forged and fabricated. For example, property in Village Akbarpur purportedly sold to the investors was found to be Wakf property (Kabristan), meant for tube well, land of gram samaj and chak road. Property allegedly sold at Village Hathupura was found to be land of gram sabha and forest land. Further in majority of cases though the land was stated to be allotted to the investors however no sale deeds were executed. Thus, there was no transfer of ownership though 34% of the amount taken from the investors was for the purpose of transferring properties in their names. Though there was no sale of the land as per the Transfer of Property Act however fake entries were made in the accounts books. Though in the books of accounts amounts were being shown for development of land however the money was actually rotated in the various sisters concerns on the basis of forged invoices and in reality no land was developed. 10 intermediary companies were created for transfer of land from M/s PGFL to M/s PACL namely Silverline Associates Pvt. Ltd., Delhi, Maurya Healthcare Pvt. Ltd., Delhi, Panghat Properties Pvt. Ltd., Delhi, Lakhpati Properties Pvt. Ltd., Delhi, Sunbright Realtors Pvt. Ltd., Mohali, Spacecity Real Estates Pvt. Ltd., Mohali, Amber Realtors Pvt. Ltd., Mohali, Smiling Star Real Estate Pvt. Ltd., Mohali, Shine Star Properties Pvt. Ltd., Chandigarh and Valley-Vista Realtors Pvt. Ltd., Mohali. Funds so collected from the customers were utilized for making repurchase of the land purportedly allotted to the customers whereas in fact no actual transfer of land took place to the customers. There was on paper transfer of land from above noted 10 intermediary companies of M/s PACL through unregistered power of attorneys, agreement to sell etc. with no stamp duty paid. Further 16 intermediary companies were created by M/s PACL for the purpose of repayment to its investors namely M/s Muurugan Realtors Pvt. Ltd. (formerly known as M/s Thamirabarani Farm & Agricultural Development Pvt. Ltd.), M/s Madras Infrastructure Pvt. Ltd. (formerly known as M/s Thamirabarani Farm & Development Pvt. Ltd.), Aspen Farm Developers Pvt. Ltd., Ivy Farm Developers Pvt. Ltd., Bhumika Farm Developers Pvt. Ltd., Tulika Farm Developers Pvt. Ltd., Budhi Pallien Realtors Pvt. Ltd., Gramin Environment & Infrastructure Pvt. Ltd., Gramin Colonisers & Construction Pvt. Ltd., Kundalini Buildways Pvt. Ltd., Shashti Buildcon Pvt. Ltd., Swarnika Skyhi Promoters Pvt. Ltd., Varishsena Farming Construction Pvt.

Ltd., Yavakrida Promoters Pvt. Ltd. and Yadavi Farming Construction Pvt. Ltd. On the strength of sham documents, money was rotated amongst these companies. As per M/s PACL Circular No.62/2010 dated 16th July, 2010 expected value of land at the end of agreement of various plans was mentioned. Thus, if a customer invested 10,000/- in the company, he would be allotted 200 sq. yard plot and after 10 years the expected value of the land was shown as 37100/- irrespective of the place of land which was highly improbable. By creating a pyramid structure, number of agents were recruited as commission agents and over 23 lakhs commission agents were enrolled and over more than 1700 agents were at the top level and high commissions were paid to those agents. Thus,

to mobilize funds from very large number of people, marketing technique wherein collection agents called commission agents with incentives was promoted resulting in targeting a large number of gullible customers. Investigation also revealed that funds of M/s PACL were diverted to M/s Pearls Astralasia Pty Ltd. which was incorporated in September, 2009 and money of the investors was invested in real estate in Australia by forming joint ventures.

9. As per the status report filed by CBI, during the course of investigation, role of Gurmeet Singh, petitioner No.1 who was the Executive Director-Finance of M/s PACL since 1st February, 2009 was revealed as under-

"i. He is a qualified Chartered Accountant and joined PACL as AGM (Finance) in mid 2004. In February, 2009, he became Executive Director(Finance) of PACL, before that he was heading PACL accounts department as GM (Finance).

ii. While he was director, PACL had collected investment/ funds from crores of gullible investors/customers in the name of sale of undeveloped agriculture plot and carrying out development activities on the same. However the land allotted to the customers was nonexistent/Govt. land/not owned by the Company. Now most of the customers of PACL verified by CBI, have neither got the plot nor received the payment due.

iii. While he was director, number of sham transaction purportedly showing sale, purchase and allotment of land to investors have been done. One of such instance of such sham transaction pertains to Kh. No.314 & 99 of Akbarpur, Meerut (UP) which is purportedly shown purchased by PACL through Agreement to Sell & GPA dated 27.3.2009 from M/s Spacecity Real Estate Pvt. Ltd. (Intermediary/front company of PGF). A possession letter also enclosed with the same. In the Agreement to Sell it is mentioned that "the first party is the absolute owner and in possession of Agriculture Developed land...." Further it is also mentioned that "the First Party has delivered the peaceful and vacant possession of the said land to second party on the spot". The crucial fact is that the above is Govt. land in Kh. No.314(Kabristan) and therefore there is no question of it being sold/purchased and the physical possession of the same being transferred. Further PACL had allotted the bogus land comprised in Kh.99 (owned by farmers for years - Never purchased by PACL) to its 9 investors in the year 2011. When the gullible customers were informed that PACL has shown the allotment of bogus land to them, they realized that they have been cheated by PACL.

iv. While he was director, as per PACL Circular No.62/2010 dated 16.07.2010 the investment received from gullible customer was being utilized as 36% : Cost of Plot and 64% : Development & other charges. Investigation revealed that the company has cheated the customers in the name of land development work and actually no land development work was carried out and the thousands of crores rupees/funds were diverted by taking bogus invoices from Kolkata based shell companies & other companies, purported shown as engaged in the land development work. It is

pertinent to mention that the petitioner accused person in conspiracy with other accused persons had diverted about 11,000 Crores through bogus land development through Kolkata based shell companies & others which was also corroborated by Income Tax Department report.

v. While he was director, the work order -cum- agreement took place between PACL & hundreds of companies for land development work, which is not mentioned in the minutes of board meetings. The same work orders were signed by Sh. Gurmeet Singh.

vi. While he was director, PACL was having possessions of forged GPA, ATS, will, possession letters etc. pertaining to the nonexistent/Govt. land of village Kot & Padora of Bhind(MP) and the company had used the same documents as genuine and shown the allotment of same land to its thousands of gullible customers. The same 12 forged valuable property documents were seized by CBI from PACL.

vii. Being director of PACL, he has chaired some of the board meeting and signed the minutes of board meetings, running illegal scheme, cheating customers. He played significant role in decision making, policy decisions and day-to-day running of the affairs of company, while sitting in the Board of Directors of PACL.

viii. As director he was also responsible for issuance of circulars, inducing its commission agents by giving them incentives, Prizes such as Foreign trips, for collecting more and more funds from the gullible investors. ix. In criminal conspiracy with other co-accused, being Executive Director (Finance), he played significant role in the board meetings for grant of approval of diversion of investor's money to Australia through associate company M/s PIPL. It is mentioned in the Board meeting that the company will invest 150 cr. in PIPL to explore business avenues in the overseas market.

x. Being ED (Finance), he is also authorized signatories in the bank accounts of PACL.

xi. There is significant oral & documentary evidence against the petitioner accused to substantiate his role as alleged in the charge sheet."

10. Further as per the status report filed by CBI role of Subrata Bhattacharya, petitioner No.2 Executive Director of M/s PACL since 1 st February, 2009 was found to be as under:-

"i. While he was director, PACL had collected investment/ funds from crores of gullible investors/customers in the name of sale of undeveloped agriculture plot and carrying out development activities on the same. However the land allotted to the customers was nonexistent/Govt. land/not owned by the company. Now most of the customers of PACL, verified by CBI, have neither got the plot nor received the payment due.

ii. While he was director, through a sham transaction Kh.

No.314 & 99 of Akbarpur, Meerut(UP) is purportedly shown purchased by PACL through Agreement to Sell & GPA dated 27.3.2009 from M/s Spacecity Real Estate Pvt. Ltd. (Intermediary/front company of PGF). A possession letter also enclosed with the same. In the Agreement to Sell it is mentioned that :the First Party has delivered the peaceful and vacant possession of the said land to second party on the spot". The crucial fact is that how the above Govt. land of Kh. No.314 (Kabristan) can be sold/purchased and how the physical possession of the same can be transferred. Further PACL had allotted the bogus land of above Kh.99 to its 9 investors in the year 2011. When the gullible customers were informed that PACL has shown the allotment of bogus land to them, they realized that they are cheated by PACL.

iii. Being Whole Time Director (Executive Director) of PACL, sometimes he has chaired the board meeting and signed the minutes of board meetings, running illegal scheme, cheating customers. He played significant role in decision making, policy decisions and day-to-day running affairs of the company, while sitting in the Board of Directors of PACL.

iv. As director he is also responsible for issuance of circulars, including its commission agents by giving them incentives, prizes such as foreign trips, for collecting more and more funds from the gullible investors. The circulars signed by him include PACL circular No.62/2010 dated 16.07.2009, having various plans/schemes of utilized for the land cost and the major portion i.e. 64% will be utilized as development charges and other charges. Further the draft of this circular was placed before Audit Committee on 10.06.2010, instead of Board of Directors meeting which took place in the same day (10.06.2010) and the same was chaired by S. Bhattacharya. Both meetings dated 10.06.2010 were attended by only two directors i.e. S. Bhattacharya and Gurmeet Singh and in both meetings S. Bhattacharya acted as chairman of the meetings. v. In criminal conspiracy with other c-accused, being director, he played significant role in the board meetings for the approval of diversion of customer's money to Australia through associate company M/s PIPL. It is mentioned in the minutes of Board meeting that the company will invest 150 cr. In PIPL to explore business avenues in the overseas market.

vi. While he was director, PACL was having possession of forged GPA, ATS, Will, possession letters etc. pertaining to the nonexistent / Govt. land of village Kot & Padora of Bhind (MP) and the company had used the same documents as genuine and shown the allotment of same land to its thousands of gullible customers. The same 12 forged valuable property documents were seized by CBI from PACL.

vii. Detailed role has been mentioned in the charge sheet and there is enough oral and documentary evidence against the petitioner accused. The respondent craves for liberty to refer to the same if necessary during the course of hearing."

11. On investigation 5500 properties worth more than 3400 crores have been found out and even during custody, efforts were made to sell the properties in Australia which was purchased from the money of the investors. Investigation has also revealed that Gurmeet Singh diverted more than 11000 crores in the name of fictitious land development on the basis of forged invoices. Further investigation qua the money trail is continuing.

12. The main argument addressed by learned senior counsels for the petitioners is that entire allegations of the CBI show that being an offence of serious nature, bail should not be granted, whereas in Sanjay Chandra (supra) Supreme Court noted that the statement of the witnesses ran into seven hundred pages and the other documentary evidence was also too voluminous, so the trial may take considerable time and the appellant therein would have to remain in jail longer than the period of detention had they been convicted, thus it was not in the interest of justice that they should be in jail for indefinite period. In Sanjay Chandra (supra) the Supreme Court was not dealing with a case of large number of investors rather the allegations were in respect of criminal conspiracy between the accused in the year 2009 to get UAS license for providing telecom services to a company otherwise ineligible to get UAS license.

13. Even in Manoranjana Singh @ Gupta (supra) the Hon'ble Supreme Court had taken into consideration various ailments, the appellant therein was facing and also the fact that disclosure in the latest status report of the CBI revealed that further confinement of the appellant therein in judicial custody was not an indispensable necessity for the unhindered investigation that was in progress.

14. In the decision reported as (1978) 1 SCC 118 Gurcharan Singh Vs. State (Delhi Admn.) the Hon'ble Supreme Court laid down the guidelines and the overriding consideration for grant of bail as under:-

22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 CrPC if it deems necessary to act under it.

Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

23. xx xx xx xx xx

24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

15. The important fact to be noted in the present case is that in the FIR, the investigation is being carried out where lakhs of investors have been cheated, their money misappropriated and forged documents prepared. In the decision reported as (2002) 2 SCC 210 Narinderjit Singh Sahni & Anr. Vs. Union of India & Ors. the Hon'ble Supreme Court held that each transaction of cheating and fraud with every individual investor is a separate cause of action wherein separate FIR could have been registered. Thus, though the CBI consolidated the case in relation to the offences committed qua all investors in one FIR, it would have been within its jurisdiction to have lodged separate FIRs on the complaint of each investor. Considering from that angle, the magnitude and severity of the offence in the present case is not only in relation to the quantum of money involved but also that offences have been committed against lakhs of investors.

16. As noted above, the apprehension of the CBI that the petitioners are likely to hinder the further investigation being carried out and temper with the evidence is based on credible material as while in custody also efforts have been made to dispose of the property of the company.

17. In similar circumstances in Y.S. Jagan Mohan Reddy (supra), wherein money of large number of investors was involved and there was a reasonable apprehension of evidence being tampered with, the Supreme Court declined to grant bail.

18. Considering the nature of serious allegations against the petitioners, the magnitude and severity of the offence alleged impacting lakhs of investors and there being a genuine apprehension of causing obstruction in further investigation and tampering with the evidence, this Court does not find it to be a fit case for grant of bail to the petitioners.

19. Petition is accordingly dismissed.

(MUKTA GUPTA) JUDGE MARCH 06 2017 'v mittal'