

Sujay U. Desai vs Serious Fraud Investigation Office on 28 January, 2022

Author: Shekhar Kumar Yadav

Bench: Shekhar Kumar Yadav

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

RESERVED

IN CHAMBER

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36790 of 2021

Applicant :- Sujay U. Desai

Opposite Party :- Serious Fraud Investigation Office

Counsel for Applicant :- Gunjan Jadwani, Kartikeya Saran

Counsel for Opposite Party :- A.S.G.I., Manoj Kumar Singh

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Mr. Anurag Khanna, learned Senior Counsel assisted by Mr. Kartikeya Saran, Ms. Gunjan Jadwani and Mr. Amar Gahlot, learned counsel for the applicant and Mr. S.P. Singh, learned Solicitor General of India assisted by Mr. Manoj Kumar Singh, learned counsel for the respondent.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail in Sessions Trial No.577 of 2020 (Serious Fraud Investigation Officer vs. Rotomac Global Pvt. Limited and 68 others) arising from Complaint filed under Section 212 (14) of the Companies Act, 2013 in respect of offences under Sections 36(c) r/w/s. 447, 448 of the Companies Act, 2013 and Section 211 r/w/s 628 of the Companies Act, 1956.

3. It transpires from the record that initially the applicant moved an interim bail application before the Apex Court by filing Writ Petition (Criminal) No.126 of 2020, which came to be disposed of

directing the applicant to approach this Court by filing bail application and, thereafter, the applicant approached this Court by filing bail application under section 439 Cr.P.C. being Criminal Misc Bail Application No.12047 of 2020, which came to be disposed of by order dated 05.05.2020 whereby the prayer for interim bail of the applicant was rejected and liberty was granted to the applicant to move regular bail application. However, in the meantime, the order dated 05.05.2020 has also been challenged by the applicant before the Apex Court by filing SLP Criminal No.2393 of 2020, which came to be disposed of vide order dated 28.05.2020 as not maintainable and liberty was granted to the applicant to file a regular bail application. Hence, the present bail application has been filed seeking regular bail under Section 439 Cr.P.C. read with Section 212(6) of the Companies Act, before this Court.

4. The encapsulated facts of the case are that the applicant is said to have been arrested in pursuance of the arrest order dated 19.03.2020 by the Arresting Officer, who is Assistant Director of Ministry of Corporate Affairs for the offence under Sections 447 and 448 of the Companies Act, 2013. Copies of grounds of arrest were also served on the applicant on 19.3.2020. In pursuance of Order No.03/117/2018-CL-II (NR) dated 21.02.2018 and Order No.7/117/2108/CL-II dated 22.08.2019 under Sections 447 and 448 of the Companies Act, 2013 issued by the Ministry of Corporate Affairs, Government of India (hereinafter referred to as the MCA) which in exercise of power under Sections 212 (1) (c) of the Companies Act, 2013 had ordered for investigation into affairs of Rotomac Global Pvt. Ltd. (hereinafter referred to as the 'RGPL') and 10 others and Frost International Ltd. (hereinafter referred to as 'F.I.L.') by the Serious Fraud Investigation Office-respondent (hereinafter referred to as 'the SFIO') in the public interest. Pursuant to the order of MCA, the Director SFIO vide Order No. SFIO/Inv./AOI/2018-19 dated 20.06.2018 had appointed a team of officers for carrying out investigation into the affairs of the Company. The applicant is alleged to be the Director and CEO of M/s F.I.L. Public Limited Company incorporated under the Companies Act.

5. During investigation, it is found that the applicant and similarly placed co-accused, out of whom some are of foreign entities, who are said to be the Directors in different companies, used to run a fraudulent Merchanting Trade (MT) business and submitted false/deceptive statements/financials to different Banks to avail credit facility in the form of opening of Letter of Credit and thereby caused loss to the Public Sector Banks.

6. It also revealed that out of the documents required for opening the Letter of Credit, applicant along with similarly placed other co accused persons knowingly submitted Letter of Credit opening request along with false/deceptive and misleading documents so as to induce the banks to rely upon the said documents and to give credit facility to them in the form of opening of Letter of Credit. It is also found that financial statements submitted to the Bank for opening, continuation and enhancement of Credit facilities do not reflect the true and fair accounts of their affairs. It also revealed that the accused persons secured financing for their MT Business and under the guise of MT Business, accused is said to have violated the regulations/guidelines issued by Reserve Bank of India. It is also found that the accused, who is the Director of the company caused huge loss amounting to Rs.7820/- crores to the Public Sector Banks in connivance with other foreign entities co-accused and others Directors-co accused. It is also found that the applicant abused their position

as Promoter-Director of Frost International Limited (FIL) to cause wrongful loss of Rs.4041/- crores to public Sector Banks. Applicant along with other Directors utilized the corporate identity of the FIL to perpetrate fraud of rotating the funds obtained through Letter of Credit. It is further alleged that in furtherance of their dishonest intention, applicant along with others manipulated the books of FIL by showing fake and unrecoverable MT trade receivable to the tune of Rs.3537.74 crores to deceive the public sector Banks and allured them to obtain credit facilities. It is further alleged that the applicant along with other Directors were also indulged in speculative currency trading with banks money and ultimately public money which resulted in heavy losses. The applicant along with others have also done siphoning of money to the tune of Rs.845 crores which is standing in the books of FIL in furtherance to the perpetration of the above mentioned fraud.

7. It is submitted by learned Counsel appearing for the applicant that applicant is in jail since 19.3.2020. He has cooperated with the investigating agency. There is no need for his further interrogation, as investigation by SFIO has already been completed. Since number of witnesses disclosed in the charge sheet are living out of the Country, it will not be possible to conclude the trial expeditiously. It is further submitted that there is bleak chance for early conclusion of trial. Entire prosecution case rests upon documentary evidence. There is no chance of tempering or influencing the evidence and witnesses by the applicant.

8. It is further submitted that no purpose would be served by keeping the applicant behind the bar as applicant is ready to abide the conditions imposed by the Court. It is further contended that present prosecution was started against the applicant on the basis of false facts and no manipulation has been done by the applicant in the books of account. No active role is assigned to him. It is further submitted that he has not flouted any guidelines issued by R.B.I. It is further submitted on the aforesaid basis that since no prima facie case is made out against the applicant, he is entitled for bail.

9. In rebuttal to the aforesaid contentions, the bail is opposed by learned counsel appearing for SFIO by submitting that applicant was the Director of the FIL and was directly associated with the MSL also. False receivable amount was shown in the books of account furnished before the Bank and due to that reason banks issued letter of credits for use in foreign countries. In fact Company concerned engaged in Merchanting Trade business was in loss and due to that reason advance taken through letter of credits could not be repaid and it become NPA. Referring to total amount of NPA, it was further submitted that the applicant and its company furnished false books of accounts and caused huge loss not only to the Bank concerned, but interest of public at large also affected, therefore, prayed that the bail application of applicant is liable to be rejected.

10. It is further submitted that applicant along with other co accused persons under the garb of Merchantile Trade have fraudulently induced the Banks & Public Financial Institutions to obtain credit facilities. He had knowingly falsified the books of account and the financial statements of F.I.L. deliberately concealing material facts thereby inducing BFIs to fraudulently extending credit facilities to F.I.L. which ultimately remained outstanding as account of F.I.L. became N.P.A. He submitted that the offence committed by the applicant being the Director and the Managing Director of F.I.L., has come into light during the investigation, is of grave nature. In support of his

arguments, learned counsel also relied upon the cases of P. Chidrambaram vs. Directorate of Enforcement (2019) 9 SCC 24 and Y.S. Jagan Moham Reddy vs. Central Bureau of Investigation, 2013 (7) SCC 439, in which the Court has observed that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.

11. I have considered the rival submissions advanced by the learned counsel for the parties and have gone through the entire material available on record.

12. Perusal of the record discloses that the applicant has been arraigned as an accused no.44 in the complaint filed by the SFIO. Applicant is stated to be the Managing Director, Signatory of the financial statements of Frost International Limited, which is a company engaged in the business of commodities and merchant trading. The FIL had secured the credit facilities by way of margin money / FD's as well as other collaterals. It also revealed that since its incorporation in 1995 till February, 2018, FIL had duly serviced all its loans and obligations towards Banks and other creditors in a timely manner and over a period of time, Banks have increased the sanction limit from time to time. Later on, on the basis of complaint, Banks initiated action against FIL based on R.B.I. Circular dated 12.2.2018 and also before the National Company Law Tribunal, Mumbai under the Insolvency and Bankruptcy Code. FIL had challenged the said RBI Circular before Apex Court and the NCLT proceeding was stayed and Circular was quashed. Thereafter, Banks stopped FIL's credit limits and the money received as advance from the buyers for future supplies were adjusted by the Banks against the devolved Letters of Credits. It has also been averred that applicant under the garb of MT conducted mopping of interest arbitrage thereby, fraudulently inducing the public sector Banks to obtain credit facilities to FIL. Applicant had knowingly falsified the books of accounts and the financial statements of FIL deliberately concealing material facts thereby including public sector Banks to fraudulently credit facilities to FIL which ultimately remained outstanding at Rs.4041 Crores as account of FIL became NPA. Applicant is also stated to be indulged in speculative currency trading unrelated to MT being undertaken by RGC thereby gambling with Banks money which resulted in huge loss. Applicant was instrumental in holding the currency losses in the books of accounts under the garb of debit notes. These debit notes were raised against foreign parties and made part of trade receivable. Later on, these debit notes were adjusted against the payment received from the LC rotated funds. Falsified financial statements of FIL signed by the applicant was filed with ROC and was submitted to public sector Banks depicted false MT trade receivables. The applicant provided false and bogus documents to the Banks.

13. Allegation against the applicant is also that he abused his position as promoter-directors of FIL to cause wrongful loss of Rs.4041 Crores to public sector Banks. He utilized the corporate identity of FIL to perpetrate fraud of rotating the funds obtained through Letter of Credits discounting for mopping the interest arbitrage available between LC issuance and discounting charges and that between the interest on fixed deposits. This whole conspiracy was played under the garb of doing MT.

14. The applicant used the corporate identity of FIL to rotate LC funds for mopping the interest arbitrage and showed it in the books as Merchanting Trade business. Since it was not actually into MT business the corresponding sales and purchase shown in the financial statements and books of

accounts is false. Since mopping of interest was done by keeping the rotated funds obtained through LC discounting in Fixed Deposits to camouflage the same the interest income from FD was shown as part of revenue from operation in the financial statements to give a false picture of profitability of MT business. A large amount of these fictitious trade receivables were standing against their undisclosed related parties. The sum and substance of the outcome of the investigation conducted in the matter and the facts mentioned in the complaint for prosecution are that concerned Companies were engaged in fraudulent Merchanting Trade and caused wrongful loss to the Public Sector Bank to the tune of Rs.7820 Crores approximately applying different modus operandi including siphoning of Bank funds through Merchanting Trade; falsification of financial statement of the Companies involved in the matter by not showing true and fair views.

15. Considering the role of the applicant as alleged against him, nature and gravity of the offence and also the evidence available on record in support thereof, prima facie, it appears that huge amount received by the applicant through Letter of Credit has become NPA due to non-payment of advance taken by the Company on account of falsification in the books of account furnished by the company before the Bank concerned, therefore, the allegations levelled against the applicant and the company concerned cannot be overlooked at this stage. This court is further of the opinion that on the basis of allegations appearing on record, it cannot be held that there are no reasonable grounds to believe that the accused is not guilty of the offences alleged against him and that he is not likely to commit any offence under the Act while on bail and thus, twin conditions for grant of bail as envisaged under Section 212(6) (ii) of the Company Act, 2013 are not satisfied. This court is further of the opinion that the applicant is not entitled to bail even under Section 439 Cr.P.C. even if the bail application is not tested on the touchstone of twin conditions as enumerated in Section 212(6) (ii) of the Company Act, 2013 for the reason that offence committed by the applicant is an economic offence which affects the economy of the nation.

16. In *Y. S. Jagan Mohan Reddy Vs Central Bureau of Investigation*, (2013) 7 SCC 439, the Hon'ble Supreme Court has held that while granting bail, the court has to keep in mind the factors like the nature of accusation, the nature of evidence in support thereof, the severity of 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 during the trial, reasonable apprehension of the witnesses being tampered with, the large interests of the public/State and other similar considerations.

17. As discussed above, there are serious allegations against the applicant. The offence committed by the applicant is an economic offence of huge magnitude affecting the economy of the nation and interest of public/State and, therefore, requires a stringent approach for grant of bail. The offence has been committed with prior planning with an eye on personal profit totally disregarding the interest of the community and causing damage to the economy and ignoring national interest. The applicant was instrumental in submissions of false and fabricated documents and siphoning of funds of the company to the tune of several crores and indulging in fraudulent and deceptive methods, and thus, keeping in mind the nature of accusation as discussed in detail in earlier paras and the material brought on record against the applicant by SFIO, this court is not inclined to release the applicant on bail even under Section 439 Cr.P.C.

18. In the end, it is contended by learned counsel for the applicant that the applicant is suffering from diabetes and various other ailments and, therefore, on that ground, he should be released on bail and also looking to the present Covid-19 pandemic.

19. However, he has failed to bring on record any document which may reveal that accused is not getting proper medical treatment or care in jail or he requires such treatment which can only be provided if he is released on bail. In the absence of any documentary evidence to the above effect, this court is of the opinion that the applicant who is involved in serious economic offence cannot be granted bail on the above mentioned medical grounds. The mere fact that the accused is in custody for more than one and half years, may not be a relevant consideration to release such accused on bail (Anil Kumar Yadav vs. State (N.C.T.) of Delhi and another, 2018 (1) CCSC 117.

20. Keeping in view the modus operandi adopted by the Companies concerned for obtaining the Letter of Credit, the amount of NPA, the nature and gravity of the allegations/offences levelled against the applicant which not only shake the conscience of the society but also the public at large, evidence collected during investigation, complicity of accused and without expressing any opinion on the merits of the case, prima facie the court is not inclined to grant bail to the applicant. The bail application is liable to be rejected and the same is, accordingly, rejected.

21. However, it is expected that the trial court shall make all sincere endeavours to expedite the proceedings of the trial and conclude the same as expeditiously as possible, in accordance with law, within a period of six months.

Order Date:-28.01.2022 Ajeet (Shekhar Kumar Yadav,J.)