IN THE COURT OF SH. SANDEEP YADAV, ADDL. SESSIONS JUDGE-02 (SOUTH-EAST), SAKET COURTS, NEW DELHI

FIR No. 50/19
U/s. 409/420/120-B IPC
PS EOW
State Vs. Malvinder Mohan Singh

01.04.2021.

ORDER

1. This application u/s. 439 Cr.PC for grant of regular bail has been filed by Malvinder Mohan Singh in FIR No. 50/19 u/s. 409/420/120B IPC registered at PS EOW. This, in-fact, is second bail application. First bail application was dismissed by ld. Predecessor vide order dated 03.03.2020.

2. Arguments addressed at Bar by Mr. Manu Sharma, ld. counsel for applicant/accused, Mr. L.D. Singh, ld. Addl. Public Prosecutor for State and Mr. Sandeep Das, ld. counsel for complainant were heard at length. Rival submissions have been considered.

3. FIR bearing no. 50/19 was registered with PS EOW, New Delhi on the complaint of Manpreet Singh Suri, Authorised Representative of Religare Finvest Ltd. (hereinafter referred to as "***RFL***") against Malvinder Mohan Singh, Shivinder Mohan Singh and Sunil Godwani, N.K. Ghoshal and other persons. It was further stated in the FIR that these persons were having absolute control in Religare Enterprises Ltd.

(hereinafter referred to as "***REL***") and its subsidiaries who put RFL in poor financial condition by advancing loan to companies/entities having no financial standing and control by these persons. These entities willfully defaulted in repayment of loans and caused wrongful loss to RFL to the tune of Rs.2,397 crores. These discrepancies were also noted and highlighted by Reserve Bank of India and it is mentioned in the analysis of Reserve Bank of India that top borrowers of RFL under Corporate Loan Book (hereinafter referred to as "***CLB***") portfolios were related entities and there was inter-linkage between borrowers as fund were routed from one borrower to another borrower. It was further observed by Reserve Bank of India that loan amount ultimately came back to group companies of RFL. Persons named in the FIR were major shareholders in REL till June 2017 and remained in control of REL till February 2018. New board and management realized that complainant company (RFL) has been put to wrongful loss to the tune of Rs.2397 crores. Malvinder Mohan Singh, Shivinder Mohan Singh and Sunil Godwani in connivance with each other swindled public money to the tune of Rs.2397 crores.

4. After conclusion of investigation, charge sheet has been filed. Applicant/accused Malvinder Mohan Singh alongwith Shivinder Mohan Singh, Sunil Godwani, Anil Saxena and Kavi Arora have been charge sheeted under Section 409/420/120B IPC. Investigating Officer continued further investigation and supplementary charge sheet has also been filed against other persons.

5. Factual background is that FIR No. 50/19 u/s. 409/420/120B

IPC was registered at PS EOW. Applicant/accused Malvinder Mohan Singh was arrested on 11.10.2019 in the present FIR. First charge sheet was filed on 06.01.2020 and cognizance of the offence was taken on 15.01.2020. During investigation, contentions raised in the FIR have been substantiated as can be seen from the charge sheet.

6. Mr. Manu Sharma, ld. counsel for applicant/accused argued as under : -

7. It is clear from various mails which are part of supplementary charge sheet that new board purchasing shareholding of RFL was made aware of outstanding loan given by RFL and hence allegations levelled in the FIR are without any basis. A flow chart was presented to the Court showing that 90 % of loan amount came back to 19 entities before applicant took control of these entities. Related party transaction *per se* is not an offence. Breach of relevant section of Companies Act becomes an offence. No offence of cheating is made out. Investigating Officer has not conducted investigation to find out as to where the sum of Rs. 1010 Cr. as reflected in the flow chart which came back to 19 entities ultimately reached. Reference was made to relevant pages of charge sheet and supplementary charge sheet, submission being that CLB is only 9 % of exposure. According to the charge sheet, G.S. Sodhi is sitting over 100 crores of rupees and no investigation is being conducted on this aspect. Reference was made to para 12 of bail application showing that applicant flew out of India on four occasions after investigation was started by SFIO, it being contended that applicant is not a flight risk. Not a single witness in two years has stated that applicant

is influencing him. Reference was made to relevant pages of supplementary charge sheet to show that a sum of Rs.3664 crores is owed by REL to RHC Holdings Pvt. Ltd. Reference was also made to the letter of RBI wherein RBI has emphasized the need to place related party transactions before the board. As per main charge sheet, Sachindernath, a prosecution witness, is saying that all transactions are being disclosed to board and hence, there is no violation of Companies Act. It has been laid down in ***R.Venkatatakrishnan Vs. CBI – AIR 2010 SC 1812***, relied upon by Mr. Sandeep Das, ld. counsel for complainant, that for the offence u/s. 409 IPC, one has to be a public servant and since, applicant is not a public servant, therefore, Section 409 IPC is not attracted. The Court while dismissing the earlier bail application of applicant did not deal with the issue of repayment by applicant as this fact has emerged only by way of supplementary charge sheet. Filing of supplementary charge sheet and incarceration of applicant for almost a year constitute change of circumstances since dismissal of first bail application filed by applicant. Mr. Manu Sharma, ld. counsel for applicant/accused relied upon following judgments:

(i) Sanjay Chandra Vs. CBI – 2012 1 SCC 40.
(ii) Babu Singh & Ors. Vs. State of UP – 1978 1 SCC 579.
(iii) State of Maharashtra Vs. Nainmal Punjaji Shah – (1969) 3 SCC 904.
(iv) P. Chidambaram Vs. CBI – (2020) 13 SCC 337.
(v) G. Udayan Dravid & Ors. Vs. State & Ors. - 2007 (93) DRJ 624.
(vi) Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar – (2000) 4 SCC 168.

(vii) Wolfgang Reim & Ors. Vs. CBI – 2012 SCC Online Del 3341.

(viii) Mahesh Kumar & Ors. Vs. CBI – 2013 (138) DRJ 288.

(ix) R. Vasudevan Vs. CBI – 2010 SCC Online Del 130.

(x) Bhagirath Vs. State of Madhya Pradesh – (1976) 1 SCC 20.

(xi) P. Chidambaram Vs. Directorate of Enforcement – (2020) 13 SCC 791.

8. Mr. L.D. Singh, ld. Addl. Public Prosecutor for State, assisted by Investigating Officer submitted that first bail application of applicant/accused was dismissed vide order dated 03.03.2020 and there is no change of circumstances since then and therefore, present application is liable to be dismissed. Reference was made to para 6 & 7 of the order dated 03.03.2020.

9. Submissions of Mr. Sandeep Das, ld. counsel for complainant, may be noted down as under :

10. Very same arguments were raised earlier and rejected in previous bail application vide order dated 03.03.2020. Charge sheet stood filed prior to dismissal of previous bail application and hence, there is no change of circumstances. Investigation is open u/s. 173 (8) Cr.PC. Even if it is assumed that money came back to 19 entities, offence of criminal misappropriation of fund was completed when money was used by RHC Holdings Pvt. Ltd. to square off its liability. Requirement of Companies Act is that in

case of related party transactions, board of directors have to approve it at various levels. Offence was completed when money was paid by shell companies to RHC Holdings Pvt. Ltd. Supplementary charge sheet is against other accused persons and applicant/accused cannot contend that filing of supplementary charge sheet is a change of circumstance sofar he is concerned. Due diligence is not fully possible in a public listed company like REL. Giving background about conduct of applicant/accused, it was submitted that applicant Malvinder Mohan Singh was hauled up by Hon'ble Supreme Court in contempt proceedings which speaks volume about his past conduct. Mr. Sandeep Das, ld. counsel for complainant, relied upon following judgments:-

(i) R. Venkatakrishnan Vs. CBI – AIR 2010 SC 1812.

(ii) Virupakshappa Gouda Vs. State of Karnataka – AIR 2017 SC 1685.

(iii) Sunil Godhwani Vs. State – Bail Application 1100/2020.

(iv) CBI Vs. Ramendu Chattopadya – Crl. Appeal No. 1711 of 2019.

(v) Nitin Johari Vs. SFIO – Bail Application No. 1971 of 2019.

(vi) Sunil Dahiya Vs. State – (2016) 4 DLT (Cri) 593.

(vii) Rana Kapoor Vs. Directorate of Enforcement & Anr. - Crl. Bail Application No. (ST) 4999 of 2020.

(viii) Karunakaran Ramchand Vs. Economic Offence Wing – Bail application 2819/2020.

(ix) Gurcharan Singh Vs. State – Delhi Admn. (1978) 1 SCC 118.

11. The first leg of argument of Mr. Manu Sharma, ld. counsel for applicant/accused was to highlight that there was no cheating and averments in this regard in the FIR were not substantiated as mails which are part of supplementary charge sheet would, according to him, suggest that new board purchasing shareholdings of RFL was made aware of outstanding loan given by RFL. First of all, these mails and their contents will be tested during trial. Secondly, even if it is accepted that there is no cheating, one should not forget that applicant/accused has also been charge sheeted u/s. 409/120B IPC which are serious offences.

12. Main emphasis in the arguments of Mr. Manu Sharma, ld. counsel for applicant/accused, was to highlight that 90 % of the amount came back from RHC Holdings Pvt. Ltd. to 19 entities and ultimately the money trail of this amount has not been properly investigated by Investigating Officer. However, the fact remains that the money ultimately reached RHC Holdings Pvt. Ltd. and was used by RHC Holdings Pvt. Ltd., as was rightly contended by Mr. Sandeep Das, ld. counsel for complainant, to square of its liability.

13. In R.Venkatatakrishnan (***supra***) it was held that ***a case involving temporary embezzlement also attracts the ingredients of Section 405 of Indian Penal Code.*** It was further held in para 191 that ***in the present case, accused no. 6 parted with money of NHB which was entrusted to him so that Harshad Mehta could get it although not entitled therefore in law. The conduct of accused no. 6 was therefore dishonest.***

He is guilty of the offence of criminal breach of trust. Therefore, in the present case, the moment RHC Holdings Pvt. Ltd. retained the loan amount for temporary period it committed the offence of criminal breach of trust.

14. As regards the contention of applicant/accused that it has been held in aforesaid judgment that for the offence punishable u/s. 409 IPC accused must be a public servant is concerned, one should also read para 173 of this judgment wherein it is mentioned that ***this Section (409) classes together public servants, bankers, merchants, factors, brokers, attorneys and agents.*** Hence, applicant/accused being banker will fall within the purview of Section 409 IPC.

15. Mr. Sandeep Das, ld. counsel for complainant, was right in submitting that all contentions raised in the bail application were raised earlier and were rejected vide order dated 03.03.2020. Mr. Manu Sharma, ld. counsel for applicant/accused, submitted that the Court while dismissing earlier application did not deal with the issue of repayment by applicant. This aspect has also been dealt with in the preceding paragraph of this order wherein it has been held that temporary embezzlement by applicant/accused will constitute the offence of criminal breach of trust.

16. Disclosure of transactions to the board is one thing while approval of related party transaction by board at various level as required by Companies Act is another thing. Thus, the reliance placed by Mr. Manu Sharma, ld. counsel for applicant/accused, on the statement of witnesses like Sachindernath who stated that transactions are being disclosed to the

board are of no consequence as none of the witnesses have stated that related party transaction had approval of board various levels.

17. As regards the possibility of witnesses being influenced by applicant/accused, ld. Predecessor vide order dated 03.03.2020 has observed about likelihood of applicant/accused fleeing from justice or tampering with evidence. This Court as successor court cannot review this part of the order dated 03.03.2020.

18. The Court while dismissing the earlier bail application of applicant/accused vide order dated 03.03.2020 has already observed that in the present matter, many banks had extended loans to RFL with the specific instruction that proceeds for the same would not be utilized towards loans to associate companies/related parties, etc.

19. While dismissing the bail application of co-accused Sunil Godwani, Hon'ble Delhi High Court observed in para 35 as under : -

"***The present case is of an economic offence involving siphoning of public money/investor money to the tune of Rs. 2000 crores. It is settled law that economic offences are considered to be grave offences especially when public money is involved and that the Courts have to be careful in granting bail in such cases.***"

20. Mr. Manu Sharma, ld. counsel for applicant/accused, in this regard relied upon P. Chidambaram Vs. Directorate of Enforcement (***supra***)

wherein it was held that ***in that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either to grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.***"

21. In this regard the Court cannot ignore the following observations made by Hon'ble Supreme Court in ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation -(2013) 7 SCC 439*** :

" ***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 a serious threat to the financial health of the country.***

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, rea-

sonable 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."

22. The present case also pertains to fraud of the magnitude of Rs.2397 crores. Public money to the tune of Rs.2397 crores has been swindled by applicant/accused in conspiracy with other accused persons. Amount of Rs.2397 crores was siphoned off to other companies through layer transaction in CLB.

23. In view of magnitude of the fraud and dismissal of earlier bail application of accused by ld. Predecessor, the Court is of the view that applicant/accused is not entitled to bail. Accordingly, the application filed by applicant/accused Malvinder Mohan Singh u/s. 439 Cr.PC for grant of bail is dismissed. *Dasti.*

Addl. Session Judge-02
South East District, New Delhi

(Sandeep Yadav)
ASJ-02/South East District
Saket Courts/New Delhi/01.04.2021