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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th June, 2022

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BAIL APPLN. 716/2022

PRAVEEN KUMAR AGARWAL

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

+

BAIL APPLN. 1172/2022 & CRL.M.(BAIL) 420/2022

SUBASH AGARWAL

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

+

BAIL APPLN. 1173/2022 & CRL.M.(BAIL) 421/2022

RAJESH AGARWAL

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

+

BAIL APPLN. 1203/2022 & CRL.M.A. 10740/2022

MOHAN LAL SEHJPAL

..... Petitioner

versus

CENTRAL BUREAU OF
INVESTIGATION & ANR.

..... Respondents

+

BAIL APPLN. 1278/2022

AKASH AGARWAL

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

+ **BAIL APPLN. 1382/2022 & CRL.M.(BAIL) 521/2022**

MANNOJ KUMAR JAIN

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Present:- Mr. Mohit Mathur, Senior Advocate with Dr. Aman Gaur, Ms. Nidhi Gaur, Sumit Misra, Rahul Patel, Advocates for the Petitioner in BAIL APPLN. 716/2022 [9717093414].

Mr. Rajiv Nayar & Mr. Trideep Pais, Senior Advocates with Mr. Parminder Singh, Mr. Rishi Agarwala, Mr. Kanav Vir Singh & Mr. Ashish Hira, Mr. Sharan Niranjana, Advocates for the Petitioner in BAIL APPLN. 1172/2022 [9920525735].

Mr. Dayan Krishnan & Mr. Trideep Pais, Senior Advocates with Mr. Parminder Singh, Mr. Rishi Agarwala, Mr. Kanav Vir Singh & Mr. Ashish Hira, Mr. Shravan Niranjana, Advocates for Petitioner in BAIL APPLN. 1382/2022 [9920525735].

Mr. Kapil Sibal & Mr. Trideep Pais, Senior Advocates with Mr. Parminder Singh, Mr. Rishi Agarwala, Mr. Kanav Vir Singh & Mr. Ashish Hira, Mr. Sharan Niranjana, Advocates for the Petitioner in BAIL APPLN. 1173/2022 [9920525735].

Mr. Sanjeev Mahajan, Mr. Bharat Beriwal & Mr. Sarthak Chiller, Advocates for the Petitioner in BAIL APPLN. 1278/2022 [9811156437].

Mr. Anand Nandan & Mr. D.S. Mishra, Advocates for Petitioner in BAIL APPLN. 1203/2022.

Mr. Ripu Daman Bhardwaj, Special Public Prosecutor for CBI with DSP Anshuman Saha, (IO) in all the petitions.

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CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T**

1. These six applications have been filed under Section 439 of the Code of Criminal Procedure, 1973 ["CrPC"], for grant of bail in connection with FIR No. RCB1/2014/E/0004/CBI/BS & FC, registered on 19.02.2014, in Police Station Central Bureau of Investigation ["CBI"], under Sections 120B/409/411/420/467/468/471/474 of the Indian Penal Code, 1860 ["IPC"] and Sections 4/5 read with Section 6 of the Prize Chit and Money Circulation Schemes (Banning) Act, 1978 ["PCMCS Act"]. As the six applications arise out of the same FIR, they were heard together and are being disposed of by this common judgment.

2. The present applications relate to following six accused:

Bail Application No.	Name of the accused	Accused No.
716/2022	Mr. Praveen Kumar Agarwal	A-20
1172/2022	Mr. Subhash Agarwal	A-24
1173/2022	Mr. Rajesh Agarwal	A-25
1203/2022	Mr. Mohan Lal Sehjpal	A-14

1278/2022	Mr. Akash Agarwal	A-23
1382/2022	Mr. MannoJ Kumar Jain	A-22

Factual background

3. The facts relating to these proceedings are as follows:-

- a. The abovementioned FIR was registered against two companies, namely PGF Limited ["PGF"] and PACL Limited ["PACL"], and their officers. The FIR was registered pursuant to the directions of the Supreme Court in *PGF Limited and Others vs. Union of India and Another*¹, which revealed that the aforesaid companies were carrying out a collective investment scheme ["CIS"] in the garb of sale and development of agricultural land.
- b. The alleged *modus operandi* of the accused was to seek investment in land without the companies having ownership of the land. Sample checking of the land allotted by PGF to its customers revealed that the land was held, not in the name of the company, but in the name of other individuals.
- c. The concerned companies promised investors a fixed return on the land and created documentation to show a reverse sale of land by the investors to the companies, repayments being routed through several associate companies of PGF and PACL.
- d. None of the present applicants were named in the FIR.

¹ (2015) 13 SCC 50

- e. Some of the officers of PGF and PACL, including their directors and managing directors, were arrested on 08.01.2016.
- f. The original charge sheet was filed on 07.04.2016 before the Chief Metropolitan Magistrate, West, Tis Hazari Courts, Delhi. Six accused [including the two companies – PGF and PACL] were named in the original charge sheet, which [alongwith its annexures] runs into over 34,000 pages. A list of 462 documents and 182 witnesses has been filed alongwith the charge sheet.
- g. The allegations made in the FIR were elaborated in the original charge sheet in detail. The details of verification of the land allotted by the companies has been provided. In the charge sheet, it is alleged that PACL had 5.46 crore active investors as on 31.01.2014 from whom it had raised a principal amount of approximately ₹45,184 crores. As far as PGF is concerned, the allegation is of investments to the tune of approximately ₹332 crores.
- h. The present applicants were not named as accused in the original charge sheet, although some of them were referred to therein:-
- Mr. Praveen Kumar Agarwal [*inter alia* in paragraphs 171, 172, 173, 206, 207, 208 and 212].
 - Mr. Subhash Agarwal and Mr. Rajesh Agarwal are the Chairman and Managing Director of ARSS Infrastructure Projects Limited [“ARSS”] respectively, which is mentioned *inter alia* in paragraph 174.
 - Mr. Mohan Lal Sehjpal was a director of Pearls Infrastructure Projects Limited [“PIPL”]. PIPL and Mr. Mohan Lal Sehjpal

find mention *inter alia* in paragraphs 181 to 190, 194 and 196 to 203.

- i. As far as the present applicants are concerned, they have been named as accused only in a supplementary charge sheet filed on 31.12.2021. A list of 265 witnesses and 307 documents has been filed alongwith the supplementary charge sheet.
- j. The applicants were all arrested a few days prior to filing of the supplementary charge sheet, i.e. on 22.12.2021. Five other individuals were also arrested on the same day. The applicants were remanded to police custody for a period of two days [from 23.12.2021 to 25.12.2021], and have been in judicial custody since then.
- k. It is stated in the supplementary charge sheet that the investment plans offered by PGF and PACL were in the nature of a CIS defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 and regulated by the Securities And Exchange Board of India (Collective Investment Schemes) Regulations, 1999. As the companies had not complied with the aforesaid Act and Regulations, the Securities and Exchange Board of India [“SEBI”] had passed orders against them.
- l. Upon a reading of the supplementary charge sheet, it is evident that the case made out against the present applicants is that they were involved in diversion of funds raised by PGF/PACL from their investors. In the case of Mr. Mohan Lal Sehjpai, the diversion was carried out through PIPL, of which he was a director. In the cases of the other applicants, the allegation is that companies controlled by them raised fake invoices against PGF/PACL for land development

work which was never, in fact, executed. In the supplementary charge sheet, the roles of the six applicants herein have been summarised as follows:

“Mohan Lal Sehgal- *Shri Mohan Lal Sehgal was one of the conspirator and facilitator of the crime. He was one of the Directors of M/s. Pearls Infrastructure Projects Limited. Through, M/s. Pearls Infrastructure Projects Limited AUD 138.20 Mn. were diverted to Australia. He was a very close associate of Shri Nirmal Singh Bhangoo and had worked as a Top Level Agent in the core business of Pearls Group where investment schemes were illegally operated by the group. Along with another Director Shri Kanwaljit Singh Toor, he signed the request letters submitted to the Bank for remittance of funds to Australia. He had also signed Balance Sheets of M/s. Pearls Infrastructure Projects Limited for the periods 2009-10 to 2014-15, when the funds were diverted to Australia.*

Shri Praveen Kumar Agarwal: *In furtherance of criminal conspiracy with the accused promoters/directors of Pearls Group, Shri Praveen Kumar Agarwal dishonestly and fraudulently facilitated diversion/misappropriation of funds to the tune of Rs. 4318.49 Crores through 37 companies controlled by him. He dishonestly received the funds from M/s. PACL Limited (erstwhile M/s PACL India Limited) on the pretext of land development/ earthwork, but no land development work was done and fake / bogus invoices showing execution of work were prepared to justify receipt of such funds. The Work Order cum Agreements executed for purported execution of work were also bogus.*

Shri Akash Agarwal: *In furtherance of criminal conspiracy with the accused promoters/directors of Pearls Group, Shri Akash Agarwal dishonestly and fraudulently facilitated diversion/misappropriation of*

funds to the tune of Rs. 161.44 Crores through 05 companies controlled by him. He dishonestly received the funds from M/s. PACL Limited (erstwhile M/s. PACL India Limited) on the pretext of land development I earthwork, but no land development work was done and fake / bogus invoices showing execution of work were prepared to justify receipt of such funds.

Shri MannoJ Kumar Jain: *He was the main Promoter/Director of M/s. Jain Infra-projects Limited. In furtherance of criminal conspiracy with the accused promoters/directors of Pearls Group, Shri MannoJ Kumar Jain dishonestly and fraudulently facilitated diversion/misappropriation of funds to the tune of Rs. 268.73 Crores through M/s. Jain Infra-projects Limited. He dishonestly received the funds from M/s. PACL Limited (erstwhile M/s. PACL India Limited) on the pretext of land development, but no land development work was done and fake / bogus invoices showing execution of work were prepared to justify receipt of such funds. He purportedly sublet the work to 07 different companies, who also raised such bogus / fake invoices without executing any land development work.*

Shri Subash Agarwal and Shri Rajesh Agarwal: *Shri Subhash Agarwal is the Chairman and Shri Rajesh Agarwal is the Managing Director of M/s. ARSS Infrastructure Projects Limited which received funds to the tune of Rs. 305.76 Crores from M/s. PACL Limited against purported land development work. Investigation revealed that no land development was done and fake /bogus invoices were raised by their company in order to divert the funds collected from investors. Shri Rajesh Agarwal executed the agreement with M/s. PACL India Limited for the purported land development work, which was never meant to be done. Both the persons signed on the balance sheets of the company for the relevant years. They conspired and facilitated M/s. PACL India Limited in diverting funds collected from investors.”*

4. The Special Court, by an order dated 09.02.2022, considered the bail applications of the present applicants and three other accused. While granting bail to one of the applicants therein, who was the Chartered Accountant and auditor of PGF, the Special Court rejected the applications of the other accused, including the present applicants. The Special Court examined the respective roles of the applicants and found that the delay in filing of the supplementary charge sheet cannot be a ground for grant of bail in a case of complicated financial fraud like the present one. The likely delay in completion of the trial, given the number of witnesses, and the factum of the accused having cooperated in the investigation have also been held to be insufficient for the grant of bail.

5. These six bail applications have been heard together, and are disposed of by this common judgment, on the submission of the parties, including Mr. Ripu Daman Bhardwaj, learned Special Public Prosecutor for the CBI, that the case against each of the applicants is on similar lines in all material respects. As BAIL APPLNs. 716/2022, 1172/2022 and 1173/2022 were part-heard before this Bench, the other three applications, i.e. BAIL APPLNs. 1203/2022, 1278/2022 and 1382/2022, were also placed before this Bench pursuant to the directions of the Roster Bench dated 18.05.2022 and orders passed by Hon'ble the Acting Chief Justice. It may be mentioned that Mr. Bhardwaj was instructed by the Investigating Officer ["IO"], who was present in Court throughout the hearing.

Submissions

6. I have heard Mr. Kapil Sibal, Mr. Rajiv Nayar, Mr. Mohit Mathur, Mr. Dayan Krishnan and Mr. Trideep Pais, learned Senior Counsel for the applicants in BAIL APPLNs. 1173/2022, 1172/2022, 716/2022 and 1382/2022, and Mr. Sanjeev Mahajan and Mr. Anand Nandan, learned counsel for the applicants in BAIL APPLNs. 1278/2022 and 1203/2022 respectively, in support of the present applications. Mr. Bhardwaj also made detailed submissions.

7. The principal arguments urged on behalf of the applicants were as follows²:-

a. The case against the applicants does not concern the main charge of running a CIS or fraudulently inducing investors to invest in the projects of PACL/PGF. In fact, the applicants have not themselves collected any money from investors and the offences mentioned in the FIR cannot be made out against them. The applicants are accused, not of any direct connection with PGF/PACL, but in respect of transactions entered into by companies of which they were directors/promoters with PGF/PACL.

b. The case against the applicants is, at the highest, that they were providing accommodating entities to PACL/PGF and thus facilitating diversion of funds obtained from investors by the said two companies. Although, the allegations against PACL and PGF concern obtaining fraudulent investments to the tune of approximately ₹45000 crores and

² As the submissions urged on behalf of the applicants were almost on identical lines, I have dealt with them collectively. Wherever any particular submission was made which was relevant only to a particular applicant, that has been separately mentioned.

₹815 crores respectively, the allegations against the present applicants relate only to diversion of a proportion of the said investments, ranging from approximately ₹4000 crores [in the case of Mr. Praveen Kumar Agarwal and Mr. Mohan Pal Sehjpal] to ₹161 crores [in the case of Mr. Akash Agarwal]. The applicants also claim that a large proportion of the amount received by their companies from PGF/PACL was, in fact, paid to sub-contractors for the execution of the work and only a small proportion remained to the benefit of their own concerns.

c. The allegation of diversion of funds and transactions of the nature described in the supplementary charge sheet were revealed even at the stage of the original charge sheet. Some of the present applicants, like Mr. Praveen Kumar Agarwal and Mr. Mohan Lal Sehjpal, were, in fact, named in the original charge sheet itself. Although Mr. Rajesh Agarwal and Mr. Subhash Agarwal were not individually named, their company, i.e. ARSS, was named. Mr. Mathur submitted that the case made out against Mr. Praveen Kumar Agarwal in the supplementary charge sheet virtually paraphrases the narration contained in the original charge sheet. None of the persons named in the original charge sheet with regard to such allegations were arrested at any stage during the period of almost eight years since the FIR was first registered, and five and half years since the original charge sheet was filed. The other applicants are also accused of similar transactions.

d. In fact, it is the contention of several of the applicants that they have joined the investigation whenever required by the IO and that the

nature of the transactions against PGF and PACL have been discovered on the basis of information and documents provided by them. The other applicants were not served with such notices at all.

e. Learned counsel submitted that, although permission was taken from the Special Court to undertake further investigation in the year 2016, no steps were taken and the applicants were arrested only on 22.12.2021.

f. The allegations being based upon documentary evidence which is already in the possession of the CBI, learned counsel submitted that the question of tampering with the evidence does not arise. In the cases of Mr. Rajesh Agarwal and Mr. Subhash Agarwal, Mr. Nayar mentioned that ARSS is now undergoing insolvency proceedings and the documents of the company are in the possession of the resolution professional and not of the applicants.

g. The applicants, despite the long period for which investigations into the affairs of PGF/PACL have been proceeding, have not made any attempt to flee from justice.

h. In the cases of Mr. Manno Kumar Jain, Mr. Mohan Lal Sehgal and Mr. Subhash Agarwal, it is urged that they were summoned to the CBI office by virtue of notices under Section 41A of the CrPC dated 28.11.2021 and were arrested soon thereafter on 22.12.2021, despite their cooperation with the IO. Learned counsel submitted that no material has been placed on record to justify the arrest of the concerned individuals despite the fact that they were served notices under Section 41A of the CrPC, which specifically provides that notices under the said section would be issued in cases where the

arrest of a person is not required under Section 41(1) of the CrPC. Learned counsel drew my attention to Section 41A(3) of the CrPC, which provides that a person served with notice under Section 41A of the CrPC shall not be arrested in respect of the concerned offence unless reasons are recorded in support of a contrary opinion of the police officer. No such opinion has been placed on record by the prosecution.³

i. With regard to the contention raised in some of the cases to the effect that the applicants have other criminal antecedents, learned counsel submitted as follows:-

- In BAIL APPLN. 716/2022, Mr. Mathur submitted that Mr. Praveen Kumar Agarwal is not in custody in any other case, having been granted bail in all cases in which he was arrested.
- In BAIL APPLN. 1172/2022, Mr. Nayar submitted that Mr. Subhash Agarwal has been granted anticipatory bail by the Orissa High Court by the order dated 01.10.2019 in ABLAPL No. 14039/2019 in the other case in which he is an accused.
- With regard to the prior antecedents cited against Mr. Akash Agarwal, Mr. Mahajan submitted that he was not arrested in any other case.
- With regard to the prior antecedents cited against Mr. Manno Jain, Mr. Krishnan submitted that all those cases relate to bank debts in which the applicant is on bail.

³ In the written submissions filed on behalf of the CBI, it has been stated that all the present applicants except Mr. Akash Agarwal were issued notices under Section 41A of the CrPC on 28.11.2021 but were not issued any notices immediately prior to their arrest on 22.12.2021.

j. Learned counsel submitted that no material has been placed on record to justify the sudden decision to arrest the applicants at this length of time after the filing of the FIR and the original charge sheet.

k. With regard to the case of the CBI that two witnesses had given statements under Section 164 of the CrPC against Mr. Praveen Kumar Agarwal, Mr. Mathur submitted that statements of the very same witnesses under Section 161 of the CrPC were taken note of in the original charge sheet itself. Mr. Mahajan also submitted that the witness statements supporting the case against Mr. Akash Agarwal were made in July, 2021 whereas he was arrested on 22.12.2021.

l. Mr. Sukhdev Singh, the Managing Director of PACL, has been granted bail by the order of the Sessions Court dated 24.10.2019. The Managing Director of the principal company having been enlarged on bail, learned counsel urged that the present applicants, whose roles are far less serious than the role attributed to Mr. Sukhdev Singh, ought to be released also.

m. My attention was also drawn to an order of the Special Court dated 16.04.2022 whereby one Mr. Chander Bhushan Dhillon, a director of PGF, was granted bail. In this order, the Special Court has taken note of the number of witnesses cited, the fact that the accused has been in custody since 22.12.2021, his cooperation with the investigation and also accepted his submission that he is not at flight risk. Learned counsel submitted that the same considerations would apply *a fortiori* to the present applicants.

8. In support of these applications, learned counsel for the applicants cited the judgments of the Supreme Court in *Sanjay*

*Chandra vs. CBI*⁴, *Y.S. Jagan Mohan Reddy vs. CBI*⁵, *Nimmagadda Prasad vs. CBI*⁶, *Dataram Singh vs. State of UP*⁷, *Sushila Aggarwal vs. State (NCT of Delhi)*⁸ and *P. Chidambaram vs. Directorate of Enforcement*⁹.

9. Mr. Bhardwaj, learned Special Public Prosecutor, opposed the grant of bail on the following grounds:-

a. Mr. Bhardwaj referred to the grave nature of the charges against the applicants, and emphasised that the present cases relate to a *ponzi* scheme in which the allegation is that the principal perpetrators cheated more than 5.4 crore small investors of their hard-earned wealth. He submitted that the present applicants are the persons through whom the principal perpetrators routed the funds raised from the public and their cooperation was, therefore, essential to the successful implementation of the fraudulent CIS.

b. Mr. Bhardwaj submitted that, contrary to the picture portrayed by the applicants, several of the directors of PGF/PACL continue to remain in custody in the present FIR. As far as Mr. Sukhdev Singh is concerned, Mr. Bhardwaj submitted that grant of bail to him is pending challenge before the Sessions Court. He also drew my attention to an order dated 17.01.2020 passed by the Supreme Court in *Subrata Bhattacharya vs. Securities and Exchange Board of India and*

⁴ (2012) 1 SCC 40

⁵ (2013) 7 SCC 439

⁶ (2013) 7 SCC 466

⁷ (2018) 3 SCC 22

⁸ (2020) 5 SCC 1

⁹ (2020) 13 SCC 791

*Others*¹⁰ whereby one of the directors of PACL was denied bail, despite the submission that bail had been granted to Mr. Sukhdev Singh.

c. Mr. Bhardwaj submitted that the arrest of the present applicants at this stage was occasioned by the evidence that had come to light in the course of investigation, including with regard to the fake invoices having been generated by the companies in which the applicants were involved. He submitted that the arrest of the present applicants at this stage was required to prevent their influence over their employees and to discover the route by which the amounts received by them were recouped by PACL/PGF and their directors.

d. Although Mr. Bhardwaj did not point to any specific instance in which the present applicants failed to respond to any notices for documents or personal appearance issued by the CBI, it was suggested that they were not entirely forthcoming in their responses.

10. In addition to the order of the Supreme Court in *Subrata Bhattacharya*¹¹, Mr. Bhardwaj relied upon the decisions of Supreme Court in *Rohit Tandon vs. Directorate of Enforcement*¹² and *Serious Fraud Investigation Office vs. Nittin Johari*.¹³

Analysis

11. Before coming to the facts relating to the present proceedings, it is appropriate to crystallize some of the general principles which emerge from the decisions cited at the Bar:-

¹⁰ TC (CrI) No. 1/2016

¹¹ Supra (note 10)

¹² (2018) 11 SCC 46

¹³ (2019) 9 SCC 165

- a. The purpose of grant of bail is neither punitive nor preventative, but aimed at securing the appearance of the person at trial. Deprivation of liberty prior to conviction is a great hardship and should only be resorted to if release on bail is likely to prejudice the trial.¹⁴
- b. Even in the case of economic offences, the seriousness of the charge cannot be the *sole* ground for denial of bail.¹⁵
- c. Although it was held in *Y.S. Jagan Mohan Reddy*¹⁶ and *Nimmagadda Prasad*¹⁷ that economic offences must be viewed differently, even for the purpose of bail, even in those cases, while denying bail at a stage prior to filing of charge sheet, the Court granted liberty to the accused to seek bail after the charge sheet had been filed.¹⁸
- d. It is made clear in *P. Chidambaram*¹⁹ that, even in case of grave economic offences, it is not a rule that bail should be denied in every case. Economic offences may fall within the category of grave offences, but this will only be one of the several considerations for grant or refusal of bail.

¹⁴ Supra (note 4) [paragraphs 21 to 23]

¹⁵ Supra (note 4) [paragraph 24]

¹⁶ Supra (note 5)

¹⁷ Supra (note 6)

¹⁸ *Y.S. Jaganmohan Reddy* [Supra (note 5)] [paragraph 36]; *Nimmagadda Prasad* [Supra (note 6)] [paragraph 26]. Mr. Sibal submitted in the course of arguments that, in these cases, bail was, in fact, granted on 23.09.2013, six days after filing of the last charge sheet on 17.09.2013. This is also noted by the Supreme Court in *Nittin Johari* [Supra (note 13)] [paragraph 17].

¹⁹ Supra (note 9)

e. An allegation of tampering with evidence and influencing witnesses must be supported by some material.²⁰

f. It is relevant to consider whether the accused was arrested during investigation, when they would have had the best opportunity to tamper with evidence or influence witnesses. Strong reasons are required to place a person in judicial custody after filing of the charge sheet. The question of the accused participating in the investigation is also relevant, as is his prior conduct.²¹

12. Turning now to the facts of the present cases, I accept the submission of Mr. Bhardwaj that this case concerns allegations of grave economic offences, with a very large number of victims. However, as noted in the judgments cited above, this sole consideration cannot be dispositive of the applications for bail. Considering the allegations against the accused and the submissions of learned counsel for the parties, I am of the view that the present applicants are entitled to grant of bail for the following reasons:-

a. The applicants herein, and the companies of which they were in management, are not accused of inducing investors to participate in the CIS established by PACL/PGF and their officers. The roles of the present applicants, as brought out in the charge sheets, come in at a later stage, and are related to the routing of the funds collected by PGF/PACL.

²⁰ Supra (note 4) [paragraphs 24 and 39]

²¹ Supra (note 7) [paragraph 3]

b. It is also noteworthy that the investigation has been going on for over eight years now and the original charge sheet was filed in the year 2016. Although the Special Court is justified in recording that investigation of complex financial transactions takes considerable time, the allegations against the present applicants have now been crystallized in the supplementary charge sheet filed on 31.12.2021. The allegation that the funds were diverted by PGF/PACL through third party concerns is adverted to in the original charge sheet filed in the year 2016. Several of the present applicants and their concerns were, in fact, referred to in the original charge sheet itself, but no necessity was felt to place them under arrest at any stage during the investigation.

c. The evidence in a case like this is largely documentary and has been recovered by the CBI over the long course of this investigation. There is no allegation that the applicants tampered with the evidence or withheld documents during this period. The transactions relate to the period 2008-09 to 2014-15. As a considerable period of time has passed since then, the chances of the accused being able to manipulate the books of accounts, at this stage, are much diminished. It may also be noted in this connection that the documents and account related information have been collected by various agencies, including SEBI, and will be available from those agencies also. There is no material placed on record to support the contention urged on behalf of the CBI that the applicants are likely to tamper with the evidence or influence witnesses. Following the judgments cited above, such a contention cannot be accepted without a strong foundational basis, particularly

when almost eight years have passed since the FIR was registered and five and a half years have passed since the original charge sheet was filed, during which period, the applicants were at liberty.

d. All the accused were served with various notices from time to time for production of documents and appearance before the IO. There is no substantial allegation that the accused failed to comply with any such notices during the period of investigation.

e. Significantly, it has been stated by the CBI in its written submissions that five of the six applicants herein [with the exception of Mr. Akash Agarwal] were issued notices under Section 41A of the CrPC on 28.11.2021. The statutory provision itself indicates that the arrest of the noticees was not contemplated at that stage. No material has been placed on record to establish any change of circumstances on the basis of which their arrest could have been considered necessary a few weeks thereafter, particularly given the prolonged period of investigation. The additional material relied upon by the CBI in this connection, namely recording of two statements under Section 164 of the CrPC by two employees of Mr. Praveen Kumar Agarwal, is insufficient as their statements under Section 161 of the CrPC were already on record. Similarly, the CBI relied upon certain witness statements pertaining to the case of Mr. Akash Agarwal, but those statements were recorded in July, 2021, long before the arrest of the accused on 22.12.2021.

f. The continued incarceration of the applicants does not appear to be necessary as the investigation against them has been completed, and the supplementary charge sheet filed. The applicants have clearly

averred in the applications/written submissions filed by them that they have not been interrogated for any substantial period after their arrest. Mr. Praveen Kumar Agarwal has stated in his application that he has not been interrogated at all while in custody. Mr. Rajesh Agarwal, Mr. Subhash Agarwal and Mr. MannoJ Kumar Jain have stated in their written submissions that they have been questioned only for very brief periods of time, not exceeding 30 minutes. Mr. Akash Agarwal has also been interrogated only once during custody and Mr. Mohan Lal SehJpal has stated in his written submissions that he has been interrogated only once for about five minutes. These factual assertions have not been controverted.

g. Although Mr. Bhardwaj has emphasized that charges of prior criminal antecedents have been made against some of the applicants, they have made out a case that they were either not arrested in connection with those cases or have been released on bail.

h. The applicants all have roots in society and there is no material to suggest that they are flight risks.

i. It is also not possible to avoid the conclusion that the trial will take a considerable length of time. The CBI has cited a total of 447 witnesses and filed a list of 769 documents with the two charge sheets. The original charge sheet, alongwith its annexures, alone runs into over 34,000 pages.

13. Although learned counsel for the applicants and Mr. Bhardwaj had, in the course of arguments, laid considerable emphasis upon the grant of bail to Mr. Sukhdev Singh, the Managing Director of PACL, and the denial of bail to Mr. Subrata Bhattacharya, I have decided the

present applications independently of those orders, as the said orders concern directors of PGF/PACL, whose roles are at considerable variance from the roles attributed to the present applicants by the CBI itself. Suffice it to state that while rejecting Mr. Subrata Bhattacharya's application for bail, the Supreme Court specifically noted that the matter involved an alleged criminal conspiracy in furtherance of which "*the Directors of M/s PGF Limited and M/s PACL Limited are alleged to have illegally obtained a benefit of Rs 45,184 crores at the expense of 5.46 crore investors spread all over the country from sham land transactions.*" The Court proceeded on the basis of roles attributed to the applicants therein, as elucidated in the affidavit of the CBI. The applicants in the present case, in contrast, are not directors of PGF/PACL and their roles are required to be independently considered in connection with their applications for bail.

14. The judgments in *Rohit Tandon*²² and *Nittin Johari*²³, which were cited by Mr. Bhardwaj, do not appear to be conclusive of the present case. Both those cases, unlike the present cases, involve offences under statutes which incorporate statutory limitations on the grant of bail.²⁴ In *Nittin Johari*²⁵, while reiterating the observations in *Y.S. Jagan Mohan Reddy*²⁶, the Court noted several factors which

²² Supra (note 12)

²³ Supra (note 13)

²⁴ Section 212(6) of the Companies Act, 2013 in the case of *Nittin Johri* [Supra (note 13)] and Section 45 of the Prevention of Money Laundering Act, 2002 in the case of *Rohit Tandon* [Supra (note 12)].

²⁵ Supra (note 13)

²⁶ Supra (note 5)

must be taken into account. In *Rohit Tandon*²⁷ also, the Court proceeded to affirm the view taken by the Sessions Court and High Court on facts but did not lay down any general principle militating against the grant of bail, even in the case of grave economic offences.

15. In view of the aforesaid discussion, I am of the view that applying the relevant principles to the facts of the present cases, further incarceration of the applicants, pending conclusion of the trial, is unnecessary and they are liable to be released on bail, albeit with stringent conditions to ensure their presence at the trial and to minimise the risk of prejudice to the prosecution.

Conclusion

16. For the aforesaid reasons, it is directed that the applicants will be admitted to bail in connection with FIR No. RCBD1/2014/E/0004/CBI/BS & FC, registered on 19.02.2014, in Police Station CBI, under Sections 120B/409/411/420/467/468/471/474 of the IPC and Sections 4/5 read with Section 6 of the PCMCS Act, subject to the following conditions: -

- a. The applicants will furnish a personal bond in the sum of ₹30,00,000/- [Rupees Thirty lakhs] each, with two sureties each in the like amount, to the satisfaction of the Trial Court. At least one of the sureties in each case will be from the spouse or a blood relative of the concerned applicant.
- b. Each of the applicants will furnish their residential address to the IO, which will be verified by the IO. The applicants will remain

²⁷ Supra (note 12)

resident at the said addresses and will give prior information to the Special Court and the IO in the event of any change of address.

c. The applicants will not leave the country without the permission of the Special Court. Their passports, if any, will be surrendered to the Court. In the event the applicant's passport is already in custody of any Court in connection with any other proceedings, an affidavit to that effect will be filed before the Court. The IO will also verify the position and file a verification report before the Court.

d. Each of the applicants will give their mobile numbers to the IO and ensure that the said mobile numbers are kept in working condition and are reachable at all times.

e. Each of the applicants will attend the Special Court on each and every date of hearing, unless exempted by the Special Court under exceptional circumstances.

f. Each of the applicants will report to the Officer-in-Charge of the police station having jurisdiction over their place of residence on the first and third Monday of every calendar month at 04:00 PM, and will be released within one hour, after completion of necessary formalities.

g. The applicants will not tamper with the evidence or attempt to influence any of the witnesses in the case or act in any other manner prejudicial to the trial.

17. It is made clear that these observations are only for the purpose of disposal of the present bail applications, and will not prejudice the parties in the trial.

18. The applications are disposed of with the aforesaid directions.
The pending miscellaneous applications also stand disposed of.

19. A copy of this order be communicated to the concerned Jail Superintendent(s) electronically.

PRATEEK JALAN, J

JUNE 13, 2022

'vp'

