

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 1st April 2022**
Pronounced on: 10th May 2022

+ **BAIL APPLN. 679/2022**

KRISHNAN SUBRAMANIAN Applicant

Through: Mr. Tanveer Ahmed Mir, Mr. Saud Khan, Mr. Prabhav Ralle and Mr. Kartik Venu, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Avi Singh, ASC for State with Mr. Karan Dhalla and Ms. Mizba Dhebar, Advocates and Insp. Manoj Kumar, P.S. EOW.

Mr. Mohit Mathur, Sr. Advocate with Mr. Sandeep D. Das, Mr. Shashwat Sarin and Mr. Harsh Gautam, Advocates for the complainant.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant bail application under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the applicant seeking regular bail in FIR bearing No. 50/2019 registered at Police Station EOW Mandir Marg for offences punishable under Sections 409/420/120B of the Indian Penal Code, 1860.

2. Status report filed by the State is taken on record.

3. The brief facts of the case are that the aforesaid FIR was lodged by M/s. Religare Finvest Limited (hereinafter "RFL" - New Management) with Police Station EOW Mandir Marg against Malvinder Mohan Singh, Shivinder Mohan Singh, the then Promoters/Directors, Sunil Godhwani, the then Chairman-cum-Managing Director and N.K. Ghoshal. It is alleged that the aforesaid persons having absolute control on REL, and its subsidiaries have put 'RFL' in poor financial condition by disbursing loans to entities, having no financial standings. These entities willfully defaulted in repayments and caused wrongful loss to 'RFL' to the huge money. The Reserve Bank of India (hereinafter "RBI") has pointed out some discrepancies in its analysis viz. the top borrowers of 'RFL', under Corporate Loan Book (CLB) portfolio were related entities; there was inter linkage between the borrowers as funds were routed from one borrower to another; and the loan amounts ultimately were coming to the group companies of 'RFL'.

4. Mr. Tanveer Ahmed Mir, learned counsel appearing on behalf of the applicant submitted that as per the allegations made in the complaint and crystallized in the charge-sheet, the promoter-directors were involved in round tripping of some loans right from the year 2008 onwards and it is a matter of admitted position that the aforesaid round tripping predominantly took place between the period from 2008 to 2016, during which period the applicant was neither a part of 'REL' nor a part of 'RFL'. It is further submitted that 'RFL' was a 100% subsidiary of 'REL' and therefore, a common balance sheet was being filed. The applicant throughout his

limited tenure as Group CFO of 'RFL', worked strictly under the guidance and directions of the Board of Directors. It is vehemently submitted that the applicant at no point of time held a key role so far as management of affairs of 'REL' or 'RFL' is concerned. The applicant sought to resign from RFL/REL on 14th November 2018 and the resignation attained force on 11th March 2019 after obtaining the requisite clearances from the RBI.

5. Learned counsel for the applicant further submitted that during the course of further investigation one Maninder Singh who was working as Chief Business Officer of 'REL' as well as held vital post in 'RFL', was arrested by the investigating authorities on 27th October 2020 on the allegation that he had aided and abetted and being an accessory/criminal conspirator with the main beneficiaries i.e. Shivinder Mohan Singh and Malvinder Mohan Singh and thereby had caused loss of more than Rs. 1500 Crores to 'RFL'. The allegation against him was that he was a member of Risk Management Committee (hereinafter "RMC") and about 13 dubious loans were granted to related parties without any documentation/collateral securities, whereas the co-accused Maninder Singh had a huge responsibility in refusing to permit/sanction or support the grant of such loans, being a member of the 'RMC'.

6. The investigating agencies conducted detailed investigation and consequently filed a chargesheet dated 6th January 2020, before the CMM, Saket, District Court, New Delhi. It was submitted that on account of fact that no evidence surfaced to the detriment of the applicant during the aforesaid investigation as comprehensively conducted by Economic

Offences Wing (hereinafter “EOW”), therefore, the applicant was neither arraigned nor charge sheeted by the respondent.

7. The supplementary chargesheet under Section 173(8) of Cr.P.C. was filed by the Investigating Authorities *qua* the co-accused Maninder Singh on 20th January 2021. The said co-accused applied for grant of bail in Bail Application No. 3952/2020 and the Co-ordinate Bench of this Court had granted regular bail to him vide judgment dated 5th May 2021. The said judgment was challenged before the Hon’ble Supreme Court by the complainant by way of filing SLP (CrI.) No. 12290/2021, which was dismissed in *limine* vide judgment and order dated 12th July 2021.

8. Learned counsel further submitted that the applicant was served a notice under Section 91 of Cr.P.C. by the investigating authorities, in response to which he appeared and supplied the requisite information as well and joined investigation to the satisfaction of the investigating authorities. In consequence whereof, the applicant was asked to go back to his home and was never called upon to join investigation again at any point of time. It is further submitted that on 8th December 2021, officers from the ‘EOW’, Delhi Police came to the residence of the applicant at around 8:30 AM, and the applicant was forcefully taken to the offices of ‘EOW’ at Mandir Marg and in the evening, the arrest memo was handed over to him. No reasons whatsoever were provided to the applicant as to why he was arrested.

9. It is further submitted that the second supplementary charge-sheet under Section 173(8) of Cr.P.C. was filed by the investigating authorities on

15th December 2021 i.e. within a period of 6 days from the arrest of the applicant which would manifestly indicate and demonstrate that the supplementary charge-sheet *qua* the applicant was already ready and finalized and thereafter the applicant was arrested. It is argued that when the applicant was arrested, admittedly his custody was not needed, and he was arrested only for the purpose of giving him a taste of punishment before he was actually convicted.

10. To strengthen his arguments, learned counsel for the applicant has relied upon several judgments of Hon'ble Supreme Court and High Court as under:-

- a) *Sanjay Chandra vs CBI 2012 (1) SCC 14,*
- b) *D.K. Shivkumar vs Enforcement Directorate 2019 (264) DLT 586,*
- c) *P. Chidambaram vs Enforcement Directorate 2019 SCC Online SC 1549,*
- d) *P. Chidambaram vs CBI 2019 SCC Online SC 1380.*
- e) *Shivani Rajiv Saxena vs Enforcement Directorate,* passed by this Court in Bail Application No. 2164 of 2017 dated 15th December 2017.

11. Learned counsel also relied upon and judgment passed by the High Court of Bombay in *Laxman Irappa Hatti vs State of Maharashtra 2004 (4) Mh. L.J. 415*, wherein it is observed that filing of chargesheet would entitle the applicant for grant of bail as the investigation stands crystallized.

12. Learned counsel for the applicant submitted that further investigation, which otherwise is not contended by the prosecution, cannot be a ground for continued incarceration and the same has been negated by the Hon'ble Supreme Court of India on a number of occasions. He has relied upon the judgment of Hon'ble Supreme Court in *P. Chidambaram vs CBI 2019 SCC Online SC 1380*. Learned counsel submitted that the applicant was arrested on 8th December 2021, when the main charge sheet and the first supplementary charge sheet had already been filed and investigation stood crystallized. There is no denial of the fact that entire investigation is in the domain of "documentary evidence" which obviously has not been touched or tampered with since 2008. There is no propensity on the part of the applicant, therefore, to tamper with any kind of evidence which has been placed on record or which is in the domain of further investigation. It is an admitted position that EOW had already seized all the documents, including digital and electronic evidence. Therefore, the applicant cannot tamper with any such evidence.

13. Learned counsel argued that it is a matter of admitted position that the entire criminal activity of giving dubious loans or unjustified loans by 'RFL' has taken place within the period of 2008 to 2016 during which period, the applicant was nowhere concerned either with 'REL' or 'RFL', in as much as he joined 'RFL' only on 14th November 2017. Therefore, the applicant is not at all responsible for such grant of loan. It is also submitted that the main accused Anil Saxena has already been enlarged on bail vide order dated 17th June 2020 by the Coordinate Bench of this Court and the same bail order was challenged in the Hon'ble Supreme Court which has

been confirmed by the Hon'ble Supreme Court. It is also submitted that the co-accused Maninder Singh, who is accused of being responsible for fraudulent loans to the tune of more than Rs. 1500 Crores has already been granted bail vide order dated 5th May 2021 by the Coordinate Bench of this Court, and the said order was also challenged before the Hon'ble Supreme Court and Hon'ble Supreme Court had dismissed the aforesaid SLP vide order dated 12th July 2021.

14. Learned counsel submitted that there is no *prima facie* case made out against the applicant. It is vehemently submitted that as regards the parameters of gravity and seriousness of offence, the case against the applicant is on a lower pedestal when compared to co-accused Anil Saxena and Maninder Singh, who had already been enlarged on bail by the Coordinate Bench of this Court and the bail orders have been confirmed by the Hon'ble Supreme Court. Learned counsel for the applicant submitted that that the applicant has a permanent abode, he is a family man and shall not abscond or flee from justice if granted bail. On instructions, it is submitted that applicant shall abide by all conditions imposed by this Court while granting bail. The applicant further undertakes not to influence any witness or tamper with any evidence or take any such step which might be detrimental to the fair investigation of the present matter. The applicant has clean antecedents and has no criminal case against him except the instant FIR. Considering the facts and circumstances of the case, it is prayed that the applicant be released on bail.

15. *Per Contra*, Mr. Avi Singh learned ASC for the State vehemently opposed the instant bail application and submitted that specific role has

been assigned to the applicant in the instant case. It was alleged that three companies namely Best, Vitova and Devera were initially granted secured loans (i.e. part of 19 loans, which are investigated in this case) worth Rs. 115 crores collectively and property documents of agricultural land parcel situated in Asola were kept with the complainant company as security against the said loans. It is further submitted that later, during enquiry, it was found that land parcels were exchanged by the borrower companies without permissions and knowledge of complainant-company. The property documents which were kept with complainant-company as security were released to the alleged borrower by accused person and a share pledge agreement dated 10th January 2018 with RHC and Elive under which shares of Elive were pledged and trademark certificates with respect to Religare Brand were deposited with 'RFL', who was the then group CEO of complainant company was under the control of accused persons, at that time.

16. It is submitted that after receiving the said complaint, investigation was done, and applicant herein was asked to join the investigation. He replied that property related documents of Asola land was handled by operation team. The mails provided by complainant-company revealed that property documents were released on the instructions of applicant herein, for which, he was not authorised. Further, it was found that properties mortgaged with complainant company were already exchanged vide exchange deed dated 18th July 2017 by the alleged borrower and the loan amount was never paid by them to the complainant company. Accused could not produce any board resolution, in his favour, vide which he was

authorised to get the documents of properties viz., Best Health Management Pvt. Ltd., M/s. Vitova Realtors Pvt. Ltd. and M/s. Devera Developers Pvt. Ltd., released and replaced them through Elive Shares vide share pledge agreement dated 10th January 2018. The said three loans were initially sanctioned as secure loans but later on, they were converted into unsecured loans. So, those facts indicated conspiracy of accused in question with the said promoters and SPA was executed solely with intention to defraud 'RFL' by asking it to release the property related documents as security. It was done without any knowledge of complainant-company.

17. Learned ASC submitted that given the sensitive nature of the matter and the large sums of money involved, there is a strong possibility of the applicant absconding and not facing trial. Further if released on bail, he can influence the witnesses and tamper with evidence since he, as the Group CFO, had wide ranging connections and standing with the employees of the Religare Group. It is vehemently submitted that the applicant is not entitled to any relief by this Court and the instant application is liable to be dismissed.

18. Heard learned counsel for the parties and perused the record.

19. I have perused the FIR, chargesheet dated 6th January 2020, copy of first supplementary chargesheet under Section 173(8) Cr.P.C. dated 20th January 2021, copy of second supplementary chargesheet under Section 173(8) Cr.P.C. dated 15th December 2021, bail order of the co-accused Anil Saxena dated 17th June 2020 passed by the Coordinate Bench of this Court, order dated 17th July 2020 passed by the Hon'ble Supreme Court in SLP

(CRL.) Diary No. 13106/2020 challenging the bail order of Anil Saxena, bail order of co-accused Maninder Singh granted by Co-ordinate Bench of this Court vide order dated 5th May 2021 and order of Hon'ble Supreme Court dated 12th July 2021 challenging the bail order of Maninder Singh in SLP (CRL.) Diary No.12290/2021.

20. The jurisdiction to grant bail must be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:-

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his absconding;
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused; and
- (v) larger interest of the public or the State and similar other considerations.

21. In the case of *Vaman Narain Ghiya vs. State of Rajasthan*, (2009) 2 SCC 281, the Hon'ble Supreme Court held as under:-

“7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the mis-adventures of a person alleged to have committed a crime; and on the other, the fundamental cannon of criminal jurisprudence, viz, the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have (See A.K. Gopalan v. State of Madras AIR 1950 SC 1000).

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.”

22. In the case of ***Ketan Suresh Pawar & Anr vs. Yuvraj Sudeepan Sawant & Anr. (2020) 16 SCC 752***, the Hon’ble Supreme Court held as under:-

“In that background considering that the charge sheet had been filed and the other coaccused have been enlarged on bail, the High Court has considered it appropriate to grant the bail in favour of the respondent No. 1 herein. Though the learned counsel for the petitioner herein contends that the allegations against the respondent No. 1 is of a serious nature, the present

SLP(Crl) No.4158/2019 custody being prior to trial the same cannot be treated as one after conviction so as to deny the bail based only on the allegation though in appropriate cases the same is also to be kept in perspective. The allegations in any event would be gone into in the trial. Even if a supplementary charge sheet is required to be filed, the respondent No. 1 was available in custody from the date of his arrest till the grant of bail. That apart, the State/Investigating Agency has not made any grievance by challenging the order, contending that his custody is required for interrogation. Even if he is on bail, he shall certainly make himself available. In addition, it is seen that the respondent No. 1 was released on bail as far back as on 13.02.2019 and there is no material on record to indicate that as on today any of the conditions imposed while granting bail has been violated. Needless to mention that if the respondent No.1 violates the bail conditions, it will be open for the petitioner herein to approach the High Court in that regard.”

23. In the instant case, it is an admitted case that co-accused Maninder Singh was enlarged on bail by the Coordinate Bench of this Court vide order dated 5th May 2021. The said bail order was challenged before the Hon’ble Supreme Court by way of filing SLP (CRL.) Diary No. 12290/2021. The Hon’ble Supreme Court vide order dated 12th July 2021 confirmed the bail order dated 5th May 2021 and dismissed the SLP. The co-accused Anil Saxena was also enlarged on bail by the Coordinate Bench of this Court vide order dated 17th June 2020 in Bail Application No. 1074/2020. The said order was also challenged before the Hon’ble Supreme Court by way of filing SLP (CRL) Diary No. 13106/2020. The Hon’ble Supreme Court vide order dated 17th July 2020 did not interfere with the bail order of co-accused Anil Saxena.

24. A perusal of record shows that chargesheet has already been filed, all materials have been collected by the investigating authorities and the evidence against the applicant is documentary in nature. In the considered opinion of this Court, the applicant is neither a flight risk, nor can there be any propensity on his part to tamper with any evidence or influence any witness inasmuch as the entire domain of evidence is documentary in nature, which exists as it is from the year 2008 onwards, unhindered, and untampered. The applicant is a permanent resident of Delhi and has clean antecedents. He has been languishing in jail since 8th December 2021. In that background considering the chargesheet, first supplementary chargesheet and second supplementary chargesheet as well as the fact that other co-accused persons having been enlarged on bail by the Coordinate Bench which stand confirmed by the Hon'ble Supreme Court; and the facts and circumstances and discussion as aforesaid, this Court is inclined to allow the instant bail application seeking regular bail.

25. It is accordingly directed that the applicant be released on bail on his furnishing personal bond in the sum of Rs. 1 Lac with two sureties each of the like amount to the satisfaction of the Jail Superintendent/Trial Court subject to the conditions as follow:-

- (a) he shall under no circumstances leave India without prior permission of the Court concerned;
- (b) he shall surrender his passport, if any, before the Trial Court;
- (c) he shall appear before the Court concerned as and when required;

- (d) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- (e) he shall provide his mobile number(s) and keep it operational at all times;
- (f) he shall commit no offence whatsoever during the period he is on bail; and
- (g) in case of change of residential address and/or mobile number, the same shall be intimated to the Court concerned by way of an affidavit.

26. Accordingly, the bail application stands disposed of. Pending application, if any, also stands disposed of.

27. It is made clear that any observations touching merits of the case are purely for the purpose of deciding the instant petition and shall not be construed as an expression of final observation in the proceedings before Trial Court.

28. Copy of this judgment be sent to Jail Superintendent for compliance.

29. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 10, 2022
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