

Reserved

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1. **Case :-** BAIL No. - 12506 of 2019

Applicant :- Sudhanshu Dwivedi

Opposite Party :- State of U.P.

Counsel for Applicant :- Brij Mohan Sahai, Pankaj Yadav, Saurabh Shankar
Srivastav, Syed Mehfuzur Rehman

Counsel for Opposite Party :- G.A.

And

2. **Case :-** BAIL No. - 873 of 2020

Applicant :- Vikas Chawla

Opposite Party :- State of U.P.

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. The present applications under Section 439 Cr.P.C. have been filed seeking bail in FIR No.540 of 2019 initially registered under Sections 409, 420, 467, 468, 471, 120B IPC. Section 13(2) of the Prevention of Corruption Act has been added subsequently during the course of investigation.

2. On 2nd November, 2019, the aforesaid FIR came to be registered on the complaint of one I.M. Kaushal, Secretary, Trust of Uttar Pradesh Power Corporation Limited (hereinafter referred to as "U.P.P.C.L.") against one Mr. Praveen Kumar Gupta, ex-Secretary (Trust) and Mr. Sudhanshu Dwivedi, the accused-applicant in Bail No.12506 of 2019 who served U.P.P.C.L. in the capacity of Director (Finance) from June 2016 to June 2019.

3. As per the FIR, in pursuance of the implementation of the Uttar Pradesh Electricity Reforms Transfer Scheme, 2000, the Uttar Pradesh State Electricity Board was divided on 14th January, 2000 into 3 Companies i.e. (i) Uttar Pradesh Power Corporation Limited, (ii) Uttar Pradesh Rajya Vidut Utpadan Nigam Limited, and (iii) Uttar Pradesh Hydro Power Corporation Limited. On 14th January, 2000 itself the employees working in the Uttar Pradesh State Electricity Board were assigned to the aforesaid three corporations established in pursuance of the Reform Scheme. In respect of all the employees working in these three power corporations, Uttar Pradesh State Power Sector Employees Trust was constituted on 29th April, 2000 under the provisions of the Provident Fund Act, 1952 to manage general provident fund, gratuity fund and pension fund of the employees of three electricity corporations so constituted.

4. A Trust-deed was executed on 24th April, 2000 for creation of the Trust. As per trust deed, the aforesaid three funds namely, General Provident Fund, Gratuity Fund and Pension Fund created for the benefit of employees of three power corporations shall be called “Uttar Pradesh State Power Sector Employees General Provident Fund”, “Uttar Pradesh State Power Sector Employees Gratuity Fund” and “Uttar Pradesh State Power Sector Employees Pension Fund”. These funds collectively would be referred to as ‘Funds’.

5. As per the Trust-deed, the funds vest in Board of Trustees who shall administer the Funds in accordance with the Rules as set out in the Schedule of the Trust-deed. The First Trustees are:

(i) ‘Chairman cum Managing Director, U.P.P.C.L.’ Chairman of the Trust;

(ii) ‘Chairman cum Managing Director of U.P.R.V.U.N.L.’ Member; and

(iii) ‘Chairman cum Managing Director, U.P. Hydro Power Corporation Ltd.’, Member.

6. The other Trustees are to hold office on appointment by nomination or otherwise, in the manner as provided in the Uttar Pradesh State Power Sector Employees General Provident Fund Rules, 2000.

7. Clause 7 of the Trust-deed reads as under:-

“7. That the trustees of the Board shall hold the ‘Funds’ and the amounts accruing in Trust for the Members and beneficiaries of the said ‘Funds’ and shall administer and apply the same in accordance with these presents and the Rules, nevertheless subject to the Provisions of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder, and the Income Tax Act, 1961 and the Income Tax Rules, 1962.”

8. For the management of provident fund of the employees joining the U.P.P.C.L. on 14.01.2000 or later, Uttar Pradesh Power Corporation Contributory Provident Fund Rules, 2004 were enacted and made applicable with effect from 1st April, 2004. Uttar Pradesh Power Corporation Contributory Provident Trust (hereinafter referred to as “CPF”) was constituted on 25th June, 2006 under the Provident Fund Act, 1952.

9. Appropriation and the management of Provident Funds of the employees of the Uttar Pradesh State Power Sector Employees Trust and the Uttar Pradesh Corporation C.P.F. Trust was the responsibility of Secretary (Trust) and Director (Finance) U.P.P.C.L. The management and appropriation and other related actions with respect to provident funds account of the employees were to be performed by the Secretary (Trust) and Director (Finance) of both the Trusts in accordance with the directions issued by the Central Government from time to time.

10. The amount deducted from the salaries of the member employees of the Uttar Pradesh State Power Sector Employees Trust and the Uttar Pradesh Corporation Contributory Provident Fund Trust were forwarded to the Trust office by all three Corporations which then were required to be invested by the Secretary (Trust) on the approval of Director (Finance) and trustee and in accordance with the directions issued from time to time by the Board of Trustees in various approved schemes.

11. On 08.05.2013, it was resolved by the Board of Trustees of the U.P. State Power Sector Employees Trust that the amount of the General Provident Fund would be invested in term deposits of the nationalised Banks for a period of 1 to 3 years. Further, it was resolved in the meeting of the Board of Trustees of the Uttar Pradesh State Power Sector Employees Trust on 21st April, 2014 that in case there were alternative investment avenues available which were as safe as investment in the Banks and offered more assured interests, they should be presented after contemplation and, if needed then the Director (Finance) should be duly authorised to take the services of investment advisor.

12. In pursuance of the aforesaid resolutions till October, 2016, Provident Fund amounts of the two Trusts were deposited in the Nationalised Banks in term deposits accruing interest.

13. However, in the month of December, 2016 on the proposal of the then Secretary of the Trust, Mr. Praveen Kumar Gupta, after obtaining the approvals from the then Director (Finance), Mr. Sudhanshu Dwivedi and the then Managing Director, U.P.P.C.C.L., Mr. A.P. Mishra, co-accused, they started investing the G.P.F. and C.P.F. funds in the P.N.B. Housing term deposits. In the same series, the G.P.F. and C.P.F. funds were invested as term deposits by Mr. Sudhanshu Dwivedi and Mr. Praveen Kumar Gupta from March, 2017 in a private institution named Deewan Housing Finance Ltd (hereinafter referred to as 'DHFL') without taking the recommendation/cognizance of M.D./Chairman and without any authority of law in illegal and mala fide manner for personal gains.

14. It is further alleged that appropriation of funds was not done in accordance with the notification dated 2nd March, 2015 issued by the Ministry of Finance, Government of India. It is further alleged that according to the aforesaid notification, the funds of non Government Provident Fund could have been invested in the unscheduled commercial banks to the maximum limit of 50%.

15. It is alleged that the forged and fabricated minutes of the meeting of the Board of Trustees of the Contributory Provident Fund allegedly held on 24th March, 2017 were prepared. In the aforresiad meeting it was allegedly resolved that "the Board

of Trustees agreed to consider the investment proposals as per the government notification dated 2nd March, 2015 in the securities with higher security and high interest rates other than deposits of nationalised banks in AAA rated Companies. As per prevailing practice, further investment and the securities would be decided by Secretary (Trust) on the case to case basis with the consent/approval of Director (Finance), U.P.P.C.L. trustee.

16. It has been alleged that as per record available in the office of trust from March, 2017 to December, 2018, the then Secretary (Trust) Mr. Praveen Kumar Gupta who was in charge of both C.P.F. and G.P.F. Trust after obtaining approval from the then Director (Finance), Mr. Sudhanshu Dwivedi and transgressing the clear directives of the Government of India as contained in its notification dated 2nd March, 2015 according to which clear directions were issued that the moneys of the employees Provident Fund should not be invested in any of the institutions other than scheduled/unscheduled commercial banks, with ill intentions invested more than 50% of the amount in term deposit of DHFL, knowing well that it did not fall in the category of unscheduled commercial banks and it was an unsecured private institution.

17. It is also alleged that according to the records available, GPF contributions amounting to Rs.2631.20 crores were invested in DHFL out of which only Rs.1185.50 crores have been received by the trust office and an amount of Rs.1445.70 crores plus interest is yet to be received. Similarly, an amount of Rs.1491.5 crores of the Contributory Provident Fund was invested in the DHFL, out of which Rs.669.3 crores have been received by the office of the trust and Rs.822.2 crores plus interest is yet to be received. Thus, the total amount of Rs.2267.90 crores (Principal Amount) and interest is yet to be received from the DHFL.

18. It is alleged that the then Director (Finance) and the Secretary Trust by not following the directives issued by the Government of India dated 2nd March, 2015 and investing more than 50% of the amount of employees' GPF and CPF in DHFL have committed the offence of Criminal Breach of Trust.

19. Thus, allegations in sum and substance are that the accused in furtherance of criminal conspiracy with malafide intention for personal gain and in violation of the relevant provisions of law, have invested huge amount of two funds i.e. Uttar Pradesh Power Sector Employees General Provident Fund and Uttar Pradesh Power Corporation Limited Contributory Provident Fund in DHFL, a company incorporated under the Companies Act. Their malafide decision has caused huge loss to these funds to the amount of Rs.2267.9 crores (Principal Amount) besides interest. The investigation has revealed that the investments have been made in the

DHFL by the accused for personal gain as they have received the huge amount from DHFL as commission for making such investments.

20. The aforesaid two trusts were created under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and rules made thereunder as well as the provisions of Indian Trust Act, 1882.

21. Rule 11 of the Uttar Pradesh State Sector Employees General Provident Fund Rules 2000 which provides power and function of the secretary of the Trust reads as under:-

“(a) The Company Secretary of the UPPCL shall function as the Secretary of the Board.

(b) The Secretary will be assisted by such staff for the efficient discharge of his function as the Board may decide.

(c) The Director (Finance) of UPPCL and the Secretary of the Board shall jointly operate the accounts of the Fund.”

22. Rule 22 provides investment of the Assets of the fund which reads as under:-

“22. Investment of the Assets of the Fund:

(a) The trustees shall, subject to the Provisions contained herein invest all money of the Fund, in accordance with the provisions of Section 418 of the Companies Act, 1956 and in the manner prescribed by the Central Government from time to time, in this behalf, so however, that the securities in which the money is invested shall be payable in India both in respect of capital and interest.

Provided that the investments must be in accordance with provisions laid down in the Income Tax Rules, 1982 and as may be prescribed by the RPFCL.

(b) The Trustees may deposit such sums of money as are not invested in accordance with sub-rule (a) above or are required for day to day needs of the Fund in a Post Office Saving Bank Account or in any Scheduled Bank, and open account or accounts in such Bank or Banks for the purpose in the name of the fund, and such accounts shall be operated by the Director (Finance) of UPPCL and the Secretary of the Board.

(c) All investments made or to be made as aforesaid shall be held in the name of the Fund.”

23. Thus, according to the aforesaid Rule 22 the money of the Fund is to be invested in accordance with the provisions of Section 418 of the Companies Act, 1956 and in the manner prescribed by the Central Government from time to time in this behalf. It is also provided that the investments must be in accordance with the provisions laid down in the Income Tax Rules, 1962 and as may be prescribed by the RPFCL.

24. Similarly, some of the provisions of UPPCL Contributory Provident Fund Rules, 2004 would be apt to make note of for disposal of the present bail applications.

25. Rule 14 provides for investment of the fund amount which reads as under:-

“14.0 Investment

(i) All moneys of the Fund shall be invested expeditiously not later than the close of the month of recovery subject to such directions the Board may give from time to time. The investments shall be in the securities mentioned or referred to in clause (a) to (d) of Section 20 of the Indian Trust Act,

1882 (II of 1882), provided that such securities are payable both in respect of capital and in respect of interest in India and in such other securities as the Central Government may from time to time approve in this regard. Furthermore guidelines issued by the Ministry of Finance and Ministry of Labour regarding investment pattern shall be followed for making investment.

(ii) All expenses incurred in respect of, and loss, if any, arising from any investment shall be charged to the Fund.”

26. Thus, 2004 Rules are Pari materia provisions with the 2000 rules.

27. Section 20 of the Indian Trust Act, 1982 postulates that the investment shall be made in the security satisfying clause (a) to (d) for investment of Trust money reads as under:-

“20. Investment of trust-money.—Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities and on no others:—

(a) in promissory notes, debentures, stock or other securities³ [of any⁴ [State Government] or] of the⁵ [Central Government], or of the United Kingdom of Great Britain and Ireland:⁶ [Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(b) in bonds, debentures and annuities⁷ [charged or secured by the⁸ [Parliament of the United Kingdom]⁹ [before the 15th day of August, 1947] on the revenues of India or of the¹⁰ [Governor-General in Council¹¹] or of any Province¹¹]:¹² [Provided that after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;]

¹² [(bb) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock¹³ [which before the 15th day of August, 1947, was] issued by the Secretary of State for India in Council under the authority of an Act of Parliament¹⁴ [of the United Kingdom] and charged on the revenues of India;¹⁵ [or which¹⁶ [was] issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935];]

(c) in stock or debentures of, or shares in, railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council; ¹⁵[or by the Central Government] ¹⁵[or in debentures of the Bombay ¹⁶[Provincial] Co-operative Bank Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council] ¹³[or the State Government of Bombay]; ¹⁷

(d) in debentures or other securities for money issued, under the authority of ¹⁸[any Central Act or Provincial Act or State Act], by or on behalf of any municipal body, port trust, or city improvement trust in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi: ¹⁹[Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;]

(e) on a first mortgage of immovable property situate in ²⁰[any part of the territories to which this Act extends]: Provided that the property is not a lease hold for a term of years, and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; ²¹[***] ²²[(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963 (52 of 1963); or]

(f) on any other security expressly authorized by the instrument of trust, ²²[or by the Central Government by the notification in the Official Gazette] or by any rule which the High Court may from time to time prescribe in this behalf: Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.”

28. Section 418 of the Companies Act, 1956 provides that the amount of provident fund shall be deposited in the post office, State Bank of India or in a Nationalised Schedule Bank. The aforesaid provision is applied to safeguard the provident fund deposits of the employees. However, it has been alleged that in clear departure from the statutory provisions, the applicant and co-accused for the purpose of earning illicit brokerage, deposited the provident funds amounts in DHFL, a private entity and such investment was completely unsafe and hazardous. As a consequence of the illegal decisions and actions of the applicant and other co-accused, Rs. 2267.90 crores (Principal Amount) and interest of the provident funds of the employees have been dishonestly misappropriated.

29. Section 418 of the Companies Act 1956 is reproduced here under:-

“418. Provisions applicable to provident funds of employees.

(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either-

(a) be deposited-

(i) in a post office savings bank account, or

(ii) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(iii) where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank; or

(b) be invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (2 of 1882).

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub- section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub- section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub- section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (a) of section 58A of the Indian Income- tax Act, 1922 (11 of 1922) 3, or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8, and 9 of the Indian Income- tax (Provident Funds Relief) Rules.

(4) Where a¹ trust has been created by a company with respect to any provident fund referred to in sub- section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees² within fifteen days from the date of collection]; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.”

30. Relevant portion of the notification dated 2nd March, 2015 issued by Ministry of Finance is reproduced hereunder:-

“**F. No. 11/14/2013-PR.**—In partial modification of this Ministry’s Notification No. 5(88)/2006-PR dated 14th August, 2008, the pattern of investment to be followed by Non-Government Provident Funds, Superannuation Funds and Gratuity Funds shall be as follows, effective from 1st April, 2015:—

Category	Investment Pattern	Percentage amount to be invested

(i)	<p>Government Securities and Related Investments Government Securities, Other Securities {‘Securities’ as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956} the principal whereof and interest whereon is fully and unconditionally guaranteed by the Central Government or any State Government. The portfolio invested under this sub-category of securities shall not be in excess of 10% of the total portfolio of the fund. Units of Mutual Funds set up as dedicated funds for investment in Govt. securities and regulated by the Securities and Exchange Board of India: Provided that the portfolio invested in such mutual funds shall not be more than 5% of the total portfolio at any point of time and fresh investments made in them shall not exceed 5% of the fresh accretions in the year.</p>	Minimum 45% and upto 50%
(ii)	<p>Debt Instruments and Related Investments Listed (or proposed to be listed in case of fresh issue) debt securities issued by bodies corporate, including banks and public financial institutions (‘Public Financial Institutions’ as defined under Section 2 of the Companies Act, 2013), which have a minimum residual maturity period of three years from the date of investment. Basel III Tier-I bonds issued by scheduled commercial banks under RBI Guidelines: Provided that in case of initial offering of the bonds the investment shall be made only in such Tier-I bonds which are proposed to be listed. Provided further that investment shall be made in such bonds of a scheduled commercial bank from the secondary market only if such Tier I bonds are listed and regularly traded. Total portfolio invested in this sub-category, at any time, shall not be more than 2% of the total portfolio of the fund. No investment in this sub-category in initial offerings shall exceed 20% of the initial offering. Further, at any point of time, the aggregate value of Tier I bonds of any particular bank held by the fund shall not exceed 20% of such bonds issued by that Bank. Rupee Bonds having an outstanding maturity of at least 3 years issued by institutions of the International Bank for Reconstruction and Development, International Finance Corporation and Asian Development Bank. Term Deposit receipts of not less than one year duration issued by scheduled commercial banks, which satisfy the following conditions on the basis of published annual report(s) for the most recent years, as required to have been published by them under law: having declared profit in the immediately preceding three financial years; maintaining a minimum Capital to Risk Weighted Assets Ratio of 9%, or mandated by prevailing RBI norms, whichever is higher; having net non-performing assets of not more than 4% of the net advances; having a minimum net worth of not less than Rs. 200 crores. Units of Debt Mutual Funds as regulated by Securities</p>	Minimum 35% and upto 45%

	<p>and Exchange Board of India:</p> <p>Provided that fresh investment in Debt Mutual Funds shall not be more than 5% of the fresh accretions invested in the year and the portfolio invested in them shall not exceed 5% of the total portfolio of the fund at any point in time.</p> <p>The following infrastructure related debtinstruments: Listed (or proposed to be listed in case of fresh issue) debt securities issued by body corporates engaged mainly in the business of development or operation and maintenance of infrastructure, or development, construction or finance of low costhousing. Further, this category shall also include securities issued by Indian Railways or any of the body corporates in which it has majorityshareholding. This category shall also include securities issued by any Authority of the Government which is not a body corporate and has been formed mainly with the purpose of promoting development of infrastructure. It is further clarified that any structural obligation undertaken or letter of comfort issued by the Central Government, Indian Railways or any Authority of the Central Government, for any security issued by a body corporate engaged in the business of infrastructure, which notwithstanding the terms in the letter of comfort or the obligation undertaken, fails to enable its inclusion as security covered under category (i) (b) above, shall be treated as an eligible security under this sub-category. Infrastructure and affordable housing Bonds issued by any scheduled commercial bank, which meets the conditions specified in (ii)(d)above. Listed (or proposed to be listed in case of fresh issue) securities issued by Infrastructure debt funds operating as a Non-Banking Financial Company and regulated by Reserve Bank of India. Listed (or proposed to be listed in case of fresh issue) units issued by Infrastructure Debt Funds operating as a Mutual Fund and regulated by Securities and Exchange Board of India. It is clarified that, barring exceptions mentioned above, for the purpose of this sub-category (f), a sector shall be treated as part of infrastructure as per Government of India's harmonized master-list of infrastructure sub-sectors: Provided that the investment under sub-categories (a), (b) and (f) (i) to (iv) of this category No. (ii) shall be made only in such securities which have minimum AA rating or equivalent in the applicable rating scale from at least two credit rating agencies registered with Securities and Exchange Board of India under Securities and Exchange Board of India (Credit Rating Agency) Regulation, 1999. Provided further that in case of the sub-category (f) (iii) the ratings shall relate to the Non-Banking Financial Company and for the sub-category (f) (iv) the ratings shall relate to the investment in eligible securities rated above investment grade of the scheme of the fund. Provided further that if the securities/entities have been rated by more than two rating agencies, the two lowest of all the ratings shall be considered. Provided further that investments under this category requiring a minimum AA rating, as specified above,</p>	
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	<p>shall be permissible in securities having investment grade rating below AA in case the risk of default for such securities is fully covered with Credit Default Swaps (CDSs) issued under Guidelines of the Reserve Bank of India and purchased along with the underlying securities. Purchase amount of such Swaps shall be considered to be investment made under this category.</p> <p>For sub-category (c), a single rating of AA or above by a domestic or international rating agency will be acceptable.</p> <p>It is clarified that debt securities covered under category (i) (b) above are excluded from this category (ii).</p>	
(iii)	<p>Short-term Debt Instruments and Related Investments</p> <p>Money market instruments:</p> <p>Provided that investment in commercial paper issued by body corporates shall be made only in such instruments which have minimum rating of A1+ by at least two credit rating agencies registered with the Securities and Exchange Board of India.</p> <p>Provided further that if commercial paper has been rated by more than two rating agencies, the two lowest of the ratings shall be considered.</p> <p>Provided further that investment in this sub-category in Certificates of Deposit of up to one year duration issued by scheduled commercial banks, will require the bank to satisfy all conditions mentioned in category (ii) (d) above.</p> <p>Units of liquid mutual funds regulated by the Securities and Exchange Board of India.</p> <p>Term Deposit Receipts of up to one year duration issued by such scheduled commercial banks which satisfy all conditions mentioned in category (ii) (d) above.</p>	Upto 5%
(iv)	<p>Equities and Related Investments</p> <p>Shares of body corporates listed on Bombay Stock Exchange (BSE) or National Stock Exchange (NSE), which have:</p> <p>Market capitalization of not less than Rs. 5000 crore as on the date of investment; and</p> <p>Derivatives with the shares as underlying, traded in either of the two stock exchanges.</p> <p>(b) Units of mutual funds regulated by the Securities and Exchange Board of India, which have minimum 65% of their investment in shares of body corporates listed on BSE or NSE.</p> <p>Provided that the aggregate portfolio invested in such mutual funds shall not be in excess of 5% of the total portfolio of the fund at any point in time and the fresh investment in such mutual funds shall not be in excess of 5% of the fresh accretions invested in the year.</p> <p>Exchange Traded Funds (ETFs)/Index Funds regulated by the Securities and Exchange Board of India that replicate the portfolio of either BSE Sensex Index or NSE Nifty 50 Index.</p> <p>ETFs issued by SEBI regulated Mutual Funds constructed specifically for disinvestment of shareholding of the Government of India in body corporates.</p> <p>Exchange traded derivatives regulated by the Securities and Exchange Board of India having the underlying of any permissible listed stock or any of</p>	Minimum 5% and upto 15%

	the permissible indices, with the sole purpose of hedging. Provided that the portfolio invested in derivatives in terms of contract value shall not be in excess of 5% of the total portfolio invested in sub-categories (a) to (d) above.	
(v)	Asset Backed, Trust Structured and Miscellaneous Investments Commercial mortgage based Securities or Residential mortgage based securities. Units issued by Real Estate Investment Trusts regulated by the Securities and Exchange Board of India. Asset Backed Securities regulated by the Securities and Exchange Board of India. Units of Infrastructure Investment Trusts regulated by the Securities and Exchange Board of India. Provided that investment under this category No. (v) shall only be in listed instruments or fresh issues that are proposed to be listed. Provided further that investment under this category shall be made only in such securities which have minimum AA or equivalent rating in the applicable rating scale from at least two credit rating agencies registered by the Securities and Exchange Board of India under Securities and Exchange Board of India (Credit Rating Agency) Regulations, 1999. Provided further that in case of the sub-categories (b) and (d) the ratings shall relate to the rating of the sponsor entity floating the trust. Provided further that if the securities/entities have been rated by more than two rating agencies, the two lowest of the ratings shall be considered.	Upto 5%

31. Heard Mr. Saurabh Shankar Srivastava and Mr.P. Chakravarty, learned counsels for the applicants, Mr. V.K. Shahi, learned Additional Advocate General and Mr. Anurag Verma for the State.

32. The applicant, Sudhanshu Dwivedi was appointed as Director (Finance) of UPPCL on 30th June, 2016. In the capacity of Director (Finance) of UPPCL, he became Trustee of the aforesaid two trusts.

33. So far as accused-applicant, Sudhanshu Dwivedi is concerned, Mr. Saurabh Shankar Srivastava, learned counsel has submitted that it was largely the secretary of the trust who was also the General Manager (Finance and Accounts) of U.P.P.C.L. who in fact was looking after its day to day operations along with his assisting team. He has further submitted that initially the monies of the provident funds were invested in term deposits with the schedule Nationalised Banks. However, when better interest rates were offered by unscheduled commercial banks, they became the preferred investment avenues. After demonetisation and following economic slowdown, the term deposits with the banks started yielding much lower rates of interest and as such the Board of Trustees in the best interest of the employees, explored the new investment avenues and, therefore, it was collectively

decided by the trustees that the investment can be done in the AAA rated Housing Finance Companies which were duly recognised by the National Housing Bank, a body constituted under the National Housing Bank Act, 1987 which gives due recognition to the housing finance Companies operational in India on the basis of several qualifying variables. He has further submitted that in December 2016, it was unanimously resolved by the Board of Trustees that in order to get best returns on the funds, the monies would be invested in the term deposits with Punjab National Bank Housing Company which yielded better returns than those offered by the banks.

34. The Secretary of the trust informed that better rates were offered by DHFL which was a AAA rated company and was also duly recognised by the National Housing Bank. Thereafter, an opinion was sought from all the trustees including the applicant. Learned counsel has submitted that role of the applicant was only to the extent of recommending on the financial health and viability of the DHFL. The applicant conducted an extensive research and found that the top investors of the DHFL were the various scheduled banks including State Bank of India and many other well recognised companies and investment funds. After making such exercise, he approved DHFL for investment. It is also submitted that some dispute erupted between the DHFL and Reliance Nippon Asset Management Limited and the matter went to the Bombay High Court in Commercial Suit (Lodging) No.1034 of 2019 and, the Bombay High Court by an oral order dated 30th September, 2001 restrained the DHFL from making any payments to any of its other creditors without the leave of the Court.

35. Learned counsel for the accused-applicant has also submitted that notification of the Government of India dated 2nd March, 2015 is not applicable on the two Trusts as they are not registered with the EPFO which regulates the Provident Funds which are registered with it and are exempted in accordance with the Employees Provident Fund and Miscellaneous Provisions Act, 1952. It is further submitted that since the Trusts are not registered with EPFO, the investments done by UPPCL are to be treated as the ones essentially coming from a company and not from the trust.

36. It is further submitted that the decision to invest in the DHFL was approved by the Board of trustees in its meeting held on 22-24th April 2017 in which Mr Sanjay Agrawal, Chairman UPPCL and Trust, Mr. A.P. Mishra, Managing Director, UPPCL, Mr. Satya Prakash Pandey, Director (P & A) U.P.P.C.L. and Trustee, Mr Sudhanshu Dwivedi, the Director (Finance) and Mr. P. K. Gupta, General Manager (F & A,) Secretary (Trust) were present. It is further submitted that all these persons had signed the resolution. It is said that Sanjay Agrawal was the Chairman who signed the resolution but he has not been made the accused as he is an influential

person. It is further submitted that the decision on investment was not taken with a malafide intention and, there is nothing in evidence which would connect illegal gratification/commission having been paid to the accused-applicant by DHFL in lieu of investment made. He has further submitted that he acted with due care and with bonafide intention and there is no criminality involved for which he is being prosecuted. Investments made in DHFL were for earning better rate of interest in favour of the employees and, therefore, the FIR in question has been lodged in hurried manner and , the accused applicant should be enlarged on bail.

37. In the Supplementary affidavit, it has been stated that the accused applicant had only rendered an advice on investment in DHFL and measuring its then excellent financial health, he had himself invested Rs.20 lakh of his GPF fund in the said Company. Since the proceedings under the insolvency and bankruptcy code have been initiated against the DHFL, the accused-applicant has also filed this claim before the NCLT, Bombay. In view of the aforesaid, it has been submitted that the accused-applicant did not have any malafide intention in giving consent for investment of funds in DHFL.

38. Mr. V.K. Shahi, learned Additional Advocate General has submitted that the management and investment of the GPF/PPF amount of all the 42000 employees of the Power Corporation was required to be carried out in conformity with GPF Rules, 2000, CPF Rules, 2004 and the Gazette notification of Government of India dated 2nd March, 2015. These rules specifically provide that the investment is to be made in accordance with the rules and the notifications issued by the Government of India. He, therefore, has submitted that there is no substance in the submission of the learned counsel for the accused-applicant that the Government of India notification dated 2nd March 2015 has no application in respect of the two Trusts whose money was invested in DHFL. He has further submitted that the notification dated 2nd March, 2015, spells out in detail the investment patterns, which is required to be followed and adhered to in making investments of CPF amounts. He has further submitted that investment in DHFL has been made in blatant violation of the guidelines, contained in the notification dated 2nd March, 2015 as well as GPF Rules, 2000 and CPF Rules 2004 as well as provisions of Indian Trust Act and Indian Companies Act, 1956.

39. It has been further submitted that the Director (Finance), Secretary and Managing Director of UPPCL being trustees were under duty and responsibility to invest GPF and CPF contributions of the employees safely and in accordance with law. However, for the illicit purposes of earning brokerage amount, the applicant in connivance with the Secretary, P. K. Gupta and Managing Director, A.P. Mishra invested GPF and CPF contributions of the employees in GPF and CPF Trusts

illegally and unsafely invested in the shape of FDRs in DHFL, a non banking financial company.

40. It has been further submitted that the decisions regarding investment of PF amount, could have been taken only by the Board of trustees, however, in the instant case no meeting of Board of trustees was convened and on 17th December, 2016 the applicant, Mr, Praveen Kumar Gupta and A.P. Mishra co-accused took a decision for investment of provident fund amount in PNB Housing Finance. Subsequently, the investment was made in LIC Finance Company in defiance of the provision of law and stipulation. In the same series on 16th March 2017, the investments were unlawfully made in DHFL. To ratify the investments so made and in furtherance of illegal and malafide designs, allegedly a meeting of the Board of trustees was convened on 24th March, 2017 by circulation. The minutes of the said meeting were also found to be false, forged and fictitious. Mr Sanjay Agrawal, a senior IAS official has mentioned in his statement that his alleged signatures on the minutes of meeting, allegedly convened on 24th March, 2017 are forged and fictitious. In the Supplementary affidavit filed by the State, a true copy of the report of the Forensic Science Laboratory, Uttar Pradesh, Mahanagar, Lucknow in respect of the forged signature in the minutes of alleged meeting of the Board dated 24th March, 2017 has been placed on record. It has been found that the signatures of Mr Sanjay Agrawal on the minutes of the alleged meeting of the Board of Trustees held on 24.03.2017 are forged and he did not append his signatures.

41. Thus, it is submitted that only the Board of Trustees comprising of 10 members was empowered to take appropriate decisions with regard to investment of CPF and GPF amounts. However, the accused-applicant being Director (Finance), P.K. Gupta, (Secretary, Trust) and Mr. A.P. Mishra (Managing Director) of UPPCL and trustee in furtherance of criminal conspiracy and to earn illicit brokerage amount, without convening any meeting of the Board of trustees, carried out authorised and illegal investments of the provident fund amounts in clear breach and violation of the Rules and provisions of Indian Trust Act and Companies Act, Provident Funds and Miscellaneous Provisions Act, 1952 and Government of India notifications.

42. It has been further submitted that the amount of brokerage was transmitted from DHFL to 14 companies including Alpine Associates, a company run and operated by one Ashish Chaudhari, a close confidant of accused, Abhinav Gupta s/o Mr. P. K. Gupta. The brokerage amount was subsequently transferred to several other firms through RTGS with the assistance of certain Chartered Accountants. The said firms in turn, for the purposes of justifying their proscribed money, made cash payments to several Chartered Accountants and the money after exchange of several hand, reached Abhinav Gupta s/o Praveen Kumar Gupta, Secretary (Trust).

43. Mr. Abhinav Gupta has stated in his statement before the investigating officer that a sum of approximately 30 crores was received as brokerage from C.A., Lalit Goyal and, the said amount was divided amongst the present applicant Director (Finance), P.K.Gupta (Secretary,Trust) and A.P. Mishra (Managing Director). A copy of the statement given by accused, Abhinav Gupta has been placed on record with the counter affidavit.

44. I have considered the submissions and the provisions of the relevant rules and the Acts carefully.

45. The accused-applicant was Director (Finance) and the trustee who was to operate the account of the trust with secretary of the Trusts. He was the person who recommended for investment in the DHFL.The investments were made on 16th March, 2017 without there being any authorisation of the Board of Trustees, but to justify the investment forged minutes of meeting allegedly held on 24th March, 2017 were prepared on which signature of the Chairman, Mr Sanjay Agrawal were forged. Statement of Abhinav Gupta s/o Praveen Kumar Gupta has prima facie disclosed that the brokerage amount of Rs.30 crores was given by DHFL for making investment and this brokerage amount was divided among three accused. The acts of commission and omission of the accused along with other co-accused have caused huge loss to the two trusts created for the welfare of poor 42000 employees of the three electricity corporations out of their hard earned money.

46. The economic crime of such scale and magnitude are carefully and meticulously planned and executed. It is well settled that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the court has to keep in mind the nature of accusations, magnitude and gravity of offence and nature of evidence in support of the accusations.

47. The Supreme Court in the case of **Y.S. Jagan Mohan Reddy vs CBI: (2013) 7 SCC 439** in paras 34 and 35 in respect of granting bail in economic offences having deep rooted conspiracy and large public money involved has held as under:-

“34. 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 serious threat to the financial health of the country.

35. 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 serious threat to the financial health of the country.”

48. In judgment rendered in the case of **State of Bihar Vs. Amit Kumar (2017) 13 SCC 751**, it has been held that while considering the bail involving socio-economic offences stringent parameters should be applied. Paras 8-9 of the said judgment are extracted hereunder:-

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.

9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.”

49. Further, the aforesaid view has been reiterated in the case of **Rohit Tandon vs Directorate of enforcement (2018) 11 SCC 46**. Paras 21 and 22 of the aforesaid judgement read as under:-

“21. The consistent view taken by this Court is that 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 serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and *State of Maharashtra v. Vishwanath Maranna Shetty* [*State of Maharashtra v. Vishwanath Maranna Shetty*, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

50. The Supreme Court in its judgement in **Serious Fraud Investigation Office Vs. Nitin Johri and another, (2019) 9 SCC 165**, while considering the factors to be taken into account while considering the bail involving serious economic offences in para 24-27 has held as under:-

“24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in *Y.S. Jagan Mohan Reddy* [*Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35)

“34. 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 serious threat to the financial health of the country.

35. 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, reasonable 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.”

This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement* [*Gautam Kundu v. Directorate of Enforcement*, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] and *State of Bihar v. Amit Kumar* [*State of Bihar v. Amit Kumar*, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771] . Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

25. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent 1 both prior and subsequent to the filing of the investigation report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

26. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [*Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent 1 by observing that bail was justified on the “broad probabilities” of the case.

27. In our considered opinion, this vague observation demonstrates non-application of mind on the part of the Court even under Section 439 CrPC, even if we keep aside the question of satisfaction of the mandatory requirements under Section 212(6)(ii) of the Companies Act.”

51. The present case involves a scam of huge magnitude involving money of 42000 employees of the Three Electricity Corporations who had invested it with a hope that they would get good return on it at the time they would need money. Trust has been breached in criminal conspiracy by the accused which has resulted huge loss to the two Trusts resultantly to the employees. The accused is an influential person. The money trail is yet to be completely discovered and, therefore, at this stage, the accused-applicant cannot be released on bail.

52. The trial court in well considered order has rejected the bail application of the accused applicant. I have not been persuaded to take a different view than taken by the trial court. In view thereof, the bail application of the accused, Sudhanshu Dwivedi is *rejected*.

53. So far as bail application of the accused-applicant, Vikas Chawla is concerned, as per the prosecution version, name of the accused-applicant has come into light during the course of Investigation. Role of the the accused-applicant in the offence is that of receiving brokerage amount from DHFL directly into his bank account

which the accused failed to disclose/ account for as to how and why he has received the said amount into his account.

54. The accused has received huge brokerage amount of Rs.5.69 crores in his account from DHFL directly for which he has not accounted properly and satisfactorily. This is a documentary evidence. He has not been able to show anything for having any connection with DHFL or having any business relation with DHFL. The allegation against the accused-applicant is that he along with others have criminally conspired to commit the offence by receiving the said brokerage amount from the DHFL. Direct brokerage details are part of the case diary which prima facie reveals that the several times amounts were transmitted by the DHFL to several companies. The said brokerage amount is in crores. The accused company's name also find place at Serial No.4 and Serial No.14 which reveals that the brokerage amount has also been received by the company of the accused.

55. Whether the accused had knowledge of the above mentioned transactions with the DHFL or the Chartered Accountant had kept him in dark, is a matter of Investigation and evidence which would not be seen at this stage.

56. Considering the allegation and the evidence available on record and the fact that a deep rooted conspiracy involved in the present case, I do not find it to be appropriate to release the accused applicant on bail at this stage and thus, his bail application is also *rejected*.

Order Date:-07.04.2020

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