

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

25.09.2020

Bail application taken up for hearing pursuant to order No. Judl/Circular/F.43/South East/Saket/2020/57575796 dated 30.05.2020 passed by Ld. District & Sessions Judge, South East. Hearing is being conducted through video conferencing.

Present: Mr. N. Hariharan, Sr. Advocate with Mr. Shri Singh, Ms. Maneka Khanna and Mr. Abhishek, counsels for accused Shivinder Mohan Singh.
Mr. L.D.Singh, Addl.Public Prosecutor for state with IO Inspr. Sanjeev Dhodi.
Mr. Mohit Mathur, Senior Advocate with Ms. Surbhi Sharma, counsel for complainant.

1. Shivinder Mohan Singh who has been arrayed as accused no. 2 in the chargesheet filed by Economic Offence Wing of Delhi Police in case FIR No.50/19 has filed this application under Section 439 Cr.PC for grant of regular bail. This, in-fact, is second bail application. First bail application was dismissed in December 2019 before filing of charge sheet.

2. I have heard Mr. N. Hariharan, ld. Sr. Advocate for applicant/accused, Mr. L.D. Singh, ld. Addl. P.P. for State assisted by

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IO/Inspector Sanjeev Dhodi as well as Mr. Mohit Mathur, Id.Sr. Advocate for complainant at length and considered rival submissions. Written arguments were also filed by Id. counsel for applicant/accused as well as Id. counsel for complainant and same have been perused.

3. FIR No. 50/19 was registered by Economic Offence Wing of Delhi Police on 27.03.2019 on the complaint of Manpreet Singh Suri, Authorised Representative of Religare Finvest Limited (In short referred to as “RFL”) against Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godwani, Narender Ghosal and others under Section 409/420/120B IPC. The version of complainant emanating from FIR is summarized as under :

4. RFL is subsidiary of Religare Enterprises Ltd. (In short referred to as “REL”). Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godwani, Narender Ghosal and others who are named in the FIR were having absolute control in REL and its subsidiary RFL. Malvinder Mohan Singh and Shivinder Mohan Singh were classified as promoters of REL since June 2017. It was revealed during the inquiry conducted by new management of REL that there was willful default of unsecured loans by borrower entities either related to, controlled by or associated with promoters. These loans were extended in violation of government norms and in contravention of

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policies and guidelines of Reserved Bank of India (In short referred to as “RBI”). It was thus concluded that persons named in the FIR put RFL in poor financial condition by advancing loans to companies/entities having not financial standing. These entities willfully defaulted in repayment of loans and caused wrongful loss to RFL to the tune of Rs.2397 crores as principle amount and Rs.415 crores as interest amount. RBI from time to time noted and highlighted above said discrepancies. It is mentioned in the analysis of RBI that borrowers of RFL under Corporate Loan Book Portfolio (CLB) were related entities and there was inter-linkage between borrowers as funds were routed from one borrower to another. When RBI pointed out these CLB portfolios as risk areas exposure, around the time of quarterly reporting was managed, however, disbursement reinstated soon. Thus, the actual extent of exposure of CLB was concealed from RBI as well as general public shareholders. Persons named in the FIR were major shareholders in REL till June 2017 and remained in control of REL till February 2018. Malvinder Mohan Singh, Shivinder Mohan Singh and Sunil Godwani in collusion with Narender Ghosal abused their official position and caused RFL to enter into the transaction whereby public money was transferred to shell companies. New Board of management realized that complainant company i.e. RFL has been put to wrongful loss to the tune of Rs. 2397 crores and Malvinder Mohan Singh, Shivinder Mohan Singh

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and Sunil Godwani in collusion with each other swindled public money to the tune of Rs. 2397 crores.

5. After registration of FIR, investigation commenced and applicant/accused Shivinder Mohan Singh was arrested on 10.10.2019. After conclusion of investigation, charge sheet was filed on 06.01.2020. Applicant/accused alongwith other accused persons were charge sheeted under Section 409/420/120B IPC. Cognizance of offence was taken by learned Chief Metropolitan Magistrate on 15.01.2020.

6. During course of investigation, complainant company provided details of persons who approved loans pertaining to 19 entities. During investigation ROC record was collected and as per ROC record, accused Shivinder Mohan Singh was non-executive director and vice chairman of REL from 13.12.2004 to 06.04.2010 and from 29.07.2016 to 14.02.2018. It was also found during investigation that shell/dummy entities were used by Malvinder Mohan Singh and Shivinder Mohan Singh alongwith management of REL and RFL to divert money from REL to their holding company by debiting circuitous transaction to conceal fake transaction. It is mentioned in the chargesheet that despite being listed company, no government norms were adhered to with respect to disbursal of loans by RFL.

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Statements of employees clearly reflected that no process was defined for disbursal of loans to these entities. The only precaution which has been taken is that it was mentioned on the proposal “ corporate is known to promoter and based on their comfort we are proposing the deed”. It was further revealed during investigation that directors of shell/dummy companies are acquaintance of promoters i.e. Malvinder Mohan Singh, Shivinder Mohan Singh and Sunil Godwani. Investigation concluded that accused Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godwani, Kavi Arora, Anil Saxena and RHC Holding Pvt. Ltd. acted in connivance with each other being members of well planned conspiracy. These accused persons flouted all corporate norms and facilitated accused persons to divert the amount of public listed company to accused Malvinder Mohan Singh and Shivinder Mohan Singh's linked entities and thus caused wrongful loss to the complainant company.

7. Submissions made and contentions raised by Mr. N.Hariharan, Id. Senior Advocate for applicant/accused may be enumerated as under:-

8. FIR was registered on 27.03.2019 and applicant/accused was arrested on 10.10.2019. During this interregnum, applicant/accused joined the investigation on five occasions and it is

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nobody's case that during this period applicant/accused tried to tamper with evidence. Applicant/accused was not interrogated while being in judicial custody. An inference being drawn was that investigation qua applicant is complete. Applicant/accused has been granted bail in ECIR/05/DL ZO II/2005 by Hon'ble Delhi High Court and in SLP Hon'ble Supreme Court has held that there shall be status-quo as regards release of accused. Accused has been granted regular bail by this court in FIR No. 189/19. Entire evidence in documentary in nature and has been seized and thus there is no possibility of evidence being tampered with by the accused. Accused is entitled to reasonable opportunity to defend himself during the trial which he can do only if he is on bail. Keeping in accused in custody indefinitely will tantamount to violation of his fundamental rights guaranteed under Article 21 of Constitution of India. Transaction in question was purely mercantile transaction which went awry and hence no criminality is involved. RFL is an independent entity and can take its own decision and applicant/accused was not involved in decision making process of RFL. Kinds of loans which were extended by RFL in the present case are practice in mercantile world and there is nothing illegal in the transaction. RBI cautioned RFL but did not take any action against RFL to prevent it from extending loans which shows that no irregularity was committed by RFL. Applicant was never on the board of RFL and hence not responsible for loans granted by RFL. Every

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transaction had to go through various committees in which accused has no say. There is no concept of vicarious liability under Indian Penal Code. Promoter does not run the business. Business is run by the Board. Promoter is just an investor who invest seed money of the company. Entire chargesheet is reproduction of SEBI report which shows that no independent investigation was conducted in the matter and specific role of each accused has not been examined. Public money is not involved in the transaction. Mr. N.Hariharan gave an example of the bank where customers of the bank deposits money in the bank and bank advance loan to certain entities and that those entities default in repayment of loan and investors' interest is not affected. Mr. N.Hariharan during the course of arguments relied upon *Sanjay Chandra Vs. CBI 2012 (1) SCC 14*, particularly para 21, 39, 40, 41, & 42, *P.Chidambaram Vs. Directorate of Enforcement-2019 SCC Online SC 1549* and *P.Chidambaram Vs. CBI – 2019 SCC Online SC 1380*. It was further submitted that accused is not a flight risk as appropriate conditions may be imposed in the bail order to prevent him from leaving the country. Accused has satisfied the triple test as there is no allegation of tampering of evidence or influencing of witnesses. No further information is to be elicited from accused and protracted period of custody of accused is pre trial punishment. Since Indian Penal Code does not recognize vicarious liability, specific role has to be attributed to director to make him culpable. In none of the *FIR No. 50/19*

remand applications, apprehension was expressed that applicant/accused may influence witnesses. Applicant/accused has never been part of any credit related committee.

9. Mr. L.D.Singh, Id. Addl.PP for State argued on the basis of reply filed by the IO and submitted that huge financial fraud has been committed in this case and hence, accused is not entitled for bail.

10. Mr. Mohit Mathur, Id. Senior Advocate for complainant submitted that REL has 89 per cent share holding in RFL. RFL got the money from REL. REL got the money from public sector bank and therefore it is the public money which was swindled by accused persons. Raising a legal issue, Mr. Mohit Mathur submitted that Section 185 of Companies Act has been violated and in particular referred to the explanation to Section 185 of Companies Act and submitted that applicant need not be a director in RFL for being liable U/s. 185 of Companies Act and he can be a Director in Holding company for being liable U/s. 185 of Companies Act. Mr. Mohit Mathur further submitted that RFL did not get back its money and suffered losses because of the acts and omissions of applicant accused Shivinder Mohan Singh and other persons. Mr. Mohit Mathur also read the definition of promoter given in Section 2 (69) of Companies Act and submitted that it is the promoter who controls the company. Mr.

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Mohit Mathur referred to page 31A of the chargesheet to submit that further investigation is going on and enlarging the accused on bail at this stage may hamper further investigation. It was further submitted that Ranchem Pvt.Ltd. and RHC holding Pvt. Ltd. which were the ultimate beneficiary in this case are controlled by Shivinder Mohan Singh and Malvinder Mohan Singh. Mr.Mohit Mathur controverted the submission of Mr. N. Hariharan that it was a mercantile transaction going awry and submitted that borrowers never ask for any money. Mr. Mohit Mathur submitted that related party transaction committee had members from RFL and REL and therefore, accused cannot contend that he has no role in the transaction of RFL. Mr. Mohit Mathur referred to ED case bearing ECIR/05/DLZO-II/2019 where accused misused the facility of provision of home cooked food and to meet his family members as he got mobile phone smuggled through his driver who was bringing food and used that mobile phone to talk/chat with his known persons and associates in washroom, submission being that from the conduct of accused, it is clear that he will try to tamper with evidence and influencing witnesses if released on bail. Responding to the contention of Mr. N. Hariharan, Id. Sr. Advocate for accused, that entire charge sheet is reproduction of SEBI report, Mr. Mohit Mathur, Id. Sr. Advocate for complainant, submitted that SEBI Act which regulates affairs of the company when interest of share holders are effected could not have been ignored by IO. It was

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further submitted that applicant/accused is also director of two shell companies namely Fern Healthcare and Modland Company to whom loans were extended and thus, objective of accused was to be keep the money in the company of applicant/accused. Referring to the conduct of accused, Mr. Mohit Mathur submitted that applicant/accused flouted orders of Hon'ble Supreme Court and he was hauled up by Hon'ble Supreme Court in contempt petition and thus an inference can be drawn that applicant/accused can flout order of any court. Mr. Mohit Mathur also referred to the dismissal of bail application of co-accused Kavi Arora by this Court and Hon'ble High Court. Mr. Mohit Mathur further submitted that director of company works as trustee as money of company and when company is swindled by director, Section 409 IPC gets attracted. Mr. Mohit Mathur further submitted that further investigation is in progress and releasing the accused at this case on bail may hamper further investigation.

11. Mr. Mohit Mathur referred to the judgment given in Y.S. Jaganmohan Reddy Vs. CBI (Crl. A. No. 730/13), Sunil Dahiya Vs. State (2016) 4 DLT (Cri) 593. In this case it was held that grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a magnitude of money, effecting very large number of people would also have an adverse impact not only in the progress of case but also on the trust of criminal justice system. Mr. Mohit Mathur

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also relied upon CBI Vs. Ramendu Chottopadhyay (Crl. A. No. 1711/19). Mr. Mohit Mathur then relied upon Nitin Johri Vs. SFIO wherein judgment given by Hon'ble Supreme Court in Sanjay Chandra case was distinguished on the ground that charges in the said case carried maximum punishment for a term which may extend to seven years.

12. Mr. N. Hariharan, Id. Sr. Advocate for applicant/accused relied upon Sunil Bharti Mittal Vs. CBI (2015) 4 SCC 609 and Maqsood Sayed Vs. State of Gujarat & Ors. (2009) 5 SCC 668 wherein it was held that there can be no vicarious liability under Indian Penal Code. Mr. N. Hariharan also relied upon C. Udyan Dravid & Ors. Vs. State & Ors. (2007) 137 DLT 583 to contend that loans given by financial institutions do not involve public money. Mr. N. Hariharan then relied upon P. Chidambaram Vs. Enforcement Directorate (2019) SCC Online SC 1549 and Sanjay Chandra Vs. CBI to emphasize that bail cannot be denied on the sole ground of economic offence. Mr. N.Hariharan also relied upon Sharad Kumar Vs. CBI 2011 SCC Online Del 5056 and Ashok Kumar Vs. State 2016 SCC Online Del 1169 to contend that judgment given by Hon'ble Supreme Court in Sanjay Chandra (supra) applies to bail even when Section 409 IPC is invoked. Mr. N.Hariharan also relied upon P.Chidambaram Vs. CBI 2019 SCC Online SC 1380 wherein it was *FIR No. 50/19*

held that detailed examination on merit should be avoided in bail application. It was further held that bail cannot be denied on the mere allegation that witnesses will be influenced.

13. The fact that accused joined investigation on five occasions before his arrest will not *ipso facto* lead to the conclusion that he will not tamper with evidence. It has come during investigation that director of companies to which loans were extended by RFL are persons related to or associated with accused Shivinder Mohan Singh and Malvinder Mohan Singh. Therefore, these persons can be easily influenced by the accused. Instance of misuse of facility provided to accused in ED matter where he tried to smuggle a mobile phone during custody also speaks volume about his capacity to tamper with evidence and influence the witnesses. Thus accused cannot contend that he has satisfied the triple test.

14. Although, accused has been granted bail by Hon'ble High Court in ED matter but in SLP Hon'ble Supreme Court has held that ***“Until further orders, status-quo with respect to release from jail be maintained and impugned judgment not to be treated as precedent for any other case.”*** Therefore, accused cannot draw any support from the order dated 23.07.2020 passed by Hon'ble High Court granting bail to accused in ED matter.

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15. Accused was granted bail by this court in FIR No. 189/19 primarily on the ground that main accused in that case i.e. Laxmi Vilas Bank and its officials have not been arrested. In that case Ld. counsel for accused relied upon R.Vasudevan Vs. CBI (2010) 166 DLT 583 wherein it was held that if there is discriminatory investigation, accused is entitled to bail. Thus accused was granted bail in FIR No. 189/19 on the basis of specific facts of that case and the fact of the present case are clearly distinguishable. I find substance in the submission of Mr. Mohit Mathur that it was not a simple case of mercantile transaction going awry and borrowing entities never asked for money from RFL. Loans were extended by RFL to the entities only on the ground that these entities were known to the promoters. Thus, prima facie it is established that RFL was put to wrongful loss and wrongful gain was extended to RHC Holding Pvt. Ltd. which is controlled by Malvinder Mohan Singh and Shivinder Singh.

16. The fact that REL had 89% share holdings in RFL and that related party transaction committee had members from RHC Holding Pvt. Ltd. and REL was not disputed or controverted during the arguments. Thus, it does not lie in the mouth of accused to contend that RFL can take its own decisions and accused was nowhere involved in the transaction.

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17. The contention of Mr. N.Hariharan that the promoter of the company does not run the business of the company as the business is being run by board militates against the definition of promoter given in Section 2 (69) of Companies Act. As per the said definition promoter is the controller of the company. Definition of promoter given in Section 2 (69) of the Companies Act also demolishes the case of accused that he cannot be held vicariously liable for the act of the company. It should not be forgotten that applicant accused is being prosecuted for his acts done in the capacity of promoter of REL. Various acts attributed to the applicant regarding advancement of unsecured loans to different entities and unlawful dealing with the proceeds of the crime have come to the light during investigation. Therefore, accused cannot hide behind the principle of vicarious liability. Mr. N.Hariharan gave an example of bank submitting that customer puts his money in the bank and the bank advances loans to certain creditors and the creditor defaults in repayment of loans, customer is not thereby cheated or wronged. Even if one goes by the example given by Mr. N.Hariharan, if huge amount of loan extended by bank to various borrowers are not repaid back and same materially affects the financial condition of the bank, common interest of the depositor will suffer and depositor will be cheated. Therefore, this example is not appropriate so far as the accused is concerned.

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18. It is prima-facie established from the investigation conducted in this case that applicant /accused in conspiracy with other accused caused wrongful gain to RFL to the tune of Rs. 2397 crores. The money which was given by RFL to 14 companies ultimately reached RHC Holding Pvt. Ltd., a company controlled and owned by Shivinder Mohan Singh and Malvinder Mohan Singh. Thus, applicant enriched himself illegally at the cost of RFL. Applicant was exercising deep control over the affairs of RFL through REL. Various committees which approved the loan from RFL had members from RFL and REL. Thus applicant cannot distance himself from the affairs of RFL. It is the case involving huge economic fraud. Offences committed in such cases are to be treated as serious offences. While deciding bail application seriousness of the offence is a factor which weighs in the mind of the court and which has to be considered.

19. It has been held in catina of judgments that economic offences constitute a class apart and need to be visited with different approach in the matter of bail. Economic offences having deep rooted conspiracies and involving loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country. In the economic offences, it is the magnitude of the offence which will determine the severity of the offence. In *P.Chidambaram FIR No. 50/19*

Vs. Directorate of Enforcement (supra), it was held and observed as under:-

“However, while considering the same the gravity of offence is an aspect which is required to be kept in view by the court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of 'grave offence' and in such circumstance while considering the application for bail in such matters, the court will have to deal with the same, being sensitive to the nature of allegation made against the accused.”

It was further held in this case that, *“there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case on its own merits. Discretion of the court has to be exercised judiciously and not in arbitrary manner.”*

20. It was also held in this case that underlying conclusion is that irrespective of nature and gravity of charge, precedent of another case alone will be the basis of either grant or refusal of bail though it

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may have been bearing on the principle. But, ultimately consideration will have to be on the case to case basis on the facts involved therein and securing presence of the accused to stand trial.

21. This court has also dismissed the bail application of co-accused Kavi Arora in the same FIR vide order dated 06.05.2020. The role attributed to the accused is on higher pedestal as compared to the role of co-accused Kavi Arora. Therefore, accused is not entitled to bail.

22. During investigation statements of directors of the companies to which loans were extended by RFL were recorded as they were found to be associated or related with applicant/accused. Thus, possibility of these witnesses being influenced by accused cannot be ruled out. It was observed by this court while deciding the application of accused Shivinder Mohan Singh in ED matter bearing ECIR /05/DL ZO-II /2019 vide order dated 17.06.2020 the fact that accused managed to smuggle a phone during his ED custody speaks volume about his conduct and intention. It was further observed that accused can indulge in such nefarious activities while being in custody, it will be reasonable to conclude that accused if released on bail will try to tamper with evidence and influence the witnesses. These observations are equally to the present bail application.

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23. Considering the seriousness and gravity of allegations, particularly the magnitude of amount involved besides the possibility of accused tampering with evidence and influencing witnesses, it is concluded that accused is not entitled to bail. Hence, application filed by applicant/accused Shivinder Mohan Singh U/s. 439 CrPC for grant of bail is dismissed.

It is clarified that nothing stated in this order will tantamount to the merits of this case. Chargesheet be sent back alongwith copy of this order.

Copy of this order be uploaded on the official website forthwith. Copy of this order be sent to Ld. counsels for both parties through email.

The application stands disposed of.

(Sandeep Yadav)

ASJ-02/South East District
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