

(2019) 12 DEL CK 0286

In the Delhi High Court

Case No : Bail Application No. 2154 Of 2019, Criminal Miscellaneous (Bail) No. 1511 Of 2019

Gaurav Kumar

APPELLANT

Vs

Serious Fraud Investigation Office

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 418, 477A
Companies Act, 2013 — Section 7(5), 7(6), 34, 36, 38(1), 46(5), 56(7), 66(10), 75, 118, 129, 140(5), 170, 184, 188, 189, 206(4), 212(6), 212(6)(ii), 212(7), 212(12), 212(14), 212(15), 213, 217(4), 229, 251(1), 339(3), 439, 441, 447, 448
Companies Act, 1956 — Section 6, 7, 8, 211, 297, 299, 301, 628, 629A
Code Of Criminal Procedure, 1973 — Section 193, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 37

Citation : (2020) 266 DLT 505

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Vikas Pahwa, Awnish Kumar, Ruchika Wadhawan, Anurag Ahluwalia, Abhigyan Siddhabnt

Final Decision : Disposed Of

Judgement

Anu Malhotra, J

1. The applicant Gaurav Kumar seeks the grant of bail in CC No.720/2017 pending before the learned Special Judge (Companies Act) Dwarka District Courts, Delhi submitting to the effect that he has been vide the order dated 24.5.2019 of the Special Judge (Companies Act) Dwarka District Courts (the applicant arrayed as accused No.88) summoned for the alleged commission of offences punishable under Sections 477A read with Section 120B Indian Penal Code, 1860 and under 628 of the Companies Act 1956 and under Section 448 of the Companies Act, 2013.

2. The facts as put forth through the complaint case No.720/2017 filed by the Serious Fraud Investigation Office under Section 439 read with Section 212(15)

of the Companies Act, 2013 and Section 193 of the Cr.P.C., 1973 bring forth that pursuant to WP(C) No.818/2015 Ranvir Singh vs. UOI filed in the Hon'ble Supreme Court of India pursuant to the order dated 14.12.2015 wherein it was alleged that Mohd. Iqbal, a resident of Saharanpur had :

? Amassed disproportionate assets;

? Incorporated a number of sham companies under the Companies Act, 1956, many of which have dummy directors or fictitious shareholders.

? Acquired lands & buildings in the names of these companies, using laundered money earned from illegal mining through contracts taken in the names of Companies/partnership firms owned by his family members, investigations were made into allegations against the accused No.1 Mohd. Iqbal and others and investigation was permitted to be made and thereafter the Ministry of Corporate Affairs (MCA) Government of India vide the letter dated 8.1.2016 ordered investigation by SFIO into the affairs of the six companies owned by the accused No.1 Mohd. Iqbal and subsequently the Hon'ble Supreme Court ordered extended investigation vide the order dated 8.2.2016 qua other companies accused including accused No.1 as well and vide order dated 8.1.2016 and vide letter dated 23-24/2.2016 the Ministry of Corporate Affairs directed the SFIO to investigate into the affairs of the additional 104 companies and one LLP (Limited Liability Partnership) and on completion of the investigation the SFIO, a report dated 6.7.2017 under Section 212(12) of the Companies Act, 2013 to the Central Government vide letter dated 11.8.2017 issued necessary instructions to initiate prosecution against the accused persons. The accused No.1 to 9 were stated to be the working mind and will of the group consisting of 110 companies, one LLP, 24 partnership firms and one charitable trust. The accused No.10 to 27 were stated to be key associates and confidants of the group. The accused No.28 to 78 were stated to have held position of Directors in the said entities and the accused No.79 to 92 include statutory auditors, chartered accountants, company secretaries, self acknowledged accommodation entry operators and other professionals. Accused Nos.93 to 176 were the companies in question.

3. It has been submitted on behalf of the SFIO that during investigation it was found that in order to launder the unaccounted money generated through illegal mining, the group head set up a huge conglomerate by incorporation of large number of companies and entities, acquiring number of shell companies and formation of a family trust and it has been revealed that the unaccounted money was brought into the financial system by way of placement of funds into the banking channel, layering of such funds to multiple entities and then integrating the same into the group entities and finally utilizing the accumulated funds for acquisition of assets. The complete investigation revealed that Rs.610.30 crores was routed through 84 entities under investigation mostly non-functional and non-income generated shell companies, for acquisition of assets i.e. sugar mills, land, FDRs, mines etc. The entities are stated to have been divided into seven Clusters based on common attributes of functionality as mentioned in the order

of summoning dated 24.1.2019. As per the investigation conducted it is stated to have been revealed that the entire network of entities under investigation (EUIs) was created under the single objective of creating/acquiring legal assets out of the wealth amassed through illegal sand mining activities and that in order to achieve this goal Mohd. Iqbal and his network of companies/family members/key associates (hereinafter referred to as the Group) created a complex grid of EUIs to camouflage the source of funds. It has been alleged, however, through the complaint that the fictitious assets acquired through accommodation entry operators were liquidated to create real assets and a set of dummy/ghost shareholders and directors were used as a front to facilitate the liquidation and acquisition of assets. The said Group is alleged to have indulged in the large scale falsification of the books of accounts and as per the complaint pliable auditors and accounting professionals including the present applicant have totally disregarded the fundamental principles of accounting to please the kingpin of the Group and that many illegal acts were committed by the Group including, inter alia, stockpiling of unaccounted money and large-scale money laundering for legitimizing the proceeds of crime. The SFIO has further submitted that on the investigation report being submitted before the Hon'ble Supreme Court vide order dated 31.07.2017, the MCA was directed to take into consideration the investigation report of the SFIO to take a conscious decision whether or not to sanction prosecution and the MCA whilst exercising power under Section 212(14) of the Companies Act, 2013 issued instructions and sanction to initiate prosecution for the violations and the offences committed under the various provisions of the Companies Act, 1956 and the Companies Act, 2013 as well as under the Indian Penal Code, 1860 against 176 accused persons including the present petitioner and that the order directing the initiation of prosecution was placed before the Hon'ble Supreme Court, whereafter it was observed by the Hon'ble Supreme Court that there was nothing that survived in the matter and the petition was disposed of and as a consequence, a criminal complaint was filed before the Trial Court on 18.09.2017.

4. The role attributed and alleged to the applicant arrayed as accused No.88, as per the investigation conducted is that as a part of the larger conspiracy, paper companies as detailed in Cluster III were incorporated which had no substantial existence through functional office, staff, records etc. to run the business proposed in the Memorandum of Association/Article of Association and that the statutory records of these companies were fabricated as the said companies were shell companies and did not carry out any business and no Board Meetings were ever held and no resolutions were ever made. It is alleged further that the copy of resolutions filed with returns were prepared independently and were not the certified abstracts of the minutes of meetings and were false and bogus and had no relevance with actual activities. The SFIO contends that the Annual Accounts were not adopted in the Annual General Meeting as no AGM was held and that through the investigation conducted it has been submitted that the appointment of directors, auditors, authorized persons etc. were void without board meetings

and resolutions passed in such meetings and that in the absence of legal authorization, all the acts done by the directors and other authorized persons were null and void and that no resolution for allotment of shares, either on face value or on premium was passed and all such allotments were void. The SFIO has further contended that no register of members or register of shares were prepared and share transfer deeds were not actually executed and that the books of accounts were not prepared by the company and that such financial statements do not reflect a true and fair view of the companies. The statutory auditors were also stated to have not audited the financial affairs of the companies as per prescribed manner nor as per the guidelines of ICAI.

5. As per the SFIO the flow of funds in the said companies reflected the following attributes:

? No company did substantial business except Safety Plus Power Limited.

? The companies allotted shares on high share premium without any appropriate underlying worth of the company. The investigation revealed such inflow of funds as accommodation entries.

? The inflow of funds in the companies of this cluster was basically from Share Premium & Share Application Money (51%), Loans from other EUI, related parties or unrelated parties (37 %).

? There is no operational inflow of fund through the business activities of the companies, except in the case of Safety Plus Power Limited and Enchant Infrastructure Private Limited.

? The profit earned by the companies was either "from agriculture or from interest on the FDRs, which was not the primary objective of the companies.

? The control over the companies of the Group in this cluster was evident from the shareholding in the companies. Names of certain persons were fraudulently used as directors/shareholders of the companies without their consent.

The SFIO further contended that the companies were incorporated/ acquired with the prime motive to infuse the unaccounted money of the group in the mainstream through accommodation entries and later utilize it to purchase fixed assets; to route it in the private trust controlled by the family or to other associates and legalize the laundered money as bank FDRs.

6. It has thus been submitted on behalf of the SFIO that in the absence of the statutory records, registers, documents and books of accounts, these companies were only paper companies having no substantial existence through functional office, staff, records etc. to run the business proposed in the Memorandum of Association / Article of Association and even the CA Jitender Kumar Sharma/co-accused tried to outsource the work of preparing backdated statutory records and registers of the companies under investigation with the help of his business associates. The SFIO has further submitted that investigation revealed that most

of the companies who purchased shares of the companies under this Cluster (III) were companies controlled by Vivek Kumar Jain, self-acknowledged entry operator and controller of several shell companies whose statement and role had been discussed in Cluster I. The SFIO further alleged that a total of Rs.2879.60 Lakhs was infused in the companies through accommodation entries in the guise of share capital by Vivek Kumar Jain and all these shares were transferred to the group companies within a year at face value, which it was submitted was evident from the corresponding returns of the companies.

7. It has further been submitted by the SFIO that a statement of the Company Secretary Gaurav Kumar i.e. the applicant herein was recorded during examination on oath u/s 217 (4) of the Companies Act, 2013 on 08.02.2017, who stated that since his partner CS Shruti Kumari had earlier worked with CS Vijay Kumar Sharma in VS Associates, hence his firm got the assignment of preparing statutory registers and records for the period FY 2008-09 to 2014-15 of some 58 companies under investigation during February-March 2016 from CS Vijay Kumar Sharma/co-accused and that the required details and information to prepare such records and registers were taken from the MCA website and no original documents were provided to them and as they could not prepare the registers for all 58 companies, therefore some records were returned incomplete. It is alleged by the SFIO that the assignments were handed in piecemeal to V S Associates till June 2016. However, V S Associates again requested CS Shruti Kumari in the first week of February 2017 to provide softcopies of the same work which was sent to them on 06.02.2017 through email.

8. The SFIO further states that during the course of investigation, as per documents collected from the office of the co-accused, the CS Jitender Kumar Sharma and other materials clearly indicated that the statutory records like minute books were prepared much after occurrence of the events in order to complete the legal formalities and were not the documents prepared during the course of the actual functioning of the companies.

9. It was further submitted by the SFIO that further investigation revealed that these records/ registers were prepared by CS Vijay Kumar Sharma, the co-accused and his associates. It has been submitted further by the SFIO that during examination on oath u/s 217 (4) of the Companies Act, 2013 on 17.02.2017, Vijay Kumar Sharma, Company Secretary, having proprietary firm, VS Associates, A-52, Lower Ground Floor, Nirman Vihar, New Delhi - 110092 submitted that these records were prepared by VS Associates at the relevant time as per the advice of CA Jitender Kumar Sharma/ the co-accused.

10. As per the investigation conducted, the SFIO has submitted that the examination revealed that the co-accused CS Vijay Kumar Sharma was professionally associated with the co-accused CA Jitender Kumar Sharma and he had prepared such records / registers as per the advice of CA Jitender Kumar Sharma and that during February - March 2016, Vijay Kumar Sharma assigned CS Gaurav Kumar and CS Shriti Kumari to prepare records / registers of 58

companies under investigation for the period from FY 2008-09 to FY 2014-15. It was admitted that no original documents were provided and records/registers were prepared on the basis of details and information available on the MCA website and that after preparation the documents in piecemeal were handed over to CS Vijay Kumar Sharma of VS Associates till June, 2016.

11. The SFIO further submitted to the effect that the investigation of the 111 EUI and associated entities reveals a grand design by Mohd Iqbal, his family members, close associates of the family and professionals to launder the illicit gains from the rampant illegal sand mining undertaken by the group through a series of contracts awarded to the entities controlled by the conglomerate.

12. It was further submitted on behalf of the SFIO that the facts which have come forth during the investigation show that the entire network was created with a single objective of creating/acquiring legal assets out of the wealth amassed through illicit sand- mining activities and that to achieve this goal, the Group created a complex grid of business entities to camouflage the source of funds and fictitious assets acquired through accommodation entry operators were liquidated to create real assets. It was further submitted by the SFIO that a set of dummy / ghost shareholders and directors were used as a front to facilitate the liquidation and acquisition of assets and that the group had indulged in large scale falsification of the books of accounts and that the pliable auditors and accounting professionals had totally disregarded the fundamental principles of accounting to please the king pin of the group. It was further submitted by the SFIO that the Group had scant regard and fear of the laws of the land and that investigation reveal that among the many illegal acts committed by the group included a stockpiling of unaccounted money and large-scale money laundering for legitimizing the proceeds of crime.

13. The order dated 24.1.2019 of the learned Special Judge (Companies Act), District Courts, Dwarka Delhi vide which the applicant has been summoned vide para 4.5. thereof observes to the effect that:

"A-86, Company Secretary, Shri Vijay Kumar Sharma entered into an oral agreement with A-79 Jitender Kumar Sharma for completion of statutory registers of 58 entities for back date period and he further deputed his junior A-89 Shriti Kumari and her friend A-88 to complete the registers.", the applicant being A-88.

14. The applicant has submitted that he is in judicial custody since 24.5.2019 with the SFIO and that the SFIO has filed the investigation report dated 6.7.2019 and that cognizance was taken of the investigation report vide order dated 24.1.2019 by the learned Special Judge Special Judge (Companies Act). The applicant submits that even as per the order of summoning dated 24.1.2019, Section 448 of the Act is applicable only after the date of enactment of the said Section i.e. 12.9.2013. The applicant submits that his first bail application dated 24.5.2019 was erroneously rejected by the learned Special Judge solely on the

ground of application of Section 447 read with Section 212(6) of the Act and that the learned Special Judge had erroneously applied the rigours of Section 447 even though the applicant had not been summoned under Section 447 of the Act.

15. The applicant has submitted that the learned trial Court had failed to appreciate that the allegations made out against the applicant were of mere preparation of statutory records of past years and it was further contended that even if all allegations of the SFIO were assumed to be true, the learned trial Court had failed to appreciate that merely because the statutory records pertained to the past, the same did not make it an offence and rather the Act itself contemplated of the preparation of such records for compoundment of offences committed by the companies for non-maintaining of statutory records and registers.

16. The applicant had submitted that he is a young Company Secretary being prosecuted for commission of an offence under Section 448 of the Companies Act, 2013 r/with Section 628 of the Companies Act, 1956 and Section 477A read with Section 120B of the Indian Penal Code, 1860 for allegedly preparing some unsigned and unexecuted statutory records allegedly with Kumari Shriti, A-89 and that they purportedly executed this work on the instructions of Company Secretary V.K. Sharma A-86, and A-86 was then approached by Jitender Kumar Sharma, a Chartered Accountant A-79 for execution of this work and there drafts documents were allegedly recovered from the office premises of the Chartered Accountant Jitender Kumar Sharma on 26.1.2017. The applicant submitted that the SFIO had got the permission to conduct investigation in the matter on 8.1.2016 and that the documents allegedly prepared during the period February to March, 2016 were for the period 2008-2009 till the year 2014-15 The applicant submits that he has absolutely no role to play with the principal accused persons and that his role comes into play only after the commission of the alleged crime.

17. The applicant has further submitted that it was alleged in the investigation report dated 6.6.2017 that the applicant fabricated the statutory records of the EUI as per directions of CS Vijay Kumar Sharma (A86) and thus has been charged u/s 628 Companies Act, 1956, u/s 448, Companies Act, 2013 and Section 477A r/w Section 120B IPC, 1860.

18. The Applicant submits that he is alleged to have also given his statement purportedly u/s 217 (4) of the Companies Act, 2013 wherein he has allegedly stated that he got the assignment of preparing the statutory registers and records for the year 2008-2009 to 2014-15 during the period of February-March 2016 and states that he did this only to gain experience and not for any monetary gain and he was never paid for this work and that he only prepared this on the basis of the documents downloaded from the Website of the Ministry Corporate Affairs i.e MCA. He also stated that he does not know anyone from these companies. The Applicant further submits that though he is named qua Charge No. 6 for falsifying of statutory registers, the applicant submits that none

of the charges mentioned in the complaint, investigation report or summoning order are substantiated by any material documents nor are they made out against the applicant.

19. The applicant had submitted further that the offence punishable under Section 448 Companies Act 2013 is not made out against the Applicant since the Applicant has never made any false statement which has been filed by him or anybody else with any authority and submits that it is pertinent to note that the documents recovered from the office of Accused No. 79 are unsigned draft documents. The applicant submits that the documents had not been filed before any statutory authorities and the same were only draft documents prepared from the Statutory Records available and downloaded from the site of MCA. It is, inter alia, submitted by the applicant that he has never made any false statement with regard to any document. Inter alia the applicant submits that for invocation of Section 448 of the Companies Act, 2013 it is imperative that a false document is prepared and that since the applicant has never filed any false statement Section 448 of the Companies Act is not applicable to him. It is submitted by the applicant that unsigned documents have no validity in law and the same cannot be relied upon.

20. The applicant has further submitted that without prejudice to the rights and contentions and whilst admitting for the sake of arguments that he had signed and prepared the back dated statutory records, sought to contend that the preparation of the statutory registers for past events is not an offence and that rather the preparation of the statutory registers for the past events is the sine qua non for the compounding of offences under Section 441 Companies Act, 2013.

21. The applicant has further contended that The Companies Act 2013 requires a company to maintain such registers under various provisions for the Act, namely Sections 85, 118, 170 and 189 and failure to comply with which is an offence, compoundable in terms of Section 441 of the Act, the pre requisite of which is to make good the default.

22. The applicant has further contended that the assignment for the same was received by the Applicant in Feb-March 2016 and thus the Applicant cannot be held liable for statutory records filed in the year 2008-09 to 2014-2015 available on the MCA website and thus seeks to contend that since the role of the Applicant only commences from February-March 2016, the provisions of Section 628 Companies Act, 1956 cannot be applied to the Applicant.

23. The applicant has further submitted that the offence under Section 477A IPC is not made out against the Applicant since the applicant has not falsified any document and that as stated through the investigation report, the documents were seized from the possession of Jitender Kumar Sharma (Accused No. 79) and all these documents were unsigned and unfiled and admittedly do not bear the signature of the applicant or any other person and none of them have been

seized from the possession of the applicant and no material has been placed on record to substantiate the said offence. The applicant has further submitted that the offence under Section 120B, IPC is also not made out against the him since his role only began in February or March 2016, only pursuant to the orders passed by the Government for initiating the investigation by the SFIO which was much after the period of the alleged conspiracy which is the subject matter of the present complaint. The applicant has also submitted that he is admittedly not related to any of the accused co-conspirators and had only been in touch with Accused No 86 and Accused No 89 who have both been granted bail on 15.07.2019 by the learned trial Court. Reliance in relation thereto has been placed on the applicant on the verdicts in

"Suraj Parkash Vaid versus Union of India And Ors 12(1976) DLT 82

State of NCT of Delhi Vs. Raj Kumar Mishra 2015 SCC OnLine Del 9994

Garg Roadlines V. Commissioner 2017 SCC OnLine Del 7890 : (2017) 100 VST 275

Khialdas and Sons Vs. Commissioner of Income Tax 1997 (225) ITR 960

Commissioner of Income Tax Vs. Aparna Agency Pvt. Ltd 2004 (267) ITR 50

Commissioner of Income Tax Vs. Gian Gupta 2014 SCC OnLine Del 2937 : (2014) 369 ITR 428"

24. It has been submitted on behalf the applicant in as much as none of the statements/returns alleged to be false had been signed, endorsed or filed by the applicant coupled with the factum that no material has been placed on record to implicate the applicant he is thus entitled to be released on bail. The applicant has further submitted that all offences with which he has been charged are bailable in nature and thus he deserves bail.

25. The applicant has further submitted that he had filed a bail application earlier dated 24.5.2019 before the learned trial Court which was rejected solely on the ground of application of Section 447 of the Companies Act, 2013 and that the applicant has been in custody since then. The applicant has submitted further that the investigation report, the sanctioning order along with the complaint and the summoning order have charged the applicant under Section 477A of the Companies Act and 120B Indian Penal Code, 1860 and under Section 6 to 8 of the Companies Act, 1956 and under Section 448 of the Companies Act, 2013 and that the applicant has never been charged of the offence punishable under Section 447 of the Companies Act, 2013 and thus the rigors of Section 212(6) of the Companies Act, 2013 cannot apply to the facts and circumstances of the instant case. Inter alia the applicant submits that Section 212(6) of the Companies Act 2013 was amended and the words "the offences covered under sub sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of

section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447" were replaced with "offence covered under section 447".

26. It has thus been submitted by the applicant that the amended Section 212(6) of the Companies Act, 2013 along with the Statement of Objects and Reasons to Section 212(6) makes it amply clear that the rigour of the said Section would only be applicable if a person has been charged under Section 447 Companies Act, 2013, which is not the case in the present matter.

27. Inter alia, the applicant submitted that even if it is assumed that the rigours of Section 212(6) Companies Act apply even to Section 448 of the Companies Act, the test is satisfied as there is no reasonable ground to believe that the applicant is guilty of the commission of the offence of section 448, as he has not made any false statement, the only allegation against him being that he made some draft documents on the basis of documents already filed with the MCA.

28. The applicant has further sought grant of bail on the principles of parity submitting to the effect that the trial Court has granted bail vide order dated 15.7.2019 to the accused No.86 V. K. Sharma and to Shriti Kumari Accused No.89 were similarly placed as the applicant.

29. The applicant further submits that even accused No.79 i.e. Jitender Kumar Sharma from whose possession the unsigned documents had been recovered had also received interim protection from the Hon'ble Allahabad High Court vide order dated 01.08.2019 and further on 11.09.2019. Inter alia the applicant submitted that regular bail has been granted to Ashish Aggarwal (Accused No. 91) vide order dated 31.05.2019 who was summoned for offences punishable under Sections 418, 477A, 120B IPC, u/s 211, 297, 299, 301, 628, 629A of 156 Act, and u/s 129, 184, 188, 189, 447, 448 Companies Act, 2013, observing the doubtful application of Section 447 of the Companies Act submitting further that the SFIO has conceded that the only non bailable offence in the Companies Act is under Section 447 Companies Act 2013 only and that the bail to Accused No. 77 and Accused No. 90 vide common order dated 31.05.2019 has been granted whilst placing reliance on another order dated 30.05.2019 wherein bail was granted to Accused Nos. 57, 65 and 66. The applicant further states that Accused No. 41 had been granted bail on 05.07.2019 and anticipatory bail has been granted to Accused Nos. 70, 71 and 72 on 11.07.2019 and that this Court had further granted anticipatory bail to Accused No. 37, 58, 80 and 81 on 08.08.2019. A chart containing the names of all accused who are stated to be similarly placed as the Applicant and have been granted bail as given by the applicant is as under:

S. No.

Name of the Accused

Status

1.

Jitender Kumar Sharma (Accused No. 79)

Interim protection granted on 1.08.2019 and 11.09.2019 by Hon'ble Allahabad High Court

2.

Pawan Kumar Aggarwal (Accused No. 81)

Anticipatory Bail granted on 8.08.2019 by the High Court of Delhi.

3.

Viresh Verma (Accused No. 84)

Interim protection granted on 1.08.2019 and 1.09.2019 by the Allahabad High Court

4.

4. Ashwini Aggarwal (Accused No. 85)

Interim protection granted on 01.08.2019 and 11.09.2019 by the Allahabad High Court

5.

5. Vijay Kumar Sharma (Accused No. 86)

Regular Bail granted on 15.07.2019 by the Trial Court

6.

Shriti Kumari (Accused No. 89)

Regular Bail granted on 15.07.2019 by the Trial Court

7.

Brij Bhushan Sharma (Accused No. 90)

Anticipatory Bail granted on 31.05.2019 by the High Court of Delhi.

8.

Ashish Aggarwal (Accused No. 91)

Regular Bail granted on 31.05.2019 by the High Court of Delhi.

30. Inter alia, the applicant submits that the charge sheet i.e. the investigation report in the present matter has been filed and the investigation is complete and nothing more qua the applicant is left to be investigated and the investigation is wholly documentary in nature and is already on record and thus there is no risk of the same being tampered with by the applicant. Inter alia, the applicant

submits that the investigating agency has not relied on any private witness and thus there is no scope of the applicant influencing any witness in as much as the said personnel are officers of the SFIO.

31. Qua the contention that the unsigned documents do not fall within the ambit of the culpability under Section 448 or 447 of the Companies Act, 2013, on behalf of the SFIO it was sought to be contended that that the applicant was one of the perpetrators of the larger conspiracy of the Group and committed various fraudulent acts caused loss to the exchequer and relied upon the observations in the case of Rohit Tandon v. Directorate of Enforcement reported as (2018) 11 SCC 46 to the effect:

"21. The consistent view taken by this Hon'ble 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 as a whole and thereby posing serious threat to the financial health of the country...."

32. It is also contended on behalf of the SFIO that a bare perusal of the aforesaid provisions would indicate that the amendment in Section 212(6) in 2015, merely substituted the words "the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447" for the words "offence covered under Section 447", meaning thereby that instead of an elaborate list of sections which provide for punishment under Section 447, the phrase "offence covered under Section 447" has been used. It is further submitted that had the Legislature intended to cover only section 447 under Section 212(6), it would have used the words "offence under Section 447" instead of "offence covered under Section 447".

33. It has further been submitted on behalf of the respondent that this is further buttressed by the fact that Section 212 (6) of the Companies Act, 2013 uses the words "no person accused of any offence under those sections", clearly meaning thereby that the conditions for bail enumerated under Section 212 covers more than one section as plural is used. It is further submitted that many offences under the Companies Act provide for punishment under section 447 of the Companies Act, 2013. It is further submitted that thus, the sweep and ambit of Section 212 (6) is wide enough to cover more than one offence, i.e., offences under the Companies Act, 2013 which provide for punishment under Section 447 (as per comprehensive list attached). It is further submitted that any interpretation to the contrary would render the same redundant and defeat the very purpose of the Act.

34. The respondent SFIO has further submitted that it is settled law that when

Courts are faced with the task of interpretation of statutes, in the first instance, the grammatical meaning of the word is to be adhered to, as held by the Hon'ble Supreme Court in PUCL versus Union of India, reported as (2005) 5 SCC 363. It is further submitted that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. It is further submitted that in the instant case, once the legislature clearly uses the words 'offence covered, under section 447' and 'no person accused of an offence under those sections', it is amply clear that the plain reading of the statute suggests that the intention of the legislature is to ensure that more than one offence is covered under the ambit of Section 212(6).

35. The SFIO further submits that as laid down by the Hon'ble Supreme Court in "Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation" 2013 (7) SCC 439, economic offences constituted a class apart and need to be visited with a different approach in the matter of bail and that the economic offences have deep rooted conspiracies and involved huge loss of public funds and thus, needed 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, in as much as, they tend to seriously prejudice/ destroy the economy of a country and thus, caused immense irreversible damage to the larger public interest.

36. The respondent SFIO has further submitted that the case of the Applicant squarely falls under the , provisions of Section 212 (6) (ii) of the Companies Act, 2013 and that Section 212 (6) of the Companies Act, 2013, starts with a non-obstante clause and the provisions stipulated under Section 212 (6) (ii) of the Companies Act, 2013, are mandatory in nature and as such in the facts and circumstances pertaining to the present case, the applicant is not entitled to be released on bail.

37. Inter alia the SFIO submitted further that in the absence of the statutory records, registers, documents and books of accounts, these companies were only paper companies having no substantial existence through functional office, staff, records etc. to run the business proposed in the Memorandum of Association / Article of Association and that even the CA Jitender Kumar Sharma/co-accused (A-79) tried to outsource the work of preparing backdated statutory records and registers of the companies under investigation with the help of his less associates. It was further submitted by the SFIO that investigation revealed that most of the companies who purchased shares of the companies under this Cluster III were companies controlled by Vivek Kumar Jain, self-acknowledged entry operator and controller of several shell companies whose statement and role had been discussed in cluster I and that a total of Rs.2879.60 Lakhs was infused in the companies through accommodation entries in the guise of share capital by Vivek Kumar Jain and that all these shares were transferred to the group companies within a year at face value, which was evident from the

corresponding returns of the companies.

38. The SFIO has thus submitted that Section 212(6) and Section 212(7) of the Companies Act, 2013 read to the effect:-

"212. Investigation into affairs of Company by Serious Fraud Investigation Office.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by-

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.",

and that in as much as the case of the applicant falls under the provisions of Section 212(6)(ii) of the Companies Act, 2013 and as Section 212(6) of the Companies Act, 2013 starts with a non-obstante clause and the provisions stipulated under Section 212(6)(ii) of the Companies Act, 2013 are mandatory in nature, in the facts and circumstances of the instant case, the applicant is not entitled to be released on bail.

39. The SFIO places reliance also on the verdict of the Hon'ble Supreme Court in "Satpal Singh Vs. The State Of Punjab" AIR 2018 SC 2011 whereby on a prayer seeking grant of anticipatory bail under the NDPS Act, 1985 it was held that the twin conditions of bail under the NDPS Act, 1985 are applicable in a case of anticipatory bail also and it was submitted thus, on behalf of the SFIO that the provisions of Section 37 of the NDPS Act, 1985 being akin to Section 212(6) of the Companies Act, 2013, the limitations prescribed under Section 212(6) r/w Section 212(7) of the Companies Act, 2013 are applicable in the instant case.

40. It is thus, submitted on behalf of the SFIO that the orders under Section 439

of the Cr.P.C., 1973 as sought by the petitioner herein, cannot be granted without reference to the provisions of Section 212(6) and 212(7) of the Companies Act, 2013 without entering a finding on the required level of satisfaction of the Court that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged to have been committed by him and that the petitioner is not likely to commit any offence while on bail.

41. Reliance was also placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in "State of Gujarat V. Mohanlal Jitmalji Porwal" (1987) 2 SCC 364 wherein, it was observed vide para 5 to the effect:-

".....5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

42. On a consideration of the submissions that have been made on behalf of either side, in terms of Section 212 (6) of the Companies Act, 2013, the offence prescribed under Section 448 of the Companies Act, 2013 which relates to making of a statement which is false in any material particulars knowing it to be false or which omits any material fact, knowing it to be material in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purpose of any of the provisions of this Act or the rules made thereunder makes a person culpable under Section 447 of the Companies Act, 2013.

43. Section 448 of the Companies Act, 2013 reads to the effect:

"448. Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,-

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 447."

44. Section 447 of the Companies Act, 2013 reads to the effect:

"447. Punishment for Fraud.- Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud 1[involving an amount of at

least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.-For the purposes of this section-

(i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled."

45. It is apparent thus that in terms of the ambit of Explanation-(i) to Section 447 of the Companies Act, 2013 which defines 'fraud' for the purpose of the said Section, a false statement in relation to in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement which is false in any material particulars, knowing it to be false or which omits any material fact, knowing it to be material, would fall within the ambit of Sections 448 and 447 of the Companies Act, 2013 as sought to be contended on behalf of the petitioner.

46. However, in the facts and circumstances of the instant case, the reply affidavit filed on behalf of the SFIO through its Assistant Director and the written submissions submitted by the SFIO bring forth that the petitioner was given an assignment of preparing statutory registers and records for the financial year 2008-09 to 2014-15 of some 58 companies during February-March, 2016 and the required details and information to prepare such records and registers were taken from the MCA website and no original documents were provided to V S Associates with whom the partner of the petitioner Shriti Kumari had worked and as some of the registers could not be completed for all the 58 companies, some records were returned incomplete and the assignment was returned in piecemeal to VS Associates till June, 2016 and VS Associates had again requested Shriti Kumari, the co-accused in the first week of January, 2017 to provide soft copies of the same, which were sent to them on 16.02.2017 through email. The relevant documents attributed against the applicant were stated to have been

collected from the office of Jitender Kumar, Chartered Accountant, the co-accused (A-79), which the SFIO submitted were statutory records like minutes book prepared after the occurrence of the event in order to complete the legal formalities but were not the documents prepared during the course of actual functioning of the company and that the minutes books and other documents were not required to be signed by the petitioner and the same were not signed.

47. In as much as it has been submitted on behalf of the petitioner that the documents have not been filed with any statutory authorities and the same were only draft documents prepared from the statutory records available and downloaded from the site of the MCA, the applicability of Section 448 of the Companies Act, 2013 becomes wholly doubtful in the absence of any signed document having been submitted by the petitioner.

48. The contention raised on behalf of the petitioner that the assignment was received by the applicant in February-March, 2016 and that the applicant could thus not be liable for the statutory record which was filed in the year 2008-09 to 2014-15 available on the MCA website cannot be overlooked in as much as the role attributed against the applicant by the SFIO commenced only from February-March, 2016. None of the statements/returns alleged to be false have been signed and endorsed or filed by the applicant, coupled with the aspect of the act of the petitioner in stated preparation of statutory register and records by taking details and information for preparation of the record of companies from the MCA website when no original document had been submitted without such prepared records being submitted to any authority, the aspect of such records falling within the realm of an attempt to submit a false statement has to be considered taking into account the factum that A-86 Shri Vijay Kumar Sharma who is stated to have given the assignment to the petitioner, A-88 and his partner Shriti Kumari, A-89 are both on bail vide order dated 15.07.2019 of the learned trial Court.

49. As regards the contention that has been raised on behalf of the SFIO that orders under Section 439 of the Cr.PC, 1973 as sought by the petitioner herein, cannot be granted without reference to the provisions of Section 212(6) and 212(7) of the Companies Act, 2013 without entering a finding on the required level of satisfaction of the Court that there are reasonable grounds for believing that the petitioner is not guilty of the offences alleged to have been committed by him and that the petitioner is not likely to commit any offence while on bail and further submission made by the SFIO that as laid down by the Hon'ble Supreme Court in "Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation" 2013 (7) SCC 439, economic offences constituted a class apart and need to be visited with a different approach in the matter of bail and that economic offences have deep rooted conspiracies and involved huge loss of public funds and thus, needed 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, in as much as, they tend to seriously prejudice/

destroy the economy of a country and thus, caused immense irreversible damage to the larger public interest with reliance having been placed on behalf of the SFIO on the verdict of the Hon'ble Supreme Court in "Rohit Tandon Vs. Directorate of Enforcement" (2018) 11 SCC 46 to contend to similar effect. On a consideration of the submissions made on behalf of either side, it is essential to observe at the outset that the charges in the matter are yet to be framed by the learned Trial Court in relation to CC No.720/2017.

50. Thus without any observations on the merits or demerits of the aspect of framing of charges or otherwise and the trial, if any, in the circumstances, in as much as, it has been laid down by the Hon'ble Supreme Court in "P. Chidambaram Vs. Central Bureau of Investigation" 2019 (14)SCALE 157 that the basic jurisprudence relating to bail remains the same, in as much as the grant of bail is the rule and refusal is the exception, so as to ensure that the accused has the opportunity to securing a fair trial and that even though, economic offences fall under the category of a grave offence and the said circumstance is to be considered at the time of consideration of an application for bail, even if the allegation is one of a grave economic offence, it is not a rule that bail should be denied in every case since there is no bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so.

51. Furthermore, it is in these circumstances that the provisions of Section 212(6) of the Companies Act, 2013 in the facts and circumstances of the instant case would have also to be considered and thus, it cannot be contended that the embargo of Section 212(6) would essentially operate in the instant case.

52. In the instant case, there are no contentions raised on behalf of the SFIO that the applicant's presence cannot be secured or that the applicant would flee from justice or that the applicant can influence the witnesses or tamper with the evidence in any manner.

53. The applicant in the circumstances is allowed to be released on bail on filing a bail bond in the sum of Rs.2,00,000/- with two sureties of the like amount to the satisfaction of the Special Judge, Companies Act seized of the proceedings in CC No.720/2017 titled as "SFIO Vs. Mohd. Iqbal & Ors." with conditions that he shall not leave the country, shall not tamper with the evidence, shall provide his contact details to the Serious Fraud Investigation Office (SFIO) and shall commit no offence whatsoever.

54. The Bail Application 2154/2019 and CRL.M. (BAIL) 1511/2019 are disposed of accordingly.

55. Copy of the order be given dasti under the signatures of the Court Master, as prayed.