(2020) 07 DEL CK 0124

In the Delhi High Court

Case No : Bail Application No. 1413 Of 2020

Kavi Arora APPELLANT

Vs

State RESPONDENT

Date of Decision : 23-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 439, 482
Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471
Companies Act, 2013 — Section 36(c), 128, 129, 447, 448
Companies Act, 1956 — Section 209, 211, 628

Citation : (2020) 07 DEL CK 0124

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Puneet Bali, Vibhav Jain, Aditya Soni, Mayank Datta, Amit Chadha, Mohit Mathur, Sandeep Das, Vipin Tyagi, Aishwarya Singh, Surbhi Sharma

Final Decision : Dismissed

Judgement

S.No.,Name,Post,Loans Approved,"W h e t h e r Made

Accused

1,Maninder Singh,"Group CEO and Bos

of Kavi Arora",s13,No

2,"Mr.Avinash Chander

Mahajan","Independent Director

of REL (Also

Member of RPT

Committee of REL)",6,No

3,"Anil Saxena (Already

Granted bail)","Group CFO and

Director of REL",6,Accused no.5

4,Sunil Kumar Garg,"Group Treasury Head

and Director, RFL",6,No

5,Pankaj Sharma,"President and Chief

Risk Officer, RFL",6,No

6,Sunil Godhwani,"MD and Chairman of

REL (Also Membe

of RPT Committee o

REL)","6

r

f",Accused No.3

Date,Particulars,,,

29.04.2014,"RBI raised concerns about these CLB Loans and pointed out the ever greening or round

tripping of funds in a letter addressed specifically to the Petitioner. Despite the said letter the

Petitioner being CEO and Managing Director andp art of various committees continued to

give loans under the Corporate Loan Book to shell entities which rotated these funds.",,,

08.03.2016,"RBI again raised concerns in a letter addressed to the Petitioner regarding the CLB Loan

and pointed that the CLB Loans policy was deficient.",,,

12.07.2016,"The RBI was not convinced with the explanation provided on 8.7.2016. Therefore, the

Petitioner (being the CEO and MD of RFL) along with Sunil Godhwani (beingC EO and MD

of REL) undertook not to increase the CLB Loan exposure or rollo ver the CLB loans, bu

continued giving loans under the CLB.",,,

01.09.2016,"Despite the aforesaid undertakings to the RBI, the Petitioner approved loans worth Rs. 492

crores to the following entities:

Zolton Properties Pvt. Ltd.- Rs.165 cr

Artifice Properties Pvt. Ltd.- Rs. 165 Cr

Modland Wears Pvt. Ltd.- Rs. 162 Cr

It is pertinent to mention that these loans were opposed by the independent director - Mr.

Mohnish Dutt vide his email dated 31.8.2016 but were still approved by the Petitioner.",,,

21.09.2016,"The Petitioner was a party to an internal email which acknowledges that the CLB Loans

must be evergreened to avoid being categorized as NPAs. The email was sent in the context

of credit rating agency - ICRA seeking explanation regarding the CLB Loans from the

Petitioner.",,,

27.01.2017,"Since the CLB Loans continued unabated, the RBI once again in a letter addressed tot he

Petitioner raised issues with the CLB Loans and specifically stated thatt he loans were

routed from one entity to another. RBI red flagged the following entities which are also part

of the chargesheet to which loans had been granted:

A&A Capital Services Pvt. Ltd.

Gurudev Financial Services Pvt. Ltd.

Fern Healthcare Pvt. Ltd.

Tripoli Investment and Trading Company Annies Apparels Pvt. Ltd.

Torus Buildcon Pvt. Ltd.

Rosestar Marketing Pvt. Ltd.

Best Health Management Pvt. Ltd.

Volga Management and Consultancy Pvt. Ltd.

Ad Advertising Pvt. Ltd.",,,

31.01.2017,"Despite the aforesaid RBI letter to the Petitioner he immediately thereafter pursuant to the conspiracy approved loans to the following entities (which had been mentioned in the RBI

Letter) amounting to Rs. 300 cr:

A&A Capital Services Pvt. Ltd.

Abhiruchi Distributors Pvt. Ltd.

Annies Apparel Pvt. Ltd.",,,

30.06.2017,"Despite the aforesaid undertakings to the RBI and RBI concerns, the Petitionerd isbursed

loans worth Rs. 850 crores to the following entities:

Rosestar Marketing Pvt. Ltd.

Tripoli Investment and Trading Company Volga Management and Consultancy Pvt. Ltd.

Ad Advertising

Fern Healthcare Pvt. Ltd.

Torus Buildcon Pvt. Ltd.

Reference may be made to Petition Pg. 42 @ Pgs. 73 to 79 It is pertinent to note that while

the loans were disbursed on 30 June, 2017 the loan proposals were prepared only on 5 July,

2017 (and thus ante dated). The same is evident from Ms.Rajni Barnwalâ??s statement o

(Compilation Pg. 131 and Pg. 75 and emails of July 5, 2017 and July 11, 2017 (Compilation

Pg. 133).

Therefore, the minutes of the RMC meeting of 28 June, 2017 are fabricated since the

record that the loan proposals have been received and reviewed (Compilation Pg. 85).

The Petitioner ratified the forged minutes of the RMC meeting of 28 June, 2017 int he RMC

meeting held on 16 August, 2017 (Compilation Pg. 272).

It is important to note that 30 June, 2017 was the last day of the quarter (1 April, 2017 to 30

June, 2017). Therefore, a sizeable disbursement was made, without documentation to avoid

reporting the same to RBI and to evergreen loans which were becoming due on the same

day to avoid categorization as NPAs.

The loans were granted to entities which were specifically stated to be suspicious in

RBIâ??s letter dated 31.01.2017.",,,

31.08.2017,"The petitioner signed the directorâ??s report where despite the internal email of 21

September, 2016 (relevant or the financial year 2016-17), the Petitioner (being the CEO and

Managing Director) specifically stated to the general public that the CLB Loans were no

NPAs.",,,

22. It is pertinent to mention here that while a fraction of the money trail of Rs. 2000 crores has been recovered, the other fraction still remains",,,,

untraced as yet and investigation regarding the same is ongoing, by the Economic Offences Wing as well as independently by SEBI. The SEBI itself is",,,,

still investigating fraud of about Rs. 600 crores and has recorded the same in its order dated 14.03.2019. Moreover, the loans granted by the Petitioner",,,,

to the following entities amounting to over Rs. 600 crores are still under investigation:,,,,

A. A&A Capital Services Pvt. Ltd.,,,,

B. Shridham Distributors Pvt. Ltd (erstwhile Abhiruchi Distrbutors Pvt. Ltd),,,,

C. Annies Apparel Pvt. Ltd.,,,,

D. Gurudev Financial Services Pvt. Ltd; and,,,,

E. Tara Alloys Ltd.,,,,

23. The petitioner being influential is capable of tampering with evidence and influencing witnesses who were his subordinates. As apparent from the,,,,

various documents and the bail applications themselves, there is no denial of the Complainant Company's funds by the accused persons having been",,,,

siphoned away. In addition, there is a higher apprehension of the accused persons including petitioner herein absconding as they are aware that they",,,, are likely to be convicted. Further, the conduct of the Accused with respect to internal investigation being carried out by AZB & Partners is also",,,,

relevant as the Accused refused to participate in the investigation.,,,,

24. In addition, there are various complaints and FIR which have been filed by the Complainant Company and are pending investigation. The Accused",,,,

has also been made a suspect in another case emanating from FIR No. 189/2019 dated September 23, 2019 which is pending at the stage of",,,,

cognizance. It is pertinent to note that this is not an isolated instance and there are various other frauds committed by the accused persons. Agencies,,,,

like SEBI.. ED and SFIO are also investigating REL.,,,,

25. It is settled law that economic offences are considered to be grave offences especially when public money is involved and that the Courts have to,,,,

be careful in granting bail in such cases. These observations have been made in Y.S. Jagmohan Reddy v. CBI (Criminal Appeal No. 730 of 2013).,,,,

26. In the case of Sunil Dahiya v. State [(2016) 4 DLT (Cri) 593] this Court held as follows:,,,,

54. The nature and wavily of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving",,,,

cheating, criminal breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also",,,,

have an adverse impact not only in the progress of the case, but also on the trust of the criminal justice system that people repose. It would",,,,

certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the",,,,

evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the",,,,

high stakes, the nature and extent of his involvement, and his resources, lie may flee from justice.""",,,,

27. In the case of CBI vs. Ramendu Chattopadya (Criminal Appeal No. 1711 of 2019), the Hon'ble Supreme Court held that economic offences",,,,

having deep rooted conspiracy involving investors' money have to be taken seriously. The Hon'ble Supreme Court while dismissing the order of bail,",,,,

despite filing of chargesheet stated in Paragraph no. 8 as follows:,,,,

This Court is conscious of the need to view such economic offences having a deep rooted conspiracy and involving a huge loss of",,,, investors' money seriously. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key",,,,

role....thereby cheating a large number of innocent depositors and misappropriating their hard-earned money.""",,,,

28. This Court is conscious about the fact that the Petitioner has been charged with Section 409 IPC which is a grave offence punishable with life,,,,

imprisonment. The judgments of Sanjay Chandra vs. CBI is distinguishable from the present case as the charges in the said case carried a maximum,,,,

punishment of 7 years, which is not the case herein. The same was also noted in Nittin Johari vs. SFIO (BA 1971/2019), wherein this Court held:",,,,

4. Ld. Sr. Counsel has submitted that investigation in the present case stands completed and even charge sheet has been filed by the",,,,

investigating agency...Despite being CEO and a whole time Director, the petitioner was only an employee of BSL and has never been a",,,,

shareholder or signatory of the Accounts of BSL. No financial benefit has accrued to the applicant from the allegedly fraudulent activities,,,,

of BSL. Petitioner has only acted in his professional capacity as CFO of BSL. The work of the finance department was duly delegated, and",,,,

each person was responsible for his scope of work. The petitioner was neither aware of nor involved in the alleged falsification of books or,,,,

the alleged preparation and use of any forged and fraudulent documentation in any manner. It is further submitted that on number of,,,,

occasions, the documents which came to him in the course of his work were already approved by the Board of Directors as well as by the",,,,

Audit Committee and there was no reason for the petitioner to suspect any wrongdoing in such decision.,,,,

â?¦..,,,,

16. Ld. Sr. Counsel has argued that investigation in the present case is complete. There are 284 accused persons and documents on which,,,,

reliance has been placed are voluminous and trial may take considerable time and, therefore, the petitioner in view of the judgment of",,,,

Hon'ble Supreme Court in Sanjay Chandra's case (supra) be released on bail. However, the said case is distinguishable from the case in",,,,

hand as the charges in the said case carried a maximum punishment for a term which may extend to seven years whereas in the present,,,, case, the petitioner is alleged to involved in offence u/s. 36(c), 128, 129, 447, 448 of the Companies Act, 2013; u/s. 209, 211 r/w 628 of the",,,,

Companies Act, 1956 and under Section 467, 468, 471 r/w Section 120B of the Indian Penal Code and one of the offence u/s. 467 IPC is",,,,

punishable with imprisonment up to life.""",,,,

29. The Hon'ble Supreme Court of India has held that of chargesheet does not lessen the allegations of the prosecution in any manner. To the,,,,

contrary, it establishes material on record against accused persons. (Virupakshappa Gouda vs. State of Karnataka [AIR 2017 SC 1685]). Similar",,,,

pronouncements have been made in CBI vs. Ramendu Chattopadya and Nittin Johari vs. SFIO (BA 1971/2019).,,,,

30. The judgments being relied upon by the Petitioner, i.e., the judgment of Sanjay Chandra v. CBI is distinguishable as the same do not involve",,,,

misappropriation of public money, unlike in the present case. The same has been distinguished by this Court in the case of Gurmeet Singh & Ors. v.",,,,

CBI [2017 (162) DRJ 488], wherein this Court held:",,,,

12. The main argument addressed by learned senior counsels for the petitioners is that entire allegations of the CBI show that being an",,,,

offence of serious nature, bail should not be granted, whereas in Sanjay Chandra (supra) Supreme Court noted that the statement of the",,,,

witnesses ran into seven hundred pages and the other documentary evidence was also too voluminous, so the trial may take considerable",,,,

time and the appellant therein would have to remain in jail longer than the period of detention had they been convicted, thus it was not in",,,,

the interest of justice that they should be in jail for indefinite period. In Sanjay Chandra (supra) the Supreme Court was not dealing with a,,,,

case of large number of investors rather the allegations were in respect of criminal conspiracy between the accused in the year 2009 to get,,,,

UAS license for providing telecom services to a company otherwise ineligible to get UAS license.""",,,,

31. Moreover, Sanjay Chandra vs. CBI & Ors. has been distinguished by this Court in the case of Sunil Grover v State: [(2012) 3 DLT (Cri) 861]",,,,

wherein it was held that no public money was involved in Sanjay Chandra's case. This Court in Sunil Grover's case held as follow:,,,,

12. So far as the judgments of the Apex Court in Sanjay Chandra's case and

Suresh Kalmadi's case (supra) are concerned, no doubt, these",,,,

reinforce and revisit the basic principles of law with regard to the grant of bail...In the cases, which have been cited by the learned counsel",,,,

for the petitioner, no member of the general public was affected directly, rather it was the public ex-chequer which was put to loss by not",,,,

holding auction of government resources or by over invoicing lenders. This is totally different from the facts of the present case where the,,,,

petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them,,,,

lucrative returns at regular intervals.â??,,,,

32. It is pertinent to mention here that in order dated 17.06.2020 granting bail to Anil Saxena, categorically observed by coordinate bench that he was",,,,

not part of day-to-day functioning of RFL is of no relevance here as per the role played by the petitioner in the present case.,,,,

33. Moreover, it is relevant to mention here that order dated 17.06.2020 granting bail to co-accused Anil Saxena was challenged before the",,,,

Honâ??ble Supreme Court vide SLP(Crl.) diary no.13106/2020 and same has been disposed of vide order dated 17.07.2020. Whereas, present",,,,

pettion was heard on 10.07.2020 and pending for judgment, however, meanwhile, through Court Master, this Court has been apprised about the said",,,,

order wherein the Honâ??ble Supreme Court has observed that although, the petitioner (therein) may be justified in relying upon documents brought",,,,

on record to indicate that the finding of the fact noted by this Court (High Court) in the impugned judgment is correct or contrary to record, even so,",,,,

stating overall view of the matter, there lordships decline to interfere with the order granting bail to Anil Saxena. Further observed, the observations in",,,,

the impugned order of bail are confined to R-2 (therein) and cannot be used as precedent/parity for other accused. The case of other accused be,,,,

considered on its merit.,,,,

34. In view of above facts and law discussed and the fact that further investigation is at the crucial stage regarding fraud committed by accused for,,,,

worth of Rs.2,000/- crores plus of public money, there is apprehension that the petitioner may tamper with the evidence and influence the prosecution",,,,

witnesses, therefore, this Court is not inclined to grant bail.",,,,

35. The petition is, accordingly, dismissed with no order as to costs.",,,,

36. The Trial Court shall not get influenced by the observations made by this Court while passing the order in the present petition.,,,,

37. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.,,,,

