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(2021) 05 DEL CK 0009

In the Delhi High Court

Case No : Bail Application No. 3952 Of 2020

Maninder Singh APPELLANT

Vs

State Of Nct Of Delhi RESPONDENT

Date of Decision : 05-05-2021

Acts Referred:
Indian Penal Code, 1860 — Section 120B, 409, 420

Citation : (2021) 05 DEL CK 0009

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : N.Hariharan, Sudhir Nandrajog, Tanveer Ahmed Mir, Sidharth S.Yadav, Vaibhav Suri, Prabhav Ralli, Varun Varma, Riya Soni, Amit Ahlawat, Sandeep Das, Siddharth Sharma, Shashwat Sarin

Final Decision : Disposed Of

Judgement

Yogesh Khanna, J

1. Petitioner seeks regular bail in case FIR No.50/2019 under Section 409/420/120B IPC registered at police station EOW.

2. The complaint is made by Manpreet Singh Suri, AR-authorised representative of Religare Finvest Limited (RFL) against Malvinder Mohan Singh

(MMS), Shivinder Mohan Singh (SMS), the then promoters/ directors, Sunil Godhwani, the then Chairman-cum-Managing Director, and NK Ghoshal.

The AR of RFL alleges the above persons having absolute control on REL and its subsidiaries, have put RFL in poor financial condition by disbursing

loans to entities having no financial standings. These entities willfully defaulted in repayments and caused wrongful loss to RFL to the tune of Rs.2397

crores. These shell companies/entities were controlled by above persons.

3. It is further the case of prosecution the Reserve Bank of India (RBI) has

pointed out such discrepancies in its analysis viz. the top borrowers of

RFL, under Corporate Loan Book(CLB) portfolio, were related entities; there is inter linkage between the borrowers as funds were routed from one

borrower to another; and the loan amounts ultimately are coming to the group companies of RFL.

4. It is alleged Malvinder Mohan Singh and Shivinder Mohan Singh were major shareholders till June 2017 and remained in control of the companies

till February 2018 when after the companies were taken over by the new management and then it was revealed the complainant had suffered a

wrongful loss to the tune of Rs.2397 crores. It is alleged, the alleged promoters viz Malvinder Mohan Singh, Shivinder Mohan Singh in conspiracy with

Sunil Godhwani, CA had swindled the public money to the tune of Rs.2397 Crores. It is stated the total standalone net -worth (Aggregate of Share

Capital, Reserves & Surplus) of REL as on 31.02.2018 stood at Rs.2,328.22 crores. Its investment in RFL of Rs.2,090.34 crores comprises 89.78% of

the net worth of the REL. It is alleged extremely high amount of shareholder's funds of REL has been invested in RFL and such diversion of funds to

RFL causes a direct loss to the shareholders of REL.

5. During the course of investigation, a report dated 26.01.2017 from RBI was obtained which noted the entities were related entities; there was inter-

linkage between the borrowers themselves; and out of 21 loans disbursed to 9 borrowers, the funds disbursed ultimately came back to the group

companies of RFL; accounts of various other borrowers were used to route funds to the group companies; borrower companies had a weak financial

standing with no revenue from operations; cash losses etc and loan for working capital was given when there was no business. Further, loans were

given on the recommendations of the promoters as the owners of the borrowing entities had good relations with the promoters; the loans given were

without any documentation, except a loan agreement/ MoU entered into between RFL and the borrower(s). The end-use of these funds is not known.

6. During the course of investigation, the accused persons namely Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godhwani, Anil Saxena and

Kavi Arora are arrested. After completion of investigation, the charge sheet is filed against them only.

7. Accused Maninder Singh was the Chief Business Officer and an appointed

Group Chief Executive Officer of REL vide appointment letter dated

22.03.2017 and was a part of the Risk Management Committee along with Kavi Arora. He was designated as a Key Management Personnel on

22.03.2017 and was holding Key Managerial position in the organization and allegedly was instrumental in conspiracy with promoters Malvinder

Mohan Singh, Shivinder Mohan Singh and Kavi Arora, CEO and MD of RFL for siphoning of the money from the complainant company to the tune of

Rs.2000 crores.

8. It is also alleged by the prosecution the petitioner was well aware the entities to whom loans worth hundreds of crores were extended were not

credit worthy but kept approving the loans since these entities were linked to the promoters and signed financial statements of RFL in which the

transactions in question were not categorized as related party transactions, though most of the loans were diverted to RHC Holding Private Limited (a

promoter entity).

9. Out of the loans disbursed to 19 entities, petitioner herein was involved in sanctioning and disbursal of loan to 13 entities along with Kavi Arora

worth Rs.850 Crores. The petitioner was associated with Ranbaxy Laboratory Limited for 27 years which established his proximity with the

promoters i.e. Malvinder Mohan Singh and Shivinder Mohan Singh and the transfer of funds is facilitated along with Kavi Arora in the other

companies of promoters which were misappropriated so that no objection could be raised from any quarter. He was drawing huge salary and benefit

in the capacity of Chief Business Officer and Group CEO of the holding company i.e. Religare Enterprise Limited. It is also alleged he was highly paid

and qualified chartered accountant but flouted all corporate governance norms to extend unsecured loans to the promoters linked entities which was

eventually misappropriated/siphoned off.

10. It is also alleged public money have been swindled with the conspiracy of officials of the company and promoters. The main charge sheet has

been filed and further investigation is being carried out and if accused is released on bail he can influence the witnesses and can temper with the

evidences.

11. Admittedly, the present FIR was registered on 27.03.2019. The charge sheet was filed by the EOW on 10.01.2020 wherein no allegations was

made against this petitioner. It was only after filing of the charge sheet, EOW arrested the petitioner on 27.10.2020 and sent him to custody in this

case. The petitioner was a part of the risk management committee for a considerable period of time and he alongwith other Committee members

assessed the risk for grant of loan to certain entities and that out of 13 such entities, 6 entities have been given clean chit by SEBI. The petitioner

admittedly was not a part of the Related Party Transaction Committee, Loan Investment and Borrowing Committee at any point of time during his

employment, which committees finally approved and sanctioned the plans.

12. The fact petitioner was a part of the Risk Management Committee was known to the prosecution at the time of filing of initial charge sheet on

10.01.2020 in which detailed investigation qua alleged offence was made. The charge sheet filed prior to this arrest and the Supplementary charge

sheet, gives the same table showing the petitioner herein, being a part of the Risk Management Committee. The supplementary charge sheet, filed on

20.012.2021, did not bring on record any new material against this petitioner. This material was already within the knowledge, power and possession of

the EOW at the time of filing first charge sheet dated 10.01.2020. Admittedly, he has been involved in this case only on account of being in

employment with REL from 26.10.2020 till 14.11.2017 during which period he was also appointed as a Non-Executive Director. However, the tripping

of loans took place from the year 2008-2017. Admittedly, co accused Anil Saxena is granted regular bail vide order dated 17.06.2020 of this Court,

was a group CFO of REL from 2010 till 14.11.2017. He was admittedly a part of the Risk Management Committee and worked as a key management

personnel for about six years.

13. The Supreme Court did not disturb the bail order of co-accused Anil Saxena but with a rider such order would not operate as a precedent for other

accused. The main beneficiary Shivinder Mohan Singh has also been granted regular bail by learned Trial Court vide order dated 03.03.2021 and co-

accused Narender Kumar Goushal has also been granted regular bail per order dated 14.01.2021 by the learned Sessionâ??s Court, Saket Courts,

New Delhi. The main accused Shivinder Mohan Singh has also been granted regular bail by this Court in Case ECIR/05/DLZO-II/2019 registered by

Enforcement Directorate. He was also granted regular bail in FIR No.189/2019 police station EOW by the learned Trial Court per order dated

01.09.2020.

14. Admittedly, the petitioner is not a beneficiary to even a single penny and whatever was done appears to be at the instance of beneficiaries

Shivinder Mohan Singh and Malvinder Mohan Singh, who have since been granted bail. Though it is alleged the orders of grant of their bails have been

stayed but admitted their bails are not cancelled as yet. It is also the case of the petitioner though total amount alleged is Rs.2397 crores, but such

figure pertains to the total disbursal of the loan by RFL and not the outstanding to RFL. The Enforcement Directorate in the chargesheet dated

10.01.2020 has rather concluded only Rs.300 crores out of Rs.2397 crores is outstanding.

15. It is also alleged petitioner has no flight risk as has deep roots in the society and there been no allegations of tempering / influencing any witness

from 27.03.20198 till the filing of the charge sheet or till the date of his arrest. The entire trail of money has since been investigated and the transaction

pertaining to petitioner regarding approval of 13 loans is already part of the first charge sheet where the petitioner was not even made an accused or

was arrested. Thereafter no new material surfaced, yet he was arrested. It is alleged the offences are premised on financial transactions, all of which

have taken place through banking channels, hence, even the custodial investigation was never sought by the prosecution upon arrest.

16. Admittedly the investigating authority did not arrest members of other instrumental committees viz Related Party Transaction Committee, which

committee used to recommend the sanctioning of loan â?" such members are Rashi Dhir, Avinash Chander Mahajan, Harpal Singh, Monish K Dutt,

Sunil Kumar Garg and Pankaj Sharma.

17. It is alleged the investigating authority cannot discriminate between accused persons per R Vasudevan vs CBI, New Delhi 2010(166) DLT 583

which holds as under:-

â??15. Another point which arises for consideration is the discriminatory treatment of the petitioner qua the other co-accused Ankur

Chawla who is named in the FIR. The Sessions Judge had rejected this plea of the petitioner by observing that it is not for the Court to say

as to when and which of the accused is to be arrested. This is true that the investigation is in the exclusive domain of the police or the

investigating agency and ordinarily the Court would not interfere in the investigation except to the extent what is permitted under Chapter

XII of the CPC. But at the same time, the High Court cannot ignore the fact, in case the investigating agency is acting in a discriminatory or

arbitrary manner.

16. xxx xxx xxx

17. In the instant case it seems that colour of dress of the co-accused has weighed with the investigating agency and it has for reasons best

known to them chosen to record the statements of the co-accused on couple of occasions who is bound to feign ignorance and make his

statement exculpating himself. Such an unfair approach does not befit the premier investigation agency like CBI as it certainly shows

discrimination qua the petitioner. Our own High Court in Binoy Jacob (supra) case has very categorically observed that our country is

governed by rule of law which envisages that all persons must be dealt with the same manner while doing so. The Court has certainly not

only an obligation but also a right to call upon the investigating agency to explain its actions qua a particular co-accused and in case any

reasonable explanation is not given it may draw its own conclusion.

18. The petitioner herein was an employee; not a beneficiary to a single penny; the main beneficiaries Shivinder Mohan Singh and Narender Kumar

Ghoshal have since been granted regular bail by the learned Trial Court; such bails have not been cancelled as yet; the properties worth Rs.300 crores

stood attached; there being no allegation against him of tempering of evidence or influencing of witnesses; the perusal of chargesheet shows the entire

trail of money stood investigated; he is not named in FIR or in the first chargesheet; no new material brought on record by the supplementary

chargesheet; custodial interrogation never sought of this applicant by the authorities and since the investigation qua this applicant is complete and he

being no more required for the purpose of investigation hence, considering above, there is no impediment to grant him bail.

19. In the circumstances, the applicant is hereby granted bail on his executing a personal bond of Rs.1.00 lac with one surety of like amount to the

satisfaction of the learned Trial Court/Duty MM. The petitioner herein is also directed not to leave the jurisdiction of National Capital Territory of

Delhi without prior permission of learned Trial Court; the petitioner shall not contact any of the employee of REL, RFL or any of the Religare group of

companies; the petitioner shall provide his contact number to the SHO concerned and ensure he is reachable on the said mobile number at all time and

shall ensure he is present at all hearings/proceedings.

20. With the observations above, the petition stands disposed of. Pending application(s), if any, also stands disposed of. Nothing opined herein shall be

construed as observation on the merits of case pending trial.

21. A copy of this order be communicated electronically to the learned Trial Court/ Jail Superintendent for information and compliance.