

(2020) 01 DEL CK 0382

In the Delhi High Court

Case No : Bail Application No.1971 Of 2019

Nittin Johari

APPELLANT

Vs

Serious Fraud Investigation Office

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 21
Companies Act, 2013 — Section 36(c), 128, 129, 212, 212(6), 212(6)(ii), 212(7),
436(1)(a), 436(1)(b), 436(2), 447, 448
Code Of Criminal Procedure, 1973 — Section 193, 284, 439, 439(2)
Companies Act, 1956 — Section 209, 211, 621(1), 628
Indian Penal Code, 1860 — Section 120B, 467, 468, 471
Prevention of Money-Laundering Act, 2002 — Section 45(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 37, 37(1)(b)(ii)

Citation : (2020) 01 DEL CK 0382

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Sidharth Luthra, Ranjana Roy Gawai, Gautam Khazanchi, Sandeep Mittal, Pradyuman Kaistha, Manish Jha, Vishnu Menon, Maninder Acharya, Ajay Diggpaal, Natasha Sarkar, Akshita Singh, Vipul Acharya

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. This bail application is filed by the petitioner Nittin Johari u/s. 439 CrPC r.w. Section 212(6) of the Companies Act, 2013 in complaint case No. 502/2019 arising out of case No. 5/5/2016/CL-II dated 03.05.2016 and file no. SFIO/INV/BPS/2016/480-494 at Serious Fraud Investigation Office.

2. Ld. Counsel for the petitioner has submitted that petitioner has been arraigned as an accused in the complaint filed against 284 accused persons under Sections 439(2) r/w Section 436(1)(a), (d) and (2) r/w Section 212 of the Companies Act, 2013 r/w Section 621(1) of the Companies Act, 1956 r/w Section 193 Cr.P.C. Ld. Sr. Counsel has submitted that the applicant was taken into custody on

02.05.2019 and is in JC since then. He is the only accused currently in judicial custody in the instant case out of the 284 accused persons. Petitioner had joined Bhushan Steel Ltd. (hereinafter referred to as "BSL") in 1995 as an Assistant General Manager and was thereafter promoted to the post of Chief Financial Officer in 2014. In February 2018, petitioner had resigned from BSL.

3. Ld. Sr. Counsel has submitted that the petitioner has fully cooperated with SFIO in the investigation and supplied all the documents and information as and when required. On 02.05.2019, SFIO had summoned the petitioner via telephone and arrested him without any justification or reasons. The petitioner was produced before the Ld. Duty M.M., Patiala House Courts and was remanded to SFIO custody for two days which was thereafter extended from time to time. On 08.05.2019, the petitioner was remanded to judicial custody which has also been extended from time to time by the Ld. Special Judge, Dwarka Courts. The interim bail application of petitioner was allowed by the Hon"ble High Court on the medical ground of his mother. However, the first regular bail application of the petitioner was dismissed by the Ld. Special Judge on 06.06.2019. Thereafter charge-sheet was filed before the Ld. Special Judge on 01.07.2019. The Petitioner had filed the 2nd bail application on 12.07.2019, however, the same was also dismissed by the Ld. Special judge on 02.08.2019.

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. The present case is based on documentary evidence and banking transactions and, therefore, there is no possibility of the petitioner tampering with evidence. The petitioner is also no longer employed in M/S BSL as the same has already been taken over by the Tata Group pursuant to insolvency proceedings. No other accused is presently in custody in the present case. Only the petitioner is in custody since 02.05.2019. Considerable time will be taken in the completion of the trial. The petitioner has roots in the society and is not a flight risk. He has clean antecedents. Wife of petitioner has a history of depression and rheumatoid arthritis and is unable to manage the family affairs in his absence. The petitioner himself is a patient of diabetes since the last 25 years and has lost considerable weight due to his illness while in custody. 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. It is submitted that Ld. Spl. Judge has dismissed both the bail

applications in routine and casual manner and submissions recorded by Ld. Special Judge in the bail order dated 02.08.2019 are a replication of the submissions recorded in order dated 06.06.2019.

5. It is next submitted that conditions for bail imposed under Section 212(6)(ii) and 212(7) of the Companies Act 2013 are completely unreasonable, draconian and contrary to the fundamental tenets of criminal law. He, therefore, prayed that petitioner be released on bail in the interest of justice.

6. Ld. Sr. Counsel for the petitioner in support of its contention has also relied upon the following case law:-

- a. Sanjay Chandra v. CBI, (2012) 1 SCC 40;
- b. Nimesh Tarachand Shah v. Union of India, (2018) 11 SCC1;
- c. Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294;
- d. Ankush Kumar @ Sonu vs. State of Punjab, 2018 SCC Online (P&H) 1259;
- e. Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565;
- f. State of Maharashtra v. Nainmal Punjabi Shah & Anr (1969) 3 SCC 904;
- g. Niranjan Singh & Anr. v. Prabhakar Rajaram Kharote & Ors.,(1980) 2 SCC 559;
- h. P.Chidambaram v. CBI, 2019 SCC OnLine SC 1380;
- i. D.K.Shivakumar v. Directorate of Enforcement, 2019 SCC OnLine Del 10691.

7. Ld. ASG on the other hand has opposed the bail application and submitted that Ld. Special Court has taken cognizance and summoned the petitioner of the offences under Section 36(c), 128,129,447,448 of the Companies Act, 2013; under Section 209, 211 r/w 628 of the Companies Act, 1956 and under Section 467, 468, 471 r/w. Section 120-B of the Indian Penal Code vide order dated 16.08.2019. It is further submitted that the case against the petitioner squarely falls under the provisions of Section 212 (6)(ii) of the Companies Act, 2013. Section 212(6) of the Companies Act, 2013 starts with a non-obstante clause and the conditions stipulated under Section 212(6) (ii) of the Companies Act, 2013, are mandatory in nature. Further, as per Section 212(7) of the Companies Act, 2013, the limitation on granting of bail specified in Section 212 (6) is in addition to the limitations under the Code of Criminal Procedure, 1973. It is submitted that Hon"ble Supreme Court vide its order dated 12.09.2019, in criminal appeal no. 1381 of 2019 which was against the order of Ld. Predecessor of this court has clearly stated that the mandatory conditions of bail as embodied in Section 212(6) and Section 212(7) of Companies Act as well as under Section 439 of Cr.P.C. have to be satisfied while considering the bail application.

8. It is further submitted that the investigation into the affairs of accused no.-1 Bhushan Steel Ltd.(BSL) by SFIO has revealed that the ex-promoters/family members, assisted by employees and close associates, used a complex web of

157 companies to siphon off funds from BSL for various purposes and also fraudulently availed of credit from various lender banks and manipulated the books of accounts and financial statements of BSL, causing wrongful loss to banks and financial institutions and public investors of the limited company and causing wrongful gain to the promoters and their family members. The corporate structure of BSL was repeatedly abused for various fraudulent purposes and patently false documents were presented to lending institutions for availing credit running into thousands of crores. The books of accounts of the company were manipulated and various companies were incorporated for routing of funds in a deceptive manner. Thus, using a complex web of transactions, funds were transferred and the affairs of the accused companies were conducted in such a manner so as to facilitate fraud of massive proportions. It is submitted that petitioner was one of the prime perpetrator and master mind behind all the fraudulent activities and thus, in view of the serious nature of allegations and active role played by the petitioner and the offence being an economic one which affects the economy of the nation and twin conditions for grant of bail as envisaged under Section 212(6)(ii) of the Companies Act, 2013 are not satisfied, the bail application be dismissed. Ld. ASG in support of her submissions has relied upon following case law:-

- a. State of M.P. v. Kajad, (2001) 7 SCC 673;
- b. Bijando Singh v. Md. Ibocha (2004) 10 SCC 15;
- c. Union of India v. Rattan Mallik @ Habul-(2009) 2 SCC 624;
- d. Narcotics Control Bureau v. Kishan Lal (1991) 1SCC 705;
- e. Customs New Delhi v. Ahmadaliev Nadira 2004 3 SCC 549;
- f. Union of India v. Shiv Shankar Kesari-(2007) 7 SCC 798;
- g. Satpal Singh vs. state of Punjab (2018) 13 SCC 813;
- h. Narcotics Control Bureau v. Dilip Pralhad Namade (2004) 2 SCC 619;
- i. Union of India v. Saurabh Chatterji (2006) 9 SCC 759;
- j. Y.S.Jagan Mohan Reddy v. Central Bureau of Investigation, reported in 2013 97) SCC 439;
- k. Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46;
- l. State of Gujarat vs. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364;
- m. Ram Govind Upadhyay v. Sudarshan Singh & Ors., AIR 2002 SC 1475;
- n. State of Bihar and Anr v. Amit Kumar alias Bachcha Rai (2017) 13 SCC 751;
- o. Gautam Kundu v. Directorate of Enforcement (PMLA) (2015) 16 SCC 1;
- p. Achint Navinbhai Patel v. State of Gujarat and Anr. (2002) 10 SCC 529.

9. I have considered the rival submissions. As per the material/documents appearing on record, the petitioner who was the Ex-CFO and whole Time Director of BSL was also heading its finance Department and was involved in the following activities:-

- a. Receiving of funds from various companies/financial institutions for BSL;
- b. He was one of the signatories to the financial statements of BSL till FY 2016-17;
- c. He was also a member of the "Committee of Board of Directors on Borrowing, Investment and Loans" of BSL along with its promoters;
- d. He was closely associated with the ex-promoters (Accused Brij Bhushan Singal and Neeraj Singal);
- e. He was a Director in the following accused companies (categorized as Category "B") which were promoters' companies incorporated by accused Brij Bhushan Singal and Neeraj Singal (which received funds from category "A" company i.e. Bhushan Steel Ltd. and diverted them to purchase property or invest the same as promoter's equity in the form of preference shares in BSL):-
 - i. Bhushan Consumer Electronics Pvt. Limited (A-9);
 - ii. Marsh Capital Services Pvt. Ltd. (A-36);
 - iii. Nifan Finvest Limited (A-39)
 - iv. Paragon Securities Pvt. Ltd. (A-44)
 - v. Sukhana Steel Pvt. Ltd. (A-54)
 - vi. Bhushan General Traders Pvt. Limited (A-13)
 - vii. Bhushan Aviation Limited (A-6).

10. As per the material appearing on record, as the ex-CFO and whole time Director of BSL and also as a member of the "Committee of Board of Directors on Borrowing, Investment and Loans", the petitioner was one of the main accused and brain behind the entire fraudulent arrangement of availing credit facilities from bank through Letter of Credit (LC) by filing false documents with various banks. LCs were obtained on the basis of false and fabricated documents. There are allegations that the petitioner, along with other individuals, also submitted false documents under his signatures for discounting the LCs including the false and fabricated letters under the name and (false) signature of Hindustan Zinc Ltd. or Jindal Steel Works and its authorized signatory.

11. It is alleged against the petitioner that at the time of opening of LCs, the documents attached such as proforma invoice/lorry receipts etc. were not genuine. The request letter of the beneficiary of the LC at the time of discounting of documents under LC were not issued by the beneficiary i.e. Hindustan Zinc

Ltd. and JSW Steel Ltd. In most of the cases, the transporter either did not exist or the vehicle number mentioned turned out to be a two/three passenger vehicle. The request letter given by the beneficiary of the LC for negotiation of the documents were not issued by them and the account number mentioned therein was of Bhushan Steel Ltd. instead of beneficiary of LC i.e. Hindustan Zinc Ltd. and JSW Steel Ltd. Bill of exchange was neither drawn nor signed by any of the authorized signatory of Hindustan Zinc Ltd. and JSW Steel Ltd.

12. It is further alleged against the petitioner that the confirmation with regard to the genuineness of the trade transaction and supply of goods as per proforma invoice accompanying the documents submitted to LC discounting bank were signed by various accused persons including the present petitioner. The LC discounted amount was, thereafter, transferred to the BSL account and was available as a credit to it for the period of LC, which could be sixty, ninety or any number of days as per the terms and conditions of the LC. Thus, using the fraudulent, deceptive method, various accused persons including the present petitioner were able to avail the illegitimate flow of funds amounting to Rs. 45,818 crore during the period 2013-14 to 2016-17 from the banks.

13. Though, the Ld. Sr. Counsel for the petitioner has argued that despite being CFO 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 and no financial benefit has accrued to the applicant from the allegedly fraudulent activities of BSL, however, there are allegations against the petitioner that petitioner was the whole-time director (Finance) & Chief Financial Officer of BSL during the relevant period. He was part of the "Committee of Board of Directors on Borrowing, Investment and Loans" and was a close associate of accused Brij Bhushan Singhal and Neeraj Singhal, and assisted them in raising finance, submitting requests for credit facilities and making presentations before the lender banks. He was working in the Finance Department of BSL as an employee in various positions since 1995, and accused Brij Bhushan Singhal and Neeraj Singhal made him the CFO in 2005. During the course of investigation, it was also revealed that he was conspiring with the ex-promoters and the head (Accounts) to manipulate the accounts and the financial statements. He was also the signatory to the financial statements. It is alleged that petitioner being a Chartered Accountant was well aware about the fact that BSL had not provided the required disclosures and details as required under the Indian Accounting Standards (IndAS) for the adjustments made by it as part of the recasting of its accounts for the financial year 2014-15 and 2015-16. The only disclosures made were in Note 45 of the Financial Statements for Financial Year 2016-17, which are insufficient and do not provide details of the item wise adjustments made. It is further alleged that the petitioner was also aware that the documents submitted to banks for availing credit using LCs are fabricated/false and that the material was not being supplied by the beneficiaries i.e. JSW or HZL against those fabricated LCs. Further, a fraudulent method of accounting was put in place in BSL for the amounts involved in the fraudulently opened, discounted and

repaid LCs. The fraudulent method ensured that huge inflow and outflow of funds was not reflected in the balance sheet. BSL was maintaining separate accounts in SAP and Legacy/Foxpro system citing excuse of transition and used the accounting head BSL-ITT Orissa for camouflaging these transactions.

14. It is further alleged that the manipulation in the financials was also within the knowledge of the petitioner. Under the garb of first time adoption of IndAs (Indian Accounting Standards), the amount of Rs. 3,727.45 Cr. and Rs. 2,420.69 Cr. for the F.Y. 2014-15 and 2015-16 respectively was shown under the head "Bill of exchange-payable," which reflected the actual position of the fraudulently availed LCs. However, it was never reflected in the balance sheet for F.Y. 2014-15 and 2015-16. During the course of investigation, it was also revealed that the books of accounts of BSL were manipulated, in the figures of "Stock-in-Transit" (SIT) and "Trade Receivable" and on account of the fraudulently encashed LCs during the period 2013-14 to 2016-17 which was covered up through false increase in valuation of assets by around Rs. 15000/- crore. The revaluation was fraudulently done and based on a false valuation report. The balance sheet of BSL was already manipulated to contain the inflated figures of Rs. 6523 crore of "SIT"(Stock-in-Transit), Rs. 1271 crore of trade Receivable and Rs. 2420 crore of bill of Exchange-payable amounting to Rs. 10,214 crore. It is alleged that the figure of Rs. 10,214 crore was written off to cover up the fraud which was continuously perpetrated from 2013-14 to 2016-17 by various individuals including the petitioner. It is further alleged that at the time of first adoption, BSL elected to regard deemed cost as fair value for plant, property and equipment (PPE) at the date of transition to IndAS except for certain items. Investigation has revealed that the assets of BSL were fraudulently revalued to a higher value from Rs. 36,563.17 crore to 51,435.72 crore as on 1st April, 2015 at the time of first adoption. The fair value of assets was fraudulently increased by Rs. 15,568 crore, for the purpose of making various adjustments related to inflated "SIT", Trade Receivables and Bill of Exchange-Payable.

15. Perusal of the above facts, thus, reveals that petitioner was actively involved in the fraudulent activities and was instrumental in submission of false and fabricated documents to discount letter of credits, preparation of false books of accounts including balance sheet. The role of the petitioner will further be discussed in the later part of this pronouncement, let this court first discuss the case law cited by the Ld. Sr. Counsel. At the outset, it may be submitted that there is no quarrel with the proposition of law laid down in the authorities cited by Ld. Sr. Counsel. However, each case has its own peculiar facts and it is a settled law that there is no straitjacket formula for consideration of grant of bail to an accused. In the present bail application, the petitioner is alleged to be involved in offences under Section 36(c), 128, 129, 447, 448 of the Companies Act, 2013; under Section 209, 211 r/w Section 628 of the Companies Act, 1956; under Section 467, 468, 471 r/w Section 120-B of the Indian Penal Code. Thus, the offences alleged against the petitioner are not only economic offences but offences defined under the Companies Act as well where conditions for grant of

bail are stringent in nature as envisaged under Section 212(6) (ii) of the Companies Act, 2013 and Hon"ble Supreme Court while remanding the bail application back to this court has directed to reconsider the bail application filed by the petitioner in the light of the principles governing the grant of bail under Section 439 of the Cr.P.C. while also keeping in mind the scope and effect of the twin mandatory conditions for grant of bail laid down in Section 212(6)(ii) of the Companies Act, 2013.

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.

17. Ld. Sr. Counsel has further relied upon Nikesh Tarachand Shah's case (supra), wherein Hon"ble Supreme Court has held that Section 45(1) of the Prevention of Money Laundering Act 2002 so far as it imposes twin conditions for release on bail are unconstitutional as it violates Article 14 and 21 of the Constitution of India. The said authority does not help the petitioner for the reason that Hon"ble Supreme Court vide its order dated 12.09.2019 has specifically directed this court to reconsider the bail application keeping in mind the scope and effect of the twin mandatory condition for grant of bail laid down in Section 212(6)(ii) of the Companies Act, 2013.

18. Ld. Sr. Counsel has next relied upon Ranjitsing Brahmajeetsing Sharma's case (supra) wherein Hon"ble Supreme Court has held that the satisfaction of the court as regards the likelihood of not committing the offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. No doubt, this court while deciding the present bail application will keep this proposition of law laid down in by Hon"ble Supreme Court in mind. Reliance is also placed upon Ankush Kumar @ Sonu's case (supra), wherein Punjab and Haryana High court has held that so far as second part of Section 37 (1)(b)(ii) of NDPS Act i.e. regarding satisfaction of the court based on reason to believe that the accused would not commit any offence after coming out from the custody is irrational. Ld. Sr. Counsel has, therefore, argued that similar clause in Section 212(6) (ii) is also irrational and court should not rely upon the same. This court, however, cannot ignore the twin mandatory conditions as envisaged under Section 212(6) (ii) in view of the directions passed by the Hon"ble Supreme Court.

19. Reliance is next placed upon Gurbaksh Singh Sibbia's case (supra), wherein

the Hon"ble Supreme Court has observed that grant of bail is a rule and refusal is an exception. Ld. Sr. Counsel has next relied upon State of Maharashtra v. Nainmal Punjaji Shah & Anr (1969) 3 SCC 904; Niranjan Singh and Anr. v. Prabhakar Rajaram Kharote & Ors., (1980) 2 SCC 559; P.Chidambaram v. CBI, 2009 SCC OnLine SC 1380 and D.K.Shivakumar v. Directorate of Enforcement, 2019 SCC OnLine Del 10691 and argued that this court is not required to discuss the evidence in detail at the time of deciding the bail application but at this stage should only consider the fact whether the petitioner will be available to face the trial and whether there is any apprehension that he would tamper with evidence or influence the witnesses and according to Ld. Counsel this is not the case here as there is nothing on record to suggest that petitioner will abscond or tamper with evidence or influence witnesses. The investigation is already over. It is, therefore, prayed that petitioner be released on bail in the interest of justice.

20. I have carefully considered the submissions made by Ld. Sr. Counsel. As discussed earlier, no straitjacket formula can be laid down in deciding a bail application. The Hon"ble Supreme Court in State of Bihar & Anr. v. Amit Kumar @ Bachcha Rai, (2017) 13 SCC 751 has held as under:-

"11.Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail."(Emphasis supplied)

21. Thus, the present bail application has to be decided on the basis of its own facts and keeping in mind the proposition of law that economic offences constitute a class part and need to be visited with a different approach in the matter of bail and since these kind of offences cause irreparable harm to the economic system and, therefore, required to be considered seriously.

22. As narrated earlier, vide order dated 12.09.2019, the Hon"ble Supreme Court while setting aside the bail order dt.14.08.2019 passed by the Ld. Predecessor of this court has remanded back the matter to this Court to reconsider bail application filed by the petitioner in the light of the principles governing the grant of bail under Section 439 of the Cr.P.C. while also keeping in mind the scope and effect of the twin mandatory conditions for grant of bail laid down in Section 212(6)(ii) of the Companies Act, 2013.

23. Let this court first examine the provisions of Section 212 (6)(ii) & 7 of the

Companies Act, 2013 which runs as follows;

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), [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 sub-section 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 (5) 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.

24. Perusal of Section 212 (7) of the Companies Act, 2013 reveals that limitation on granting bail is in addition to the Limitation provided under Section 439 Cr.P.C. This court has now to decide the bail application in the light of the provisions of bail enunciated in the Companies Act as well as Cr.P.C. This court has, thus, to be satisfied that there are reasonable grounds for believing that petitioner is not guilty of the offences alleged against him and that he is not likely to commit any offence while on bail. It is a settled law that at the time of consideration of bail application, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence. What is to be seen is whether there is reasonable ground for believing that accused is not guilty of the offence(s) he is charged with. This was so observed by Hon"ble Supreme Court in the following cases while deciding the bail application under Section 37 of the NDPS Act which also envisages the twin conditions as contemplated in Section 212(6)(ii) of the Companies Act:-

a. Union of India v. Rattan Mallik @ Habul-(2009) 2 SCC 624;

b. Union of India v. Shiv Shankar Kesari-(2007) 7 SCC 79.

25. In view of the law laid down by the Hon"ble Supreme Court,

this court is not supposed to meticulously scan the evidence in detail. However from perusal of the facts which have emerged during the investigation, it cannot be said that there are reasonable grounds for believing that petitioner is not guilty of the offences alleged against him. As discussed earlier, there are allegations that the petitioner along with other co-accused has siphoned off the funds for fraudulent purposes and also fraudulently availed of credit from various lender banks and also manipulated the books of accounts and financial statements of BSL. The petitioner was one of the signatories to the financial statements of BSL till FY 2016-2017 and was also Director in accused company who has diverted the funds. There are allegations that false and fabricated documents were filed for opening Letter of Credit (LC) and LCs were discounted on the basis of false documents submitted under his signature. There are allegations that the petitioner along with other accused persons by using the fraudulent and deceptive methods availed the illegitimate flow of funds amounting to Rs. 45,818 Crore during the period 2013-14 to 2016-17. Thus, there are serious allegations against the petitioner regarding manipulation and fabrication of financial documents by way of which, the fund was siphoned off to other companies and therefore, it cannot be held that there are no reasonable grounds to believe that accused is not guilty of the offences alleged against him.

26. Further in view of the allegations appearing on record and active participation of the petitioner in alleged commission of the offence i.e. in fabrication of documents in opening LCs and discounting of the same, manipulation of accounts and siphoning of the funds worth several crores and keeping in mind the fact that all fraudulent activities were allegedly planned in advance and executed carefully and with deliberate design and further taking overall view of the matter, it is difficult to hold that petitioner will not commit any offence under the Act while on bail. This court is, therefore, of the opinion that on the basis of allegations appearing on record, it cannot be held that there are no reasonable grounds to believe that the accused is not guilty of the offences alleged against him and that he is not likely to commit any offence under the Act while on bail and thus, twin conditions for grant of bail as envisaged under Section 212(6) (ii) are not satisfied.

27. This court is further of the opinion that petitioner is not entitled to bail even under Section 439 Cr.P.C. even if the bail application is not tested on the touchstone of twin conditions as enumerated in Section 212(6) (ii) of the Companies Act, 2013 for the reason that offence committed by the petitioner is an economic offence which affects the economy of the nation. In "Y. S. Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439", the Hon"ble Supreme Court has held that while granting bail, the court has to keep in mind the factors like the nature of accusation, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused during the trial, reasonable apprehension of the witnesses being tampered with, the large

interests of the public/State and other similar considerations. As discussed above, there are serious allegations against the petitioner and one of the offence under Section 467 IPC is punishable with imprisonment up to life. The offence committed by the petitioner is an economic offence of huge magnitude affecting the economy of the nation and interest of public/State and, therefore, requires a stringent approach for grant of bail. The offence has been committed with prior planning with an eye on personal profit totally disregarding the interest of the community and causing damage to the economy and ignoring national interest. The petitioner was instrumental in submissions of false and fabricated documents and siphoning of funds of the company to the tune of several crores and indulging in fraudulent and deceptive methods for personal gain and thus, keeping in mind the nature of accusation as discussed in detail in earlier paras and the material brought on record against the petitioner by SFIO, this court is not inclined to release the petitioner on bail even under Section 439 Cr.P.C.

28. In the end, it is argued by Ld. Sr. Counsel for the petitioner that the petitioner is suffering from diabetes and various other ailments and, therefore, on that ground, he should be released on bail. Ld. Sr. Counsel has, however, failed to place on record any document which may reveal that accused is not getting proper medical treatment or care in jail or he requires such treatment which can only be provided if he is released on bail. In the absence of any documentary evidence to the above effect, this court is of the opinion that the petitioner who is involved in serious economic offence cannot be granted bail on the above mentioned medical grounds.

29. In view of above discussions, this court is of the opinion that offences alleged against the petitioner are serious in nature which involve fraud to the tune of several crores and the offence being an economic one which affects the economy of the nation, the petitioner is not entitled for bail under Section 439 Cr.P.C. This court is further of the opinion that in view of the allegations appearing on record against the petitioner there are no reasonable grounds to believe that he is not guilty of the offences alleged against him and he is not likely to commit any offence under the Act while on bail and, therefore, no grounds for bail are made out under Section 212(6) of the Companies Act, 2013. The bail application is, therefore, dismissed and stands disposed of accordingly.