

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 02.02.2021

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Pronounced on : 05.03.2021

+ **BAIL APPLN. 3791/2020**

SAI CHANDRASEKHAR

..... Petitioner

Through: Mr. Tanveer Ahmed Mir, Advocate.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Amit Mahajan, St. Counsel.

Mr. Vikram Panwar, Advocate for
Victim-Company.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. By way of this order, I shall dispose of the present petition filed under Section 439 Cr.P.C. on behalf of the petitioner for grant of regular bail in case ECIR/02/DZCR/2019 dated 26.02.2019 U/s 3/4 PMLA, 2002.

2. Briefly stated the facts of the case are that on 13.12.2014, FIR no. 136 was registered by Economic Offence Wing (EOW) on the complaint of M/s Hassad Netherland, BV against Virkaran Avasthi,

Ritika Avasthi, Namit Arora, Vinod Sirohi and Rahul Rai Surana for offence U/s 409/420 and 120B IPC for deliberately manipulating/falsifying stocks, inventories of M/s Bush Foods Pvt. Ltd which resulted in huge account fraud of approximately Rs. 1000 crore.

3. The FIR was lodged on the grounds that M/s Bush Foods incorporated under Companies Act on 29.07.2005 having its office at DLF South, Saket, New Delhi, was engaged in business of procuring, processing etc. and dealing with all kinds of rice and value added rice products etc. The company was originally promoted by Mr. Virkaran Avasthi and his wife Mrs. Ritika Avasthi. Mr. Virkaran Avasthi was Managing Director of company and in-charge of affairs of company.

4. In 2011, Standard Chartered Private Equity (SCPE) acquired 29% shares of M/s Bush Foods and following the investments, SCPE appointed Mr. Rahul Rai Surana, Namit Arora as nominee Directors on the Board of M/s Bush Foods and Mr. Vinod Sirohi as its Chief Financial Officer. Around September, 2012 M/s KPMG India Pvt Ltd on behalf of M/s Bush Foods approached complainant company and invited it to invest into M/s Bush Foods as strategic partner. In the month of November, 2013, a meeting was held at KPMG office in Delhi which was attended by SCPE nominee directors, Mr. Avasthi and Mr. Sirohi. The proposal was made to complainant company that among others, SCPE Would sell its entire share holding of 29% to the complainant company. It was also represented to the complainant

company that M/s Bush Foods has turnover of Rs. 1000 Crore and is one of the largest branded food company in India, revenue from domestic market constitute 60% total revenue in financial year 2012; internationally M/s Bush Foods has portfolio of over 250 global customers across 56 countries; export to middle-east constitute 25% of total export; M/s Bush Foods is unique opportunity for strategic partnership with single owner as opposed to other Basmati Rice players in India. M/s Bush Foods had appointed Deloitte Haskins as Sales Statutory Auditor. M/s Bush Foods has atleast 12 months of stock of rice at one time in order to ensure continuity of supply of branded product. It has inventory of Rs.895.50 Crore. Further secured loans of the company were to the tune of Rs.539.30 Crore out of which approximately 96% constituted net working capital facility loan for packing credit including foreign country loans. The average net working capital of M/s Bush Foods has increased as compared to previous financial year etc. Copies of information, memorandum and data as on September, 2012 prepared by M/s KPMG and it was furnished to the complainant company. Vendor due diligence report dated 31.10.2013 prepared by Price Water House Cooper Pvt. Ltd. at request of M/s Bush Foods was also submitted which by and large matched with statement and data books. Based on the information, the complainant company invested aggregate amount of USD 120354783 (approx. Rs.750 Crores). In this manner the complainant company

purchased total 69.5% shares of M/s Bush Foods which includes complete 29% shares of M/s SCPE and part of shares of Mr. and Mrs. Avasthi. Mr. Avasthi held 30.5% shares of M/s Bush Foods.

5. Then nominee directors of SCPE (i.e. Mr. Rahul Rai Surana and Namit Arora) resigned from the Directorship of M/s Bush Foods. The management and affairs of the company was settled to be run by Mr. Avasthi and his team and accordingly he continued to be the CEO and MD of M/s Bush Foods. The complainant company thereafter appointed Mr. Nasir Mohd., Mr. M.F. Al-Hajari, Mr. Khalid Abdel-Rehman, Mr. Fadi-el-Jouni and the present accused Sai Chander Shekhar as Non-Executive Directors on the Board of M/s Bush Foods. Subsequently, the present accused has resigned from the Board of Directors on 12.09.2013. The complainant company found that there was lack of transparency and clarity in the financial records etc. Mr. Avasthi asked the complainant company for further funding but failed to submit the business plans, consolidated financial statement etc. Ultimately, complainant company got suspicious and in the end of 2013, internal investigation for ascertaining actual financial position of M/s Bush Foods was carried out. The complainant company appointed Mr. Amin Controllers Pvt. Ltd. (surveyor) to survey raw-material inventory of M/s Bush Foods. The surveyor visited the various warehouses of M/s Bush Foods in Panipat, Murthal, Shahbad and found that warehouses were totally or partly empty. The substantial

bags of stock were filled with husk, plant slippery material etc. and in some compartments wooden pallets were used to frame platform upto height of six feet. On top of this platforms, two layers of rice/ husk bags had been spread out to create the impression that compartments are totally filled. The surveyor evaluated the material in the range of USD 3-5 millions. It was further found that M/s Bush Foods has availed material working capital loan facility from various public Sector banks under the consortium agreement dated 19.10.2012 executed between company and consortium banks consisting of banks Bank of India, Allahabad Bank, Bank of Baroda, Central Bank of India, PNB, Exim Bank, Standard Chartered Bank, DSB and HSBC Bank. The loan has been availed on the strength of inventory as available with M/s Bush Foods and verification by banks and secured by hypothecation, charge on stock of rice to the consortium bank. The Complainant has been informed that current outstanding amount under credit facility was over 714 crore which exceeds sanctioned amount of Rs.700 crore.

6. In this manner, the company had also taken various loan facilities from various banks prior to the contract with complainant company. On the basis of report of actual inventory appears to be less than 5% of the inventory represented to complainant company shown in the books of account of company upto October, 2013. The books of account, financial statement of M/s Bush Foods has been manipulated and

falsify by officers and employees of company and represented incorrect level of stock/inventory to induce the complainant to invest in M/s Bush Foods. Inter-alia, on the basis of said complaint, the aforesaid FIR was registered. Then on 26.02.2019, The Directorate of Enforcement has recorded ECIR and started investigation.

7. As per ED the role of the present petitioner/accused is that he was employee of M/s Hassad Netherland, BV colluded with Virkaran Avasthi to cheat M/s Hassad Netherland. He joined M/s Hassad in September, 2009 and was responsible for Hassad's Agri-business, investment in rice, sugar etc. in South-East Asia etc. He has played important role in the business transaction between M/s Bush Foods and M/s Hassad Foods. After completion of deal on 28.03.2013, petitioner/accused was rewarded by Mr.Virkaran Avasthi as Rs.7.0 Crore was received by him through M/s V&R Overseas, out of which Rs.6.0 Crore was paid directly to the account of one Mr. R.V.Gowda, account maintained with UCO Bank, Bidarahalli Bangalore, who had sold him his property in Bangalore. Further from the account of M/s V&R Overseas, Rs.50.0 Lac were transferred to the account of Mr. C. Janardan, father of petitioner/accused on 09.04.2013 and another Rs.50.0 Lac to the account of his mother. Further, as per investigation, petitioner/accused has also received Rs.13.79 crore in his company namely M/s Harin Ventures from the joint account of Virkaran Avasthi and RitikaAvasthi.

8. I have heard the Ld. counsel for the parties and perused the material on record.

9. It is submitted by the counsel for the petitioner that the complaint U/s 3/4, R/w Section 44 and 45 of PMLA 2002 pursuant to the investigation already stands filed and the investigation qua the petitioner is complete. It is further submitted that in the predicate offence, the charge sheet, supplementary charge sheet also stands filed.

10. It is further submitted by the counsel for the petitioner that further investigation cannot be a ground for continued incarceration and rejection of bail. It is further submitted that none of the evidences have been tampered ever since 2013 and the evidence in the present case is documentary in nature and the respondent vide panchnama dated 23.10.2020 has seized all the documents, digital devices like computers, hard drives, mobiles etc. which cannot be now tampered as they are in the possession of the respondent. It is further submitted that there is no possibility of influencing any witness as all the statements stands recorded U/s 50 of the PMLA and the ED authorities have not taken any steps under the Witness Protection Regime, therefore, it is evident that no witness has been influenced by the petitioner. It is further submitted that the petitioner is not a flight risk and this apprehension of the respondent can be taken care of by imposing conditions upon the petitioner.

11. It is further submitted that the statement recorded U/s 50 of the PMLA cannot be read as inculpatory evidence against the petitioner as the same is inadmissible in evidence being violation of Article 20 (3) of the Constitution of India and in any case what value is to be attached to these statements is a matter of trial. It is further submitted that as per the complaint of the prosecution the entire matter pertains to the offence committed by Veer Karan Awasthi, Ritika Awasthi, Vinod Sirohi, Rahul Rai Surana and Namit Arora, however, none of them have been arrested and investigated by the respondent and the prosecuting agency have been discriminatory against the petitioner. It is further submitted that there is no evidence that the petitioner was in connivance with personnels belonging to organization like Q Invest, Ambit Corporate Finance Pvt. Ltd., Manish P. Jain & Associates, SSPA & Co. Chartered Accountants, GM Kapadia and Company, KPMG and Price Water House Coopers, the companies which did prior due diligence for and on behalf of M/s Hassad Foods before the said companies purchased the share holdings in Bush Foods Ltd. It is further submitted that the respondent has already attached and frozen the movable and immovable properties of the petitioner. It is further submitted that twin conditions as existed U/s 45, PMLA were struck down as unconstitutional in the judgment of Nimesh Tarachand Shah Vs. Union of India (2018) 11 SCC 1.

12. Ld. counsel for the petitioner has relied upon:

- (a) Shivani Rajiv Saxena Vs. Directorate of Enforcement; Bail Appl. 2164/2017.
- (b) D.K. Shiva Kumar Vs. E.D.; 2019 (264) DLT 586
- (c) P. Chidambaram Vs. E.D.; 2019 SCC Online SC 1549
- (d) P. Chidambaram Vs. CBI; 2019 SCC Online SC 1380.
- (e) Navendu Babbar Vs. State of NCT of Delhi; Bail Appl. 913/2020, decided on 18.06.2020.
- (f) Anup Prakash Garg Vs. E.D.; 2018 SCC Online Del 10287
- (g) Raj Kumar Goel & Anr. Vs. E.D.; 249 (2018) DLT 498.
- (h) Gurbaksh Singh Sibbia Vs. State of Punjab; 1980 (2) SCC 565
- (i) Anil Mahajan Vs. Comm. of Customs; 2000 Cri LJ 2094
- (j) Gaurav Gupta Vs. E.D.; 2015 Cri LJ 3187.
- (k) Parasmal Lodha Vs. Asst. Director, E.D.-2017 SCC Online Delhi 8676.

13. On the other hand, it is submitted by the Ld. Standing Counsel that the petitioner was an employee of Hassad Food Company who colluded and conspired with Vikaran Awasthi, Ritika Awasthi and M/s Bush Foods Overseas Private Limited to cheat Hassad Netherlands B.V., a 100% subsidiary of Hassad Food Company, Qatar. It is submitted that the petitioner was responsible for Hassad's agri business investments in rice, sugar and other projects in South-East Asia, Middle East, Africa, Europe and South America. It is submitted that his job responsibilities included determination and identification of

new opportunities globally for mergers and acquisitions and for joint venture opportunities and to manage and coordinate the engagement of 3rd parties, monitor, evaluate, co-ordinate, due diligence process and to recommend to the management and the board potential investment opportunities, strategies and manner of execution.

14. It is submitted that the petitioner played a key role in negotiations and personally monitored the inventory verification and made comments on Hassad's concerns on the G.M. Kapadia & Co. report, a chartered accountant firm, which was engaged by M/s Hassad Neterlands to do stock count of the inventory. It is further submitted that the petitioner overruled the questionnaire prepared for the distributor's due diligence exercise on his understanding that the distributors were genuine and carried out amendments in a distributor survey. It is further submitted that the petitioner leaked information of Hassad Netherlands and he was not suppose to share confidential information with Virkaran Awasthi and Vinod Sirohi. He leaked confidential internal communications to the Directors/officials of M/s Bush Foods Overseas Pvt. Ltd. And the communications so leaked contained sensitive information relating to the transaction.

15. It is further submitted that the petitioner being an employee of the complainant company was aware of the ground realities and despite that he induced the complainant to invest Rs. 750 Crores in M/s Bush

Foods Overseas Pvt. Ltd. by purchasing its 69.5% shares. It is submitted that the petitioner received kickback of about Rs. 20 cores, out of which 7 crores have been identified. It is further submitted that the petitioners owns a company by the name of M/s Harin Ventures Ltd in Dubai and a sum of around Rs. 13 Crores were transferred from the account of Virkaran Awasthi. It is further submitted that the investigation is still in progress and the petitioner has not co-operated in the investigation. It is further submitted that the present case involves the commission of grave economic offence of laundering of the proceeds of crime.

16. Ld. Standing Counsel for the respondent has relied upon:

- (a) YS Jagan Mohan Reddy Vs. CBI [2013 (7) SCC 439].
- (b) Nimmagadda Prasad Vs. CBI [2013 7 SCC 466].
- (c) Central Bureau of Investigation Vs. Ramendu Chattopadhyay Crl. Appeal No. 1711 of 2019.
- (d) State of Gujarat Vs. Mohanlal Jitmalji Porwal (1987) 2 SCC 364.
- (e) State of Bihar Vs. Amit Kumar (2017) 13 SCC 751.
- (f) Anil Kumar Yadav Vs. State (NCT of Delhi) 2018 12 SCC 129.
- (g) Gautam Kundu Vs. Directorate of Enforcement 2015 16 SCC 1.
- (h) Union of India Vs. Hassan Ali 2011 10 SCC 235.

- (i) Vidyut Kumar Sarkar Vs. The State of Bihar and Ors. Criminal Miscellaneous No. 73325 of 2019 High Court of Patna.
- (j) Directorate of Enforcement Vs. Upendra Rai SLP CrI. 2598/2020.
- (k) P Chidambaram Vs. Directorate of Enforcement 2019 SCC OnLine 1549.
- (l) Cheviti Venkanna Yadav Vs. State of Telengana (2017) 1 SCC 283 .
- (m) Dr. Shivender Mohan Singh Vs. Directorate of Enforcement 2020 SCC OnLine Del 766.
- (n) Order of the Hon'ble Supreme Court dated 31.07.2020 in SLP (CrI.) No. 3474/2020 titled Directorate of Enforcement Vs. Shivinder Mohan Singh.
- (o) Mohammad Arif Vs. Directorate of Enforcement 2020 SCC OnLine Ori 544.
- (p) Order of the Hon'ble Supreme Court dated 24.11.2020 in SLP (CrI) No. 4878/2020 titled Mohammad Arif Vs. Directorate of Enforcement.
- (q) Municipal Committee, Amritsar and Ors. Vs. State of Punjab & Ors. 1969 (1) SCC 475.
- (r) Devi Dass Gopal Krishnan Etc. Vs. State of Punjab & Ors. (1967) 3 SCR 557.
- (s) SFIO Vs. Nittin Johari & Anr. (2019) 9 SCC 165.

17. Twin conditions mentioned in Section 45 of the PML Act continue to be struck down as being unconstitutional in view of the judgment of the Apex Court in the case of Nikesh Tarachand Shah vs.

Union of India (2018) 11 SCC 1. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act'. The said amendment does not revive the twin conditions already struck down by the aforesaid judgment.

18. Since the twin conditions for bail in section 45 of the PML Act have been struck down by the Hon'ble Supreme Court and the same are neither revived nor resurrected by the Amending Act therefore, as of today there is no rigor of said two conditions under original Section 45(1)(ii) of the PML Act for releasing the Petitioner on bail. The provisions of section 439 of Cr.P.C and the conditions therein will only apply in the case of the Petitioner for grant of bail.

19. At the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided, so that no party should have the impression that his case has been prejudiced. (*Niranjan Singh and another V. Prabhakar Rajaram Kharote and others* (1980) 2 SCC 559.)

20. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the

nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi* and another (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits.

21. In *Kalyan Chandra Sarkar v. Rajesh Ranjan and another* (2004) 7 SCC 528, it was held as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances,

the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598 and *Puran v. Rambilas* (2001) 6 SCC.”

22. In *Jayendra Saraswathi Swamigal v. State of Tamil Nadu* (2005) 2 SCC 13, it was held as under:-

“16. The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Capt. Jagjit Singh* AIR 1962 SC 253 and *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118 and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

23. The petitioner in the instant case is in custody since 27.10.2020. Nothing has been placed on record to show that the petitioner is a flight

risk and according to the counsel for the petitioner the petitioner was granted permission to go to Sri Lanka for two weeks and thereafter he returned, the fact which has not been denied by the respondent. As far as the question of tampering is concerned, the evidence is documentary in nature and the documents and digital evidence is in the custody of the prosecuting agency.

24. As far as the question of influencing the witnesses is concerned, no material has been placed on record by the respondent to show that anyone on behalf of the petitioner had tried to influence the witness of this case in any manner whatsoever. A vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse the bail and it is not the case of the prosecution that the accused is of such character and stature that his mere presence at large would intimidate the witnesses and there is no material on record to show that if released on bail, he would tamper with the evidence or subvert the course of justice. As per the record, moveable and immovable properties have already been attached, the statement of the witness have also been recorded. The FIR was registered way back in 2014 and there is nothing to show that the petitioner tried to influence the witnesses or tamper with the evidence.

25. Therefore, in view of the discussion mentioned hereinabove, the petitioner is admitted to bail on his furnishing personal bond in the sum

of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the Ld. Trial Court, subject to the condition that he shall not leave the country without permission of the Special Court, the passport if already not deposited, shall be deposited with the Special Court, he shall join the investigation as and when required by the prosecuting agency and he shall not tamper with the evidence and influence the witnesses in any manner. The bail application is disposed of accordingly.

26. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

MARCH 5, 2021

Sumant

सत्यमेव जयते