

Court No. 52.

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36542 of 2020

Applicant :- Rahul Kothari

Opposite Party :- Serious Fraud Investigation Office

Counsel for Applicant :- Sankalp Narain

Counsel for Opposite Party :- Gyan Prakash, Sanjay Kumar Yadav

Hon'ble Om Prakash-VII,J.

**Order on Criminal Misc. Application No. IA/05/2021
Interim Bail)**

1. Heard Shri Vikram Chaudhary, learned Senior Advocate assisted by Shri Sankalp Narain and Shri Pranjal Krishna, learned counsel for the applicant, Shri Gyan Prakash, learned Senior Advocate assisted by Shri Sanjay Kumar Yadav, learned counsel appearing for the S.F.I.O. through video conferencing.
2. Prayer made in the aforesaid application is quoted below :

“WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the Application for Interim Relief, and the applicant namely, Mr. Rahul Kothari may be released on Interim Bail during the pendency of the Criminal Misc. Bail Application No. 36542 of 2020 (Rahul Kothari Vs. Serious Fraud Investigation Officer) on such terms and conditions as are deemed fit and proper in the circumstances of the case, so as to meet the ends of justice; Any other orders or direction which this Hon'ble High Court deems fit & proper in the facts and circumstances of the matter, may also be passed in the interest of justice.”

3. Submission of the learned counsel for the applicant is that both father and mother of the applicant were suffering from

Covid-19 disease and were in critical condition. Father of the applicant also met with an accident. No one is to look after them in the house. Applicant is the only son. Thus, referring to the documents annexed with the interim bail application prayer was made to allow the interim bail application.

4. Sri Gyan Prakash, learned Sr. Advocate appearing for the S.F.I.O. argued that earlier the applicant had also approached this Court for interim bail on other grounds but same was rejected. Since argument has been completed on the main bail application, therefore, interim bail application cannot be allowed. At this juncture learned counsel appearing for the S.F.I.O. also referred to the prayer made in the interim bail application and prayed for rejection of the application.

5. Having considered the rival submissions and going through the affidavit annexed with the interim bail application and also the documents annexed therewith, the court is of the view that interim bail application moved by the applicant is not liable to be allowed as main bail application moved by the applicant is being decided today itself.

6. Thus, the interim bail application is hereby rejected.

**ORDER ON CRIMINAL MISC. BAIL APPLICATION No. -
36542 of 2020**

7. This application has been filed with the prayer to enlarge the applicant Rahul Kothari on bail in S.T. No. 577 of 2020 (SFIO Vs. Rotomac Global Pvt. Ltd. and others) for the alleged offences under Sections 36 (c) r/w 447, 185, 186, 447, 448 r/w 447 of the Companies Act, 2013 and Section 211 r/w 628 of the Companies Act, 1956.

8. Heard Shri Vikram Chaudhary, learned Senior Advocate assisted by Shri Sankalp Narain and Shri Pranjal Krishna, learned counsel for the applicant, Shri Gyan Prakash, learned

Senior Advocate assisted by Shri Sanjay Kumar Yadav, learned counsel appearing for the S.F.I.O. through video conferencing.

9. Sri Chaudhary, learned Sr. Advocate submits that present bail application has been moved taking recourse to the provisions of Sections 167 and 439 Cr.P.C. both. Although no regular bail application has been moved before the court below yet keeping in view the pandemic situation in the country and non regular functioning of the District/Sessions Court regular bail prayer of the applicant could be heard and decided by this Court itself. It is also argued that initially one FIR was lodged by the Central Bureau of Investigation (C.B.I.) against the applicant and he was arrested and thereafter applicant moved bail application and he was allowed on bail by the co-ordinate Bench of this Court. C.B.I. approached the Apex Court but the S.L.P. was rejected. It was next contended that since the applicant was allowed on bail on the basis of same set of facts in the case started by the C.B.I., therefore, applicant is also entitled to be released on bail in the present matter started by the S.F.I.O. Referring to the provisions of Section 212 (6) of the Companies Act it was further argued that bar created in this Section will not come in the way to release the applicant on regular bail as no new facts have been brought up by the S.F.I.O.

10. Sri Chaudhary also referred to the provisions of Section 167, 173 and 309 Cr.P.C. and further argued that mere filing of the complaint / police report within the period of 60 days will not be sufficient to deprive the applicant from an indefeasible right accrued in his favour. Referring to the dates and events of the filing of the complaint, taking of the cognizance and also the date of extended remand it was next contended that cognizance had not been taken within 60 days, therefore, indefeasible right had been accrued in favour of the applicant to

release him on bail as applicant had applied for default bail on 18.05.2020 itself. At this juncture, learned Sr. Advocate also referred to the legal position and further argued that right of the default bail accrued in favour of the applicant will not be extinguished by filing of the complaint/challan only. Trial Court while rejecting the default bail prayer has committed illegality. Remand of the accused after filing the police report / complaint could not continue under Section 167 Cr.P.C., therefore, on this ground also remand extended by the concerned Magistrate is illegal and applicant is entitled to be released on bail as custody of the applicant is illegal in the present matter. It was further argued that ratio laid down by the Hon'ble Supreme Court in Sanjay Dutt Case could not be applied in the present matter. The same was propounded on the basis of concession given by the learned counsel appearing for the accused in that matter. At this juncture, learned counsel appearing for the applicant also referred to the observations recorded by the co-ordinate Bench of this Court in Bail Application No. 2920 of 2018 and 3492 of 2018 and further argued that bar created under Section 212 (6) of the Companies Act will not come in the way in releasing the applicant on default bail. At this juncture learned Sr. Advocate appearing for the applicant also placed reliance on the following case laws :

1. Jamuna Singh Versus Bhadai Shah, (1964) 5 SCR 37 :
AIR 1964 SC 1541
2. K.S. Puttaswamy Versus Union of India, (2017) 10 SCC 1
3. Beni Madhava Versus State of Rajasthan, 1981 SCC
Online Raj 88 / 1983 Cri LJ 633
4. Gopal Das Sindhi Versus State of Assam, AIR 1961 SC
986
5. Aslam Babalal Desai Versus State of Maharashtra, AIR
1993 SC 1
6. Vinubhai Haribhai Malaviya Versus State of Gujarat, AIR

Online 2019 SC 1199

7. Mithabhai Pashabhai Patel Versus State of Gujarat, AIR 2009 SC (SUPP.) 1658, (2009) 6 SCC 332
8. Ram Narayan Singh Versus State of Delhi, 1953 Cri LJ1113
9. Narendra Kumar Amin Versus C.B.I., (2015) 3 SCC 417
10. Sanjay Dutt Versus State through C.B.I., 1994 AIR SCW 3857
11. Uptron India Ltd. Versus Shammi Bhan, (1998) 6 SCC 538
12. Union of India Versus Mohanlal Likumal Punjabi, (2004) 3 SCC 628
13. Suresh Kumar Bhikamchand Jain Versus State of Maharashtra, (2013) 3 SCC 77
14. Vineet Narain Verus Union of India, (1998) 1 SCC 226
15. C.B.I. Versus Ashok Kumar Aggarwal (2014) 14 SCC 295
16. State of Bihar Versus J.A.C. Saldanha, (1980) 1 SCC 554
17. Hussainara Khaton and Ors. Versus Home Secretary, State of Bihar, Patna [(1980) 1 SCC 108]
18. Ranjitsingh Brahmajeetsing Sharma Versus State of Maharashtra, (2005) 5 SCC 294
19. Natabar Parida Versus State of Orissa, (1975) 2 SCC 220, (1975) SCC (Cri) 484
20. Nikesh Tarachand Shah Versus Union of India, (2018) 11 SCC 1, (2018) 2 SCC (Cri) 302
21. Sanjay Chandra Versus C.B.I., (2012) 1 SCC 40
22. Bikramjit Singh Versus State of Punjab (2020) 10 SCC 616
23. Rakesh Kumar Paul Versus State of Assam, (2017) 15 SCC 67
24. Achpal Versus State of Rajasthan, (2019) 14 SCC 599

25. Yogesh Mittal Versus Enforcement Directorate MA 1487 /2017 in Criminal Appeal No.2012 of 2017
26. Shri Chamundi Mopeds Ltd. Versus Church of South India Trust Association, (1992) 3 SCC 1
27. Mohd. Iqbal Madar Sheikh Versus State of Maharashtra, (1996) 1 SCC 722
28. State of U.P. Versus Lakshi Brahman, (1983) 2 SCC 372
29. Pradeep Ram Versus State of Jharkhand & Another, (2019) 17 SCC 326
30. Union of India Versus Thamisharasi, (1995) 4 SCC 190
31. Deepak Bajaj Verus State of Maharashtra, (2008) 16 SCC 14
32. State of Bihar Versus J.A.C. Saldhana and Ors., (1980) 1 SCC 554
33. Uday Mohan Lal Acharya Versus State of Maharashtra, (2001) 5 SCC 453
34. C.B.I. Versus Anupam J. Kulkarni, (1992) 3 SCC 141

11. Learned Sr. Advocate also referred to the points disclosed in the written argument and further argued that there are two stages in Section 167 Cr.P.C. Section 167 (1) Cr.P.C. is related to the prosecution agency but Section 167 (2) Cr. P. C. is related to the Court. It is next contended that in-action on part of the Court in taking cognizance will not be a ground to deprive the accused to release him on default bail. Material question in the present matter is that cognizance was taken on the complaint after prayer made by the applicant for default bail. Thus, it is argued that present bail application be allowed and applicant be released on bail.

12. Sri Gyan Prakash, learned Sr. Advocate argued that regular bail prayer made by the applicant cannot be entertained as the applicant has not moved regular bail application before the court below. It was next contended that there is no illegality,

infirmity or perversity in the impugned order passed by the court below on the default bail application. Contention is also that provision of Section 167 Cr.P.C. itself is ample clear and default bail can only be granted in case charge sheet/complaint was not filed within the stipulated period. It is further argued that if charge sheet had been filed within the prescribed period, default bail prayer cannot be allowed.

13. Sri Gyan Prakash, learned Sr. Advocate also referred to the dates and events of the filing of the complaint i.e. 15.05.2020 and date of first remand in the matter i.e. 21.03.2020 and argued that complaint was filed within sixty days. It was further argued that if sixty days period is calculated from the date of first remand i.e. 21.03.2020 then also there was no fault on part of the prosecution. Thus, default bail application moved by the applicant has rightly been rejected by the Trial Court. It was next contended that transit remand period for producing the accused before the concerned Magistrate having jurisdiction shall not be taken into consideration at the time of calculating the sixty days period. Referring to the law laid down in **Suresh Kumar Bhikamchand Jain (supra) and Pradeep Ram (Supra)** case, it was next contended that since complaint/police report was filed within the period of sixty days, no right shall accrue in favour of the applicant to release him on default bail. It was further contended that regular bail application of the applicant could also not be allowed as there is clear bar under Section 212 (6) of the Companies Act. In the present matter huge amount i.e. Rs. 4168 crores have become N.P.A. due to modus operandi adopted by the applicant and other co-accused. Bail order passed in respect of the FIR lodged on the part of the C.B.I. was not related to the Companies Act, therefore, regular bail prayer is also not liable to be allowed.

14. Sri Chaudhary, learned Sr. Advocate appearing for the applicant refuting the submissions raised by the learned Sr. Advocate appearing for the S.F.I.O. further argued that bar created under Section 212 (6) of the Companies Act will not come in the way in allowing the regular bail application. Both the courts i.e. High Court and Sessions Court have concurrent jurisdiction, therefore, regular bail prayer could be moved directly before this Court. Remand was extended without taking cognizance on the complaint in the present matter thus it indicates that it was beyond the scope of Section 167 (2) Cr.P.C. No remand could be extended after the expiry of sixty days under Section 167 (2) Cr.P.C. In that situation only provision for extended remand is given in Section 309 Cr.P.C. Thus, referring to the aforesaid facts it was next contended that the applicant is entitled to be released on default bail and also on regular bail.

15. Prosecution case in nutshell, as disclosed in the bail application and affidavits filed by the parties are that the applicant has been arrayed as an accused no. 42 in the complaint dated 15.05.2020 filed by the S.F.I.O.. It has been averred in the said complaint that applicant was one of the promoter-Director of the Rotomac Global Private Limited (hereinafter will be referred as R.G.P.L.), Crown Alba Writing Instruments Private Limited; Kothari Foods and Fragrances Private Limited; Rotomac Exports Private Ltd and also Rotomac Exim Private Limited and other sister companies which caused wrongful loss to the public sector banks to the tune of Rs. 4168 crores as N.P.A. Aforesaid companies and sister companies of the Rotomac Group of Companies were engaged in the business of commodities and merchant trading (MT). Aforesaid companies had secured the credit facilities by way of margin money/FDs as well as other co-lateral. It has also been averred that since its incorporation R.G.O.C. had

duly serviced all its loan and obligation towards bank and other creditors in a timely manner and over a period of time banks have increased sanctioned limit from time to time. Later on, on the basis of complaint, M.C.A. (Ministry of Corporate Affairs) vide order dated 21.02.2018 in exercise of powers conferred under Section 212 (1) & (3) of the Companies Act formed an opinion that the investigation into affairs of 11 Companies of Rotomac Group is necessary to be conducted by the S.F.I.O. and pursuant to the aforesaid order complainant was appointed as Investigating Officer. On completion of investigation, investigation report dated 06.05.2020 was submitted to the M.C.A. who in turn granted direction to initiate prosecution against the accused whose name appears in the complaint. Complaint also reveals that R.G.O.C. and its promoters and directors have fraudulently induced the banks to obtain credit facility. False/deceptive documents for opening of Letter of Credit was also furnished before the banks concerned manipulating and misrepresenting the financial statement. Allegations is also that aforesaid group of companies flouting the R.B.I. Guidelines obtained M. T. finances and credit facility from the banks. Complaint also reveals that fictitious M.T. Trade were also shown in the financial statement showing it to be profitable. Aforesaid companies were also engaged in speculative currency transaction. For the aforesaid reason and showing the false M.T. Trade over the years Rs. 4168 crores became outstanding which in turn became N.P.A. Thus, aforesaid group of companies caused a loss of multi-crores rupees to the public sector banks. Complaint also reveals that aforesaid companies adopting aforesaid modus operandi obtained bad debts write off. They also made manipulation in share capital. They have not shown true and fair picture of the business done by them and also furnished wrong reflection of sales and purchase figure. They have also wrongly classified

the interest income.

16. It has also been averred that applicant under the garb of MT conducted mopping of interest arbitrage thereby, fraudulently inducing the public sector Banks to obtain credit facilities. Applicant had knowingly falsified the books of accounts and the financial statements deliberately concealing material facts. It is also averred that applicant was also indulged in speculative currency trading unrelated to MT being undertaken by RGC thereby gambling with Banks money which resulted in huge loss. Applicant was instrumental in holding the currency losses in the books of accounts under the garb of debit notes. These debit notes were raised against foreign parties and made part of trade receivable. Later on these debit notes were adjusted against the payment received from the LC rotated funds.

17. Allegation against the applicant is also that he abused his position as promoter-director and caused wrongful loss of Rs. 4188 Crores to public sector Banks. He utilized the corporate identity to perpetrate fraud of rotating the funds obtained through Letter of Credit discounting for mopping the interest arbitrage available between LC issuance and discounting charges and that between the interest on fixed deposits. This whole conspiracy was played under the garb of doing MT.

18. Applicant and co-accused also used the corporate identity to rotate LC funds for mopping the interest arbitrage and showed it in the books as Merchanting Trade business. Since it was not actually into MT business, the corresponding sales and purchase shown in the financial statements and books of accounts was false. Since mopping of interest was done by keeping the rotated funds obtained through LC discounting in Fixed Deposits to camouflage the same and the interest income from FD was shown as part of revenue from operation in the financial statements to give a false picture of

profitability of MT business. A large amount of these fictitious trade receivables were standing against their undisclosed related parties.

19. Thus, the sum and substance of the investigation conducted in the matter and the facts mentioned in the complaint for prosecution are that concerned Companies were engaged in fraudulent merchantine trade and caused wrongful loss to the Public Sector Banks to the tune of Rs. 7820 Crores approximately applying different modus operandi including siphoning of Bank funds through merchantine trade; falsification of financial statement of the Companies involved in the matter by not showing true and fair views.

20. I have considered the rival submissions made by the learned counsel appearing for the parties and have gone through the entire record including the case laws relied upon by the parties.

21. Before dealing with the matter I find it necessary to quote the order passed in Bail Application No. 2920 of 2018 and 3492 of 2018 passed on 30.11.2018 :

"These two bail applications were heard together on several dates and some significant orders were passed by this Court on 25.10.2018, 14.11.2018 and 20.11.2018. By order dated 25.10.2018, the Court directed for impleadment of the informant Bank of Baroda on whose behalf arguments were made by Sri Chandra Shekhar Sinha, learned counsel. The order passed on 14.11.2018 opened the hearing but for lack of understanding the issues dimensionally, the matter was posted on 20.11.2018. The following order was passed on 20.11.2018:

"The three dimensional question which this bail application involves is (a) personal liberty of the accused persons; (b) threat to the investigating agency at the hands of the accused persons to tamper with the evidence; and (c) retrieving the alleged loss caused to the Bank. In a written constitution like the one we have in India, personal liberty is a fundamental right guaranteed under Article 21 which has a primacy. This fundamental right can only be curtailed by following the procedure established under law. The procedure unless it serves the purpose of law cannot be allowed to defeat the basic right.

Sri S.V. Raju, learned Senior Counsel, reiterating his stand, would argue that the outstanding liability as against the accused applicants is full of doubts in the attending facts and circumstances of the case but the argument would require some more clarifications which he shall address while making submissions in rejoinder.

This Court is in the midst of the arguments being advanced by Sri Amarjeet Singh Rakhra on behalf of CBI.

Sri Rakhra has explained the position with respect to export booking credits by quoting the instance of one transaction out of 14 entered into between the Rotomac Global Pvt. Ltd. with Comet Overseas Pvt. Ltd. for the purpose of procurement of goods which were to be supplied to Global Pacific Services Pte. Ltd. at Singapore. The export booking credits according to the learned counsel, essentially involve release of money to a borrower on placing an order of supply from foreign importer before the Bank which is unlike the procedure when compared to foreign letters of credit. In the case of export booking credits a financial institution loses control over the finance as soon as the money is credited to the borrower's account on submitting evidence of a contract at the receiving ends of foreign importers and the Bank in turn would facilitate the borrower by release of money in his account to make the necessary procurement so as to honour the export order. The essentials of such a sanction in the light of banking guidelines will have to be considered further so as to look at the aspect as to what formalities are mandatory for the Bank to observe before release of money. The letters of foreign credit is a mechanism where one Bank indemnifies the payment to another Bank for honouring commercial transactions between the parties and the position of Banks remains somewhat secure.

It may be observed that the CBI insofar as the documentary evidences are concerned, must come out with a clear stand about the position of procedure as per the guidelines of the Bank. It is not a case where the charge sheet in respect of an offence is to be filed, therefore, the detention of an accused person is unavoidable. In the present case, the charge sheet has already been filed, therefore, in a long duration of nine months the investigating agency ought to have done the needful and this period cannot be extended beyond what is reasonable.

It is also to be noted that in a case where the charge sheet has been filed, the situation would be different and the obligation resting on the CBI would have to be weighed with rather a higher degree of sensitivity towards personal liberty of an accused which by its very nature is fundamental.

At this juncture, Sri Raju hammers on the submission that in a case where charge sheet has been filed, there is hardly any scope for the investigation to canvass that there is any apprehension of tampering with the evidences by an accused person.

All these aspects would be considered by the Court. List this matter on 27th of November, 2018 in terms of the

order already passed."

Learned counsel for the parties were heard at length on 27.11.2018 and 28.11.2018 and the following order was passed on 28.11.2018:

Sri S.V. Raju learned Senior Counsel assisted by Sri Pranjal Krishna learned counsel for the accused applicant has concluded his arguments in the bail application. Sri Amarjeet Singh Rakhra learned counsel for the C.B.I. has also concluded his arguments barring for the fact that some decisions are to be cited by him in support of the arguments advanced.

Sri Chandra Shekhar Sinha learned counsel for the Bank craves for an opportunity to make some supplementary submissions with respect to the letter of credit i.e. Document D-7 attached to the charge-sheet. List/put up on 30.11.2018 at 2.15 p.m. for concluding arguments.

Hearing was concluded today. Having regard to the arguments made by Sri S.V. Raju, learned Senior Counsel assisted by Sri Pranjan Krishna, who concluded his submissions on 28.11.2018, Sri Amar Jeet Singh Rakhra for the CBI and Sri Chandra Shekhar Sinha for the Bank of Baroda vis-a-vis the facts and circumstances of the case coupled with the material on record, the following order was pronounced in the open Court:

"For the reasons to follow in the composite order, the bail application of Rahul Kothari is allowed whereas the bail application of Vikram Kothari is rejected at this stage." Learned counsel for the parties have argued the matter on several aspects but this Court is conscious of the fact that while dealing with the bail matter, the Court ought not to make any observations which may ultimately have a bearing on the trial. Keeping this position in mind, the Court would briefly set out the background of the case as under. Long standing credit worthiness of Rotomac Global Pvt. Ltd., a company registered under the Indian Companies Act, 1956 is reduced to culpability with the lodging of F.I.R. against the said Company. The Board of Directors of the Company is stated to comprise of three members out of whom two Directors i.e. the accused applicants have been charge sheeted whereas the third Director Smt. Sadhna Kothari has not been charge sheeted. Out of the two accused Directors of the Company, Vikram Kothari is Managing Director whereas Rahul Kothari is the Director. The F.I.R. was lodged on 18.2.2018 under Sections 120-B IPC read with Section 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act. 1988, Police Station CBI/BS&FC/New Delhi, District Kanpur/Delhi. Charge sheet was filed on 19.5.2018 under the same very sections. Supplementary charge sheet was also filed on 7.8.2018. Both the charge sheets mention of pendency of further investigation but not against the applicants. The relevant portion of the charge sheet in this regard may be extracted as under: "That further investigation is pending against Smt. Sadhna Kothari, Directgor of M/s RGPL, FIR named accused in this

case and also pending against Sri Brijesh Shankar Mishra, CFO of M/s RGPL, Sri Manoj Upadhyay, Senior Manager of M/s RGPL, Sri Shailesh Rawat, GM Banking and Finance of M/s RGPL, Sri Pawan Kumar Gupta, Assistant Accountant of M/s RGPL, Sri Umesh Kumar Verma, Accountant of M/s RGPL, Sri Krishan Narain Pandey, GM (Accounts & Audit) of M/s RGPL, Sri N.K. Agarwal, AGM/Branch Head, Sri Ravindra Dalal, Credit Officer/Scale-II, Sri Dheeraj Agrawal, Assistant Manager (Operation & Forex), Sri Radhey Shyam, Senior Manager/Joint Manager, Smt. Ankita Srivastava, the then Scale-I Officer. Sri Sunando Bandopadhyay, Assistant Manager (Scale-I), Sri Dipesh Narain, Officer, Sri Anil Kumar Rakhit, Senior Manager/ Forex Incharge, Ms. Parul Nigam, Assistant Manager, Operation, Sri Keerthy Anjaneyulu, Chief Manager / Branch Head, Sri Sanjiv Jha, Sr. Manager (Forex) all staff posted at BOB, IBB, Kanpur and Shri Mangalore Devadas Mallya (M.D. Mallya) the then Chairman & Managing Director, Sri Rajiv Kumar Bakshi, the then Executive Director, Sri Atul Agarwal the then Director (Part Time Non Official Director) posted at BOB, Head Office, Mumbai and unknown private persons / unknown public servants.

After completion of investigation under Section 173(8) against the above mentioned accused persons, supplementary charge sheet will be filed in this Hon'ble Court in due course."

The Court has heard the case of both the applicants in the light of material gathered in the charge sheet filed on 19.5.2018. The charge sheet, prima facie, makes a distinction of complicity between the two accused applicants in the backdrop of their role which each of them has severally played in the business of the Company of which they are joint beneficiaries. The distinction lies in the framing of charges itself which read as follows:
(i) M/s Rotomac Global Private Limited (M/s RGPL) (A-1) u/s 420 IPC through its CMD, Sh. Vikram Kothari/ authorised representative.

(ii) Sri Vikram Kothari (A-2), CMD of M/s RGPL u/s 120-B r/w 420, 467, 468, 471 IPC and Section 13(2) r/w 13 (1) (d) of PC Act, 1988 and substantive offence u/s 420, 471 r/w 467 & 468.

(iii) Sri Rahul Kothari (A-3) Director of M/s RGPL u/s 420, 467, 468, 471 IPC and section 13 (2) r/w 13 (1) (d) of PC Act, 1988 and substantive offence u/s 420 IPC. The arguments put forth by learned counsel for the applicants is that if everything that is projected in the charge sheet is believed to be true, yet distinction in the complicity of the two applicants is manifest from the charges itself and there is no reason as to why Rahul Kothari who has not played any representative role in the business affairs of the Company may be responsible for commission of the offences in the nature of cheating or forgery, therefore, accused Rahul Kothari is entitled to be enlarged on bail. It is further argued that all the properties and business establishments have been sealed/attached.

Consequentially, not only that the personal liberty of the applicants has been curtailed but the applicants are deprived of the right of defence in the present case as well as in the civil proceedings resorted to against them which is a blatant disregard of the procedure established by law. The submission put forth by learned counsel for Rahul Kothari (Director) could not be successfully refuted by learned counsel for CBI or the Bank on any tangible ground except for the fact that the Company was joint family business and each Director having equal mens rea was vicariously liable for the commission of offence. This is a submission relevant at the time of trial but not at this stage when the Court is considering the case of Rahul Kothari for bail.

Regard being had to the entirety of material placed on record, this Court would find that after filing of charge sheet against Rahul Kothari his further detention in jail would be nothing but a measure of punishment before holding trial. This in my humble view is not permissible looking to the scope of Article 21 of the Constitution of India hence a case for grant of bail is made out in favour of Rahul Kothari.

Insofar as the co-accused Vikram Kothari, Managing Director of the Company is concerned, it has strongly been argued that even if it is assumed that there is a, prima facie, case against him yet after filing of the charge sheet, there is no justification for the CBI to harp on his continued detention which impinges upon the personal liberty of the accused applicant who is to face trial.

In nutshell, it is argued that the same very ground on which the co-accused is entitled to be granted bail, in equal measure, is applicable to the case of Vikram Kothari, therefore, he may also be set free.

This Court would note that the advances made to M/s Rotomac Global Pvt. Ltd. have not been secured by primary or collateral security as per the mandate of Section 21 of Banking Regulation Act, 1949. The consortium of nationalised banks, prima facie, appears to have failed to secure the advances by adhering to the condition of primary security/margins and even not to the extent of collateral Securities despite the fact that there exists a pervasive control of the Ministry of Finance and Reserve Bank of India. The Court may strike a note of caution that the public money in the pursuit of windfall profits by the persons of creditworthiness, cannot be advanced in dark and without ensuring cent percent security. This Court would, therefore, not lose sight of the fact that the creditworthiness of the Company has come under the cloud on the basis of alleged misrepresentation by the Managing Director.

Hoping that the CBI would retrieve the loss and shall not spare anybody who has shaken the trust of public, in the interest of investigation and looking to the apprehensions raised, the prayer for bail made by Vikram Kothari at this stage is rejected.

This Court is also constraint to observe that the matters of

economic offences are bound to be tried by the courts of law with expedition so that the delay does not become a cause of concern to distrust the system. Learned counsel for the applicants cited a series of judgements which are as follows:

Sl.	Particulars	Citation
1	<i>Mohan Singh, Advocate Vs. Union Territory, Chandigarh</i>	(1978) 2 Supreme Court Cases 366
2	<i>Bhagirathsinh Judeja versus State of Gujarat</i>	AIR 1984 Supreme Court 372
3	<i>M.P. Lohia versus State of W.B. and another</i>	(2005) 2 Supreme Court Cases 686
4	<i>Som Mittal versus Government of Karnataka</i>	(2008) 3 Supreme Court cases 753
5	<i>S.K. Alagh versus State of U.P and others</i>	(2008) 5 Supreme Court cases 662
6	<i>Maksud Saiyed versus State of Gujarat and others</i>	(2008) 5 Supreme Court cases 668
7	<i>Dalip Kaur and others versus Jagnar Singh and another</i>	(2009) 14 Supreme Court cases 696
8	<i>Ratiram and others versus State of Madhya Pradesh</i>	(2012) 4 Supreme Court cases 516
9	<i>Sunil Bharti Mittal versus Central Bureau of Investigation</i>	(2015) 4 Supreme Court cases
10	<i>Rajendra Prakash Agrawal versus Union of India and another</i>	(2015) 15 Supreme Court cases 233
11	<i>Dataram Singh versus State of U.P and another</i>	(2018) 3 Supreme Court cases 22

Learned counsel for CBI also cited the following judgements:

Sl.	Particulars	Citation
1	<i>Nimmagadda Prasad versus Central Bureau of Investigation</i>	(2013) 7 Supreme Court cases 466
2	<i>Y.S. Jagan Mohan Reddy versus Central Bureau of Investigation</i>	(2013) 7 Supreme Court cases 439
3	<i>Gulabrao Baburao Deokar versus State of Maharashtra and others</i>	(2013) 16 Supreme Court cases 190
4	<i>Prem Prakash Verma versus Central Bureau of Investigation</i>	(2016) 5 Supreme Court cases 414
5	<i>Virupakshappa Gouda and another versus State of Karnataka and another</i>	(2017) 3 Supreme Court cases 406
6	<i>State of Bihar and another versus Amit Kumar alias Bachcha Rai</i>	(2017) 13 Supreme Court cases 751

Reference to each decision cited by the applicants and dealing with the principles embodied therein, in my humble view, is uncalled for once the fact situation of the present case is dealt with by recording reasons in the discretionary exercise of powers.

Insofar as the decisions cited by learned counsel for CBI

are concerned, emphasis has been laid on the nature of offences being economic. It is urged that the apex court in the matters of this category of offences has not disapproved the apprehensions of investigating agency and curtailing the right of personal liberty has been dealt with firmly and without attaching more importance to the right of personal liberty which each offender may claim. This submission advanced by learned counsel for CBI is not convincing for the reason that no material has been supplemented against the accused applicants after filing of the charge sheet on 19.5.2018 and the accused applicants are languishing in jail since last more than nine months without any progress in the trial.

This Court while dealing with the right of personal liberty must have due regard to such a fundamental right of a citizen and the procedure established by law has to be essentially weighed of which the premise cannot be founded on mere apprehensions. That apart, for any such conduct, it is always open to the investigating agency to approach the court of law for seeking cancellation of bail but at this stage nothing would turn on the basis of presumptive apprehensions of the investigating agency insofar as the grant of bail to Rahul Kothari is concerned. In view of the aforesaid discussions, the bail application of Vikram Kothari is rejected at this stage and that of Rahul Kothari, is allowed.

Let Rahul Kothari involved in involved crime no. RC/BD1/2018/E/0001 under Section 120-B IPC read with Section 420, 467, 468 and 471 IPC and Section 13 read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, Police Station CBI/BS&FC/New Delhi, District Kanpur/Delhi, be released on bail on his furnishing a bail bond and two heavy and reliable sureties to the satisfaction of the court concerned subject to the following conditions.

(i) The applicant shall surrender his passport before the trial court immediately on his release.

(ii) The applicant shall give due intimation to the court concerned about any movement within the country with specific time schedule.

(iii) The applicant shall file undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant shall remain present before the trial court on each date fixed, either personally or through counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(v) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate

proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code.

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

The trial court is also expected to expedite the trial once the charge sheet has been filed.”

22. It is admitted fact in the present matter that the applicant has not moved regular bail application before the court below. Only default bail application was moved and same was rejected by the court below. Thereafter present bail application has been moved before this Court taking recourse to the provisions of Section 439 and 167 Cr.P.C. It is true that provision of Section 212 Cr.P.C. has not been mentioned in the bail application but on this technical ground alone prayer made by the applicant to consider the bail application on regular side cannot be rejected. Thus, preliminary objection raised on behalf of the S.F.I.O. cannot be accepted, particularly, keeping in view the pandemic situation arose in the country and non regular functioning of the subordinate courts.

23. As far as default bail is concerned applicant was allowed on bail through aforesaid Bail Application No. 3492 of 2018 in a case lodged by the C.B.I. Present matter is related to the Companies Act and S.F.I.O. is only authorized to investigate the matter. Applicant's judicial custody was firstly made on 21.03.2020. It is settled proposition of law that period of transit remand cannot be included in the total period of judicial custody for calculating the sixty days period for filing the charge sheet/police report/complaint. In this matter complaint had been filed on 15.05.2020 itself in the court. Sixty days period for filing the police report/complaint was to be expired on 17.05.2020.

24. Submission of the learned counsel appearing for the applicant is that since cognizance was taken on 29.05.2020, therefore, remand extended after expiry of sixty days period was illegal and infeasible right had accrued in favour of the applicant to release him on default bail.

25. To analyse the submissions raised across the Bar on this score, court has minutely perused the case laws relied upon by the learned counsel appearing for the parties.

26. Submissions made by the learned counsel appearing for the applicant and disclosed in the written submission regarding the application of provisions of Section 167 (1), Section 167 (2) and Section 309 Cr.P.C. are not liable to be accepted. If the prosecution had filed complaint/police report within the period of sixty days, the right of default bail would not accrue in favour of the accused person as has been held by the Apex Court consistently in several cases and is being followed by the Courts till today. Construction of provisions of Section 167(2) Cr.P.C. in the manner submitted by learned counsel appearing for the applicant is not permissible and is not akin to the settled legal proposition. Remand could continue under Section 167(2) Cr.P.C. even after filing of complaint / charge-sheet despite this fact that cognizance had not been taken on the complaint. It is admitted case of the applicant that he moved default bail application on 18.05.2020. Since complaint had already been filed on 15.05.2020 and sixty days period was to be expired on 17.05.2020, therefore, default bail was not liable to be allowed. It is immaterial whether cognizance had been taken or not on the complaint/police report on the date of filing of the default bail application. Judicial custody could continue under Section 167 (2) Cr.P.C. in the present matter till the court takes cognizance on the complaint as has been discussed herein above. Custody of the applicant on this score will not be

deemed to be illegal and applicant was not deprived of his constitutional right as enshrined under Article 21 of the Constitution of India. There was valid ground to extend the judicial custody of the accused-applicant under Section 167 (2) Cr.P.C. for extended period. Prayer of the applicant for default bail is not liable to be allowed and is hereby rejected.

27. As far as regular bail is concerned only ground taken by the learned counsel for the applicant is that he has been allowed on bail on the basis of same set of facts in the FIR lodged by the C.B.I. and he has cooperated with the investigation agency. There is no chance for tampering the evidence or fleeing away. There is no chance for conclusion of the trial in near future. If the submissions raised on behalf of the parties on regular bail are compared in consonance with the facts and circumstances of the present matter, applicant was the Director of the R.G.O.C. and due to modus operandi adopted by the accused and the companies concerned as disclosed in the complaint huge loss occurred to the tune of Rs. 4168 crores to the public sector banks and it has become N.P.A. Act done by the applicant is a serious nature of economic offence affecting the interest of public at large and also national interest. Penal provisions of Sections 447 and 448 of the Companies Act and effect of provisions of Section 212 (6) of the Companies Act have not been considered while allowing the bail application of the applicant in the F.I.R. lodged by the C.B.I. which clearly prohibits the release of the accused unless and until 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. Bar created under Section 212 (6) of the Companies Act is also against the release of the applicant. Thus, regular bail application of the applicant in the opinion of the court is also not liable to be allowed.

28. Thus, on the basis of discussion made herein-above and keeping in view the entire facts and circumstances of the case and also the amount involved in the matter which has become N.P.A., the court is of the view that no case for regular bail is made out.

29. The prayer for regular bail is also hereby **rejected**.

Order Date :- 11.05.2021

Sachdeva