

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2022

Delivered on : 20.10.2022

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.21728 of 2022

Rahul Dinesh Surana

... Petitioner

Vs.

The Senior Assistant Director,
Serious Fraud Investigation Office (SFIO),
Corporate Bhavan,
No.29, Rajaji Salai, Ground Floor,
Chennai 600 001.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C. read with Section 212(6) of the Companies Act, 2013 to enlarge the Petitioner on bail in F.No.3/61/2018/CL-II(SR) on the file of the respondent.

For Petitioner : Mr.N.R.Elango, Senior Counsel for
M/s.Nithyaesh and Vaibhav

For Respondent : Mr.B.Mohan,
Special Public Prosecutor (SFIO Cases)
assisted by Mr.S.Sabari Perumal

ORDER

The petitioner, who was arrested by the respondent on 13.7.2022 and remanded to judicial custody on 14.7.2022 for the offence punishable under Section 447 of the Companies Act, 2013 in F.No.3/61/2018/CL-II(SR) on the file of the respondent police, seeks bail.

2. The petitioner is claimed to have played a key role in the group of Companies and is alleged to have indulged in the offence of siphoning of huge public money availed by way of financial assistance from various banks in the name of some shell Companies and puppet Companies.

3. Though a crispy order would suffice in applications for bail, considering the factual aspects projected by the parties, this court is constrained to deal with the factual aspects in brief as under:-

(i) The Ministry of Corporate Affairs (hereinafter referred to as "MCA"), Government of India (GOD), vide order No.F.No.3/61/2018/CL-II dated 28.03.2019, ordered an investigation into the affairs of Surana Industries Limited and 14 other companies (hereinafter referred to as Surana Group of Companies or Surana GOC) by Serious Fraud Investigation Office

under Section 212(1)(c) of the Companies Act of 2013. The details of Companies under Surana Group of Companies are as under:

S.No.	COMPANY
1.	Surana Industries Limited (SIL)
2.	Surana Power Limited (SPL)
3.	Surana Corporation Limited (SCL)
4.	Surana Green Power Limited (SGPL)
5.	Vinayaga Infra Limited (VIL)
6.	Surana Green Energy Limited (SGEL)
7.	SSS Tech Engineers Private Limited (SSSTECH)
8.	BLS Power Solution Limited (BL SPL)
9.	R.R.Tools Private limited (RR TPL)
10.	V.N.R. Infrastructures Limited (VNRIL)
11.	Patheyapori Gardens Private Limited (FGPL)
12.	Grant Logistics Limited (GLL)
13.	Natural Coal Private Limited (NCPL)
14.	Sayso Exim Private Limited (SAYSO)
15.	Thribhuvan Enterprise Private Limited (TEPL)

(ii) On the basis of the SFIO Investigation Report into the affairs of Surana Industries Limited and 14 other Companies, the respondent had filed a complaint against the petitioner and 89 others under Section 439(2) r/w. Section 436(1)(A),(D), & (2) r/w Section 212(6) r/w 212(15) of the Companies Act, 2013, r/w Section 621(1) of the Companies Act, 1956, & Section 193 of the Code of Criminal Procedure, 1973 seeking to prosecute

them for the offence under Sections 36(c) r/w 447, 143 r/w 147, 178(8), 188, 447, "448 r/w 129, 131 & 447", 448 of the Companies Act, 2013; Section 227 r/w 233, 628 r/w 211, 628 of Companies Act, 1956; and Section 420 r/w 120 B of the Indian Penal code, 1860.

(iii) During the course of investigation, the respondent investigation team arrested Rahul Dinesh Surana, on 13.07.2022, Dinesh Chand Surana, on 02.08.2022, Vijayraj Surana, on 02.08.2022 and Devarajan K.E. on 05.08.2022.

(iv) The Surana Group of Companies (Surana GOC) consists of three flagship companies namely Surana Industries Limited (SIL), Surana Corporation Limited (SCL) and Surana Power Limited (SPL). These Companies have made bank borrowings and have been declared as Non Performing Assets (NPA) and are presently under liquidation, Insolvency and Bankruptcy Code, 2016 (IBC). Under IBC, the Liquidator had adjudicated the dues of the SIL, SCL and SPL and assessed a total liability of Rs.10,238 Crores.

(v) During the course of investigation by the respondent, it was found that the Companies have made various false representations pertaining

to revenue generation, share capital contribution and profitability of Surana GOC, based on which, public sector banks have lend monies to SIL, SCL & SPL and the total adjudicated financial liability of the three companies is Rs.10,238 Crores. The investigation has revealed various counts of siphoning of funds, diversion of funds and creation of assets utilizing siphoned out funds. The Companies had floated various shell, puppet Companies, Partnerships and Proprietorship by making its own employees as Directors, Partners and Proprietors respectively inside and outside India to siphon off crores of money to cause loss to the lending banks. The investigation further revealed that there were two (2) distinct groups of entities controlled through their own employees (puppets). The books of accounts were maintained in a fragmented manner, both SAP and tally. False statements of trading revenue were generated to mislead the creditors and shareholders and thereby they have cheated the banks to the tune of Rs.10,238 crores.

(vi) The petitioner was appointed as Group CEO of Surana Group (SIL & SPL) on 27.05.2015 as approved in the BOD of SIL dated 22.05.2015. Email pertaining to this taking charge as Group CEO from DES

confirms the same. The specific role of the petitioner in fraudulent conduct of affairs of SIL is as listed below:

- The petitioner (A6), in connivance with his father Dinesh Chand Surana (A4), had utilized Puppet-II managed by his maternal uncle Deepak Kothari (A22) as a tool to inflate revenue figures of SIL during F.Y. 2015-16 and 2016-17 by showing paper trade. Statutory Auditors of SIL have given adverse opinion for both financial years as they were unable to conclude that the financial statements reflect true and fair view of the affairs of SIL. RDS had controlled the affairs of puppet entities SAYSO, TEPL.

- The petitioner, in connivance with his father Dinesh Chand Surana and Yashpal, had siphoned out Rs.115.99 Crores from SIL to RIPL and RVPL.

- The petitioner, in connivance with his father Dinesh Chand Surana and Anandh, had willfully mismanaged SIL between F.Y. 2014-15 and F.Y. 2016-17 for the benefit of Sakthi GOC. The

petitioner, in connivance with his father Dinesh Chand Surana and Yashpal Sharma (Yashpal) of Radha GOC, had siphoned out monies to Radha GOC. The petitioner further, in connivance with his father Dinesh Chand Surana, Anandh and Yashpal, had amassed properties at MSS Purasaiwakkam, Victory foundation and Aagam Realty at Anna Nagar, which are being in the custody and enjoyment of the petitioner and his father Dinesh Chand Surana.

- The petitioner, in connivance with his father Dinesh Chand Surana and Deepak Kothari, had utilized three fake transport firms to siphon funds of Rs 14.32 Cr from SIL, which were borrowed from banks.

- The petitioner, in connivance with his father Dinesh Chand Surana, had floated an entity BELL Tower Enterprises LLP(BELL) by employees and subsequently replaced the employees on 10.07.2015 with his illiterate & crippled distant

relative Anand Parekh and roped in wife of Anand Parekh (Bindhu Anand) on 14.09.2016. Dinesh Chand Surana & the petitioner had operated BELL and had acquired the wind mills of SIL & SCL by proxy utilizing the bank borrowings siphoned off from SIL & SCL. This is a classic case of how a promoter, who had defaulted in bank borrowing, acquires the same asset by proxy using the siphoned off funds of banks. They had also siphoned out funds (a) Rs 8.25 Crore to the bank accounts of Dinesh Chand Surana (b) Rs 2 Crores to Sakthi GOC. Dinesh Chand Surana & the petitioner had also conceived an implemented manure utilizing employees to transfer siphoned out bank borrowings from BELL to Radha GOC and RAT Ispat. Dinesh Chand Surana and the petitioner had carried out these acts in connivance with Yashpal of Radha Group, Ritesh Rai & Kanniah Anand.

- Subsequently, the petitioner, in connivance with his father Dinesh Chand Surana, orchestrated removal of steel stock from the books

of SIL by following various dubious accounting treatment. They had provisioned/ written off steel from the books of SIL to the extent of Rs.191.31 Crores between F.Y. 2015-16 to 2017-18.

- The petitioner, in connivance with his father Dinesh Chand Surana, orchestrated creation of separate Tally for Madhavaram and to artificially and falsely show trading material loss of Rs.77.44 Crores, resulting in siphoning of stocks of SIL in FY 2015-16.
- The petitioner had connived with Dinesh Chand Surana & Deepak Kothari to appoint employees as directors of SAYSO & TEPL, these BOD were accustomed to act on the direction of Dinesh Chand Surana, the petitioner & PK either directly or indirectly.

7. The petitioner, a key management personnel and son of Dinesh Chand Surana M.D of SIL & SPL, was appointed as Vice President (Projects) in SPL in the Board of Directors Meet dated 28.12.2008. The

petitioner looked after the implementation of the 420MW power plant of SPI. He has been disclosed as Key Management Personnel in the related party disclosures for F.Y. 2010-11, 2011-12, 2012-13 & 2013- 14. It is to be noted that both the hiving off 35MW and the plan to establish 420MW power plant happened after appointment of RDS as VP (Projects). The audit documentation 11101.06 Org chart SPL CHO.pdf for FY 2014-15 of SPL shows the overall control of the petitioner over Technical Department, Finance Department, Accounts Department, HR & Admin. Department, Systems Department and Company Secretary. He not only attended most of the BOD Meetings of SPL, but was also part the Management Committee, Steering Committee of SPL. His role in fraudulent conduct of affairs of SPL is as listed below;

- a. The petitioner had remained at the helm of the Power Plant Construction and he had inflated the project cost of the 420 MW through entities controlled through employees (Puppet-I) to enable SBs divert all of the monies invested in SPL as share capital back to SIL. This manner was carried out with the intent to defraud banks by not bringing in any promoter contribution.

- b. The petitioner had made various false representations to banks in the form of e-mail correspondences with banks seeking disbursements.
- c. During his tenure as Group CEO of SIL & SPL, he had written off Rs.86.24 Crores, in connivance with his father Dinesh Chand Surana, receivable from VIL and BKPL as disclosed in its audited financial statements for FY 2014-15, resulting in loss of monies borrowed from banks and causing siphoning of funds of SPL of Rs.86.24 Crores.

8. The petitioner along with his father Dinesh Chand Surana was operating SAYSO & 'TEPL using his maternal uncle, Deepak Kothari by making his employees and poor relatives as Directors in the puppet Companies and contracts were entered with puppet companies and monies were rotated among the Companies and puppet Companies. His role in fraudulent conduct of affairs of SCL is as listed below;

- a. The petitioner had connived with others to inflate revenue figures of SCL by conducting false paper trade between SAYSO, TEPL, and SCL.

b. The petitioner, in connivance with his father Dinesh Chand Surana & Deepak Kothari, had utilized corporate entities of SAYSO and 1EPL to siphon off Rs.58.8 Crores to Ramlal which is nothing, but funds borrowed by SIL & SCL from banks.

c. The petitioner, in connivance with his father Dinesh Chand Surana, Deepak Kothari & Devarajan, had orchestrated siphoning of funds of SCL, by transferring funds out to SAYSO of Rs.108.37 Crores.

d. The petitioner, in connivance with his father, Dinesh Chand Surana, had floated an entity Bell Tower Enterprises LLP(BELL) with his employees and subsequently replaced the employees on 10.07.2015 with his illiterate distant relative Anand Parekh and roped in wife of Anand Parekh (Bindhu Anand) on 14.09.2016. Dinesh Chand Surana and the petitioner had operated BELL and had acquired the windmills of SIL & SCL by proxy utilizing the bank borrowings siphoned off from SIL & SCL. This is a classic case of how a promoter, who had defaulted in bank borrowing, acquires the same asset by proxy using the siphoned off funds of banks.

e. The petitioner, in connivance with his father Dinesh Chand Surana, had also siphoned out funds (a) Rs.8.25 Crores to the bank accounts of Dinesh Chand Surana; (b) Rs.2 Crores to Sakthi GOC through BELL, which was partly repaid after the commencement of investigation. Dinesh Chand Surana and the petitioner had also conceived an implemented manner utilizing employees to transfer siphoned out bank borrowings from BELL to Radha GOC and RAI Ispat. Dinesh Chand Surana and the petitioner had carried out these acts, in connivance with Yashpal of Radha Group, Ritesh Rai & Kanniah Anandh.

9. Hence, the respondent has filed the complaint against the petitioner and others, citing 125 witnesses, annexing 532 documents and 115 statements of witnesses.

10. Learned Senior Counsel Mr.N.R.Elango appearing for the petitioner would submit his arguments as under:-

(i) The petitioner was appointed as a Vice President (Projects) of Surana Power Limited and he is neither a member of Board of Directors of

Surana GOC nor a key managerial personnel as required under Section 203 of the Companies Act, 2013. The petitioner's role as Vice President (Projects) from 2008 was only to take care of the technical aspects of Surana GOC and to look after and manage the projects and later during 2012-13, he was made as Vice President (Operations). He was not incharge and responsible for the conduct of Surana GOC and though he was appointed as a Group CEO, on 27.05.2015 in respect of Surana Industries Limited and Surana Power Limited, he had been appointed only for the purpose of reviving and rehabilitating the Company and later, he resigned from both the Companies on 05.11.2017. Other than being incharge of the projects, he has nothing to do with the borrowals from various Banks and management of finance of the company.

(ii) The fact remains that CBI & BF had registered a case in Crime No.11 of 2019 against the promoters and Directors of Surana Industries Limited for alleged offence under section 120(b), 420, 467, 468 and 470 I.P.C. and under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. In the case registered by CBI, the Chief Account's Officer has been made as an accused and the petitioner is not an accused. Subsequently, CBI

has also registered the 2nd F.I.R. in Crime No.5 of 2020 on 08.09.2020 against the promoters and Directors of Surana Industries Limited for alleged offence under Section 120(b) r/w 420, 467, 471 and under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act and in that case also the petitioner is not an accused. Subsequently, the Enforcement Directorate also registered the ECIR in CE20 No.37/2020 and even in the subsequent F.I.R. in Crime No.6 of 2022, the petitioner is not an accused.

(iii) The respondent had issued a look out circular against the petitioner and the petitioner had challenged the same in W.P.No.2477 of 2020 before this Court and this Court finding that there is no evidence of involvement of this petitioner in the alleged offence of embezzlement of public money, had given a clean chit to the petitioner and quashed the look out circular. Prior to that, the Liquidator, Insolvency Resolution Professional had filed an application before an NCLT Division Bench No.2, Chennai under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking an order to direct the Surana GOC to pay a sum of Rs.17,231 crores to the Corporate debtors, whereas, the NCLT had dismissed the application vide its order dated 27.06.2022 in MA/244/2019 in CP 646/IB/2017, finding that

there was no fraud in the management of the Company.

(iv) The loans have been issued pursuant to the due diligence exercised by the lending Banks. Mott MacDonald, a Global Engineering and Management Consultant was appointed by IDBI, the lead bank of SPL consortium lender as Lender's Independent Engineer (LIE) for due diligence, construction monitoring, performance testing and annual operation monitoring (5 phases) and only based on the Report issued by the Engineers, the loans were disbursed.

(v) From 07.03.2022 to 13.07.2022 the petitioner was summoned for investigation by the respondent and the petitioner had appeared before the respondent for more than 7 times and the petitioner has not evaded summons or absconded. He had duly cooperated with the respondent in his investigation, however, he was arrested on 13.7.2022 and remanded to judicial custody on 14.7.2022. Even thereafter the respondent had taken custody of the petitioner for two days for the purpose of investigation. After investigation in respondent's custody, the petitioner was sent back to judicial custody. When the NCLT as well as this Court by detailed and meticulous orders held that the petitioner had not committed any fraud, the respondent,

without any basis, has filed the complaint and arrested the petitioner.

(vi) The investigation has been completed and the complaint has also been taken on file. There are 125 witnesses and 89 co-accused and there is no likelihood of the trial being completed in an early date. The co-accused K.E.Devarajan, who has been similarly placed, has been directed to be released on bail in Crl.O.P.No.22595 of 2022 by order dated 11.10.2022.

(vii) The petitioner has not committed any fraud and that there are reasonable grounds for believing that he is not guilty of such offences and that he is also not likely to commit any offence while on bail and thereby the petitioner, having satisfied the twin conditions specified under Section 212(6) of the Companies Act, 2013 and thereby he is entitled to bail.

(viii) Except the bare allegations of the petitioner having connived with his father Dinesh Chand Surana, there is no material to link the petitioner with the offence. The respondent has not proved the fundamental facts in the case for invoking Section 212 (6) of the Companies Act.

(ix) There is no possibility of the petitioner to interfere with the investigation and further the judicial custody of the petitioner may not be required and thereby he would seek for grant of bail. The petitioner is ready

to abide by any stringent conditions.

11. Referring to the contentions of the detailed counter filed by the respondent, Mr.B.Mohan, learned Special Public Prosecutor would submit his arguments as under:-

(i) At the outset, it is a serious economic offence of grave magnitude. The petitioner is the key person in charge of the management and affairs of Surana group of Companies which is a family Concern run by the petitioner, his father Dinesh Chand Surana, his uncle Vijayraj Surana and K.E.Devarajan. Though the petitioner claims to be the Vice President (Projects), as per the Project Organisational Chart of Surana Power Limited, the petitioner has played pivotal role in running the Company.

(ii) In the Profile of the petitioner, annexed to the Company documents, the petitioner is shown to be the person in charge of Finance and Accounts and he is the person in charge of

1) Submission of feasibility/viability, study reports for syndication of Term Loan from the Lenders.

2) Monitoring and releasing the payments to the agencies involved in the project and operations as per the internal schedules.

- 3) Overseeing all other matters pertaining to finance which are required to be performed in the Company for the successful project implementation.
- 4) Monitoring the finance and accounts team for maintaining the proper books of accounts and making inspections of records as and when required.
- 5) Formulating and implementing the investment strategies for meeting the needs and contingencies of the company.
- 6) Planning and Monitoring the Cash Flows in the Company and forecasting the future Cash flow requirement as against the actuals.
- 7) Formulated various strategies to ensure effective control and monitoring system for finance and accounting in the Company.
- 8) Identify and exploring avenues for Private Equity participation into the Company.
- 9) Overviewing the day to day financial operations of the Company.
 - (iii) Apart from the above, he is the person coordinating with various contracts in the operation. The petitioner, in connivance with other accused, had floated shell Companies by inducting employees of Surana group Companies as Directors in the Shell Companies. Fake transactions were done as if amounts were paid to the shell Companies and they were siphoned

off. In all the correspondence, the petitioner is shown as the person in charge of Commercial and Financial transactions of the Company and the petitioner was aware of the fraudulent activities and embezzlement of funds.

(iv) Though it was claimed by the petitioner that due diligence was exercised by the Lenders' Independent Engineers, it was found that the report was given based on false representation made by the accused.

(v) Further, all the correspondence obtained from Mott MacDonald, reveal that the petitioner was the person in charge of the business of the Company. The petitioner, alongwith other accused, indulged in circulation of funds and had, by embezzling the funds and fabrication of documents, have projected the borrowed money as their money.

(vi) Sofar as non-inclusion of the petitioner as an accused in the case registered by CBI is concerned, they were in respect of the offence under the provisions of Prevention of Corruption Act in respect of the role of the other accused in colluding with bank officials and cheating the banks whereas in the case on hand, based on specific inputs and materials available in respect of the fraudulent activities and circulation and round tripping of funds, the petitioner has been roped in as an accused.

(vii) In respect of the proceedings pending before NCLT, finding is based on the report of the Insolvency Resolution Professional, who has given the report based on the inputs given by the petitioner group Companies in respect of which, no in-depth investigation had been done.

(viii) Insofar as the order passed by this court in W.P.No.2477 of 2020 is concerned, the limited purpose of the writ petition was to find out whether the petitioner was at flight risk and even during the relevant time, the respondents were not having details that in-depth and in detail investigation in respect of the fraud committed by the petitioner.

(ix) The Insolvency Resolution Professional has no wherewithal to investigate and go into details. The respondent had conducted in-depth investigation and statements have been recorded from the witnesses under Section 217 and 449 of the Companies Act.

(x) The witnesses have given evidence that the petitioner alongwith other accused, by using shell and puppet companies has involved in round tripping of monies and thereby embezzled the amounts. The accused, by various fraudulent activities had caused monetary loss to the tune of Rs.10,000 crores to the consortium of banks.

(xi) Though the petitioner claims to be not in charge of Finance, there are materials by way of oral and documentary evidence to show that the petitioner had indulged in fraud as explained under Section 447 of the Companies Act.

(xii) Various statements recorded from the witnesses with regard to the involvement of the petitioner and the fraud committed by him would reveal that the respondent has made out grounds for believing that the petitioner is guilty of the offence.

(xiii) The petitioner cannot claim bail on the ground of parity. The co-accused who has been granted bail was a statutory auditor. This court, while granting bail to the co-accused, finding that the co-accused was never shown as a key managerial person and that he was not the Founder or Promoter of the Company and he is only a Chartered Accountant by profession and he has done his duty as a Chartered Accountant without knowing the physical activities of the Company, granted bail, whereas the petitioner totally stands on a different footing.

(xiv) The petitioner has been arrested very recently and that the respondents may also require to conduct further investigation and thereby the

bail application is liable to be dismissed.

12. Heard the learned Senior Counsel appearing for the petitioner and the learned Special Public Prosecutor and perused the materials available on record.

13. Despite the fact that the court is overwhelmed with factual aspects which the parties have, unavoidably, produced, the issue before this court is whether the petitioner, who is one among the accused alleged with an offence of siphoning of public money in a fraudulent manner, is entitled for bail or not.

14. The crux of the stand taken by the petitioner seeking bail is as under:

(i) He is an innocent person and he was not in charge and responsible for the conduct of Surana Group of Companies though he was appointed as a Group CEO and he had been appointed only **for the purpose of reviving and rehabilitating** the Company.

(ii) In a case filed by CBI & BF in Crime No.11 of 2019 against the promoters and Directors of Surana Industries Limited and a Look Out

Circular was issued against him, against which the petitioner had filed a writ petition in W.P.No.2477 of 2020 and obtained a clean chit by way of an order dated 7.3.2022 quashing the Look Out Circular and thereby he is entitled to bail in the present case.

(iii) The loans were disbursed by the banks only based on the Report of the Lender's Independent Engineer and thus, there is no question of misrepresentation by the petitioner.

(iv) The next initiation by the authorities before the NCLT for a direction against the group of Companies was also dismissed and hence, the petitioner being a part of the group of companies is entitled to grant of bail.

(v) A co-accused has been granted bail by order dated 11.10.2022 in Crl.O.P.No.22595 of 2022 and thus, the petitioner is entitled for grant of bail.

15. Heard the learned Special Public Prosecutor on the above aspects and perused the materials available on record.

16. The petitioner is charged with the offence punishable under Section 447 of the Companies Act, 2013. The case of the petitioner is that he had complied with the twin conditions of Section 212(6) of the Companies

Act, 2013, which reads as under:-

" 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), 1[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."

17. On a perusal of the materials available, this court finds that the offence is a serious economic offence of grave magnitude involving around

10,000 crores of hard earned public money. Among other crimes, this sort of **white-collar crimes** are particularly harmful to society as they are committed by not just literated, but, well educated and influenced persons, who are expected to set a moral example and behave responsibly. The fraudulent activity in siphoning of pubic money by defrauding the financial institutions is unlike any other offence which could have been committed by sudden provocation as it is a well calculated one with the deep understanding as to the consequences and with the ideology to conquer them. Therefore, if the court finds a *prima facie* case against the accused in such cases, it cannot come to a satisfaction that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail as specified in Section 212 (6)(ii) of the Companies Act, 2013.

18. Though the petitioner claims to be an innocent and he was only the Vice President (Operations), from the materials submitted alongwith the Application, it is clear that the petitioner has played a major role in the affairs of the Company. He himself claims to have been appointed as a **Group CEO only for the purpose of reviving and rehabilitating the**

Company. On one side, he claims such a responsibility of **reviving and rehabilitating** the Company and on the other side, he claims no knowledge when it comes to the part of fraudulent activity in dealing with the Banks and siphoning of amounts, whereas the records also reveal that the petitioner and the other accused have formed benami/shell and puppet Companies and they have indulged in round tripping of money to their Companies. Though there are several statements recorded from the witnesses, the statement recorded from one of the Statutory Auditors viz., Geetha Suryanaranayan under Section 217 of the Companies Act reveals that the petitioner had played a key/pivotal role in the organisation. Further, a perusal of the statements recorded from other witnesses also show that the petitioner is the person, who is responsible for floating puppet and shell Companies in the name of their employees, poor relatives and round tripping and layering of money.

19. A perusal of the materials reveals that the petitioner is the person who has signed in various documents as person in charge of commercial/financial transactions of Surana Power Limited. Apart from the above, the statement recorded from Banvarlal Sharma discloses about the role played by the petitioner and other accused for defrauding the banks and

embezzlement of funds.

20. The witnesses viz., Ramachandran and Banvarlal Sharma say that without there being any actual business activities in those Companies, the petitioner and other accused, were round tripping the money and the money borrowed were projected as capital to inflate and show profit in the Companies and contracts were entered between the benami Companies at high rates and the monies were returned back to Surana for business activities.

21. Sofar as the stand taken by the petitioner that he has got a clean chit in the writ petition filed by him challenging the Look Out Circular issued against him, it is seen that he was not an accused in the case connected with such proceedings and therefore, he cannot claim such an order as an immunity for him in the bail application of the current proceedings, where he is arrayed as an accused, alleged to have indulged in fraudulent activities against the banks to siphon the money to a very large extent and especially, when the prosecution has come out with a prima facie materials against his role in such offence.

22. Similarly, the petitioner cannot take a shelter by contending

that the loans were disbursed only on the basis of the Report of the Lender's Independent Engineer and thus, he had not defrauded the Banks as the correspondences produced by the respondent reveal that such a Report was produced only on the basis of the information/inputs provided by the petitioner' Group of Companies.

23. The petitioner cannot contend that in a proceedings before NCLT, a finding was given in favour of the Group of Companies which affirms that he too had not indulged into any fraud as such a finding is based on the report of the Insolvency Resolution Professional, who has given the report based on the inputs given by the petitioner group Companies in respect of which, no in-depth investigation had been done.

24. Sofar as the stand taken by the petitioner that a co-accused has been granted bail by this court and thus, he is also entitled to grant of bail, it is seen that such a co-accused is a Chartered Accountant and this Court had granted bail to him on the ground that he is not a Founder or Promoter of the group Companies and that the other accused belonging to the Promoter family are still in custody.

25. Of course, the golden principle has been time and again held by

various courts that no person shall be deprived of his life or personal liberty except according to a procedure established by law. But, at the same time, the courts must strike a balance between the interest of the society in general and the right of an accused to personal liberty. It is relevant to note that in *Masroor vs. State of Uttar Pradesh and another* (2009) 14 SCC 286, it has been held as under:-

"**15.** There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned."

26. Further, in ***Serious Fraud Investigation Office vs. Nittin Johari*** (2019) 9 SCC 165, a Three Judges Bench of the Apex Court has held as under:-

"**24.** At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in *Y.S. Jagan Mohan Reddy* [*Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35)

“**34.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having

deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the 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 at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

This Court has adopted this position in several decisions, including *Gautam Kundu v. Directorate of Enforcement* [*Gautam Kundu v. Directorate of Enforcement*]

Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603]

and *State of Bihar v. Amit Kumar* [*State of Bihar v. Amit Kumar*, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771] .

Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences."

27. Having perused the entire materials available on record, as of now, this court is of the opinion that the petitioner has not satisfied the conditions imposed under Section 212(6)(ii) of the Companies Act for grant of bail for the offence punishable under Section 447 of the Companies Act. Further, it is a case of economic offence of such a huge magnitude affecting the society and thus, this court find that it is highly premature at this stage to grant bail to the petitioner. Accordingly, the Criminal Original Petition stands dismissed.

20.10.2022

kas/ssk

Index: Yes.

To

1. The Senior Assistant Director,
Serious Fraud Investigation Office (SFIO),
Corporate Bhavan,
No.29, Rajaji Salai, Ground Floor,
Chennai 600 001.
2. The Special Public Prosecutor (SFIO cases),
High Court of Madras.

Crl.O.P.No.21728 of 2022

A.D.JAGADISH CHANDIRA., J.

kas/ssk.

P.D. ORDER IN
Crl.O.P.No. 21728 of 2022

Delivered on
20.10.2022