



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 640 of 2022
(Arising out of SLP (Crl) No 1554 of 2022)

Jainam Rathod

Appellant

Versus

State of Haryana & Anr

Respondent

ORDER

1 Leave granted.

2 By the impugned order dated 18 November 2021 of a Single Judge of the High Court of Punjab and Haryana, an application for bail has been rejected. The Single Judge held that:

- (i) An earlier application for bail was dismissed on merits; and
- (ii) No ground was made out for the grant of bail on the ground of parity with the other accused who have been granted bail.

3 Briefly stated, a complaint¹ was lodged on 18 May 2019 before the Sessions Judge-cum-Special Judge (under the Companies Act 2013) at Gurugram alleging violations of the provisions of Section 447 of the Companies Act 2013 and various provisions of the Indian Penal Code 1860, including Sections 406, 417, 418, 420, 467, 468, 471, 474 and 477A. After the complaint was submitted on

¹ Criminal Complaint No. 3 of 2019



18 May 2019, the appellant was arrested on 28 August 2019. The first application for bail was rejected by the trial judge, following which an application under Section 439 of the Code of Criminal Procedure 1973 was rejected by the High Court on 13 November 2019. A Special Leave Petition² was dismissed by this Court on 27 January 2020 with the observation that it was always open for the appellant to move a fresh application for bail. Following this, the appellant applied for bail which was denied by the Special Judge on 13 October 2020. The High Court declined to grant bail by the impugned judgment.

4 Mr Kapil Sibal, senior counsel appearing on behalf of the appellant, submitted that:

- (i) The appellant appeared before the Serious Fraud Investigation Office³ during the course of the investigation;
- (ii) The arrest was effected after the complaint was lodged;
- (iii) The appellant has been in custody for nearly two years and eight months;
- (iv) 187 persons are named as accused and there is no likelihood of the trial being completed at an early date; and
- (v) While the main accused, Mukesh Modi and Rahul Modi, continue to remain in custody, applications for the grant of bail on the part of some of the other accused, including, Vivek Harivyasi, Priyanka Modi, Raj Kumar Modi and Surender Singh, have been entertained.

5 A counter affidavit has been filed in these proceedings by SFIO opposing bail.

² SLP (Crl) No. 11765 of 2019

³ "SFIO"



6 Mr K M Nataraj, Additional Solicitor General appearing on behalf of SFIO, opposed the prayer for bail on the following grounds:

- (i) The conditions which are spelt out under Section 212(6) of the Companies Act 2013 have not been fulfilled;
- (ii) There can be no claim of parity having due regard to the fact that besides the receipt of a commission of an amount of Rs 22 lakhs, the appellant is, upon investigation, found to have been involved in a concerted course of action of granting accommodation entries to the main accused as a part of their business;
- (iii) As regards the progress of the trial, it has been stated in the counter affidavit that a complaint was filed before the Special Court against 187 accused and that all the accused except 27 persons have appeared before the Special Court. Out of the remaining 27 persons, the Special Court has, in the case of 24 persons, by an order dated 25 March 2022, directed the initiation of proclamation proceedings under Section 82(1) of the Code of Criminal Procedure 1973; and
- (iv) The provisions of Section 212(6) of the Companies Act 2013 have been interpreted in a judgment of this Court in **Serious Fraud Investigation Office v. Nittin Johari**⁴.

7 The appellant is in custody since 28 August 2019. 187 accused are named in the criminal case by the prosecution. It is stated in the counter affidavit that all except 27 of them have appeared. It is evident that even as regards the balance,

⁴ (2019) 9 SCC 165



proclamation proceedings are intended to be initiated pursuant to the order of the Special Judge dated 25 March 2022. The proceedings are now listed before the Special Judge in July 2022.

- 8 In this backdrop, in the absence of a fair likelihood of the trial being completed within a reasonable period, this Court must be mindful of the need to protect the personal liberty of the accused in the face of a delay in the conclusion of the trial. We are inclined to grant bail on the above ground having regard to the fact that the appellant has been in custody since 28 August 2019. In **Nittin Johari (supra)**, this Court has held:

“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.”

While the provisions of Section 212(6) of the Companies Act 2013 must be borne in mind, equally, it is necessary to protect the constitutional right to an expeditious trial in a situation where a large number of accused implicated in a criminal trial would necessarily result in a delay in its conclusion. The role of the appellant must be distinguished from the role of the main accused.

- 9 For the above reasons, we allow the appeal and direct that the appellant be released on bail, subject to such terms and conditions as may be imposed by the Special Judge in connection with Complaint No 3 of 2019.



10 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

New Delhi;
April 18, 2022
-S-



ITEM NO.14

COURT NO.4

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).1554/2022

(Arising out of impugned final judgment and order dated 18-11-2021 in CRM-M No. 47621/2021 passed by the High Court of Punjab & Haryana at Chandigarh)

JAINAM RATHOD

Petitioner(s)

VERSUS

STATE OF HARYANA & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.24716/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 18-04-2022 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Ms. Nitya Ramakrishnan, Sr. Adv.
Mr. Prasouk Jain, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Anshuman Srivastava, Adv.
Mr. Mohd. Nizammuddin Pasha, Adv.
Ms. Aprajita Jamwal, Adv.
Mr. Nishant Rao, Adv.
Ms. Rabiya Thakur, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. K.M. Nataraj, ASG
Mr. Kanu Agrawal, Adv.
Mr. Shailesh Madiyal, Adv.
Mr. Mayank Pandey, Adv.
Mr. Vinayak Sharma, Adv.
Mr. Arvind Kumar Sharma, Adv.

Mr. Bhanwar Pal Singh Jadon, DAG
Mr. Chetan Jadon, Adv.
Ms. Hemlata Singh, Adv.
Mr. Virendra Pal Singh, Adv.
Mr. Rovin Singh Solanki, Adv.
Dr. Monika Gusain, AOR



**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 In terms of the signed order, we allow the appeal and direct that the appellant be released on bail, subject to such terms and conditions as may be imposed by the Special Judge in connection with Complaint No 3 of 2019.
- 3 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)
AR-CUM-PS**

(Signed order is placed on the file)

**(SAROJ KUMARI GAUR)
COURT MASTER**