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(Matter heard through Video Conferencing)
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-4525 of 2020 (O&M)

Date of Decision: 29.06.2020

Anil Jindal ...Petitioner

Versus

State of Haryana ... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Argued by:-

Mr. R.S. Rai, Sr. Advocate with
Mr. Kunal Dawar, Advocate and

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG Haryana along with
Mr. Deepak Sabharwal, Addl. AG Haryana.

ARUN MONGA, J.

1. Under blitz before this court are two orders passed by learned Sessions Court. One granting bail and the other declining to accept the security offered by suspect/petitioner in terms of bail conditions mentioned in the bail order. *Lis* herein is not whether bail or jail, for that has already been taken care while granting bail, but whether an onerous condition incapable of being performed can be imposed ?

2. Grievance of the petitioner is that while on one hand he has been accorded the concession of bail by the court below and on the other a punishing bail condition has been imposed that renders the bail to a nullity. He has been behind bars since 05.04.2018, for the last more than 26 months. Were he to be held guilty post trial, he already has undergone pre trial custody equivalent to more than half (about 2/3rd) of the minimum sentence (36 months) qua the offences he is suspected of. Juxtaposition, were he convicted, even in appeal,

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his sentence would have been suspended on the ground of more than 2/3rd already undergone, during pendency of appeal, contends the petitioner. Yet, despite grant of bail, he is in preventive custody.

3. Petitioner is an accused in FIR No. 113 dated 04.03.2018 registered under sections 420,406,120B, 204 IPC and Section 3 of Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 (for short- 2013 Act). He seeks setting aside in part/modification of an order dated 27.03.2019 (Annexure P/4) passed by the learned Additional Sessions Judge, Faridabad for regular bail in aforesaid FIR, to the extent it imposes a condition *"to furnish details and documents of any immovable property/properties valuing Rs. 100 crores in lieu of personal bond with respect to all cases pending against the petitioner and other co-accused"*. Petitioner has also assailed a later order dated 20.09.2019 (Annexure P/9) passed by the same Court dismissing his application for accepting the bail bonds observing that the properties furnished were not unencumbered.

4. First, succinct factual narrative per aforesaid FIR.

4.1. A complaint dated 04.03.2018 by one Rahul ensued into the FIR in question. Relevant allegations are that one Vinod Garg more prominently called 'Mama', who was previously known to him, told the complainant that the petitioner (Anil Jindal) was his nephew. Latter was Chairman of one SRS Group, developing and constructing plots and flats. Vinod Garg told the complainant that if he would invest money with SRS group, not only would he get a plot or flat at cheaper rate but would also get 1.5% per month interest on his investment. His money would become three times very soon. Whenever he would want, he could also withdraw all or some amount. Vinod Garg then took the complainant to the office of SRS Group, where too, same investment terms

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were offered. By falling in their trap, the complainant started depositing money in their office which by the end of 2015 was to tune of Rs. 2,46,000/-. Later on, the complainant came to know that Vinod Garg and petitioner Anil Jindal, in connivance with their partners, had taken thousands of crores of money from other people by playing fraud with them. On their collective protest, the protesters were persuaded to accept cheques. One such cheque for Rs. 2,46,000/- was issued to the complainant also. All cheques given by SRS group were getting dishonored on their presentation on their due dates, hence the complaint and resultant FIR.

4.2. Even though, both in vernacular of the FIR as well as true typed copy thereof, appended with the petition before this Court, the amount complained is stated to be Rs.2,46,000/-, but in the impugned bail order dated 27.03.2019, the same is mentioned as Rs.94,94,000/-. On a query of this Court, it transpired that FIR, at the first instance, was only by a solitary complainant i.e. Rahul, but in the course of investigation few more complainants were added within the scope of the same very FIR. Consequently, the original amount mentioned in the FIR changed from Rs.2,46,000/- to Rs.94,94,000/- at the time of passing of bail order dated 27.03.2019 by the Sessions Court. Final amount complained in the FIR in hand is now stated to be Rs.2,74,57,361/- as per the affidavit dated 10.06.2020 deposed by Sh. Moji Ram, HPS, Assistant Commissioner of Police, Faridabad, filed before this Court in the course of present proceedings.

5. Website case status shows that after completion of investigation, challan/charge sheet was filed in Court on 01.06.2018. On appearance of the accused, the case was adjourned on numerous dates for framing of charges, which were eventually framed on 28.05.2019. Thereafter, trial is being adjourned for prosecution evidence. Petitioner continues to be in pre trial preventive custody since 05.04.2018.

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6. In this background, petitioner moved a bail application before the trial court. He was though granted concession of bail vide order dated 27.03.2019 (Annexure P/4) but could not be admitted/enlarged on bail due to onerous bail conditions and thus is in jail, till date. Relevant part of the bail order is as under:

> *"……. Learned counsel for the applicant further argued that on the basis of allegations mentioned in the complaint, the applicant is liable only for the refund of the invested amount. He further submitted that the applicant along with other co-accused persons are ready to furnish the security amount to the extent of alleged defrauded amount, without admitting their liability, as alleged. ……..Learned PP for the State pointed out that applicant and other co-accused persons committed the fraud to the extent of Rs. 85 crores including the police cases pending before the Magistrate Courts and the enquiries are still pending in large number of other complaints, which are yet to be registered. ……… After hearing the rival submissions, I have given my thoughtful consideration to the same. Without commenting on the merits of the case, I am satisfied that the contention of the learned counsel for the applicant that the interest of the complainant/inventors can be secured if direction is issued to the applicant and the other accused persons for furnishing the security amount documents to the extent of alleged defrauded amount in lieu of personal bond, along with surety bond. Moreover, I am of the view that if the applicant and the other co-accused persons are released on bail by taking substantial surety against the defrauded amount, then in that situation, they may be able to complete their pending projects and will be able to return the amount to the genuine investors along with the delivery of possession of flats/shops/units etc. to the prospective and existing purchasers in the larger interest of all the parties/public good. Accordingly, applicant Anil Jindal is directed to furnish the details and documents of any immovable property/properties valuing Rs. 100 crores in lieu of personal bond with respect to all cases pending before this Court along with surety bond in the sum of Rs. 1 lac in the present case. The surety bond in the present case will be accepted only on compliance of the above directions……..It is made clear that the said documents*

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> *concerning security of Rs. 100 crores will be towards the personal bond of applicant Anil Jndal and co-accused Nanak Chand, Rajesh Singla and Bishan Bansal and their companies jointly and sevrall with respect to all the cases. ...”*

7. Subsequently, successor Judge in trial Court passed another order dated 20.09.2019 (Annexure P/9) which is as under:

> *“ ……..From the perusal of the bail orders passed by my learned predecessor it is very much clear that the applicants were directed to furnish the security to the tune of Rs. 100 cores. The applicants can only submit the documents of the properties which are free from all encumbrances. The properties which are already mortgaged or pledged with the bank cannot be accepted as security because the bank has the first right over the mortgaged/pledged properties. The properties submitted by the applicants are not free from all encumbrances and the other properties which are free from all encumbrances, submitted by the applicants are below Rs. 20 crores. In these circumstances I am of the considered opinion that applicants have failed to comply with the conditions of bail orders passed by my ld. predecessor by not submitting security to the tune of Rs. 100 crores. Therefore, the applicants cannot be released on bail. With these observations, both the applications filed by the applicants namely Nanak Chand Tayal and Anil Jindal are hereby dismissed.....”*

8. In the premise, order for the grant of regular bail to the petitioner has already been passed by Court below. For the purpose of grant of bail, the Court below obviously was duly satisfied that petitioner deserved the concession. There is no challenge, as such, to the order of grant of bail.

9. Limited challenge, therefore, is to the extent, bail order directs to furnish the details and documents of any immovable property/properties valuing Rs. 100 crores in lieu of personal bond with respect to all cases pending before trial Court.

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10. I have gone through the record of the case and heard Mr. R.S. Rai and Dr. Anmol Rattan Sidhu, the learned Senior counsels assisted by Mr. Kunal Dawar, and Mr. Pratham Sethi, respectively, Advocates for the petitioner and Mr. Deepak Sabharwal and Ms. Tanisha Peshawaria, learned Additional Advocate General and Deputy Advocate General, respectively, for the State of Haryana.

11. Mr. Randeep Rai, Learned Senior counsel vehemently argued that the bail conditions are onerous, highly excessive and oppressive and deserve to be set aside/modified. He argued that admittedly, SRS group was in the business of Real Estate. It is/was owner of the land and had paid all the government dues and obtained all necessary permissions for construction of residential projects. In course of business, majority of the property was mortgaged with Banks, financial institutions for raising loans to develop the said projects. According to him, FIR is a result of overall recession in the real estate sector, because of which the prices of the plots/flats started falling and all the investors started claiming refund of the investment without realizing that their money had already been invested in the real estate project. He argued that the public money has been put to the intended use for buying new real estate assets/land bank of SRS group and nothing has been siphoned out for the personal use of the promoters. There is thus no cheating of any kind, as alleged. Learned Senior Counsel submitted that real estate value of SRS group assets is about Rs.2,500 crores, far more than the total debt liability and, the petitioner ought to be given a fair chance to effectively deal with the situation by release on bail.

12. Learned Senior counsel while referring to various projects, annexed in tabulated form with the petition herein as Annexure P-3, further argued that SRS Group has already delivered many projects to buyers of the flats/ units/ shops etc., having been developed those as per the terms and condition of the

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agreements entered with the respective allottees. But as the prospective purchasers started backing out from their commitment to purchase the units booked by them during boom in the real estate sector, SRS group was unable to service/refund the investments, resulting into multiple FIRs. Thus, there was no dishonest intention on the part of the any of the accused, as would be evident from the abovementioned facts.

13. Arguing on the aspect of setting an onerous condition to furnish Rs. 100 crore unencumbered property as security, learned Senior counsel contended that the same cannot be sustained being highly excessive and it amounts to denial of bail. The conditions of bail have to be determined and interpreted in a reasonable manner. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, petitioner is entitled to all the fundamental rights including the Right to Liberty guaranteed under Article 21 of the Constitution.

14. Elaborating his arguments, he further submitted that the words "any condition" as used in the provision Section 439 Cr.PC should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition, acceptable in the facts, permissible in the circumstance and effective in the pragmatic sense. It should not defeat the order of grant of bail. Setting of such an onerous condition has virtually defeated the very right of the petitioner to be released on regular bail who has been behind the bars since 05.04.2018. As such, in the absence of the petitioner being able to fulfill the condition, he will never be released on bail as the condition imposed is highly impractical and cannot be fulfilled.

15. Per contra, both the learned State Counsels contended that in the peculiar circumstances, the bail conditions are quite fair, reasonable and justified. They

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argued that petitioner has committed a serious fraud. He has cheated a large number of innocent people by collecting huge deposits in Cash/ RTGS/ Cheques in about 300 companies under the name and style of SRS Group in lieu of specified services and promised to pay benefits in the form of interest and also promised to hand over possession of land/ plots/ shops. But the petitioner along with the co-accused completely failed to provide the said services/ benefits to the investors/ flat holders.

16. They further argued that there are 67 FIRs against the petitioner and his co-accused which were registered on the basis of more than 916 complaints. Out of which, 357 are made by investors involving amount of Rs. 215,03,47,493/- and 559 by the Flat Holders amounting to Rs. 80,34,57,232/-. According to them, the learned trial Court has rightly imposed the condition for furnishing heavy surety to the tune of Rs. 100 crores considering the antecedents of the petitioner and the amount involved while considering all the other FIRs registered against him. All this was brought to the notice of the trial Court by way of reply filed by the State and the said fact is very well noted in para 4 of the order dated 27.03.2019 granting the concession of regular bail to the petitioner during the pendency of the trial. The learned State Counsel submitted that the condition of furnishing documents of immovable property/properties valuing Rs. 100 crores has not been imposed in the present FIR alone but with respect to all the cases pending before the Trial Court against the petitioner. Learned State counsel further argued that petitioner has not even applied bail in the other FIRs except the present FIR. Thus, even if the condition is modified in one FIR, it would be a futile exercise as petitioner cannot be released in rest of the 66 FIRs. According to them, State has not challenged the present order granting him bail only because of the heavy condition with regard to surety imposed upon the petitioner in order to balance

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the equity and fate of the poor victims. Learned State counsel also objected that even otherwise the bail order has been challenged after unexplained delay of around 10 months.

17. Having given my thoughtful consideration, in my judgement the conditions imposed in the order dated 27.03.2019 are indeed onerous, unjust, unfair, improper and illegal.

18. Before proceeding further, it would be apposite to note that, perusal of record reveals as below :

(a). While passing the order dated 27.03.2019, the learned Additional Sessions Judge noticed the submission on behalf of the petitioner that, along with other co-accused he was ready to furnish the security amount to the extent of alleged defrauded amount, albeit, without admitting their liability. Obviously, on that basis, court below directed the petitioner to furnish the details and documents of any immovable property/properties valuing Rs. 100 crores in lieu of personal bond with respect to all cases pending before that Court.

(b). The application, which was disposed of by the learned Additional Sessions Judge vide order dated 27.03.2019 (Annexure P/4) was for grant of bail only in one specific case arising out of FIR No. 113 dated 04.03.2018.

(c). Vide order dated 27.03.2019, bail was granted to petitioner Anil Jindal alone and only in one specific case arising out of FIR No. 113 dated 04.03.2018.

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(d). Rs.2,46,000/- was the entire alleged defrauded amount of the sole complainant (Rahul) in original version of this particular FIR No.113 dated 04.03.2018.

(e). Bail was granted to the petitioner by the Additional Sessions Judge thus only in the aforesaid case bearing FIR No. 113 dated 04.03.2018.

19. Registration of other FIRs and/or pendency of any more cases against the petitioner could no doubt be taken into consideration as a factor, for deciding whether or not to grant bail in the case arising out of FIR No. 113 dated 04.03.2018. Facts and particulars of any of those cases are though not forthcoming in the impugned order P/4. However, irrespective of those other cases, the Additional Sessions Judge found it a fit case for grant of bail to the petitioner in the case arising out of FIR No. 113 dated 04.03.2018.

20. In my opinion, the amount of bond required from the petitioner and the conditions for bail in FIR No. 113 dated 04.03.2018 ought to have been determined taking into consideration the facts and circumstances of this particular FIR on its own merits, independently of and separately from any other cases. The alleged defrauded amount in this particular FIR was originally Rs. 2,46,000/- but is now Rs.2.75 crore due to addition of complainants.

21. Discernibly, by requiring the petitioner to furnish in present case, details and documents of immovable property/properties valuing Rs. 100 crores in lieu of personal bond with respect to all other pending criminal cases, the Additional Sessions Judge took into account the aggregate amount stated to be Rs. 85 crores by including the police cases pending before the Magistrate Courts and the large number of cases in which enquiries were still pending in other complaints, which are yet to be registered.

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22. The submission on behalf of the petitioner, as noticed by the Additional Sessions Judge was that, he and other co-accused were ready to furnish the security amount to the extent of alleged defrauded amount, without admitting their liability. The said submission ought to have been interpreted and acted upon in a fair, reasonable and rational manner. It should have been viewed in the context of consideration of petitioner's application for bail only in one particular case arising out of FIR No. 113 dated 04.03.2018. The submission on behalf of the petitioner ought to have been thus taken as his readiness to furnish the security amount to the extent of alleged defrauded amount in the FIR in question. It would be unfair, unreasonable and illogical to hold that for release on bail in one particular case originally involving alleged fraud of Rs. 2,46,000/- or later for that matter Rs.2.75 crore, the submission on behalf of the petitioner was that he was ready to furnish security for the aggregate defrauded amount of Rs. 85 crores in all pending criminal cases in that court, including the police cases pending before the Magistrate Courts.

23. In my outlook, the hefty condition of security imposed in the order passed by the learned Additional Sessions Judge is unreasonable and fatal to bail. Condition is oppressive to the extent of requiring petitioner to furnish the details and documents of any immovable property/ properties valuing Rs. 100 crores in lieu of personal bond with respect to all cases pending before that Court and still further directing that the said documents concerning security of Rs. 100 crores will be towards the personal bond of applicant Anil Jindal and other co-accused Nanak Chand, Rajesh Singla and Bishan Bansal and their companies jointly and severally with respect to all the cases. And, those other co-accused Nanak Chand, Rajesh Singla and Bishan Bansal etc. were not even before the court as applicants in the bail application in hand filed by petitioner herein. For the limited purpose of fixing the amount of bail bond in one FIR, it

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was unjust and improper to introduce large number of other cases with aggregate amount of Rs. 85 crores of alleged fraud, while fixing the amount of bail bond for petitioner's release only in one particular FIR No. 113 dated 04.03.2018.

24. Judiciousness qua grant or refusal of bail must be exercised prudently. A conditions for grant of bail, incapable of compliance, renders the bail a complete fantasy. In this context, speaking for Supreme Court, his Lordship Madan B Lokur, J. (as he then was) in case titled ***Dataram Singh v. State of UP (2018) 3 SCC 22*** observed thus :-

> "*The discretion to grant or refuse must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.*"

25. The word "bail" originated from old French verb "*baillier*" which mean 'to give or deliver' or from Latin "*baiulare/baiulo*" meaning 'to carry a burdon'. In English "bail" means temporary release of an accused person awaiting trial. The condition of bail or the burdon imposed on it, therefore, ought not to be such so as to defeat the very meaning of bail. Else, might as well decline the bail instead of giving an illusory one.

26. Adverting to the question, whether while granting bail in a particular FIR, can a court club all the other FIRs, which are not under consideration before it, for the purpose of imposing an arduous bail condition on an accused? Concededly, the petitioner filed his bail application only qua one FIR bearing no.113 dated 04.03.2018, out total of 67 FIRs where he has been named. He has though been arrested in all the other 66 FIRs but the said FIRs were not before the Court below as no bail applications were filed in those, when the impugned

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order dated 27.03.2019 was passed.

27. The argument of the learned State Counsel is that grant of bail in just one FIR is an exercise in futility. The accused would still remain behind bars in the other 66 FIRs since he has not filed any bail application in any of other FIRs. He further argued that unless and until he is granted bail in every FIR, he cannot be released, since each FIR is a separate proceeding. By necessary corollary, what emerges is, that each FIR being a separate case, would amount to separate trial. All the more, it seems that since petitioner is to secure bail in every FIR, unless he files bail application in each and every case/FIR, the Sessions Court could not have assumed jurisdiction on all the other 66 FIRs, while dealing with just one particular FIR in which bail application was preferred by the petitioner.

28. It would have been another matter, if the petitioner had chosen to file an appropriate application under Cr.P.C. or for that matter invoked jurisdiction under Article 226 of Constitution of India before this Court, seeking appropriate orders to club the cases in the interest of better administration of criminal justice. May be, in that event, taking holistic view, an order could have been passed, imposing a security of the kind of Rs.100 crores to secure the rights of complainants in all FIRs. Clearly that being not the case here, what necessarily has to be, therefore, seen is the allegation(s) in FIR in question while imposing bail conditions. For grant or refusal of bail, one can certainly, look into the collective allegations in all other criminal cases against an accused for proper adjudication qua his right to liberty.

29. Liberty and law must go hand-in-hand. Law permits curtailing liberty of an individual suspect, but the purpose of using that power under law is to prevent further harm to people at large in a civilized society, including the complainant(s). Liberty cannot thus be curtailed on grounds not envisaged in

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law or taking a rather tyrannical view on equity to impose undue conditions on liberty, as are incapable of compliance, as in the present case. At the same time, liberty is not to be construed with such liberalism that a court should not take into consideration totality of circumstances for determining whether an accused deserves liberty in a particular case before it. In the instant case, there is no such apprehension that if petitioner/accused is set free he would cause further mischief to complainants or society at large during the pendency of trial. In any case the elementary principles governing bail/liberty are :- a). nature of offence; b). secure availability of accused for trial; c). tempering of evidence; and d). flight risk worthy of accused; and all these issues have already been weighed by court below and have subsumed into the order granting bail.

30. Having observed as above, this court at the same time is also appreciative of the laudable intent of the learned Session court to protect the interests of the investors in all 67 FIRs, though what was before it was just one FIR. But, the said intent to protect innocent investors ought to have been achieved within four corners of criminal jurisprudence by dealing with each criminal case/FIR on its individual merits. Also, on the flipside, are these investors so gullible as they project in their complaints/FIRs ? May be not ! After all, what drives them to invest their money by giving unsecured loans at unbelievable return/interest of 1.5%-2% per month (18%-24% per annum) ? Sure, it is greed! It is time that they realize the harsh reality. If they have the ability to take such risk, then they should be equally prepared for consequence too ! Any claim of such unrealistic returns on investments should per se ring alarm bells in their mind. Could then recipient of investment, who in his zeal to expand his business, over expanded it and/or over inventoried or goes in liquidation for non service of debt triggered by excessive land purchase disproportionate to development funds coupled with failure of allottees defaulting in their payment, alone is

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blameworthy of *mens rea* to commit offences complained ? As long the accused was giving them high return of 18% p.a. he was not criminal, but once he collapsed under debt burdon, he becomes a criminal, notwithstanding his claims that he has spent all the money to create group/company assets for future use. Are in some way, these investors also not culpable to accept such tall claims of interest on their speculative investment? Be it yes or no, these questions, if raised or arise during trial, it is for the appropriate court to address. A genuine end user allottee stands definitely on different and better footing than an investor. Be that as it may, whether there has been cheating or siphoning off, as alleged by prosecution, or as defended by petitioner that it is bad business phase due to overall recession in the real estate sector or was a bad business judgment on his part to over expand by creating assets worth Rs.2,500 crore, with no intent to commit any crime, is for the trial court to determine.

31. Section 440 (1) in Chapter XXXIII of the Code of Criminal Procedure specifically mandates that the amount of every bond executed under the said chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive. Subsection (2) thereof provides that the High Court and the Court of Sessions may direct that the bail required by the police officer or Magistrate be reduced. Moreover, even Section 439 (1) (B) Cr.P.C. provides that the High Court or the Court of Sessions may direct that any condition imposed by the be set aside or modified. For ready reference, relevant sub Sections, ibid, are extracted herein below :-

> *"**439-Special powers of High Court or Court of Session regarding bail**.*
> *(1) A High Court or Court of Session may direct-*
> *(a) x x x*
> *(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is*

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accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

"Section 440-Amount of bond and reduction thereof-

(1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive."

32. In **Sumit Mehta v. State of NCT of Delhi 2013 (4) RCR (Criminal) (SC)**, it has been held that the words 'any condition' used in section 438 (dealing with pre-arrest bail) should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Further it was laid down that any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstances and effective in the pragmatic sense and should not defeat the order of grant of bail. Relevant thereof reads as under :-

> *"15. That words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."*

The Apex Court summed up the position in law in following words :-

> *"While exercising power under Section 438 of the Code, the court is duty-bound to strike a balance between the individual s right to personal freedom " and the right of investigation of the police.*

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For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

…….. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under subsection (2) of Section 438 of the Code."

33. In **Rajat Sharma v. State of NCT of Delhi 2015(3) JCC 1493,** learned brother Siddharth Mridul, J. Delhi High Court, rightly observed that the object of bail is to secure the appearance of the accused person at his trial. The relevant extract thereof is reproduced as under:-

"7. A plain reading of the above decision makes it crystal clear that the object of bail is to secure the appearance of the accused person at his trial. It is further observed that the object of bail is neither punitive nor preventative and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused person will stand his trial when called upon. The Supreme Court further observed that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there

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> *is reason to believe that he will tamper with the witnesses. To encapsulate, the Hon'ble Supreme Court has held that pre-conviction detention should not be resorted to except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty."*

34. The impugned direction in the order dated 27.03.2019, *inter alia*, is that the said documents concerning security of Rs. 100 crores will be towards the personal bond of applicant Anil Jindal and co-accused Nanak Chand, Rajesh Singla and Bishan Bansal and their companies jointly and severally with respect to all the cases. To my mind, the aforesaid other accused persons, if they want to be released on bail, have to seek bail and, if granted, would have to themselves comply with the conditions of bail, whatever those may be. Directing the petitioner to furnish documents concerning security of Rs. 100 crores towards the personal bond of his co-accused Nanak Chand, Rajesh Singla and Bishan Bansal seems patently unjust, unfair, improper and illegal.

35. Furthermore, if the argument of the State Counsel to club all FIRs for purpose of imposing bail condition in one FIR is accepted, it would amount to conferring powers on a bail Court which are otherwise not contained in Cr.P.C. A bail court cannot assume powers in those cases which are not before it. Accordingly, it is made clear that, inasmuch as, the Sessions Court assumed power over all the other FIRs while determining the bail condition in just one FIR, it exceeded its jurisdiction. Also, it would it mean that if in one FIR, condition of Rs. 100 crore security is to be imposed, in all of other 66 FIRs, as a precedent, then similar condition of Rs.100 hundred crore security in each FIR would be imposed independently, taking the aggregate total to Rs.6,700 crores. That would be an impossible course for compliance. In entire life of the petitioner, he would not be able to meet it. He would thus end up being behind

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bars through out and complete his entire conviction term even before the trial has begun.

36. Passport of the petitioner is stated to have already been deposited with the EOW of Faridabad police.

37. Since the passing of the order of bail dated 27.03.2019, the petitioner has not been able to comply with the bail condition in question. Notwithstanding grant of bail, he is thus still languishing in jail. The fact that the petitioner has not been able to furnish the details and documents of unencumbered immovable property/properties valuing Rs.100 crores and, for about 26 months is detained in jail, is by itself sufficient indication of his incapacity to comply with the said condition and that, it is onerous to him. Keeping the petitioner in further detention owing to his incapacity to comply with the said onerous condition of bail would be improper and cause extreme hardship to him to defend himself.

38. The entire purpose of security is that it should not turn out to be blarney and, not only it is tangible but should secure the person cheated by liquidating it, if the occasion arises. In the totality of circumstances, particularly the fact that in the FIR No. 113 dated 04.03.2018 the alleged defrauded amount is now Rs. 2.75 crores and the submission on behalf of the petitioner, noticed by the Additional Sessions Judge, that he was ready to furnish security for the alleged defrauded amount, I am of the opinion that the ends of justice would be met, if in this particular FIR, in which the bails stands already granted to the petitioner (Anil Jindal), the relevant condition is modified/changed to furnishing of personal bond for Rs.3,00,00,000/-, submitting therewith the details and documents of any unencumbered property/properties valued not less than Rs. 3,00,00,000/-, with one surety for an equal amount.

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39. Accordingly, the following orders/directions are being passed :

A. The impugned order dated 27.03.2019 Annexure P/4 is partly set aside, in so far it requires the petitioner Anil Jindal *"to furnish the details and documents of any immovable property/properties valuing Rs.100 crores in lieu of personal bond with respect to all cases pending before that Court along with surety bond in the sum of Rs. 1 lac in the present case and directs that the surety bond in the present case will be accepted only on compliance of the above directions and that the said documents concerning security of Rs. 100 crores will be towards the personal bond of applicant Anil Jindal and co-accused Nanak Chand, Rajesh Singla and Bishan Bansal and their companies jointly and severally with respect to all the cases."*

B. Instead the modified/changed conditions in the impugned order dated 27.03.2019 (Annexure P/4) for admitting only the petitioner Anil Jindal to bail in a particular case arising out of FIR No. 113 dated 04.03.2018, would be to furnish a personal bond for Rs.3,00,00,000/-, submitting therewith the details and documents of any unencumbered property/properties valued not less than Rs.3,00,00,000/- with one surety for an equal amount of the aforesaid conditions.

C. The prayer of the petitioner for setting aside the order dated 20.09.2019 (Annexure P/9) passed by the same Court dismissing his application for accepting the bail bonds observing that the properties being furnished were not unencumbered is rendered infructuous in view of the immediately preceding part of instant present order.

40. While parting, it is made clear that this Court's order pertains only to FIR in question. Order herein would not, therefore, amount to grant of bail in other FIRs. For that matter, modification of bail condition too is qua the FIR in hand only. It would necessarily mean that petitioner Anil Jindal in any other case and/ or the remaining accused, will have to apply for bail qua every FIR. The application(s) for bail, if and when moved by Anil Jindal and/or by the

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remaining accused in any of cases, alluded to in the order dated 27.03.2019 Annexure P/4 (including this particular FIR No. 113 dated 04.03.2018), the appropriate Court would then take an independent view of such bail application, on its own merits while adjudicating on grant or denial of bail, without being influenced by and independently of the observations/ directions in this order. It is also made clear and, if bail is granted, the conditions for bail shall be determined by the Court(s) concerned in each individual case on its own merits, inter alia, the quantum of the amount complained of in the relevant FIR.

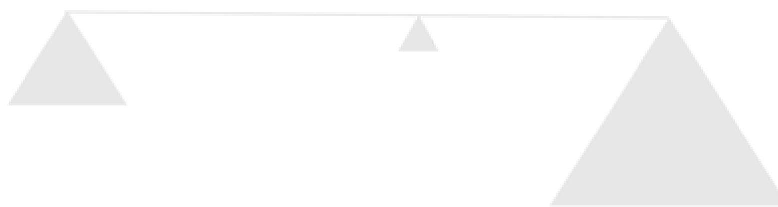
41. Petition stands disposed of in above terms.

(ARUN MONGA)
JUDGE

29.06.2020
Jiten

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No



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