

FIR No.128 of 2019 PS Economic Offences Wing in New Delhi for the offences under Sections 409, 420, 467, 468, 471 and 120B IPC, the original complainant has preferred the present appeal.

2. That the appellant herein a non-banking financial company (NBFC) lodged an FIR/complaint with the Economic Offences Branch, New Delhi against the company M/s Sri Aranath Logistics Limited (formerly known as M/s LMJ Logistics Limited), Respondent No.2 herein Jayant Kumar Jain – Managing Director and others for the offences under Sections 409, 420, 467, 468, 471 and 120B IPC. It was alleged against the accused – Respondent No.2 herein that he is the Managing Director of M/s Aranath Logistics Limited engaged in the business of multi-commodity trading of agricultural and non-commodities agricultural. That by way of written agreement accused availed loan credit facilities to the tune of Rs.25 crores for a term of 180 days from the complainant company. It was alleged that the said amount of Rs.25 crores was disbursed in the year 2017. It was alleged that the said amount of Rs.25 crores was required to be used by the company for its own purpose. It

was further alleged that for the purpose of repayment of loan, no stock statement was submitted and mortgage was also not created as agreed between the parties. It was further alleged that instead of using the amount for the purpose mentioned in the agreement the same was transferred to several fake/shell companies. It was further alleged that at the time of availing the loan the accused misrepresented to the complainant about the financial health of the company of the accused. It was further alleged that the amount of around Rs.8 crores stated to have been diverted into such shell companies which were created by the accused in the name of his employees and bank account was opened for transaction of those companies by using forged and fabricated documents of identities of those employees and the said amount was further siphoned off to other companies which were connected to the accused. It was further alleged that Directors of those shell entities have stated that they have not opened the bank account in the said name or said firm and their KYC form was misused by the accused. It was further alleged that a sum of Rs.15 crores was transferred to another company - LMJ

International Ltd. and the said amount was used for the purpose of setting off against the previous liability of the said company with the Corporation Bank, Calcutta. That after the preliminary investigation on the complaint of the appellant herein – original complainant, the Economic Offences Wing having found a prima facie case against Respondent No.2 and others, FIR being FIR No.128 was registered. The Respondent No.2 came to be arrested on 03.07.2020. The Respondent No.2 filed an application before the learned Metropolitan Magistrate seeking bail under Section 437 Cr.P.C. One another bail application for regular bail being Bail Application No.903 of 2020 was moved on behalf of the Respondent No.2 – Accused before the Court of Sessions Judge, Patiala House Courts, New Delhi. The said bail application was opposed by the I.O. A status report was filed pointing out how the amount of 25 crores was siphoned off and transferred to other shell companies and how the said amount was used by the Respondent No.2 for other companies. Vide order dated 04.08.2020 by a detailed speaking order, the learned Sessions Judge dismissed the bail application. That

thereafter, respondent no.2 – accused filed the present bail application before the High Court. The detailed status report was filed on behalf of the I.O. It was also submitted that the charge-sheet has been filed against Respondent No.2 and other co-accused. The detailed status report was filed pointing out how a sum of Rs.25 crores to be used by M/s LMJ Logistic Limited was transferred to shell and other companies such as M/s LMJ Logistic Limited and how a systematic fraud was committed. Despite the above, by the impugned judgment and order, the High Court has directed to release Respondent No.2 on bail merely on the ground that the case arises out of a commercial transaction and is based on documents already seized.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court directing to release Respondent No.2 – accused on bail, the original complainant has preferred the present appeal.

3.1 At the outset, it is required to be noted that after this Court directed to issue notice to the respondents vide order dated 17.12.2020 and thereafter the matter was adjourned from time to time, on 08.01.2022 the petitioner(appellant)

moved an application being Criminal Miscellaneous Application No.4818 of 2022 seeking permission to withdraw the present Special Leave Petition submitting that during the pendency of the present Special Leave Petition, a settlement agreement has been entered into between the petitioner(appellant) and Respondent No.2 on 08.01.2022 and therefore, the Petitioner(appellant) is no longer interested in pursuing the present Special Leave Petition in view of the settlement. The said application was heard by this Court on 10.01.2022. This Court shown its disinclination to permit the petitioner(appellant) to withdraw the Special Leave Petition by observing that the petitioner(appellant) cannot be permitted to withdraw the Special Leave Petition in view of the serious allegations against Respondent No.2 and others. That thereafter the learned counsel appearing on behalf of the petitioner(appellant) withdrew the said application. That thereafter the present Special Leave Petition was adjourned to 17.01.2022, at the request of the learned counsel for the respective parties to consider the present Special Leave Petition on merits.

4. Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of Respondent No.2 has made the following submissions in support of his prayer and requested not to cancel the bail granted by the High Court.

4.1 It is vehemently submitted by Shri Rohatgi, learned Senior Advocate appearing on behalf of Respondent No.2 that in the facts and circumstances of the case and considering the fact that the dispute is of a civil nature arising out of commercial transactions and the investigation is concluded and the case rests on documentary evidence already collected by the Investigating Officer during the investigation which have been seized and that the impugned order passed by the High Court releasing Respondent No.2 on bail is as far as back on 14.09.2020 and thereafter there are no allegations that Respondent No.2 has misused the liberty in between and that during the investigation Respondent No.2 has cooperated and neither the complainant nor the State are opposing the bail application seriously, this Court may not cancel the bail.

4.2 It is further submitted by Shri Rohatgi, learned Senior Advocate for Respondent No.2 that in the present case out

of Rs.25 crores, Rs.15 crores were transferred to the sister concern LNJ International Limited and the sister concern paid off its loan which cannot be said to be an offence.

4.3 Shri Rohatgi, learned Senior Advocate on behalf of Respondent No.2 – accused has heavily relied upon the decisions of this Court in the case of **Dolat Ram vs. State of Haryana, (1995) 1 SCC 349; X vs. State of Telangana, (2018) 16 SCC 511; Prabhakar Tewari vs. State of U.P., (2020) 11 SCC 648** as well as the decision of this Court in the case of **Gurcharan Singh vs. State (Delhi Administration) (1978) 1 SCC 118** in support of his submissions that once the bail has been granted by the High Court and/or the Court below the same may not be cancelled unless it is found that the accused has violated any of the terms and conditions of the bail order and/or has misused any liberty shown to him while releasing him on bail and/or there are any other peculiar circumstances.

4.4. Making the above submissions it is prayed to dismiss the present appeal.

5. Present appeal is opposed by learned Counsel on behalf of Respondent – State. A status report on behalf of the State has been filed in which it is stated that the State had filed a status report on 09.09.2020 before the High Court and before the High Court, the State vehemently opposed the bail of Respondent No.2. However, at that stage, further investigation was underway and a supplementary charge-sheet was yet to be filed. The same has now been filed. The State shall abide by the directions/order passed by this Hon'ble Court.

6. In the status report it has been pointed out how systematic fraud has been committed by Respondent No.2 and others siphoning off huge amount of Rs.25 crores through other Shell Companies who are found to be fake and non-existent. A supplementary charge-sheet is also filed on further investigation. A detailed status report has been filed pointing out how shell entities were used as conduit entities to transfer money to the main company of the accused i.e., LMJ Logistics Limited.

7. We have heard learned counsel appearing on behalf of the respective parties at length.

8. Having gone through the impugned judgment and order passed by the High Court directing to release the Respondent No.2 on bail it appears that the High Court has directed to release the Respondent No.2 on bail mainly on the ground that the case arises out of a commercial transaction and is based on documents already seized. Para 16 contains the only reasoning while releasing Respondent No.2 on bail, which reads as under:

“16. Coming to the facts of the present case, it is an admitted fact that the co-accused namely Navin Kumar Jain and Hulash Chand Jain were the other Directors and shareholders of SALL as well as LMJIL. They also signed/undertook personal guarantee to the complainant company in their capacity as Directors of the SALL against the “Working Capital Demand Loan”. Navin Jain had also signed the Tripartite Off-take Agreement in the capacity of Director of LMJIL. Both of them were not even arrested and the charge sheet against them was filed without arrest. During two years of enquiry/investigation, the petitioner joined investigation on multiple occasions. After his arrest, the EOW sought only one day PC remand. Neither in the Status Report nor during the course of arguments, any apprehension was shown that the petitioner is a “flight risk”. The case arises out of a commercial transaction and is based on documents that already stand seized. The petitioner has already approached the NCLT where a moratorium on the assets/properties has been declared and an IRP has been appointed. The complainant has already approached NCLT.”

9. From the aforesaid it can be seen that while releasing the Respondent No.2 on bail the High Court has not at all

adverted to and/or considered the nature of accusation and the material found/collected during the course of investigation and the serious allegations of siphoning off the huge amount through various shell companies. The High Court has not at all dealt with and/or considered any of the allegations and/or material collected during the course of the investigation which were specifically pointed out and mentioned in the status report filed by the I.O. From the status report and even the charge-sheet/supplementary charge-sheet papers it has been found during the course of the investigation that a sum of Rs.25 crores was disbursed by the complainant to Respondent No.2 and its company M/s LMJ Logistics Limited. The said amount was disbursed for its own use. During the course of the investigation, it has been found that the said amount was debited to the various companies/entities as under:

Sr. No.	Date	Beneficiary Firm	Voucher No.	Amount (In Rs.)
1.	03.11.17	LMJ International Ltd. Corporation Bank Kolkata	860388	1500,00,000/- -
2.	06.11.17	Sairam Agrocorp Pvt.	860391	2,49,25,720/-

		Ltd. Bandhan Bank, Connaught Place, Delhi		
3.	30.11.17	LMJ Logistics Ltd. RBL Bank Ltd., Connaught Place, New Delhi	860407	2,00,00,000/-
4.	30.11.17	Vasudev Agro Foods Pvt. Ltd. ICICI Bank, Parliament Street, New Delhi	860410	2,51,30,176/-
5.	30.11.17	Sairam Agrocorp Pvt. Ltd. Bandhan Bank, Connaught Place, Delhi	860405	99,98,874/-
6.	30.11.17	Vasudev Agro Foods Pvt. Ltd., Bandhan Bank, Connaught Place, Delhi	860406	99,96,387/-
7.	30.11.17	Sairam Agrocorp Pvt. Ltd. Bandhan Bank, Connaught Place, Delhi	860409	98,74,563/-

9.1 During the course of the investigation, it has been found that Rs.15 crores was transferred to another

company/LMJ International Limited through some of the fake companies and the said another company – M/s LMJ International Limited used that amount to clear its dues of Corporation Bank, Kolkata. During the investigation it has been found that a sum of Rs.2,49,25,720/- was transferred to one Sairam Agrocorp Pvt. Ltd. and it was further transferred to LMJ International Limited on the same day. Similarly, the amount of Rs.2,51,30,176/- was transferred in the account of Vasudev Agro Foods Pvt. Ltd. out of which Rs.1.82 crores approximately was transferred into account of Aldera Traders Pvt. Limited and it was further transferred to LMJ International Limited on the same day. During the course of the investigation, it has been found that an amount of Rs.99,98,874/- and Rs.98,74,563/- were transferred in the account of Sairam Agrocorp Pvt. Ltd. and consolidated amount of Rs.1,98,72,914/- was further transferred to LMJ International Limited on the same day. It has been further found that an amount of Rs.99,96,387/- was transferred to Vasudev Agro Foods Pvt. Limited and it was further transferred to LMJ International Limited on the same day. Thus, it has been found that the credit facility to

the tune of Rs.25 crores availed by M/s LMJ Logistics Limited were not used for any business purposes i.e., sale purchase of agri or non-agri products but it has been rotated through shell entities and immediately transferred to other company M/s LMJ International Limited to square off the liabilities through the shell companies. During the course of the investigation/further investigation it has been revealed that Sairam Agrocorp Pvt. Ltd. and Vasudev Agro Foods Pvt. Ltd. are fake and shell companies and they do not exist at the registered address. During the course of the investigation, it has been found that some of the employees were made directors without their knowledge and their KYC and other documents were misused without their knowledge. As per the charge-sheet/supplementary charge-sheet it appears that the investigation revealed that the accounts in question were created to inflate the turnover of the company so that they could avail the credit facility from various banks. It further reveals that the shell companies were created to misappropriate/siphoned off the money entrusted to them as a loan to the tune of Rs.25 crores. It has been revealed that there was no genuine transaction of

sale and purchase but it was simply routing and re-routing of the amount received from the complainant to different entities which were in actual being operated by Respondent No.2. All these aforesaid allegations and the material collected during the course of the investigation which are being part of the charge-sheet and supplementary charge-sheet are not taken note of by the High Court and the High Court has just simply ignored the same and has released Respondent No.2 on bail by simply observing that case arises out of a commercial transaction and the dispute is of a civil nature. Therefore, the High Court has not at all taken into consideration the relevant considerations while grant of bail. Even the High Court has not at all taken note of the reasoning given by the learned Sessions Court while rejecting the bail application of Respondent No.2.

9.2 In the light of the above facts, it is required to be considered whether the High Court is at all justified in releasing Respondent No.2 on bail.

10. At this stage few decisions of this Court on the relevant considerations to be considered by the High Court while grant of bail are required to be referred to. In the case

of **Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr., (2010) 14 SCC 496**, while cancelling the bail and quashing and setting aside the order passed by the High Court granting the bail to the accused it is observed in para 9 to 12 as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

[See *State of U.P. v. Amarmani Tripathi* [(2005) 8 SCC 21] (SCC p. 31, para 18), *Prahlad Singh Bhati v. NCT of Delhi* [(2001) 4 SCC 280], and *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598].

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In *Masroor* [(2009) 14 SCC 286], a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows: (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

11. We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail under Section 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed.

12. It is also pertinent to note that, as stated above, the Additional Chief Judicial Magistrate had rejected three bail applications of the accused but the High Court did not find it worthwhile to even make a reference to these orders. In this regard, it would be useful to refer to the following observations echoed in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528]: (SCC p. 536, para 12)

“12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.”

10.1 In the case of **Neeru Yadav vs. State of UP & Anr., (2016) 15 SCC 422**, it is held by this Court in para 11 as under:

“11. It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge. (See *Chaman Lal v. State of U.P.*, (2004) 7 SCC 525)”

10.2 In **Anil Kumar vs. State (NCT of Delhi), (2018) 12 SCC 129**, it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and

circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

10.3 In the case of **Prahlad Singh Bhati vs. NCT of Delhi & Ors., (2001) 4 SCC 280**, it is observed and held by this Court that the jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner.

It is observed and held as under:

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the 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, behaviour, means and standing 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 or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words ‘reasonable grounds for believing’ instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to

produce prima facie evidence in support of the charge.”

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the grounds on which the High Court has released the Respondent No.2 on bail, we are constrained to observe that in the instant case while dealing with the application of the accused for grant of bail, the High Court has completely lost sight of the basic principles enumerated above. The High Court has not at all considered the modus operandi adopted by the accused in commission of serious offence of siphoning and/or transferring the huge sum to another company through shell companies. The High Court has also not taken into consideration the status report filed by the I.O. in which in detail it has been pointed out how systematically the accused have committed the offence and misappropriated/siphoned off the huge sum through shell companies. Thus, it appears that the High Court has not adverted to the relevant considerations and has granted the bail mechanically by observing that the case arises out of a commercial transaction.

12. Now so far as the submission on behalf of the accused that as the accused has been released on bail as far as back on 14.09.2020 and that thereafter there are no allegations of misusing the liberty and therefore the bail may not be cancelled and reliance placed upon the decisions of this Court referred to hereinabove more particularly in the case of **X (Supra)** are concerned at the outset it is required to be noted that this is a case where it is found that the order passed by the High Court releasing the accused – Respondent No.2 on bail has been passed mechanically and without advertent to the relevant facts and without considering the nature of accusation and allegations and the nature of the gravity of the accusation. Even in the decisions which are relied upon by Shri Rohatgi, learned Senior Advocate appearing on behalf of Respondent No.2, there is no absolute proposition of law laid down by this Court in the aforesaid decisions that once the bail is granted by the High Court, though the High Court could not have granted the bail, in absence of any allegation of misuse of liberty and/or breach of any of the conditions of the bail,

the bail cannot be set aside when grant of bail is itself subject matter of challenge in appeal/revision.

12.1 What is observed and held is that the rejection of bail in a non-bailable case at an initial stage and cancellation of bail so granted has to be dealt with and considered on different basis and that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Therefore, on very cogent and overwhelming circumstances the bail can be cancelled. At this stage the decision of this Court in the case of **Mahipal vs. Rajesh Kumar alias Polia and Another, (2020) 2 SCC 118** is required to be referred to. In the said decision, it is observed and held by this Court that though this Court does not ordinarily interfere with the order of the High Court granting bail, however, where the discretion of the High Court to grant bail has been exercised without due application of mind and in contravention of the directions of this Court, such an order of granting bail is liable to be set aside. Thereafter after drawing the distinction between the power of an appellate court in assessing the correctness of an order granting bail and an

application for the cancellation of the bail, in paragraph 16

it is observed and held as under:

“**16.** The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.

In *Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508], the accused was granted bail by the High Court [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031]. In an appeal against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held: (*Neeru Yadav case* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508], SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant

considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

12.2 Thus, as per the law laid down by this Court where a Court while considering an application for bail fails to consider the relevant factors, an Appellate Court may justifiably set aside the order granting bail. Appellate Court is thus required to consider whether the order granting bail suffers from a non-application of mind or a prima facie view from the evidence available on record.

13. From the aforesaid it emerges that while releasing Respondent no.2 on bail, the High Court has not at all considered the relevant factors including the nature and gravity of accusation; the modus operandi and the manner in which the offences have been committed through shell companies and creating the false/forged documents and/or misusing the PAN Cards, Aadhar Cards and KYCs of the employees and showing them as Directors of the fake and

shell companies. As observed hereinabove, the High Court has not at all considered and taken into consideration the status report and the evidence collected during the course of the investigation. Therefore, the impugned judgment and order passed by the High Court releasing Respondent No.2 on bail is unsustainable as the High Court while releasing Respondent No.2 on bail has not exercised the jurisdiction judiciously and has not considered the relevant factors which are required to be considered while grant of bail.

14. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court releasing Respondent No.2 on bail deserves to be quashed and set aside and is accordingly quashed and set aside. Now on quashing and setting aside the impugned judgment and order passed by the High Court releasing Respondent No.2 on bail and consequently the bail being set aside, the Respondent no.2 – accused to surrender before the concerned Court/Jail Authority forthwith. Present Appeal is accordingly allowed.

However, it is made clear that any observations by this Court in the present order shall not affect the trial and the observations made in the present order be treated to be confined to the impugned judgment granting bail. It is further observed that after surrender it will be open for Respondent No.2 to move an appropriate application for bail before the High Court afresh after a period of three months, which shall be considered by the High Court in accordance with law and on its own merits and after taking into consideration the relevant material collected during the course of the investigation which is part of the charge-sheet/further charge-sheet and taking into consideration the relevant factors to be considered while grant of bail.

.....J.
[M.R. SHAH]

NEW DELHI;
JANUARY 28, 2022.

.....J.
[SANJIV KHANNA]