

(2023) 04 DEL CK 0038

Delhi High Court

Case No: Bail Application No. 271 Of 2023, Criminal Miscellaneous Application No. 2272 Of 2023

Sunny Bathija Through Wife As
Parokar.

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision: April 12, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 21
- Code Of Criminal Procedure, 1973 - Section 161, 167(2), 173(2), 173(8), 309, 437, 439, 482
- Indian Penal Code, 1860 - Section 120B, 406, 409, 411, 420, 424, 465, 468, 477A
- Prevention of Corruption Act, 1998 - Section 13(1)(d), 13(d)

Hon'ble Judges: Dinesh Kumar Sharma, J

Bench: Single Bench

Advocate: Rebecca John, Mayank Tripathi, Ashray Chopra, Aviral Bansal, Pravir Singh, Anupam S Sharma, Prakarsh Airan, Abhishek Batra, Ripu Daman Sharma, Ram Avtar Yadav

Final Decision: Disposed Of

Judgement

Dinesh Kumar Sharma, J

S.I. Nos.

A

PARTICULARS

PREFACE

B

AVERMENTS

MADE

IN

B

C

APPLICATION

SUBMISSIONS

ON

BEHALF

OF

PETITIONER

(A) PREFACE

1. The present bail application has been moved on behalf of Sunny Bathija through his wife as Parokar under Section 439 read with Section 482 Cr. P.C. in FIR No. RC2242022A0001 dated 20th June 2022 under Section 120B/409/420/477-A of IPC R/w 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1998 registered by CBI.

2. The factual matrix of the case in brief is that the present FIR No. RC 2242022A0001 was registered by Respondent-CBI, AC-VI, New Delhi on 20.06.2022 based on a written complaint dated 11.02.2022 of Sh. Vipin Kumar Shukla, DGM & Branch Head, Union Bank of India, Nariman Point, Mumbai against M/s Dewan Housing Finance (hereinafter referred to as 'DHFL'), Kapil Wadhawan, the then Chairman & Managing Director of DHFL, Dheeraj Wadhawan, Director of DHFL, Shri Sudhakar Shetty, M/s Amaryllis Realtors LLP (hereinafter referred to as 'ARLLP'), M/s Gulmarg Realtors LLP (hereinafter referred to as 'GRLLP'), M/s Skylark Buildcon Pvt. Ltd., M/s Darshan Developers Pvt. Ltd., M/s Sigtia Constructions Pvt. Ltd., M/s Creatoz Builders Pvt. Ltd., M/s Township Developers Pvt. Ltd., M/s Shishir Reality Pvt. Ltd., M/s Sunblink Real Estate Pvt. Ltd. and other unknown persons including public servants for the commission of offences punishable u/s 120-B r/w 409, 420 & 477A of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 (as amended in 2018). As per the status report, the allegations as made out in the FIR are that the co-accused Kapil Wadhawan and Dheeraj Wadhawan in conspiracy with others were involved in siphoning off public funds. It has been stated that the modus operandi of the Wadhawan brothers, was that they lent significant amounts of loans ranging in hundreds of crores to different entities owned/controlled by different individuals including their own employees in the garb of corporate loans and later on siphoned the same for their own personal gains and creation of assets in their own names and/or in the names of their family members/entities related to them. It has been stated that some of the funds were also routed to foreign countries for the creation of such assets. Using this modus operandi, Kapil Wadhawan and co-accused Dheeraj Wadhawan, in pursuance of a larger criminal conspiracy involving other persons as well, caused a loss of Rs. 334000 crores approx. to the consortium of 17 banks.

3. After investigation, CBI filed the charge sheet in the Court of Learned Special Judge (P.C. Act), CBI-08, Rouse Avenue Court, New Delhi on 15.10.2022. CBI stated in the charge sheet that further investigation is ongoing against numerous other persons and entities and the supplementary charge sheet will be filed later on.

4. The bail application moved by the present petitioner was dismissed by the learned Special Judge (P.C. Act), CBI-08, Rouse Avenue Court, New Delhi vide a detailed 19.12.2022.

(B) AVERMENTS MADE IN BAIL APPLICATION

5. In the bail application, at the outset, it has been stated that that the present accused was not named in the FIR. It has been stated that the petitioner was introduced to Mr. Dheeraj Wadhawan, i.e., Accused No.2, in 2002 when Mr. Dheeraj Wadhawan married the sister of the petitioner. It has been stated that due to his close family relationship and Indian traditions, he fully trusted and respected Mr. Dheeraj Wadhawan and his immediate family. It has been stated that the petitioner, being a Real Estate Broker-cum-Consultant for the past 14-15 years, extensively marketed the real estate projects developed by Dheeraj Realty Group to third-party purchasers. Between 2009-2017, the Applicant sold/assisted in selling more than 160 flats, commercial premises etc., aggregating to about Rs. 200 Crores approx. and was expected to earn about 2-3% brokerage, depending on the understanding at the time and the standard rate prevailing at that time in Mumbai. It has been stated that due to close family relations, the applicant was paid in a lump sum, as and when possible, by the Dheeraj Wadhawan Group Companies. Further, the petitioner stated that he has filed IT returns over the years showing substantial income.

6. The petitioner stated that his brother-in-law/co-accused namely Dheeraj Wadhawan requested him to become a director and shareholder along with one of his friends/acquaintances in M/s Sublink Real Estate Pvt. Ltd i.e. accused No. 13 and he could not decline in view of the fact that Dheeraj Wadhwan was a close relative and it was essential to maintain a cordial relationship. The petitioner stated that he never participated in Sunblink's functioning/business or administration and was not aware about Sunblink's loans, capital flow, business or assets of Sunblink or its relationship with DHFL or the so-called 'Bandra Books' entities. It has been stated in the bail application that the petitioner, along with other directors, was only a signatory to a number of documents prepared by the employees of the Dheeraj Realty Group/its appointed professionals based on decisions they made.

7. The petitioner has stated that he has joined the investigation as and when directed by the CBI after the arrest of the Wadhawan Brothers and has cooperated in every manner. It has been stated that on 29th July, 2022, the search was conducted at his residence and office but no incriminating items or documents were found. Petitioner stated that despite being in continuous communication with the CBI and the CBI being aware of his medical condition, he was arrested by the CBI on 12.10.2022 i.e. two days before the filing of the charge sheet. The petitioner stated that after his arrest he was taken to Delhi and was produced before the Court of learned Special Judge, CBI-08, on

13.10.2022. The CBI took two days of custody stating before the learned Special Judge that a charge sheet qua the applicant is also being filed. It is the case of the petitioner that he was arrested merely 2 days before the filing of the charge sheet to frustrate his rights of being released on bail which is contrary to the mandate of the Hon'ble Supreme Court as provided in Siddharth v. State of U.P., (2021) 1 SCC 676 and also reiterated in Satender Kumar Antil v. CBI & Anr. 2022 SCC OnLine SC 825. The petitioner also stated that his arrest was in violation of the guidelines as laid down by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar, 2014 8 SCC 273 as no checklist was forwarded by the CBI when they sought police custody for 2 days of the petitioner.

8. To buttress the above contention, it has also further been stated that during the 2-days remand, the Applicant was questioned perfunctorily for only 10-15 minutes and he was neither confronted with any witness nor taken outside the CBI office for any recovery or any other investigation. This conduct clearly indicates that the remand of the applicant only 2 days prior to the filing of the Chargesheet was made with malafide intention and after the preparation of the entire Chargesheet. It has been contended that after filing of Chargesheet the accused should not be unnecessarily kept in Judicial Custody if the case is primarily based on documentary evidence and if the trial is likely to take years.

9. The petitioner has also relied upon Sanjay Chandra v. CBI (2012) 1 SCC 40 to emphasize that even in the most serious economic offences witnessed by this Country, it was inter alia held that bail should be the rule and jail an exception.

10. It has been stated that the learned Trial Court though inter alia held that investigation in the matter may take a few years to complete and the trial would take even longer, lost sight of the sight of settled law laid down by the Hon'ble Supreme Court in the State of Kerala vs. Raneef (2011) 1 SCC 784 wherein it was held that delay in trial is one of the important factors to be considered while determining the question of the grant of bail. Reliance was also placed upon Satender Kumar Antil v. CBI & Anr. (supra) wherein it was inter alia held that after all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail.

11. The petitioner has also mentioned that the main accused persons, in this case, were granted default bail under Section 167 (2) Cr. P.C. by the learned Special Judge vide order dated 03.12.2022.

12. The petitioner has also stated that the learned Trial Court has erred in holding that the loan of Rs.30 Lakhs received by the Applicant from Rajen Skyscrapers Pvt. Ltd. appears to be highly improbable as the loan document was not produced before the

Ld. Trial Court. It has been stated that the learned Trial Court has failed to appreciate that the amount of Rs.30 Lakhs was received as a loan towards a project that the Applicant intended to start in 2017. The same continues to be shown as a loan to date as the project could never be launched. The petitioner state that the learned Trial Court has also lost sight of the fact that the loan granted to Rajen Skyscrapers was in the range of about Rs. 750 crores whilst the CBI has arrested the petitioner for a paltry sum of Rs. 30 lakhs while Mr. Rajen Dhruv himself has not been arrested.

13. The petitioner further stated that the learned Trial Court has wrongly held that the petitioner had the intention to avoid the seizure of costly watches and jewellery belonging to the Wadhawan Family in as much as the maximum allegation established from the witness statements and the record is that the Applicant was only acting as a courier to deliver jewellery/watches to the jewellers for its mortgage (and not its sale) by the Wadhawan Family without any knowledge as to whether the jewellery/watches were proceed of crime. The petitioner stated that it is also evident from the witness statements that the entire monies received from the mortgage were exclusively used by the Wadhawan Family.

14. It has also been contended that there is no evidence on record to show that the petitioner ever did forgery. It has been stated that the learned Trial Court ignored the record and the documents and erroneously held that the Applicant was instrumental in the facilitation of getting a backdated agreement/MOU dated 21.11.2018.

15. The petitioner stated that the learned Trial Court failed to appreciate that the 5 Shell Companies viz. M/s. Able Reality Pvt. Ltd, M/s. Poseidon Realty Pvt. Ltd., M/s. Random Realtors Pvt. Ltd., M/s. Faith Realtors Pvt. Ltd. and M/s. Marvel Township Pvt. Ltd. admittedly having no co-relation to the Applicant and owned and controlled by the Accused Nos. 1 and 2 were merged into M/s. Sunblink (also owned and controlled by Accused Nos.1 and 2) to securitise i.e. ensure repayment by way of backup security in case of non-repayment of loans. This makes it obvious that the Wadhawan's to offset their own liabilities had used their own property as a security for the loans availed by its 5 group companies.

Petitioner further stated that the learned Trial Court failed to even comprehend the transaction in as much as whilst stating that the securitisation by way of mortgage of the Worli land worth at least Rs.2447 Crores was in-fact by way of securing loans obtained by the aforesaid 5 entities to secure repayment of the loans and therefore the Learned Trial Court has fallen into error by stating that the entire loan amount was misused and concealed by the Applicant. The loan given by the DHFL against the security of the property now thus stands secured and available for recovery and has not been misused or concealed.

16. The petitioner stated that the learned Trial Court has fallen into the error in forming the opinion that the petitioner received the funds to the tune of Rs.57.52 Crores on behalf of Sunblink which was repaid through Wadhawan Group Companies by using the round-tripping technique. He stated that the transaction itself shows that the monies received and paid were all being controlled at the instance of Accused Nos.1 and 2.

17. The petitioner states that he was never a part of or involved in or even had knowledge of the functioning of DHFL and he along with several other third parties were directors and shareholders of various Wadhawan Group companies. The petitioner also stated that ex facie it is established by the investigation that the Applicant was not involved in the transactions/business of DHFL or had any knowledge about the alleged retail loans referred to as 'Bandra Books'. In respect of enrichment of Rs.150 Crores (out of the embezzled amount), the petitioner stated that even if the alleged 150 Crores was embezzled, the Applicant was only one of the several directors appointed as a dummy director and as is the case with other dummy directors, the Applicant did not benefit or receive any consideration with regard to the aforesaid transaction. It has been stated that this charge is not mentioned in the Section 173(2) report prepared by the CBI as M/s. Cloud Nine Realtors has not even been made an accused in the Chargesheet. He further stated that the learned Trial Court failed to note that the similarly placed directors and shareholders of the Wadhawan group of companies who had acted on the behest of the main accused were granted bail. Petitioner states that the learned Trial Court has merely presumed that the petitioner, if released on bail, he will do a favour for his brother-in-law by putting pressure or influence upon witnesses, this is especially so when the CBI did not even place such arguments before the learned Trial Court. Further, it has been stated that he was not even arrested by the Enforcement Directorate.

18. The petitioner stated that the charge of Section 409 IPC (Criminal Breach of Trust) cannot be made out against the Applicant as the Learned Special Court as already inter alia held that the co-accused persons (Kapil and Dheeraj Wadhawan) come under the scope of public servants and accordingly PC Act was applicable to the present trial. The reliance has been placed upon Binod Kumar & Ors. Vs. State of Bihar & Anr. In Crl. Appeal No. 2327 of 2014; Asoke Basak Vs. State of Maharashtra & Ors. 2010 (10) SCC 660 and Sharad Kumar Vs. CBI, 184 (2011) DLT 193.

19. The petitioner has also stated that in Praveen Kumar Agarwal Vs. CBI Bail Application No. 716/2022, decided on 13th June, 2022 by this Court, it was inter alia held that bail cannot be denied on the sole ground that the offence is an economic offence. It was stated that in said judgment, CBI relied upon the judgements in Nimmagadda Prasad vs. CBI, (2013) 7 SCC 466; Y.S. Jagan Mohan Reddy vs. CBI, (2013) 7 SCC 439; and other judgments in support of its contention that bail application ought

to be rejected in view of involving economic offences. However, after consideration, this Court granted bail to the accused persons therein while observing that the reliance on said judgments has no basis once the chargesheet is filed. The petitioner stated that he has no role to play in the alleged offence and no offence under Section 120B of IPC is made out against the applicant.

20. The petitioner stated that the investigation qua the accused has already been completed, and there is no possibility of tampering with the evidence. It has been stated that the learned Trial Court without any evidence on record and on a mere basis of a perfunctory statement of the Respondent wrongly held that there is material on record to show that the Applicant can abscond or may tamper with the evidence or may influence the witnesses. There is no justifiable or reasonable legal basis or document for this assumption of the learned Trial Court. The petitioner stated that the learned Trial Court did not even take note of the undertaking given by him that he shall surrender his passport eliminating any possibility of the applicant fleeing during the pendency of the trial.

(C) SUBMISSIONS ON BEHALF OF PETITIONER

21. Ms Rebecca John, learned Senior counsel for the petitioner argued that the applicant has been a real estate broker-cum- consultant for the past 14-15 years and is the sole bread earner in the family having wife and two children. Learned senior counsel submitted that the petitioner has never been an employee, Director or Key Managerial Personnel of DHFL.

22. Learned senior counsel further submitted that the main accused persons were arrested in this case on 19th July, 2022 and the period of 90 days from their arrest was expiring on 15th October, 2022. It was submitted that the petitioner was arrested on 12.10.2022 i.e. only two days prior to the filing of the charge sheet despite the fact that he was fully cooperating with the CBI. Learned senior counsel submits that post his arrest, the Applicant was not interrogated for more than 10-15 minutes and the Search and Seizure conducted by CBI did not reveal any incriminating document/asset.

23. Further, learned senior counsel submitted that in the charge sheet running over 65,000 pages and a hard drive consisting of data of 900 GB and approx. 2 lakh pages has been filed against 75 accused including 18 individuals and 57 entities. It has been submitted that none of the Directors or Key Managerial Personnel of the shell companies except the Applicant has been named as an Accused.

24. In respect of the allegation of receipt of Rs. 50 Lakhs, learned senior counsel submitted that all the promoters or directors of Rajen Skyscrapers Pvt. Ltd. including Mr. Rajen Dhruv (Accused No. 14) have not been arrested despite having received Rs. 789 crores. The CBI has found no correlation between the grant of loan by DHFL and

the meager amounts received by the Petitioner. It was submitted that in fact the petitioner only received an amount Rs. 30 lakhs, instead of Rs. 50 lakhs as alleged, as a loan towards a project that the applicant intended to start in 2017 and continues to be shown as a loan to date as the project could never be launched.

25. In respect of Sunblink Real Estate Pvt. Ltd., it was submitted that the company namely Sunblink took a loan from DHFL to the tune of Rs. 57.52 over a period of about 5 years and repaid the same with interest from Wamika Real Estate Pvt. Ltd. Learned senior counsel submitted that the Applicant became a Director of Sunblink upon the request of his brother-in-law and was never involved in Sunblink's functioning. It has been submitted that he never received any remuneration, Director's sitting fees, salary or payment from Sunblink. Furthermore, the Petitioner also has no connection whatsoever with the functioning of Wamika Real Estate Pvt. Ltd.

26. In respect of the Merger of 5 companies with outstanding loans of approx. Rs. 2186 crores given by DHFL into Sunblink against Haji Ali projects in Worli, learned senior counsel submitted that the purchase of the Haji Ali properties, the merger of the 5 companies into Sunblink and subsequent securitization of the loan of Rs. 2,186 crores is the subject matter of an investigation by the Enforcement Directorate and further more was controlled by main accused persons.

27. In respect of the preparation of a backdated agreement/MOU dated 21st November, 2018, learned senior counsel submitted that the statement of PW-137, Deepak Kapoor reveals that it was the Wadhawan brothers, Ajay Nawandar and Suraj Jagtiani who prepared and executed the said MoU.

28. Regarding the purchase of commercial project 'Napha' in Mumbai and the alleged enrichment of Rs. 150 crores of Cloud Nine Realtors Pvt. Ltd., learned senior counsel submitted that the Cloud Nine Realtors Pvt. Ltd. is not even an Accused in the charge sheet. Further, it has been submitted that the petitioner was only one of the several Directors appointed as dummy Directors in Cloud Nine Realtors Pvt. Ltd.

29. In respect of the Receipt of Rs. 2.19 crores through RKW Developers Pvt. Ltd., which was a Wadhawan group company, learned senior counsel submitted that the Petitioner was working as a real estate broker-cum-consultant and thus received the amount as brokerage/consultation fee from RKW Developers for assisting in the sale of flats in its various projects. She submitted that there was no irregularity, much less any illegality, in this transaction.

30. Learned senior counsel has also submitted that the Majority of the Accused against whom serious allegations have been made have not been arrested to date by the CBI and the other Accused who had been arrested in the matter have been granted bail or are on interim bail. This highlights the malicious 'pick and chooses' attitude of the CBI

and ought to be considered by this court while deciding the present Application.

31. Learned senior counsel submits that Sudhakar Shetty who owns and controls all Sahana Group entities such as Accused No's. 18 to 20, Amaryllis in Realtors LLP, Gulmarg Realtors LLP, C Skylark Buildcon Pvt. Ltd., etc. who are alleged to have received and defaulted loans worth approx. Rs. 11,560 crores from DHFL have neither been arrested nor named in the charge sheet despite being named in the FIR.

32. It has further been submitted that other accused persons namely A-3/Harsdhil Mehta, A-4/Ajay Vazirani, A-5/Jayesh Khona, A-6/ Dinesh Bansal, A-8/ Ajay Navandar, A-9/Jignesh Mehta, A-10/Amit Chaturvedi, A-11 Navneet Lahoti, A-12 /B.M. Chaturvedi, A-13/Santosh Sharma, A-14/Rajen Dhruv, A-15/Hetin Sakhuja, A-16/ Balwinder Singh Malhotra, A-17/Krieshan Grover and A-18/SM N Naqvi were not arrested by the CBI and were released on bail by the learned Trial Court vide order dated 13 March 2023.

33. Learned senior counsel submitted that in addition to this the petitioner is entitled to be bail predominantly on the following grounds:-

1. DELAY IN TRIAL:

(a) It has been submitted that even as per the chargesheet filed by the Respondent, further investigation is going on and the Respondent will file supplementary chargesheets. The present chargesheet of about 65,000 pages as well as a hard drive consisting of approx. 2 lakh pages names 18 individuals and 57 companies without naming their directors/promoters and 215 witnesses. Learned senior counsel submits that in these circumstances the trial is unlikely to commence in the near future, the trial will in fact take decades to complete. Learned senior counsel submitted, CBI, has till date not filed any single supplementary chargesheet in the matter. Learned Senior counsel submitted that delay in trial is an important factor that has to be taken into consideration by the Courts while deciding the grant of bail. Reliance has been placed upon Kerala v. Raneef, (2011) 1 SCC 784 in which it was inter alia held that in deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody.

(b) Learned senior counsel further submitted that vide an order dated 3rd December 2022 passed by the Special Judge CBI in para -14, it was held that even if it is presumed that the entire CBI force of India is deputed only on this case and is working day and night, then also the entire investigation of this case cannot be completed practically within the period of 90 days.

2. NO 'NECESSITY OF ARREST ONLY 2 DAYS PRIOR TO THE FILING OF THE CHARGESHEET:

(a) Learned senior counsel further submitted that all throughout the investigation from June 2022 to October 2022, the Respondent did not arrest the Applicant. After his arrest, he was perfunctorily questioned for only 10 to 15 minutes and was neither confronted with any witness nor was taken outside the CBI office. Learned senior counsel submitted that the applicant was arrested merely 2 days prior to the filing of a chargesheet spanning nearly 55,000 pages shows that the arrest was effected solely with the view to defeat the right of the Applicant to post-chargesheet bail. Reliance has been placed upon *Satender Kumar Antil v.CBI,(supra)*. The attention of this court has also been invited to the Order dated 27.01.2023 wherein Learned Trial Court while allowing the bail application of Accused No. 9 to 12 observed that the chargesheet is approved by the senior officers prior to the filing of the same in the court.

(b) Learned senior counsel also submitted that almost 150-200 Directors of the FIR-named companies and individual Accused persons, where frauds of more than Rs. 11,000 crores are alleged, have not been investigated or arrested for over one year since the commencement of the investigation. This highlights the malicious intent behind the arrest of the present petitioner. The reliance has been placed upon *Binoy Jacob v. CBI, 1993 SCC Online Del 53*.

3. TRIPOD TEST FOR THE GRANT OF BAIL:

(a) Learned Senior Counsel for the petitioner submitted that the present petitioner meets the requirements of the Tripod Test for the grant of bail. It has been submitted that the petitioner has a permanent residence in Mumbai and has always cooperated in the investigation. Even in the ED case, the petitioner was never arrested and there are no allegations of absconding, tampering of evidence or influencing witnesses against the Petitioner. Learned senior counsel submitted that CBI in its Reply filed before the Trial Court has made an unsubstantiated and vague allegation that the petitioner is likely to influence witnesses or tamper with evidence without placing on record any material in support thereof. Learned senior counsel submitted that even the Trial Court has observed in its Order dated 27th January, 2023 while dealing with the bail application of other accused persons, that most of the evidence in the matter is documentary and it would be "highly impossible" to tamper with the evidence. Learned senior counsel submits that the benefit of this observation ought to be extended to the Applicant on the ground of parity. The reliance has been placed upon *Sanjay Chandra v. CBI, (supra)*. Learned Counsel for the petitioner submitted that the petitioner's case meets the tripod test and the bail is ought to be granted notwithstanding the allegations pertaining to economic offences involving public money. Reliance has been placed upon *D. K. Shivakumar v. Directorate of Enforcement – Order dated 23rd October, 2019 in Bail Application No. 2484 of 2019* decided by this Court as well as *Amarendradhari Singh v. Directorate of Enforcement, 2021 SCC OnLine Del 3901*.

4. MEDICAL CONDITION

(a) Learned senior counsel lastly submitted that the applicant is suffering from various ailments such as accelerated hypertension, urinary tract infection, right side nerve sheath tumor, etc., and has a 16 x 20 x 25 mm sized lesion in the right side of his neck at level C3-C4 vertebra. The above diagnosis has been confirmed by a Medical Certificate dated 12th October, 2022 issued by the reputed Lilavati Hospital of Mumbai. It has been submitted that even after the arrest of the Applicant, he has been examined by the doctors in Tihar Jail who acknowledged that the Applicant suffers from various serious ailments including a nerve sheath tumor. Learned senior counsel submitted the medical condition of the petitioner entitles him to bail by virtue of the proviso to Section 437 of Cr.P.C

(D) SUBMISSIONS ON BEHALF OF CBI

34. Sh. Anupam S. Sharma, learned SPP for the CBI submitted that the present petitioner is not at all entitled to bail. Learned SPP submitted that as per his instructions, the petitioner was arrested as he was part of the conspiracy and was assisting in camouflaging the embezzled amount. Even after the Wadhawan brothers were taken into custody, the present petitioner was siphoning of the embezzled money. Learned SPP for the CBI submitted that thus it had become an operational necessity to affect the arrest of the accused as he was hampering the investigation. Learned SPP submitted that DHFL through Wadhawan Brothers in conspiracy with others, took loans and credit facilities from the consortium of seventeen banks and diverted/misappropriated Rs. 34,926.77 Crores by committing forgery, cheating, criminal breach of trust and falsifying of books of account, etc. It has been stated that for the said purpose 87 shell companies without any documentation were formed and funds were diverted to these shell companies on the other hand, part of the funds were shown to be given to 2,60,315 fictitious persons. Learned SPP submitted that the Wadhawan Brothers made these fake transactions through a fictitious portfolio by giving the code name "Bandra Books" and also showed giving of loans to some projects and different developers without following standard lending norms and without taking adequate security. Learned SPP submitted that the loan amount obtained from various banks by accused persons on behalf of DHFL was disbursed on the pretext of construction of the buildings to fictitious persons and Shell Companies and was also used for investment in shares and debentures besides purchasing securities from the companies which were linked to the promoters of DHFL itself and various guidelines and instructions issued by RBI and National Housing Board were ignored.

35. Learned SPP submitted that the 87 Shell Companies were formed by the Wadhawan brothers in the names of their employees, associates, relatives and friends in order to

divert funds out of the DHFL account and most of those companies now do not exist and are closed in the record of ROC. The disbursement of a huge amount to the Shell Companies was done through a fictitious branch known as 'Bandra Branch-001' which was in fact not in existence and was only created virtually with the code name. Software Fox Pro in system of DHFL was manipulated to create fictitious small retail home loan customers, to create falsification of the accounts, create fake documents and to generate dummy data.

36. Learned SPP submitted that the entire system was shifted from Foxpro to "Synergy" in the year 2008. However, old historical data of loans was also retained in Foxpro on one standalone PC and was continued to be used and was given the name Bandra Branch, which PC was being maintained at the DHFL headquarters. In this standalone system, a list of 2,60,315 fictitious borrowers was jumbled up and thereafter created the amount actually diverted to 87 shell Bandra Book companies was shown as loans given to fictitious retail borrowers in the standalone PC named Bandra Branch. Learned SPP submitted that the consortium banks and National Housing Bank were misinformed about the actual transactions after fudging books of account.

37. Learned SPP submitted that the petitioner was one of the main conspirators. Learned SPP submitted that whatever acts and omissions were committed by the co-accused would be attributed against the present accused as well. It has been submitted that it is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. It has been submitted that it is immaterial whether the accused is not a member of the conspiracy from the very beginning to the end, he may join at a later stage or may even depart during the period when the acts in pursuance of conspiracy were in continuation. However, such persons would be liable for the commission of the offence of an entire conspiracy. Reliance has been placed upon *Ajay Aggarwal v. U.O.I.* 1993, AIR SCW 1866, *Yashpal Mittal v. State of Punjab*, AIR 1977 SC 2433, *Vilas Rao Ghodeswar V. CBI*, AIR Online Del.494.

38. Learned SPP submitted that Petitioner was Director in twenty-one shell companies as referred Bandra Book during the year 2009 to 2014. These companies were also given loans by DHFL without proper security and mortgage for diversion of the funds. It was stated that the Petitioner being Director in the said Bandra Book (shell) entities aided Wadhawan brothers to siphon off funds from DHFL through these entities as he used to sign documents, resolutions etc. in order to complete such transactions, as desired by Wadhawan brothers. Learned SPP submitted Petitioner was also a director in twelve other companies which were owned and controlled by Wadhawan brothers. Besides the above- mentioned companies Petitioner was also a Director in M/s Cloud Nine Realtors Pvt. Ltd. since incorporation on 11.01.2010 holding 100% of its shares and a Director of M/s Sunblink Real Estate Pvt. Ltd. holding 95.05% shares. The other

directors of these companies were employees of DHFL, unlike the Petitioner who was a private person. Learned SPP submitted that the Petitioner was actively pursuing the cause of Wadhawan brothers by acting as Director in different companies owned/controlled by them.

39. Learned SPP submitted that total funds of 2168 crores were disbursed by DHFL after diverting loans received from a consortium of banks for non-mandated purposes to the Bandra Book shell companies belonging to Petitioner. Learned SPP submitted that the M/s Sunblink Real Estate Pvt. Ltd. (wherein Petitioner was 95.05% shareholder and a director since 10.12.2009) received a loan of Rs.57.52 crores from DHFL from December 2009 to May 2015. The said loan was transferred by DHFL without any mortgage or security. M/s Sunblink did not have any past record of project development and did not have any revenue in its books nor had any employees.

40. Learned SPP submitted that it has been wrongly averred by the Petitioner that the loan amount of 57.52 crores along with interest total amounting to 104.91 crores had been repaid by M/s Sunblink Real Estate Pvt. Ltd. In fact, the said amount of 104.91 crores was routed to M/s Sunblink by DHFL out of the funds obtained by DHFL from the consortium banks by transfer to M/s Wamika Real Estate Pvt. Ltd. (one Wadhawan Group Company) and after layering through various Bandra Book shell companies and ultimately reached M/s Sunblink. Therefore, the amount returned by M/s Sunblink of 104.91 crores to DHFL was received by it from DHFL itself and there was never any return of loan amount, what to say of interest.

41. Learned SPP submitted that an Amount of 57.52 crores along with interest, totaling 104.91 crores, was never repaid by M/s Sunblink. The said amount is still outstanding. The petitioner is a direct beneficiary of the said defrauded amount. Learned SPP submitted that it may further be mentioned here that firstly, as stated above the said loan was disbursed without any documentation and security and secondly, the said amount given to M/s Sunblink was not for the mandated purpose for which the loan was taken by DHFL from the consortium banks and as such, this amount was illegally diverted and misappropriated. The so-called repayment of the said loan to DHFL by M/s Sunblink Real Estate Pvt. Ltd. in the books of account was merely the evergreening of the loan by DHFL.

42. Learned SPP submitted that in March 2019 following five Bandra Book shell companies belonging to Wadhawan brothers which were given unsecured loan of Rs. 2186 crores from DHFL (thereby diverting funds given by consortium banks for non-mandated purposes without any documentation) were merged into M/s Sunblink Real Estate Pvt. Ltd. belonging to Petitioner;

I. Able Realty Private Limited

II. Poseidon Realty Private Limited

III. Random Realtors Private Limited

IV. Faith Realtors Private Limited

V. Marvel Township Pvt Ltd

43. Learned SPP submitted that as stated above, Petitioner was 95.05% shareholder in M/s Sunblink Real Estate Pvt. Ltd. Though the registered address of the said company was shown as 1st Floor, Capri, Anant Kanekar Marg, Bandra East, Mumbai, however, the actual books of account, etc. were maintained at 4th floor, HDIL Tower, Bandra East office, Mumbai, an office building owned by Wadhawans. Other directors in M/s Sunblink who had joined and resigned in between were employees of the Wadhawan brothers and not of the Petitioner.

44. Learned SPP submitted that Books of accounts of DHFL were not showing funds obtained as loan from consortium banks which were siphoned off to several Bandra Book entities but the same were shown as loans disbursed to retail borrowers in Bandra Branch-001. After exposure by Cobra Post in January 2019 that the funds had been diverted by DHFL to shell companies without any security or documentation, five Bandra Book shell companies got merged into M/s Sunblink in March 2019 in order to camouflage the unsecured loans given by DHFL to these companies. M/s Sunblink Real Estate Pvt. Ltd. gave Worli project as security against loan of Rs. 2186 Crores, however, the said loan given by DHFL remained outstanding and subsequently became NPA. The said merger was only to securitize the loans and to show to the consortiums of banks that these loans were not fake.

45. Learned SPP submitted that Petitioner had wrongly relied upon M/s Knight Frank Valuation report stating therein that loan of 2186 crores was secured by M/s Sunblink by a plot of land worth 22,477.94 crores. It is submitted that firstly, the said report is only a draft report which was unsigned and secondly, as per the said report itself the value of the property was merely 990.84 crores as against the loan of 2186 crores.

46. Learned SPP submitted that Petitioner was also a Director in Cloud Nine Realtors Pvt. Ltd. since incorporation on 11.01.2010 holding 100% of its shares which undertook one Commercial Project called "Napha" at Kalina Road, Santacruz East, Mumbai. M/s Cloud Nine Realtors Pvt. Ltd. did not have past record of development of any project and the actual control of the project was with Wadhawan brothers and they funded the said project. DHFL had given money for purchase of plot and construction for "Napha" project. DHFL purchased the project for 450 crores approx, although, the actual cost of the project was 300 crores and as such, M/s Cloud Nine Realtors Pvt. Ltd. gained 150 crores Apparently, the entire amount of the project was invested by DHFL and the project was shown to be a project of M/s Cloud Nine only for the purpose of siphoning

off money by purchasing the said project at a price much higher than the prevailing market price by DHFL from M/s Cloud Nine and thereby causing undue advantage to Petitioner of 150 crores who was 100% shareholder of M/s Cloud Nine Realtors Pvt. Ltd. and other directors were dummy directors who were employees of DHFL having no shareholding.

47. Learned SPP submitted that Petitioner took an amount of 2.19 crores from M/s RKW Developers (one of the Wadhawan Group Companies) between November 2010 to May 2014 without any documentation and security. The said amount was diverted from DHFL. Out of 2.19 crores, an amount of 1.29 crores still remains outstanding.

48. Learned SPP submitted that M/s Rajen Skyscrapers Pvt. Ltd. received a loan of Rs. 789 crores from M/s DHFL without any underlying business/transaction or any logical purpose, as such, the said funds were diverted from the loan provided to DHFL by consortium banks. M/s Rajen Skyscrapers Pvt. Ltd. (A-72) and Rajen Dhruv, Director M/s Rajen Skyscrapers Pvt. Ltd. (A-14) have also been charge-sheeted as an accused. Petitioner is a beneficiary of a part of the said diverted amount having received 50 lacs from M/s Rajen Skyscrapers Pvt. Ltd. out of the said amount which remain outstanding.

49. Learned SPP submitted that Paintings and sculptures worth more than 63 crores were purchased out of the funds received by DHFL from consortium banks. The payments for purchase of the paintings were made after transferring part of the loan amount of consortium banks by layering through transfer to various Wadhawan Brothers controlled companies/bandra book companies and thereafter making the payment for paintings. M/s Cloud Nine Realtors Pvt. Ltd. made a total payment of 94,31,250/- to various sellers of paintings after the funds were received by it through a trail of transfers from DHFL. Some of the said paintings are not traceable till date.

50. Learned SPP submitted that Petitioner used to regularly used to visit Dheeraj Wadhawan while he was in custody being hospitalised at Kokilaben hospital. It is submitted that this regular meeting of Petitioner with Dheeraj Wadhawan was without any permission either from the Court or jail authorities. It is the Petitioner who asked PW-137 Deepak Kapoor to meet Dheeraj Wadhawan and when Deepak Kapoor went to meet him he was falsely induced to enter into MOU for purchase of two paintings worth Rs.30 crores in order to settle his due amount on Wadhawan brothers. The MOU was ante-dated showing it to be executed on 20-11-2018 although it was actually executed in November, 2021 by Wadhawan Brothers on behalf of JVPD One Builders LLP with PW-137 Deepak Kapoor, while both the Wadhawan Brothers were admitted at Kokilaben hospital and KEM hospital and were in judicial custody. Subsequent thereto Petitioner called PW-137 Deepak Kapoor to handover the paintings to him but was told to handover the paintings to Ajay Nawandar, which he did and the paintings were subsequently seized from Ajay Nawandar. Apparently, the Petitioner was a part of the

conspiracy in preparation of ante-dated agreement in an attempt to cause disappearance of evidence and case property.

51. Learned SPP submitted that Petitioner was also a co-conspirator for aiding and abetting Wadhawan brothers to alienate/conceal their assets to avoid its seizure/forfeiture by law enforcement agencies. Petitioner was found instrumental in sale/mortgage of luxurious watches and costly jewellery belonging to Wadhawan family, in lieu of money for its use by Wadhawan brothers who were lodged in jail. Jewellery worth Rs. 10.75 crores approx. and watches worth Rs. 2 crores mortgaged by him were recovered during investigation.

52. Learned SPP submitted that as stated above, the part payment of the paintings was made by M/s Cloud Nine Realtors Pvt. Ltd. out of the embezzled amount of loan obtained by DHFL from consortium banks. As such, Petitioner always knew that luxurious and costly items were being purchased by Wadhawan brothers out of the funds of the loan received by DHFL and as narrated above, Petitioner was a part in disposal/concealing of the said case property/valuables.

53. Learned SPP submitted that the petitioner did not cooperate with the investigation and he started having medical complaints and got himself admitted in Lilavati Hospital, Mumbai after he was summoned on 07.10.2022. It has been submitted that when the petitioner was examined by a panel of Doctors at Government hospital, after performing requisite tests and taking into account the medical history of the petitioner, it was opined that he was not having any problem requiring his admission in the hospital.

54. Learned SPP has also submitted that Petitioner does not have clean antecedents as a prosecution complaint was filed by the Directorate of Enforcement way back in year 2019 i.e. on 09.12.2019 wherein Petitioner was made arrayed as an accused being A-7 in the said prosecution complaint.

55. Moreover, it has been submitted that it was revealed during the investigation that M/s Sunblink Real Estate Pvt. Ltd. belonging to Petitioner purchased tenancy rights of three buildings at Haji Ali, Worli, Mumbai from tenants and Sir Mohammed Yusuf trust. The said property was located at Worli and it transpired from the investigation conducted by the Directorate of Enforcement that the said property was acquired by M/s Sunblink Real Estate Pvt. Ltd. from Iqbal Mirchi (fugitive gangster) or his associates.

56. Learned SPP submitted that the role of Petitioner is much graver than the other accused who were not being arrested in the case. It has been submitted that the Petitioner was the right-hand man of his brother-in-law Dheeraj Wadhawan besides being the Director of 34 companies, he was a beneficiary of the huge amount of siphoned-off funds as narrated above. Learned SPP submitted that Deepak Kapoor was

not made an accused and a witness, as apparent from his statements recorded u/s 161 Cr.P.C. he was induced to enter into MOU so that he could recover his money, however, later he was asked not to sell the paintings in order to recover his money and to settle his dues once Dheeraj Wadhawan was out of jail.

57. Learned SPP submitted that MOU was got entered after dishonest inducement to Deepak Kapoor and actually the purpose was to shield the paintings from seizure. Learned SPP submitted that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail and need to be considered seriously. Reliance has been placed upon *Nimmagadda Prasad v. Central Bureau of Investigation* AIR 2013 SC 2821. Reliance has also been placed on the case of *Y.S. Jagan Mohan Reddy V. Central Bureau of Investigation* 2013 CRI L.J. 2734.

58. Further reliance has been placed on the case of *State of Gujarat v. Mohanlal Jitmalji Porwal and another* AIR 1987 SC 1321 whereby it was inter alia held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books.

59. In *Gurmeet Singh & Anr. v. Central Bureau of Investigation in Bail APPLN. 1707/2016* decided on 06.03.2021, it was inter alia held that the magnitude and severity of the offence in the present case is not only in relation to the quantum of money involved but also that offences have been committed against lakhs of investors.

60. Learned SPP has also placed reliance on the case of *Gulabrao Baburao Deokar v. State of Maharashtra* 2014 CRI. L.J. 845, wherein it was inter alia held that while a vague allegation that the accused may tamper with the evidence or witnesses may not be ground to refuse bail but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. It was further inter alia held that the nature and seriousness of the offence and its impact on the society particularly in economic offences are always important considerations in such a case and they must squarely be dealt with by the Court while passing an order on bail applications.

61. Reliance has also be placed on the decision in *Dr. Vinod Bhandari v. State of M.P.* 2015 CRI L.J. 1547, where a plea was taken on behalf of the appellant that the appellant had already been in a custody for about one year and there is no commencement on the trial in the near future. However, Hon'ble Supreme Court though noted that the appellant has been in custody for about one year and there is no prospect of immediate trial and acknowledged a person is kept in custody to facilitate a fair trial and in the interest of society, it is the duty of the prosecution and the Court to take all possible steps to expedite the trial. The Hon'ble Supreme Court passed appropriate directions for the completion of trial expeditiously and further directed that if the trial

is not completed in one year from today for reasons not attributable to the appellant, the appellant will be entitled to apply for bail afresh to the High Court which may be considered in the light of the situation which may be then prevailing. Learned SPP for the State therefore submits that merely on the ground of delay in a trial the accused petitioner cannot be entitled for admitted to bail.

62. Ld. SPP submitted that considering the seriousness of the offence, impact on the society as a whole and magnitude of the offence, the petitioner is not entitled for bail.

(E) FINDING & ANALYSIS

63. The bare perusal of the above judgments makes it clear that the Court while dealing with the bail application is required to confine itself to the peculiar facts and circumstances of the case, along with broad parameters for the grant of bail. At this stage detailed examination of evidence and elaborate discussions of merit cannot be undertaken. However, the Court is duty bound to look at the possible evidence of circumstance and is also duty bound to indicate that why the bail is being granted.

64. The discussion of the abovesaid judgments, crystalise the position very clearly that the Court while determining the bail has to view economic offence with more cautious approach as such offences tend to ruin the economy of the State. In addition to this, the Court has to also 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, the reasonable possibility of securing the presence of the trial, reasonable apprehension of the witnesses being tampered with and the larger interest of public/State and other similar considerations. It is also a settled proposition that the Court at this stage is not required to meticulously examine the evidence on record, the Court is only to see take a prima facie view of the allegations made against the accused and the Court is also to ensure that there is no pre-judging and no prejudiced. Only a brief examination is to be made to be satisfied about the existence of a prima facie case.

65. In the case of Sanjay Chandra v. CBI(2012)1 SCC 40,the Hon'ble Supreme Court despite noting that the accused was charged with economic offences of huge significance and that if the charges are proven then the economy of the country may suffer inter alia held the accused was entitled to be enlarged on bail subject to stringent conditions. Hon'ble Supreme Court took into account the fact that the charge sheet was also filed before the Special Judge, CBI, New Delhi and further incarceration of the accused was not required as the investigation is already completed. It was further inter alia held that while considering a bail application in case of economic offences, the seriousness of the charge is of pertinent consideration but it cannot be the sole test or factor. There are certain other tests that are to be considered such as the punishment that could be inflicted after trial and conviction, both under Indian

Penal Code and Prevention of Corruption Act.

66. It is also pertinent to mention here that while deciding the bail application, the Court has to take into account, the settled proposition that the rule is bail not a jail. Article 21 of the constitution which enshrines the most basic of all fundamental rights of our constitution may not be put to violation by denial of bail in a deserving case. It is also a settled proposition that the object of bail is to secure the appearance of the accused persons during trial by imposing necessary conditions and fixing reasonable amount of bail. The object of the bail is neither curative nor preventive. It is pertinent to mention that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person stand at trial been called upon. It has repeatedly been held that the Courts owe more than verbal respect to the settled principle that punishment begins after conviction. The Court has to keep in mind the golden principle that a man is deemed to be innocent unless duly tried and duly found to be guilty. The Court thus proceed to consider the application of bail in the peculiar facts and circumstances and the law placed by both the parties.

67. The CBI filed the charge sheet against the Kapil Wadhawan, the then CMD of DHFL-A-1, Dheeraj Dhawan , the then Director of DHFL-A-2 and 75 other accused persons including companies for the commission of offences under Section 120 B read with Sections 406/409/411/420/424/465/468/477A of IPC and Section 13 (2) read with 13(1) D of PC Act, 1988 and substantive offences thereof. It is pertinent to mention here that further investigation with regard to ascertaining roles of remaining FIRs named accused persons namely Sh. Sudhakar Sethi, M/s Amaryllis Realtors & M/s Gulmarg Relators remaining CAs (who had audited balance sheets of e-DHFL and Shell companies and who had facilitated the promoters), ultimate beneficiaries end use of diverted funds through shell companies & other Wadhawan Group Companies, the DHFL officials, insider share trading of DHFL shares, bank officials, NHB officials and other connected issues, further investigation u/s 173 (8) of Cr. PC is continuing. It is pertinent to mention here that the learned Trial Court granted default bail to Kapil Wadhawan and Dheeraj Wadhawan vide order dated 03.12.2022. However, the CBI has challenged this order before this Court.

68. Learned senior Counsel for the petitioner submitted that in the chargesheet in the following para (s) the role of the present petitioner in the investigation was found as under:-

“29. Investigation further revealed that Sunny Suresh Bathija, the brother in law of Dheeraj Wadhawan was director in 21 shell companies related to Bandra Books. Investigation revealed that he had connived with the Wadhawans for dishonestly and fraudulently diverting and misappropriating loans/facilities availed by DHFL from consortium banks.

56. The following 5 entities, with outstanding loans of Rs. 2186 crores approx., were merged in Sunblink Real Estate Pvt. Ltd. (against Haji Ali projects in Worli):

(i) Able Realty Pvt. Ltd.

(ii) Faith Realtors Pvt. Ltd.

(iii) Marvel Township Pvt. Ltd.

(iv) Poseidon Realty Pvt. Ltd.

(v) Random Realtors Pvt. Ltd.

57. The motive behind the above merger of shell companies, controlled by Wadhawan brothers into the aforesaid three companies having projects, was to mask/camouflage the outstanding loans against the above shell companies through which the funds of DHFL availed from Banks were dishonestly diverted.

58. Investigation has further revealed that Sh. Sunny Bathija, brother-in-law of Dheeraj Wadhawan, is at present Director in following two companies related to Wadhawan brothers:-

i. Sunblink Real Estate Developers Pvt Ltd,

ii. Cloud Nine Realtors Pvt Ltd. Bec

59. M/s Sunblink during the period Dec 2009 to May 2015 got the loan of Rs 57.52 crore from DHFL. The said loan was repaid by M/s Sunblink in Oct 2016 fully by repaying Rs 104.91 crores to DHFL including pending interest. The source of funds for repayment of the aforesaid loan was diverted from DHFL funds. It has revealed that DHFL disbursed Rs 360.00 crore to another Wadhawan group company namely M/s Wamika Real Estate Pvt Ltd in Oct 2016. Wadhawans routed the said funds of M/s Wamika Real estate and out of the said funds of DHFL; they repaid the loan of M/s Sunblink. DHFL had disbursed the loan to Wamika Real Estate for its project but the funds were actually routed/diverted by Wadhawans instead of using for the purposes other than the loans were sanctioned.

60. In March 2019, Wadhawans brothers started securitizing various unsecured loans given by DHFL. In this process, they merged their five entities mentioned below into M/s Sunblink:-

i M/s Able Realty Private Limited

ii. M/s Poseidon Realty Private Limited

iii M/s Random Realtors Private Limited

iv M/s Faith Realtors Private Limited

v M/s Marvelhip Pvt Ltd

61. These all above 5 companies were part of Bandra Book and had taken unsecured loans from DHFL. M/s Sunblink had given the collateral security of Worli property against the said merged loan of Rs 2186 crores. DHFL thus had outstanding loan of Rs. 2186 crores which subsequently become NPA.

62. Investigation has also revealed that Sunny Bathija in conspiracy with Kapil Wadhawan and Dheeraj Wadhawan & others played an active role in acquiring and disposing off the assets acquired from the diverted funds by Wadhawans from the loans availed from banks.

69. It has also been alleged that in para 43, it has been alleged that the present petitioner was paid Rs.50 Lakhs by M/s. Rajen Skyscrapers owned by Sh. Rajen Dhruv from the diverted funds. Investigation had revealed that in furtherance of the criminal conspiracy, Sh. Kapil Wadhawan colluded with Sh. Rajen Dhruv and misappropriated the funds of DHFL by using M/s. Rajen Skyscrapers.

70. The CBI has taken a plea that the petitioner was a Director in 20 shell companies as referred to in Bandra Books. However, the following chart being filed by the CBI, in its status report indicates that from all the companies petitioner ceased to be the Director by the end of the year 2014.

Sr No	Name of the Company	Date of Appointment	Date of cessation
1	Aahna Infracon Private Limited Duke	17-12-2009	16-12-2014
2	Realtors Private Limited Elated	25-01-2014	15-12-2014
3	Developers Private Limited	11-02-2014	15-12-2014

4	Flyhigh Realtors Private Limited Glowster Properties	14-12-2009	15-12-2014
5	Private Limited Goal Realtors	09-12-2009	15-12-2014
6	Private Limited Greentown Realtors	31-01-2011	16-12-2014
7	Private Limited Lookout	10-12-2014	16-12-2014
8	Realty Private Limited Makshi Real Estate	29-03-2011	16-12-2014
9	Developers Private Limited Obedience	17-12-2009	15-12-2014
10	Infracon Private Limited Outlook	16-07-2010	16-12-2014
11	Landmark Private Limited Panorama	08-10-2010	15-12-2014
12	Landmark Private Limited Proper	13-10-2010	15-12-2014
13	Buildcon Private Limited	15-12-2009	17-12-2014

	Ragini Real Estate Developers Private Limited Revolution		
14	Developers Private Limited	15-12-2009	15-12-2014
15	Realty Private Limited Shreesay Realtors Private Limited	29-03-2011	15-12-2014
16	Ultra Space Developers Private Limited	24-06-2013	15-12-2014
17	Uniworth Real Estate Developers Private Limited	14-12-2009	05-02-2010
18	Virtuous Buildcon Private Limited	15-12-2009	15-12-2014
19	White Lion Real Estate Developers Private Limited	06-01-2010	01-06-2011
20		10-12-2009	15-12-2014

Similarly in respect of 12 other companies, in which the petitioner was allegedly to be a Director, is ceased to be a Director by the year 2014, as shown in the table:

That Petitioner was also was director in following twelve companies which were owned and controlled by Wadhawan brothers:

Sr No	Name of the Company	Date of Appointment	Date of cessation
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11	Hemisphere Infrastructure India Private limited Contemporary	25-07-2011	10-12- 2014
2	Retail Private Limited Kamla Landmarc	23-04-2015	-
3	Realestate Holding Private Limited Pavel Trading	30-01-2015	24-09-2015
4	Private Limited Serenity	31-10-2013	17-12-2014
5	Media Private Limited Shreesh	15-03-2014	15-12-2014
6	Trading Private Limited Soberano	01-03-2014	15-12-2014
7	Trading Private Limited Viscaria	21-02-2014	15-12-2014
8	Buildcon Private Limited Fly Inspiring	21-02-2014	15-12-2014
9	Aviation Management Private Limited Limonium	27-05-2015	16-03-2016
10	Realtors Private Limited	31-10-2013	30-01-2014

	Mindspace		
11	Buidcon	14-12-2009	17-12-2009
	Private		
	Limited		
	Shishir Realty		
12	Private	31-03-2010	30-08-2010
	Limited		

71. CBI has taken a plea that the petitioner was actively pursuing the case of Wadhawan Brothers by acting as Director in different companies and he used to sign documents/resolutions in order to complete such transactions, as desired by the Wadhawan Brothers to achieve the intending object of criminal conspiracy.

72. There is also nothing on record to suggest that the petitioner was ever a director or an employee of DHFL or had any key managerial position. The plea of the learned senior counsel for the petitioner that the petitioner along with several other third parties were requested to become Directors and shareholders of various companies of these Wadhawan Brothers cannot be rejected outrightly. It is also relevant to note that the petitioner was a close family member (the brother of Deepak Wadhawan's wife) and in such kind of relations, it is very difficult to say no for any business propositions and particularly by a young man of 27-28 years of age. The balance was quite uneven in the terms of relations as well as the status. Therefore, the possibility of influence cannot be ruled out outrightly.

73. The plea of the learned senior counsel for the petitioner that the investigation has not brought anything on the record that the petitioner was involved in the transaction/business of DHFL or had any knowledge about the loans referred to as Bandra Book, cannot be negated in absence of any specific evidence on record placed by the CBI. Primarily this is a matter of trial. The Court at this stage cannot enter into meticulous examination of the evidence nor can it examine the probative value of witnesses.

74. Learned senior counsel has also referred to the testimony of PW9 – Hemant Bhatia and PW24-Syali Shirolkar, who were also dummy Directors, to show that in fact the companies were controlled by the Wadhawan Brothers and all instructions with regard to their business and requirements and subsequent utilization were done by them. There is also no material on the record to suggest that the petitioner has been personally benefited in any manner.

75. Learned senior counsel has submitted that in fact the entire loan of Rs.57.52 crores shown to have been given to M/s Sunblink Real Estate Private Limited was duly repaid.

It has been submitted that in fact all these companies were actively controlled and managed by the Wadhawan Brothers and the accused in fact had no knowledge of such transactions. In the status report of the CBI, it has been stated that M/s Sunblink Real Estate Private Limited did not have any past record of project development and did not have any review in its books or held any employee. Thus, only the trial would reveal that whether these companies were actually run and controlled by Wadhawan Brothers or the petitioner was at the helm of the affairs. In respect of the merger of the five companies, the plea of the defence is that the five shell companies merged with M/s Sunblink Real Estate Private Limited was the company owned and managed by the Wadhawan Brothers and on their instructions only the companies were merged. It has been submitted that the petitioner was unaware of the status of the loan and the purpose behind these business decisions. The plea of the petitioner is that on inquiry the petitioner came to know and also informed the CBI that a valuable plot of land conservatively worth at Rs.2477.94 crores was already mortgaged to DHFL as a security towards the outstanding loan of 2186 crores of M/s.Sunblink Real Estate Private Limited. Though the CBI has disputed this fact and has submitted that even as per the document filed by the petitioner, the actual value of the land is 995.84 crores. The moot question is that whether all these companies were actually run and controlled by the petitioner himself or they were merely the puppets in the hands of the Wadhawan Brothers again it is a matter of trial, which the CBI will require to prove. In respect of enrichment from the transaction of M/s. Cloud Nine Realtors Pvt. Ltd., it is a matter of record that M/s. Cloud Nine Realtors Pvt. Ltd. has not even been made the accused in the present case. Further the petitioner was only one of the several directors in the said company. Learned senior counsel for the petitioner has further ascertained that it is CBI's own case that the applicant did not even benefit or receive any consideration and the transaction was wholly owned and controlled by the Wadhawan Brothers.

76. In respect of the allegations that the petitioner took an amount of Rs.1.29 crores from M/s. RKW Developers Pvt. Ltd. (one of the Wadhawan Group companies), it is pertinent to mention that this allegation was not part of the chargesheet. However, it has been submitted by the learned senior counsel for the petitioner applicant was working as a real estate broker-cum-consultant and the amount of Rs.1.29 crores was received by the applicant as brokerage-cum-consultation fee from M/s. RKW Developers Pvt. Ltd. for assisting in the sale of flats in their projects and there is no irregularity much less any illegality in its transaction. In respect of the amount received from Rs.50 lakhs from M/s. Rajen Skyscrapers Pvt. Ltd., it is pertinent to mention here that the allegations of the CBI is that M/s. Rajen Skyscrapers Pvt. Ltd. including Mr. Rajen Dhruv (A14) have not been arrested despite the allegations that they have received 789 crores. Learned senior counsel for the petitioners has pointed out that none of the entities/Director /promoters that seem to have received the aforesaid 789 crores post disbursement from DHFL have been arrested and majority of them have

not been even named in the chargesheet. It has further been submitted that the CBI has found no co-relation between the grant of loan by the DHFL and the meagre amount received by the applicant. The assertion made was that the petitioner received only an amount of Rs.30 lakhs instead of Rs.50 Lakhs as alleged, which was received as a loan towards the project which could never be launched. Another allegation of the CBI is that the petitioner helped the Wadhawan Brothers in concealing/diversing the properties acquired through ill-gotten money/diverted money received from consortium banks for the mandated purpose. Thus, an allegation is that PW-137 Deepak Kapoor was induced to enter into an MOU which was never acted upon. The allegation of the CBI that this MOU was actually executed by Wadhawan Brothers in custody, were shown to be ante dated and the present petitioner facilitated the execution of this agreement. Admittedly, there is no forgery in the agreement. The only allegation is that the petitioner facilitated the execution of this agreement while the Wadhawan Brothers were in custody and the motive was to dupe PW-137 Deepak Kapoor.

77. Learned SPP for the CBI has relied upon the testimony of this witness as PW-26 regarding stake of petitioner in M/s Cloud Nine Realtors Pvt. Ltd. the extensive reliance was placed by the learned SPP for the CBI upon the testimony recorded on 01.10.2022 in which he gave details of 87 Shell companies to whom funds were advanced. The perusal of this chart shows that out of 11,765.11 Crores only Rs.57.52 Crores were advanced to M/s Sunblink Real Estate Developers Pvt. Ltd. Learned SPP submits that PW-6 has stated that the petitioner was actively pursuing the calls of Wadhawan Brothers by acting as the Director in different companies owned/controlled by them.

78. Interestingly, Ms. Rebecca John, learned senior counsel for the petitioner has also placed reliance upon the testimony of PW-26 dated 03.08.2022 wherein the witness stated that all the payments and transfers were made under direct instructions of Deepak Wadhawan. The witness further stated that Dheeraj Wadhawan himself was one of the signatories in all bank accounts of Dheeraj Reality Group and having unlimited powers for financial transactions. The witness stated that employees including himself Ms. Shyali Shirolkar, Ms. Sujata Phadke, Ms. Neha Dhiman, Sh. Rohan Aggarwal etc. were also made authorized signatories in different bank accounts.

79. This witness also stated that the Worli property which was kept as a security for loan against merged company has already been attached by the ED. The witness stated that M/s Sunblink Real Estate Pvt. Ltd. actually belongs to Wadhawans and the petitioner is acted as front of Wadhawan. In respect of M/s Cloud Nine Realtors Pvt. Ltd. also the witness stated that the actual control was with the Wadhawans and from start of the project like deal for purchase of the plot, constructions etc., all controlled and done by Wadhawans. Thus, if we peruse the testimony of Sonpal cited by the CBI and the petitioner it seems that this again require a detailed trial to ascertain the

veracity. It is also pertinent to mention here that Ms. Shyali in her statement dated 08.10.2022 stated that day to day affairs of 81 entities controlled by Wadhawan Group were being looked after from the corporate building office situated at 4th floor, HDIL Tower, Anant Kanekr Marg, Bandra East office, Mumbai, an office building owned by Wadhawans and authorized signatories for the bank account of these 81 shell entities were employees of Wadhawan Brothers or employees of their relative Hiten Sakhuja. He stated that all companies were directly controlled by the Wadhawan Brothers and on instructions for funds requirements and subsequent utilization were being Kapil Wadhawan and Dheeraj Wadhawan.

80. The apprehension of the CBI is that if the accused/petitioner is released on bail now, he will certainly hamper the investigation. However, there is no substance/material on record. It is a matter of record that the petitioner was arrested on 12.10.2023 and after two days of police custody, he was remanded to judicial custody on 15.02.2022 and on the same day, the chargesheet was filed. The submission of the CBI is that the petitioner had not been joining the investigation and faking illness. However, the record reveals that the petitioner was summoned on 07.10.2022 and on that day he expressed his inability for non-appearance and thereafter the medical board was constituted and it was found that there was no serious ailment. It is a matter of record that the chargesheet runs into 55000 pages against 75 accused persons including 17 individuals and 58 entities. It has also been stated that along with the chargesheet there is hard drive data of 900 GB and approximately 2 lakh pages. Thus, it cannot be believed that the chargesheet was not complete on 12.10.2022.

81. It is a settled proposition that arrest of an accused is not mandatory. The law provides that the accused can be arrested if the arrest is necessary for the purpose of conducting custodial investigation or there is a possibility of the accused fleeing away from the justice and tampering the evidence in any manner. The FIR was lodged on 20.06.2022. The main accused persons were arrested on 19.07.2022 and since their 90 days was expiring on 15.10.2022, the CBI had to file the chargesheet against them on 15.10.2022.

82. Though, CBI stated that the further investigation is pending against certain other accused persons and companies but there is no such case that the investigation against the present petitioner is also continuing. There seems to be substance in the plea of the petitioner that he was arrested on 12.10.2022 only to defeat his rights of being released on bail as other accused persons i.e. Sh. Harshil Mehta, the then CEO(A-3); Sh. Ajay Vazirani, Advocate (A-4); Sh. Jayesh Khona, the then Vice President (Accounting), DHFL(A-5); Sh. Dinesh Bansal, Director of M/s D.K. Realty (India) Pvt. Ltd. (A-6); Sh. Sunny Bathija, Sh. Jignesh Mehta, CA/Partner of M/s Chaturvedi & Shah LLP(A-9); Sh. Amit Chaturvedi, CA/Partner of M/s Chaturvedi & Shah LLP (A-10); Sh. Navneet Lahoti, Partner of M/s Lahoti Navneet & Co. (A-11); Sh. B.M. Chaturvedi,

CA/Partner M/s B.M. Chaturvedi &Co. (A-12); Sh. Santosh Sharma, CFO(A-13); Sh. Rajen Dhruv, Director of M/s Rajen Skyscrapers Pvt. Ltd(A-14); Sh. Hetin Sakhuja (A-15); Sh. Balwinder Singh Malhotra(A-16); Sh. Krieshan Grover, CFO, DHFL(A-17); and Sh. S.M N. Naqvi (A-18) were released on bail. Learned senior counsel for the petitioner submits that the roles being ascribed to these petitioners who were released on bail is as follows:\

i. Harshil Mehta (A-3) - He was CEO of DHFL since 2015. Pursuant to a criminal conspiracy with Kapil Wadhawan, he allegedly refused access to accounts of DHFL to internal auditors and directed them to delete negative observations from their Reports. It has been alleged that he was paid Rs. 7 crores under the garb of retention bonus.

ii. Ajay Vazirani (A-4) -He allegedly “..aided and facilitated the Wadhawans in fraudulent running the Bandra Book entities and was actively involved in the conspiracy to misappropriate the public funds”. It has also been alleged that Rs. 12.35 crores from DHFL were diverted to make payments to him and that he was paid Rs. 17.1 crores through RKW Developers which is still outstanding in DHFL’s books. He allegedly also led merger of 30 Bandra Book entities into 3 project entities and directed sanctioning of funds to them, which were diverted to repay debts of Bandra Book entities.

iii. Jayesh Khona (A-5) - He was the Vice President (Accounting) of DHFL and maintained Foxpro and Synergy systems simultaneously allegedly for the purpose of diverting funds of DHFL.

iv. Dinesh Bansal (A-6) - He was the director of Accused No. A-73 namely DK Realty (India) Pvt. Ltd. and is alleged to have received a loan of Rs. 1010 Crores which is still outstanding and is alleged to have been diverted for other purposes.

v. Jignesh Mehta, Amit Chaturvedi, Navneet Lahoti and B.M. Chaturvedi (A-9, A-10, A-11 & A-12) - They were the auditors of various Bandra Book entities and they issued false end use certificates certifying end-use funds of Rs. 35,935 crores. They also allegedly aided and facilitated the directors of DHFL in suppressing facts regarding diversion of funds.

vi. Santosh Sharma (A-13) - He was the CFO of DHFL since 2013 and was allegedly involved in the suppression of facts in DHFL’s audited books. It has been alleged that he was paid Rs. 2 crores under the garb of a retention bonus.

vii. Rajen Dhruv (A-14) - He was the director of A-73 namely Rajen Skyscrapers Pvt. Ltd. and was allegedly disbursed a loan of Rs. 789 crores from DHFL, out of which a major portion was diverted for investment into Wadhawan group companies.

viii. Hetin Sakhuja (A-15) - He is the cousin of Kapil Wadhawan and Dheeraj Wadhawan and was a director in 21 Bandra Book companies. Referred two of his employees for Directorship in Bandra Book companies. It has been alleged that he “connived with the Wadhawans for dishonestly and fraudulently diverting and misappropriating loans/facilities availed by DHFL from consortium banks.” It is pertinent to note that Learned Counsel for the petitioner has submitted that similar allegations were made against the present petitioner.

ix. Balwinder Singh Malhotra (A-16) - He was the director in 18 Bandra Book Companies and similar allegations of Hetin Sakhuja have been made i.e. that he “connived with the Wadhawans for dishonestly and fraudulently diverting and misappropriating loans/facilities availed by DHFL from consortium banks.”

x. Krieshan Grover (A-17) - He was the CFO of DHFL and was allegedly involved in suppression of facts in DHFL’s audited books.

xi. SM N Naqvi (A-18) - He notarized the agreement for assignment of the 2 paintings.

CONCLUSION

83. The discussions made hereinabove, makes it clear that it is pre-dominantly a case where the CBI has alleged the transactions of certain entries in two companies namely M/s Sunblink Real Estate Pvt. Ltd. and M/s Cloud Nine Realtors Pvt. Ltd. The case is pre-dominantly based on the documentary evidence. It is a matter of record that petitioner is on bail in E.D. case. The case of the CBI is that the present petitioner was heading and controlling these companies and thus siphoned the money, whereas the case of the petitioner is that these companies were actually controlled and managed by Wadhawan Brothers. The law regarding the bail is very clear that the Court at the stage of bail cannot enter into meticulous examination of the case nor can the stage of bail be converted into a mini trial. The Court at this stage only has to take a prima facie view and cannot enter into the meticulous examination of the facts.

84. It is a matter of the record that the further investigation in this case is still continuing. It may take a long time to conclude the investigation and the trial.

85. The Court is conscious of the fact that the cases like present one fall under the category of grave offences and thus, the Court while considering the application for bail in such matters has to be sensitive to the nature of the allegations made against the accused and these allegations have to be considered in addition to the triple test that is normally applied. However it is also a settled proposition that even if the allegations are one of the grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Reference can be made to *Satender Kumar Antil v. CBI & Anr.* 2022 SCC OnLine SC 825. Thus, in view of

the totality of the facts and circumstances of the case and taking the prima face view of the matter, without going into the deeper examination of the evidence and on the grounds of parity, the petitioner is held to be entitled to be admitted to bail. However, in order to safeguard the right of the CBI and to ensure that the accused-petitioner may not hamper the investigation or tamper with the evidence until the trial is concluded sufficient conditions can be imposed. Accordingly, the bail is granted to the petitioner subject to furnishing a personal bond of Rs.1,00,000/- with two sureties of like amount to the satisfaction of the learned Trial Court with the following terms and conditions:

- i. The petitioner shall not travel out of the country without the permission of the Court;
- ii. The petitioner shall also surrender his passport to the concerned learned Trial Court if not as of now then within seven days;
- iii. The petitioner shall not threaten or hamper with the witnesses in any manner;
- iv. The petitioner shall attend the trial regularly;
- v. The petitioner shall reside at the address given and verified by the IO, and in case of change of address, the fresh address shall be duly intimated to the learned Trial Court and the IO by way of an affidavit;
- vi. The petitioner shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- vii. The petitioner shall, in case of a change of mobile number, intimate the same to the Investigating Officer/ Court concerned by way of an affidavit;
- viii. The petitioner shall also appear once in two weeks on every Wednesday at 11.30 a.m. at the CBI, Headquarters, Mumbai.

86. In view of the above directions, the present petition along with pending application stands disposed of.