

MHCC020091792021

**IN THE SPECIAL COURT FOR CBI AT GREATER BOMBAY****CBI SPECIAL CASE NO.830 OF 2021
ALONGWITH
CBI SPECIAL CASE NO.965 OF 2021****BAIL APPLICATION EXHIBIT-18**

Bindu Kapoor ..Applicant/Accused No.9
V/s.
CBI, EO-1, Delhi.
(R.C.219 2020 E0004, EO-1, CBI, NEW DELHI.) ...Respondent

ALONGWITH**BAIL APPLICATION EXHIBIT-19**

Radha Kapoor Khanna ..Applicant/Accused No.10
V/s.
CBI, EO-1, Delhi.
(R.C.219 2020 E0004, EO-1, CBI, NEW DELHI.) ...Respondent

ALONGWITH**BAIL APPLICATION EXHIBIT-30**

Roshini Kapoor ..Applicant/Accused No.7
V/s.
CBI, EO-1, Delhi.
(R.C.219 2020 E0004, EO-1, CBI, NEW DELHI.) ...Respondent

**CORAM: S.U.WADGAONKAR
SPECIAL JUDGE (CBI)
(COURT ROOM NO.46)**

DATED: 18.09.2021.

Sr. Counsel Mr. Vijay Aggarwal i/b Rahul Agarwal for applicants/accused No.7, 9, 10
PP Mr. Bagoria for CBI, EO-1, Delhi for prosecution.

COMMON ORDER

These are the applications under Section 437 of Cr.P.C. for enlargement on bail moved by applicant/accused No.9 Bindu Kapoor below Exhibit-18, applicant/accused No.10 Radha Kapoor Khanna below Exhibit-19 and applicant/accused No.7 Roshini Kapoor below Exhibit-30, who are involved in R.C. No. 219 2020 E0004, EO-1, CBI, NEW DELHI registered by CBI, EO-1, New Delhi for the offences punishable under Sections 120-B r/w 409, 420, 468 and 471 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and Sec.7, 12, 13(1)(d) r/w 13(2) of Prevention of Corruption Act (hereinafter referred to as 'PC Act' for short).

2. It is to be noted that in the present case on the basis of source information First Information Report under R.C. No.219/2020/E0004 was registered in CBI, EO-1 on 07.03.2020. Initially, on the completion of investigation principal chargesheet is came to be filed against accused No.1 M/s Deewan Housing Finance Corporation Limited (M/s DHFL) ; accused No.2 Kapil Wadhawan, the then Chairman and Managing Director of M/s DHFL ; accused No.3 Dheeraj Wadhawan, the then Director of M/s DHFL ; accused No.4 M/s Belief Realtors Pvt. Ltd. ; accused No.5 M/s RKW Project Management Pvt. Ltd. ; accused No.6 M/s DOIT Urban Ventures (India) Pvt. Ltd. (M/s DOIT) ; accused No.7 Roshini Kapoor, Director of M/s DOIT and accused No.8 Mr. Rana Kapoor, the then CMD of M/s Yes Bank Ltd (M/s YBL). On the strength of it, special case is registered before this Court. Since the sanction for

prosecution against public servant Rana Kapoor (accused No.8) was not obtained under the PC Act at the relevant time, so this Court has remitted the present proceeding to the Court of Metropolitan Magistrate, Esplanade, Mumbai to proceed according to law by order dated 17.07.2020. During the pendency of proceeding before Ld. MM Court, the claim is made that the valid sanction was obtained against public servant, so Ld. MM Court, Mumbai forwarded the proceeding to Sessions Court, Mumbai. On the strength of it, special Case No.830 of 2021 is registered on 29.07.2021. Meantime, supplementary chargesheet is came to be filed against accused No.9 to 14 i.e. accused No.9 Bindu Kapoor, Director of M/s DOIT, accused No.10 Radha Kapoor, Director of M/s DOIT ; accused No.11 Rajiv Anand, the then Group President and Business Head of M/s Yes Bank Ltd. ; accused No.12 Mahesh Kumar Varakh (public servant), the then Group Executive Vice President of M/s Yes Bank Ltd.; accused No.13 Dularesh Jain, Chartered Accountant and accused No.14 Sunil Chaudhary, Valuer. On the strength of it, Special Case No.965 of 2021 is registered. Accordingly, 'issue process' was issued against accused.

3. M/s DHFL is registered at Registrar of Company at Mumbai, is a deposit taking finance company, was established to enable economical housing finance to the lower and middle income group. Accused No.2 Kapil Wadhawan and accused No.3 were the Directors of M/s DHFL at the relevant time. M/s Yes Bank Ltd. is a private bank governed by Banking Regulations Act and Rana Kapoor was the MD and CEO at the relevant time.

4. According to the accusation of prosecution, accused No.1 to 14 entered into a criminal conspiracy with the common object to cheat and

defraud M/s Yes Bank Ltd. and M/s DHFL and in pursuance of said criminal conspiracy Rana Kapoor, MD and CEO of M/s Yes Bank Ltd. fraudulently extended financial assistance to M/s DHFL, in lieu of substantial undue benefit to himself and his family members through the company held, controlled by them. M/s YBL subscribed debt securities issued by M/s DHFL, which is more particularly called Non Convertible Debentures (NCD) on private placement basis for Rs.10 crores on 13.04.2018. M/s YBL has invested Rs.2700 crores by way of subscription to the publicly issued NCD on 04.06.2018. Further, MCC chaired by Rana Kapoor approved enhancement of subordinate debt limit for M/s DHFL for Rs.1050 crores to Rs.2100 crores in August 2016. In May 2018, MCC and BCC of M/s YBL approved enhancement of exposure of M/s YBL for M/s DHFL for Rs.2100 crores to Rs.4000 crores in May 2018.

5. Further, M/s Belief Realtors Pvt. Ltd. (M/s BRPL) applied for Rs.1700 cores term loan for development of Bandra Reclamation Project. On the strength of it, M/s YBL sanctioned Rs.750 crores term loan for M/s BRPL on 28.06.2018 and disbursed on 27.09.2018. M/s YBL sanctioned Rs.950 crores term loan for M/s RKW Project Mgmt. Pvt. Ltd. on 29.08.2018, but due to the special audit, same was not disbursed. The said disbursed amount of Rs.750 crores was circulated to the companies controlled by Wadhawan brothers. According to the accusations, above investments made by M/s YBL in M/s DHFL was Rs.3983 crores. Further, granted credit facilities to M/s Belief Realtors, which is controlled by Wadhawan Brothers, in violation of guidelines, in spite of having adverse view against such investment of concerned official, pursuant to the criminal conspiracy, Rana Kapoor with Kapil

Wadhawan and Dheeraj Wadhawan invested the said amount in M/s DHFL and unauthorizedly and fraudulently sanctioned credit facilities of Rs.750 crores to M/s Belief Realtors Pvt. Ltd.

6. Pursuant to the criminal conspiracy, as a reward for previous huge investment made by M/s YBL in M/s DHFL and motive for further investment, Kapil Wadhawan being the Managing Director of M/s DHFL, unauthorizedly and fraudulently without making compliance of all requisite compliance/guidelines has disbursed a loan of Rs.300 crores to M/s DOIT Urban Ventures (India) Pvt. Ltd. on 22.02.2017 on the basis of inflated collateral security. Further, M/s DHFL disbursed a second loan of Rs.300 crores to M/s DOIT on 26.04.2018. No collateral security and processing fee was taken. Third loan was sanctioned for Rs.600 crores on 23.05.2018 on the basis of inflated collateral security. The fourth loan was sanctioned of Rs.300 crores without any processing fees but it was not disbursed. The third loan of Rs.600 crores was adjusted in first and second loan. M/s DOIT is run by accused No.7 Roshini Kapoor, accused No.9 Bindu Kapoor and accused No.10 Radha Kapoor Khanna with the aid of accused No.8 Rana Kapoor. All these accused have played active role while availing the above loans and those accused are authorized signatory and they used those loans to acquire properties in India as well as in abroad. At the time of availing first loan, accused Bindu Kapoor was not the Director of company, in spite of that she filed application in that capacity. The loan was applied for the general corporate purpose. The said term is not defined anywhere to the credit facility of M/s DHFL. Earlier they availed loan in the name of M/s DOIT (I) Enterprises Pvt. Ltd. and subsequently, the name was changed to M/s DOIT Urban Ventures (India) Pvt. Ltd. with a

ulterior motive to grab corporate loan. While sanctioning loan of Rs.300 crores on 26.04.2018, at that time, the applicant/accused No.7 Roshini Kapoor and applicant/accused No.10 Radha Kapoor Khanna were not the Directors of the Company but after disbursal and utilization of funds, they re-appointed themselves as the Directors of Company with malafide intention of escaping from the criminal liability. No requisite compliance is obtained by accused Kapil Wadhawan while sanctioning the above loans.

7. Further accusation indicates that, at the relevant time M/s DHFL was not proper company for investment, as there were several adverse factors were existing therein. In spite of that, accused Rana Kapoor fraudulently and dishonestly made investments in M/s DHFL on behalf of M/s YBL. Out of the investment of Rs.2700 crores in NCD through public issue, immediate wrongful loss was caused of Rs.2217 crores to M/s YBL, as in order to mitigate the further loss, M/s YBL was compelled to sell the NCD public issue for Rs.557.23 crores, when Rs.2700 crores was invested therein. The remaining investment of Rs.1283 crores is due against M/s DHFL. Further, Rana Kapoor in violation of guidelines and by committing several illegalities, sanctioned and disbursed loan of Rs.750 crores with the aid of other accused to M/s Belief Realtors Pvt. Ltd. In lieu of that, wrongful gain availed by the Wadhawan brothers, M/s DHFL has sanctioned the loan as referred above to the company M/s DOIT, which is controlled by the accused/applicants Roshini Kapoor, Radha Kapoor Khanna and Bindu Kapoor with the aid of accused Rana Kapoor. The sanctioned loan amount was not utilized for the purpose, for which it was sanctioned, several norms are violated, illegalities are committed by the Wadhawan

Brothers while sanctioning and disbursing loan amount for Rs.300 crores, Rs.300 crores and Rs.600 crores. Thus, accused has committed the above offences pursuant to the criminal conspiracy and the beneficiary of crime proceeds are Wadhawan Brothers and the family of Rana Kapoor.

8. Ld. advocate for the accused/applicants submits that the CBI has filed supplementary chargesheet against accused/applicants without arresting them in view of law laid down by the **Hon'ble Supreme Court in the case of Aman Preet Singh Vs. CBI in Cri. Appeal No.921/2021 decided on 02.09.2021** accused are entitled for bail. According to him, accused/applicants had duly co-operated with the investigation in the present matter and has been chargesheeted by CBI without arrest and thereafter this Court was pleased to issue summons to these accused/applicants under Section 204 of Cr.P.C. instead of warrant. So, accused/applicants are entitled for bail.

The referred dicta in the case of **Aman Preet Singh (supra)** reads as follows:

“In our view, the purport of Section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in Siddharth vs. State of Uttar Pradesh & Anr. (Criminal Appeal No. 838/2021),2021 SCC onLine SC 615). In fact we put to learned senior counsel whether he has come across any view taken by this Court qua the said provision. Learned counsel also refers to judgments of the High Court which we have referred to in that judgment while referring to some judicial pronouncements of this Court on the general principles of bail. The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in Court on its own Motion vs. Central Bureau of Investigation (2004) 72 DRJ 629 have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not

include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:

"26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.

Directions for Criminal Courts:

(ii)...

(iii)...

(iv)...

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., **the most apposite observations are in sub-para (v)** it is of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. **In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.** If we may

say, the observation hereinabove would supplement our observations made in Siddharth vs. State of Uttar Pradesh & Anr.(supra) and must be read together with that judgment. The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction.

In order to prevent situations of the kind which have arisen and repeatedly arise, it may be appropriate for the High Courts to circulate the judgments passed in Siddharth vs. State of Uttar Pradesh & Anr. (supra) and passed today to the trial Courts as the problem appear to be endemic.

(emphasis supplied)

9. Furthermore, he referred following citations :

Siddharth Vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 838/2021 decided by Hon'ble Supreme Court on 16.08.2021 ; Court on its own Motion Vs. CBI 2004 (1) JCC 308 ; Sanjay Chaturvedi Vs. State 2006 (3) JCC [NI] 241 decided by Hon'ble High Court of Delhi ; Court on its own Motion Vs. CBI 2004 (1) (JCC) 308 ; Court on its own Motion Vs. State in Cri. Ref. No.4/2017 decided by Division Bench of Hon'ble High Court of Delhi on 27.10.2017 ; Court on its own Motion Vs. State in Cri. Ref. No.1/2017 decided by Division Bench of Hon'ble High Court of Delhi ; Arun Sharma Vs. Union of India & Anr. in CRWP No.971 of 2016 decided by Division Bench of Hon'ble High Court of Punjab and Haryana on 22.07.2016 ; Dataram Singh Vs. State of U.P., (2018) 3 SCC 22 ; Dalip Singh Mann & Anr., Vs. Niranjn Singh, Assistant Director, Director of Enforcement, Govt. of India in CRM No.M-28490 of 2015 decided by Division Bench of Hon'ble High Court of Punjab and Haryana on 01.10.2015 ; P.D. Agro Processors

Vs. Directorate of Enforcement in CRWP-984-2016 decided by Division Bench of Hon'ble High Court of Punjab and Haryana on 25.07.2016 ; Lt. General Tejinder Singh Vs. CBI in Bail Application No.1946/2014 decided by Hon'ble High Court of Delhi on 05.09.2014 ; The Maharashtra Government Vs. Rajaram Digamber Padamwar and Ors., 2011 (4) AIR Bom R 238 ; Sudhir Nathani Vs. CBI, 2003 (3) JCC 1883 ; Sreekumar Vs. State of Kerala (13.08.2008 – KERHC) : 2008 3 KLT 748 decided by Hon'ble Kerala High Court ; Aizaz & Ors. Vs. State of U.P, (2008) 12 SCC 198 ; Smt. Shakuntala Devi Vs. State of U.P., 1986 Cri. L.J. 365 decided by Hon'ble High Court of Allahabad ; Sushila Das Vs. State 78 (1999) DLT 388 ; Narayansingh Vs. State of M.P. 1996 Cri. L.J. 551 ; P. Chidambaram Vs. Directorate of Enforcement in Criminal 2019 SCC OnLine SC 1549 ; Sushil Ansal Vs. CBI & Ors 1999 [1] SCC [Delhi] 12 ; R. Vasudevan Vs. CBI 2010 (I) JCC 642 decided by Hon'ble High Court of Delhi.

10. It is to be noted that I have gone through the above referred cases. Some of it are referred in the case of **Aman Preet Singh (supra)** or in some cases the directions are laid down that, when accused not been arrested during investigation, then accused are entitled for bail. Furthermore, in some cases considering the parameters of bail and facts of those cases, accused therein are released on bail, I have taken judicial note of all parameters. Further, he also placed number of order passed by the Special Judges working in the Sessions Court, Mumbai as well as order passed by this Court, whereby regular bail is granted to the accused after submission of chargesheet, wherein accused were not arrested during the course of investigation. It is to be noted that the

question of bail to each accused has to be considered on the basis of their facts and situation. So, the cited cases are distinguishable from the facts of the present case except the issue of release of accused on bail, when they were not arrested during the course of investigation. So, considering the parameters laid down therein, the appreciation or consideration of present application would be evaluated.

11. Ld. PP for the CBI resisted the bail application. He submits that the recitals of prosecution say to the bail applications to be an argument of prosecution. According to him, the allegations against the accused/applicants is of grave economic offence. The accused/applicants being the Directors of M/s DOIT are placed in the higher position and such there is an apprehension, they may tamper with the evidence in the event of grant of regular bail. Further, he referred the role played by the accused in the crime in question to avail the benefits of crime proceeds alongwith co-accused. He referred judgments of Hon'ble supreme Court and High Court in the application, wherein it is held that economic offences having deep rooted conspiracy and involved huge loss of public funds and to be considered as a grave offence affecting the economy of a country as a whole and thereby posing serious threats to the financial health of our country. If a person knows that, even after misappropriating huge public funds he can come out on bail and he can continue to enjoy the ill gotten wealth, that would encourage many others to commit similar crime.

12. Further, he submits that all cited cases on behalf of accused are not applicable to the facts of present case. He referred the case of Hon'ble Delhi High Court in the case of **Sharad Kumar Vs. Central Bureau of Investigation decided by Hon'ble Delhi High Court in Bail**

Application Nos. 723 and 724 of 2011 on 08.06.2011, wherein on behalf of accused submission is made that the accused were not arrested during the investigation and they appeared in the Court of Special Judge pursuant to the summons, so they are entitled for bail. The said submission is considered by the Hon'ble Delhi High Court and considering the gravity of offence and other factors for bail, rejected the bail applications of accused, wherein accused were alleged to be beneficiary of Rs.200 crores. The said order of Hon'ble Delhi High Court is upheld by the Hon'ble Supreme Court in the case of **Sharad Kumar Vs. Central Bureau of Investigation, Law Finder Doc. Id # 339884**, wherein Hon'ble Supreme Court held that the reasons assigned by the Ld. Special Judge and the Ld. Single Judge of the High Court for refusing to entertain the petitioners' prayer for bail, do not suffer from any legal infirmity. So, according to him accused/applicants are not entitled for bail. Hence, he claimed for rejection of application.

13. It is to be considered in regard to the issue crop up that, when accused not been arrested during the investigation, on submission of chargesheet as of right, entitled for bail. As Hon'ble Supreme Court in the case of **Aman Preet Singh (supra)** reiterated the observations made in the judgment of **Hon'ble Delhi High Court in Court on its own Motion Vs. CBI (2004) 72 DRJ 629 (supra)**, wherein it is held that the Court shall on appearance of accused in non bailable offence, who has not been arrested during investigation, be released on bail. It is to be noted that the facts of the cited case are distinguishable from the facts of the present case. In cited case, the observations were made by the Hon'ble Court, as the accused were free for several years and has not been even arrested during investigation and the Trial Court issued non

bailable warrant against accused on the submission of chargesheet. So, Court observed that, to send accused to jail by refusing bail suddenly is against the basic principle governing grant or refusal of bail.

14. Further, in the case of **Aman Preet Singh (supra)** the Hon'ble Supreme Court has granted anticipatory bail to the accused in spite of that Trial Court on submission of chargesheet issued non bailable warrant of arrest against the accused. In that scenario, the same guidelines are issued, but in the present case on submission of chargesheet pursuant to the issue process order, summons were issued to the accused and on appearance, accused placed regular bail application and same is to be considered in the light of important factor of consideration of bail. Further, Hon'ble High Court in the case of **Court on its own Motion Vs. State dtd. 27.10.2017** issued direction pursuant to the question of law, as framed for determination by the Court that, whether Ld. MM Court can examine the discretion exercised by the I.O. for arresting or non arresting the accused persons at the stage of taking cognizance and whether the Ld. MM Court can return the chargesheet for further investigation on the point of arrest of the accused persons. So in this scenario, the facts of the case of **Sharad Kumar Vs. CBI (supra)** relied by the prosecution are applicable to the present case, as in that case, submission is made before Hon'ble Delhi High Court that, accused were not arrested during the course of investigation, so they are entitled for bail on submission of chargesheet and same submission is turned down by the Court and rejected the bail application, when accused approached before the Hon'ble Supreme Court against the said order in the case of **Sharad Kumar Vs. Central Bureau of Investigation, Law Finder Doc. Id # 339884**, held that the

reasons assigned by the Ld. Special Judge and the Ld. Single Judge of the High Court for refusing to entertain the petitioners' prayer for bail, do not suffer from any legal infirmity and rejected the bail application and liberty is given to the accused to move afresh bail application after framing of charge. So, facts of the case of **Aman Preet Singh (supra)** are distinguishable.

15. Let's consider from another angle, when we consider the judgment in the case of **Sharad Kumar (supra)** decided by Hon'ble Supreme Court and in the case of **Aman Preet Singh (supra)**, both these judgments are delivered by Co-ordinate bench of Hon'ble Supreme Court. The judgment of **Aman Preet Singh (supra)** is decided later on, wherein the case of **Sharad Kumar (supra)** is not referred or distinguished. In that scenario, when there is a conflicting judgments of Hon'ble Supreme Court of Co-ordinate bench, then this Court is eligible to take the assistance of judgment, which is appropriate to the facts of the present case. So, the submissions as well as all cited cases referred above on behalf of accused/applicants, whereby they claimed that they be released on bail on the ground that they have not been arrested during the course of investigation, is not assist to the accused/applicants. So, accused/applicants are not entitled for the bail on that sole ground.

16. Here, I would like to point out that submission is made by the Ld. advocate for accused/applicants that the Hon'ble Supreme Court in the case of **Sharad Kumar (supra)** remanded back the matter, so same is not applicable. The submission is not consistent with the order of Hon'ble Supreme Court. Further, he submits that the judgment of Hon'ble Delhi High Court in the case of **Sharad Kumar (supra)** is of

Single Bench Judge. On the contrary, the Division Bench of Hon'ble Delhi High Court laid down the principles in **Criminal Ref. No.1/2018 decided on 13.11.2018** and **Criminal Ref. No.4/2017 decided on 27.10.2017** so, same will prevail over the judgment of Sharad Kumar (supra) decided by Hon'ble Delhi High Court. Said submission is not assist to him, as judgment of judgment of Sharad Kumar (supra) decided by Hon'ble Delhi High Court, is upheld by the Hon'ble Supreme Court with the specific observation that there is no legal infirmity therein.

17. Ld. advocate for the accused/applicants submits that the accused/applicants are released by the PMLA Court on regular bail on the set of same facts and circumstances, so accused are entitled for bail. It is to be noted that the offences tried by the PMLA Court under the PMLA Act and the offences in the present proceeding are two independent proceedings and they are distinct offences. So, releasing by PMLA Court to accused/applicants is of no avail to them to get bail in the present case, as the bail of the accused/applicants has to be considered on the basic facts and situation of the present case.

18. Another submission raised on behalf of accused/applicants is that, this Court upon consideration of supplementary chargesheet was pleased to issue summons on applicants/accused instead of warrant. Then, Court has to grant the bail. He also referred the cited cases in the applications in that regard. It is to be noted that the same submission is raised in the case of **Sharad Kumar (supra) decided by Hon'ble Delhi High Court** and Hon'ble Delhi High Court observed that Sec. 87 and 88 Cr.P.C. only defines the parameters of power of the Court in certain situation and those provisions have no bearing on the right of a person

accused of non-bailable offence to bail. For that purpose, the relevant provision is Section 437 of Cr.P.C. and the plea of the accused for his release on bail is required to be considered by the Court on the basis of well established principles. And said observations are upheld by the Hon'ble Supreme Court, so the submissions advanced on behalf of accused/applicants is of no avail.

19. One of the submissions advanced on behalf of accused/applicants is that applicant/accused No.7 Roshini Kapoor is released by the Ld. ACMM Court in the present case for the offence, which includes offence punishable under Section 409 of Cr.P.C. The prescribed punishment for it is life imprisonment. The added offences in supplementary chargesheet prescribed lesser punishment, so, applicant/accused No.7 is entitled for bail. Accordingly on the ground of parity, accused No.9 and 10 are also entitled for bail. The issue of bail granted by Ld. ACMM Court is already decided by this Court while dealing with application placed by prosecution below Exhibit-25, wherein with reasons this Court held that the effect of bail order granted by Ld. ACMM Court dated 12.11.2020 to accused Roshini Kapoor came in the purview of de novo proceeding. It means that the proceeding is to be conducted afresh by this Court, as if there had not been grant of bail by Ld. ACMM Court at first instance. So, the said submission is not assist to him.

20. It is to be considered the bail applications of accused/applicants on merits. It is settled law that while deciding the applications for grants of bail, the Court must take into account various factors, namely, nature and gravity of accusation ; nature of evidence against the accused ; severity of punishment in the event of conviction ; danger of accused fleeing from justice ; the danger of accused trying to influence

the witnesses or thwarting the course of justice and the character and antecedents of the accused etc.

21. I would like to consider the factors for deciding the present applications, whether there is a prima facie case against accused, nature and gravity of accusation, nature of evidence against the accused and severity of punishment in the event of conviction.

22. At the outset, I would like to refer the observations made by Hon'ble Delhi High Court in the case of **Sharad Kumar (supra)** by referring observation of **Hon'ble Supreme Court in the case of CBI, Hyderabad Vs. B. Ramaraju, 2011 Cri. L.J. 301**, wherein Hon'ble Supreme Court cancelled the bail of accused Ramaraju purely on the basis of enormity and gravity of the offence. So, the gravity of offence and nature of evidence against the accused, this can be a ground for the rejection of bail.

23. In the light of above facts and circumstances, which are referred herein above as the accusations against accused/applicants prima facie show the complicity of them with other co-accused, more particularly, accused Rana Kapoor in the conspiracy and they have received fraudulently and dishonestly the illegal amount pretending to be a corporate loan of Rs.300 Crores, Rs.300 Crores and Rs.600 Crores, so actual beneficiary of the said amount is applicants/accused No.7, 9 and 10 and accused Rana Kapoor. They availed this amount by allowing wrongful loss to M/s Yes Bank Ltd., which is of around Rs.4000 crores. Lakhs of depositors, who deposited the amount in Yes Bank Ltd, shareholder of Yes Bank Ltd. as well as M/s DHFL have been duped and the banking credibility of the nation has been received serious set back.

So, the accused/applicants involved in grave offence affecting the economy of the country and are continue to reap the benefits of the crime committed by them, do not deserve any indulgence and any sympathy to them being the women or mother of small kids, as submitted by the Ld. advocate. Thus, there is a prima facie evidence against accused is forthcoming and the nature and gravity of offences grave and serious one. So these factors are sufficient to reject the bail applications of the accused/applicants.

24. The submission made on behalf of accused/applicants is that, the completion of trial is not likely in near future. The accused/applicants have deep roots in the society. There are no chances of tampering with the evidence in the present case, as documentary evidence is already in the custody of CBI. According to him, still necessary conditions may be imposed and bail may be granted with condition that, accused/applicants shall not tamper with the prosecution evidence. These factors do not play significant role in the present case, as prima facie accused/applicants are involved in grave and serious economic offence and which causes loss of around Rs.4000 crores and that money belongs to the public at large including poor bank depositors.

25. Ld. advocate for the accused submits that accused/applicants deserves to be granted the benefit of proviso to Sec. 437 of Cr.P.C. being they are women. In support of his submission he placed reliance in the cases of **Sushila Dahas Vs. State, 78(1999) DELHI LAW TIMES 388 ; Smt. Shakuntala Devi Vs. State of U.P., 1986 Cri. L.J. 365**, wherein the Hon'ble High Court considering the special facts of those cases given benefit of proviso to Sec. 437 of Cr.P.C. being those accused are women. Mere directions without laying down any principle of law

is not a precedent, as in the case of **Shakuntala Devi (supra)** the 'may' appearing in the proviso treated as 'must'. Considering the facts of those cases, further in the case of **Sharad Kumar (supra)** one of the accused is woman. The Hon'ble Supreme Court rejected the bail of her. So, the submission as well as cited cases are of no avail to the accused/applicants.

26. Furthermore, Ld. advocate for the accused/applicants made submission that at the stage of considering the application for bail, detail examination of the merits of the prosecution case and the merits or demerits of the material relied upon by the prosecution should be avoided. It is to be noted that his Court has referred the accusation of prosecution for the purpose of prima facie case only and has not made detailed examination of the merits of the case.

27. One of the submissions advanced on behalf of him that accused/applicants are released on interim bail, so grounds are exist to grant regular bail to them. It is to be noted that when accused appeared with specific observations without touching merits of the case, they were released on interim bail, as prosecution sought time to file say, so granting of interim bail, itself is not sufficient to convert grant of regular bail.

28. It is to be noted that almost all submissions and referred cases on behalf of accused/applicants are discussed. If anything is remained, this Court has taken judicial note of those submissions/citations and considering it, the above order is passed. In the light of above discussion no grounds are exist to release accused No.7 Roshini Kapoor, accused No.9 Bindu Kapoor and accused No.10 Radha Kapoor Khanna.

Considering the gravity and nature of offence and in the larger interest of society, as accused/applicants involved in causing wrongful loss to the huge public money of Rs.4000 crores. Accordingly, applications are deserves to be rejected. In the result, I proceed to pass following order :

ORDER

1. Bail Application (Exhibit-18) of applicant/accused No.9 Bindu Kapoor, Bail Application (Exhibit-19) of applicant/accused No.10 Radha Kapoor Khanna and Bail Application (Exhibit-30) of applicant/accused No.7 Roshini Kapoor are hereby rejected.

2. Applicant/Accused No.7 Roshini Kapoor, applicant/accused No.9 Bindu Kapoor and applicant/accused No.10 Radha Kapoor Khanna are taken in judicial custody and they are remanded in it till 23.09.2021.

18.09.2021

(S.U.WADGAONKAR)
Special Judge, (CBI)
Gr. Bombay

Dictated on : 18.09.2021.

Transcribed on : 18.09.2021.

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”****UPLOAD DATE AND TIME : 18.09.2021 AT 5.39 PM****NAME OF STENOGRAPHER : MRS. K.S. JADHAV**

NAME OF THE JUDGE	HHJ Shri.S.U. Wadgaonkar (C.R.No.47)
Date of Pronouncement of Order	18.09.2021
Order signed by the P.O. On	18.09.2021
Order uploaded on	18.09.2021