

**IA Nos. 04/2024 and 05/2024
(in SC No. 09/19, CNR No. DLCT11-000977-2019, DoE/ED
Vs. Surendra Kumar Jain & Ors.)**

09.04.2024

Present: Sh. Atul Tripathi, Ld. SPP for DoE/ED with
Advocate Sh. V. K. Attri.
Sh. Deepanshu Trivedi, AD/IO and Sh. Pavish
Khatri, EO of ED.

A-76 Ajay Gupta for self as well as for A-75 Ajay
Guptas Shree Nath Jewelers (P) Ltd., though A-76
proceeded PO vide order dated 29.10.2021, with
Counsel Sh. Kuldeep Gola, Ld. Counsel for A-76
and Sh. Daya Chand Gupta, father of A-76.

Two separate applications filed on behalf of
Accused No.76/Applicant Ajay Gupta (hereinafter referred to
as A-76), bearing IA No. 04/2024, seeking recalling of the
order dated 29.10.2021 of this court declaring him as a PO
(proclaimed offender) and IA No.05/2024 seeking his regular
bail U/S 439 Cr.P.C. again in the case respectively, are fixed
for today.

Brief facts relevant for consideration of the said
application are that the present complaint was registered on the
basis of a complaint of Serious Fraud Investigation Office
(SFIO) against various persons U/S 120B r/w 420, 468 and
477A IPC and Section 628 r/w 211/233 and 240(3) of
Company's Act on the basis of investigation conducted by
SFIO. On the basis of investigation, a complaint was
registered by the Directorate of Enforcement (DoE/ED) vide

ECIR No.01/DLZO-II/2-17 dated 11.02.2017 under the provisions of PMLA, 2002. Supplementary complaint against A-76 Ajay Gupta, however, was filed on 01.07.2019 and vide order dated 02.11.2019, cognizance of the offences qua A-76/Applicant was taken.

Thereafter, on 07.01.2020, an application was moved by ED for issuance of production warrants of A-76 Ajay Gupta on the ground that he was lodged in Central Jail, Tihar in FIR No. 107/2019 dated 06.04.2019 under Section 406 r/w 34 IPC, PS Karol Bagh, New Delhi. Pursuant to issuance of Production Warrants, A-76 was produced in court on 18.01.2020 and was admitted to bail in this case on furnishing of personal bond in the sum of Rs. 1 lakh with one surety in the like amount, while observing that the applicant/accused was never arrested during investigation and he had been summoned on supplementary chargesheet/complaint. Besides Personal Bond/ Surety Bond for Rs.1 Lakh, bail was granted to A-76 on further conditions that he will not tamper with the evidence, he will not leave India without prior permission of the court and he shall not try to influence the witnesses of the prosecution.

During the proceedings of the case, A-76 stopped appearing in the case and on 16.02.2021, an application was moved by his father/surety Sh. Daya Chand Gupta through his counsel providing information of missing of A-76 for the past one month. Learned counsel for Applicant/A-76 prayed for withdrawal of his Vakalatnama. Vide the above order, ED was directed to file verification report regarding A-76.

On 05.04.2021, a verification report regarding missing of A-76 was filed. Subsequently vide order dated 10.08.2021, personal as well as surety bonds of A-76 were directed to be forfeited and the father of A-76 who had stood surety of A-76, was directed to deposit the surety amount of Rs. 1 lakh and NBW against the said accused were ordered to be issued against him. His surety Sh. Daya Chand Gupta was discharged on deposit of surety amount of Rs. 1 lakh vide order dated 10.08.2021. By this order, as the surety of A-76 had expressed his inability to produce the accused, the personal as well as surety bond of A-76/applicant were ordered to be forfeited and surety was directed to deposit the surety amount. Surety deposited the said amount on the same day i.e. 10.08.2021 itself and was accordingly discharged. Vide order dated 29.10.2021 after execution of process U/S 82 Cr.P.C. against A-76, he was declared as proclaimed offender (PO) by this Court.

On 01.03.2024, the applications under consideration, i.e. one bearing IA No. 04/2024 seeking recalling of order dated 29.10.2021 declaring the accused as a proclaimed offender and another bearing IA No. 05/2024 seeking his bail in the case U/S 439 Cr.P.C., have been moved.

It is submitted in the application bearing IA No. 04/2024 that applicant is a 50 year old man and is suffering from Chronic Liver Disease (CLD) and Coronary Artery Diseases (CAD), besides these, he is also stated to be suffering

from portal hypertension and anasarca. The application is accompanied with the medical documents of the Applicant.

It is further submitted by the applicant/A-76 that he was staying with his old parents in Ashok Vihar, however, his wife and children were living in Canada since 2019. During the period of Covid 19, the accused, thinking that he was suffering from the CDL due to which his survival is unlikely and it might be possible that he might be infected with the coronavirus and possibly he might die, he thought to unite with his family in Canada. Hence, on 24.12.2020, he left India without informing his parents. It is also mentioned that in Canada also he was suffering from Liver Cirrhosis and his condition had become critical due to which he was admitted in the hospital for his treatment. Now, his temporary Visa for staying in Canada has expired and the Canadian government has decided to deport him to India permanently. It is further submitted that after 23.02.2024, he was to be deported to India by the Canadian Government, hence, he returned to India. It is mentioned that the doctors of the Canadian Hospital have advised the applicant that his 10% liver is working and on the basis of that, his chances of survival are very minimal. It is further submitted that A-76 can survive only after liver transplant, but the cost of liver transplant is beyond his financial capacity. It is prayed that the order dated 29.10.2021 to declare him PO be set aside.

By way of another application bearing IA No.

05/2024, the applicant sought bail U/S 439 Cr.P.C. on the ground of his medical condition as aforesaid.

In the course of proceedings, IO Sh. Deepanshu Trivedi, present in the court submitted that he has verified the documents annexed with the application bearing IA No. 04/2024 from the Institute of Liver and Biliary Sciences, Vasant Kunj, Delhi. The said verification report is on record.

The applicant/A-76 also produced his original passports showing the data of his departure/arrival in India.

I have gone through the medical documents annexed with the application. The medical documents of ILBS have been duly got verified by the IO and found to be correct. The accused is present in the court on a wheelchair and appears to be extremely 'sick' and 'infirm'. However, the IO submits that he requires sometime to verify the medical documents of accused which are of Canada where he had undergone medical treatment.

Ld. SPP for ED submits that considering the medical condition of the accused, the applications under consideration are not being opposed, however, the relief as prayed for by the Applicant may be granted subject to verification of the documents and upon appropriate conditions being imposed.

In view of the submissions made and the documents on record, the application for recalling order dated 29.10.2021, vide which the applicant was declared a

Proclaimed Offender (PO) is allowed. Further, in view of the aforesaid submissions and documents relied upon, the accused/applicant is admitted to bail till next date i.e. 30.04.2024, subject to verification of his medical record by the IO and subject to the following conditions :-

- i) that he shall furnish before this court a personal bond in the sum of Rs. 2 Lakh with one surety in the like amount;
- ii) that he shall not leave the jurisdiction of this court without seeking prior permission of the court;
- iii) that he shall join the proceedings of this case as and when directed and on each date of hearing;
- iv) that he shall not destroy or tamper with the evidence of this case and shall not influence any witnesses of the case nor he shall even make any attempt to do so;
- v) that he shall not indulge in any criminal activities or commission of any offence of whatsoever nature and he shall not abuse the bail granted to him for any purposes; and
- vi) that he shall surrender his passport in the court.

At this stage, Ld. Counsel for the applicant/A-76 Ajay Gupta submits that sometime may be granted for arranging the surety amount and requests that till then, the personal bond of the applicant/A-76 may be accepted. It is stated that father of the applicant is a poor person and requires sometime to get the FDR prepared.

In view of the submissions made, request is allowed and personal bond furnished by the applicant/A-76

Ajay Gupta is hereby accepted till next date fixed in the matter i.e. **30.04.2024**, subject to verification of the medical documents as aforesaid and furnishing of surety bond by the applicant, as per the above terms and conditions.

Original passports of the applicant/A-76 are retained on record. Till next date of hearing, his Aadhar Card is also retained.

Kaveri Baweja
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi :09.04.2024