

CA 10856/2016

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ITEM NO.14

Court 6 (Video Conferencing)

SECTION XVII-A

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No.10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

(With appln.(s) for for approval of the resolution plan, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, exemption from filing O.T., exemption from paying court fee, extension of time, intervention, intervention/impleadment, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, permission to place additional facts and grounds, recalling the Court's order and withdrawal of case/application)

WITH S.L.P.(Crl) Nos.5978-5979/2017 (II-C)

(With appln.(s) for exemption from filing certified as well as ordinary plain copy of the impugned order, substitution, appropriate orders/directions, clarification/direction, early hearing, exemption from filing affidavit, interim bail, intervention, intervention/impleadment, modification, modification of Court order, permission to appear and argue in-person, permission to file additional documents/facts/Annexures, direction, to file SLP without certified/plain copy of impugned order, permission to palce on record subsequent facts, recalling the Court's order, seeking custody certificate and withdrawal of case/application)

Date : 18-03-2021 These matters were called on for hearing today.

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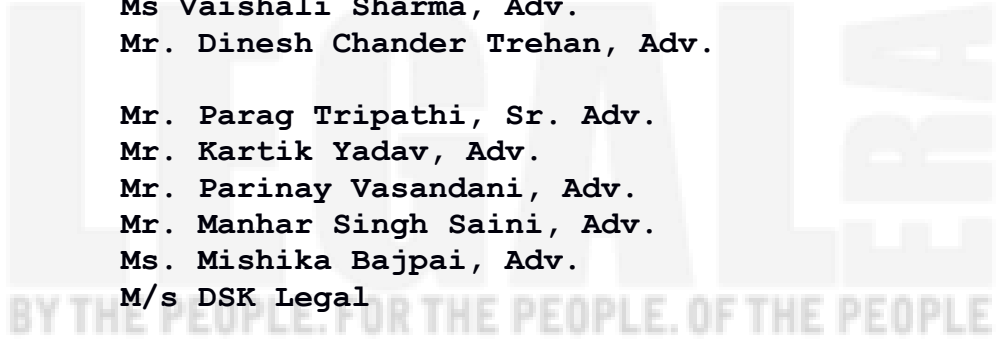
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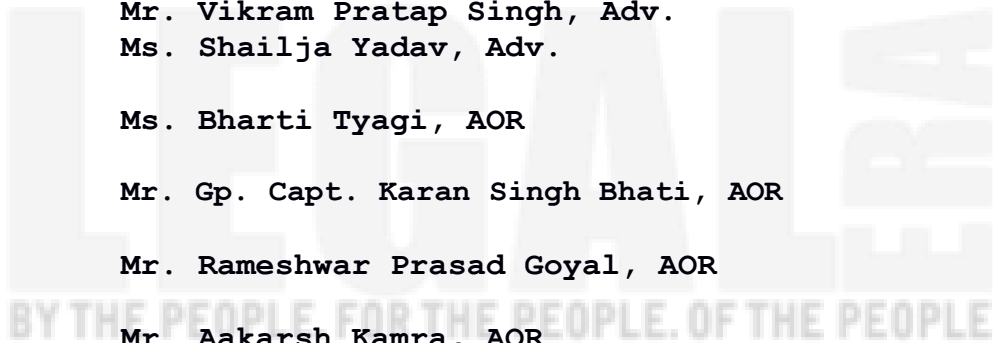
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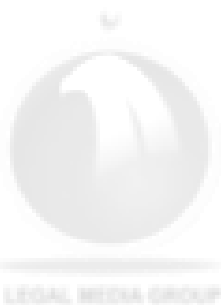
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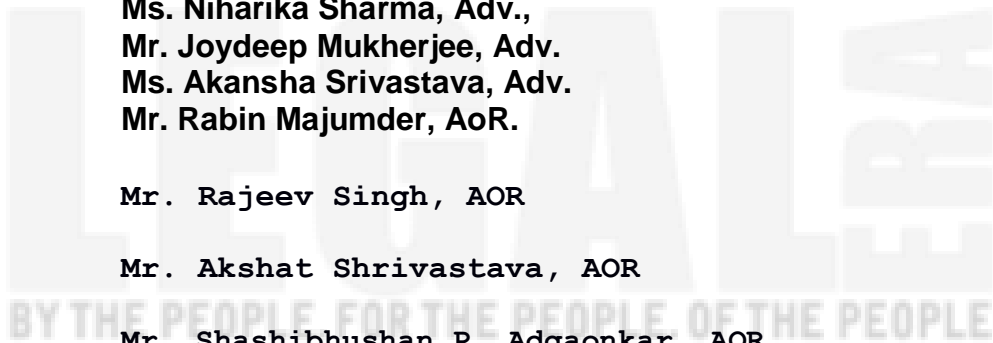
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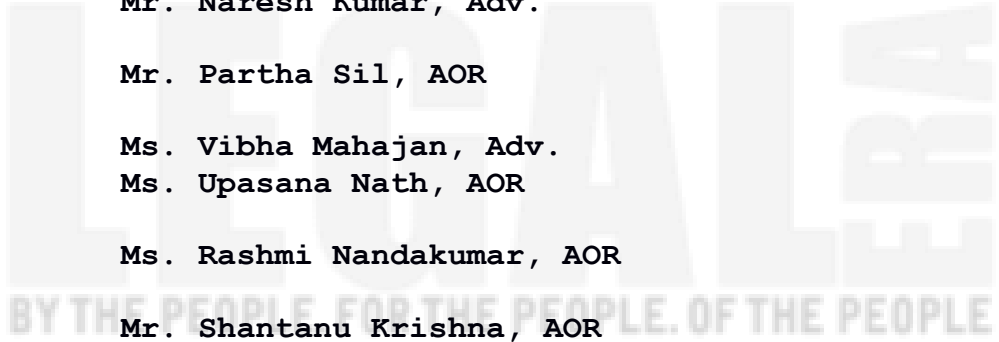
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**UPON hearing the counsel the Court made the following
ORDER**

SLP (Crl) Nos 5978-5979 of 2017

- 1 A status report has been filed on behalf of the Delhi Police by the Additional Deputy Commissioner of Police, Economic Offences Wing, New Delhi. An interlocutory application has been filed by the Delhi Police for staying the order passed by Dr Pankaj Sharma, Chief Metropolitan Magistrate, Patiala House Courts, New Delhi on 13 January 2021 granting bail to the accused, Sanjay Chandra and Ajay Chandra. This fact having been drawn to the notice of the Court yesterday (17.3.2021) during the course of the hearing, the Amicus Curiae was permitted to bring to the notice of the counsel for the accused the status report which has been filed by the Delhi Police.
- 2 FIR No 101 of 2015 was registered at the behest of the home buyers of Unitech Limited on 31 July 2015. The Sessions Judge, by an order dated 9 August 2017, dismissed the bail application filed by the accused. The Delhi High Court by an order dated 11 August 2017, declined to grant interim bail. The Economic Offences Wing filed a charge-sheet before the Chief Metropolitan Magistrate, Patiala House Courts under Sections 406, 420 and 409 read with Section 120B of the Indian Penal Code on 21 September 2017. Special Leave Petitions - SLP(Crl) Nos 5978-5979 of 2017 - were moved before this Court against the order of the Delhi High Court noted above. By an order dated 30 October 2017, the two accused were admitted to bail subject to the condition that **they shall deposit** a sum of Rs 750 crores in the Registry of this Court by 31 December 2017. Subsequently, on 30 August

2018 and 7 January 2019, two supplementary charge-sheets have been filed by the Economic Offences Wing.

3 On 14 August 2020, this Court considered the applications filed by the accused, namely, IA Nos 63800 and 63683 of 2020, for the grant of bail on the basis of their submission that they had complied with the order dated 30 October 2017 for the grant of bail. The specific submissions which were urged before this Court on behalf of the accused have been noted in the order dated 14 August 2020 in the following terms:

- “(i) By the order of this Court dated 30 October, 2017, the applicants were, admitted to bail albeit on the condition that they must deposit an amount of Rs 750 crores;
- (ii) Presently, the amount which has been deposited in the Registry of this Court is in excess of Rs 750 crores; and
- (iii) The applicants have had to suffer incarceration for a period of nearly three years despite the order enlarging them on bail, subject to conditions, as a result of their failure to meet the condition of deposit.”

4 The above submissions were not accepted by this Court for two reasons. First, there was a breach in adhering to the time line indicated by the order of this Court for deposit by 31 December 2017. Second, the Court noted that the amount which had been realized in the Registry of this Court was as a result of the monetization of the assets of Unitech Limited under the auspices of the Court appointed Committee chaired by Justice Dhingra. In other words, the accused had not complied with the direction to deposit Rs 750 crores. Consequently, observing that both the conditions which were

imposed in the order dated 30 October 2017, had not been complied with, this Court declined to grant bail. Paragraphs 7, 8 and 10 of the order of this Court reads as follows:

“7 The above directions indicate that the applicants were admitted to bail subject to the condition that "they shall deposit a sum of Rs. 750 crores in the Registry of this Court" and that "the deposit shall be made by the end of December 2017". The requirements which were imposed by the above order are, thus, two fold. Firstly, the requirement to deposit was by the applicants, Mr Sanjay Chandra and Mr Ajay Chandra; and secondly, the deposit was required to be made by 31 December 2017.

8 We find that neither of the conditions for deposit have been complied with by the applicants. Admittedly, an amount of Rs 750 crores was not deposited by 31 December 2017. The amount which has been deposited in the Registry of this Court has been realized as a result of the monetization of the assets of Unitech Limited.

10 At the cost of repetition, it is important to note that the amount which has been brought in is through monetization of assets. A significant part of the process of monetization has been carried out under the auspices of the Justice Dhingra Committee appointed by this Court.”

5 Apart from above reasons, this Court noted the circumstance that a forensic audit had been conducted and a report dated 18 December 2019 was submitted, following which this Court issued directions for taking over the management of Unitech Limited by a Board which has been constituted by the Union of India. The Court noted that the contents of the forensic report



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warrant an investigation into serious allegations of money laundering and siphoning of funds to offshore locations. By the erstwhile management of Unitech Limited. Paragraph 12 of the order reads as follows:

“Since the passing of the order dated 30 October 2017, significant events have taken place. This Court had directed a forensic audit to be conducted by M/s Grant Thornton. The report of M/s Grant Thornton was considered in a detailed order of this Court dated 18 December 2019. Since the observations contained in the report of M/s Grant Thornton have already been dealt with in the order dated 18 December 2019, it is not necessary to reproduce them again in the present order. It would suffice to note that it was as a result of the findings in the forensic report that this Court issued directions for the taking over of the management of Unitech Limited by a Board which has since been constituted by the Union of India. By the order of this Court, a direction was issued to the Union of India to ensure that all aspects which were adverted to in the forensic report should be investigated by the competent agencies of the Union of India, including in regard to the aspect of money laundering. Serious findings about siphoning of funds to offshore locations and in regard to the misdemeanour of the erstwhile management have been made in the report of the forensic auditors.”



- 6 It may be noted at this stage that during the pendency of the matter before this Court, the accused had applied for the grant of interim bail before this Court on the ground of the Covid-19 pandemic having affected their family. They were released on interim bail for a specific period after which they surrendered back. After the rejection of the application for bail on 14 August 2020, an application was moved before the High Court of Delhi in Bail

Application No 1573 of 2020 by which permission was sought and granted for withdrawing the application with liberty to approach the trial court "since the charge-sheet has now been filed". In the meantime, it also transpires that one of the accused, Ajay Chandra moved the Metropolitan Magistrate and he was granted interim bail on 23 October 2020 on the ground that his spouse has tested positive for Covid-19. Subsequently, the Chief Metropolitan Magistrate granted interim medical bail to accused Sanjay Chandra on 3 December 2020. It was thereafter, as we have noted earlier, that the application before the Delhi High Court was withdrawn with liberty to move the trial Judge. Eventually, on 13 January 2021, the Chief Metropolitan Magistrate at Patiala House Courts, directed that the accused be released on bail.

7 The order of the Chief Metropolitan Magistrate dated 13 January 2021 contains the submission of counsel for the accused that an amount in excess of Rs 750 crores was deposited with the Registry of this court and that there was no embargo placed by this Court on granting bail to the accused. In support of his order granting bail, the Chief Metropolitan Magistrate adduced the following reasons:

- “(a) That the investigation is complete in the present matter as charge sheet has been filed by the police.
- (b) Vide order dated 21.12.2020 Hon’ble Delhi High Court has granted liberty to the applicant to approach the trial court for seeking regular bail in the wake of filing of charge sheet.
- (c) There is no embargo put by the Hon’ble Supreme Court of India for disposal of the present application of the applicant.

- (d) Applicant/accused has already deposited more than Rs 750 crores as directed by Hon'ble Supreme Court of India with the Registry of Hon'ble Supreme Court of India.
- (e) Accused has ceased to be MD of Unitech as the entire management has been changed through nominee directors and resolution plan has been proposed.
- (f) Applicant has already spent 45 months (close to four years) in prison and the mandate of Sec. 436A Cr.P.C.
- (g) The charge sheet is voluminous running in thousands of pages having around more than 244 witnesses.
- (h) The limited functioning of the Court due to Covid-19 due to which the trial would take enormous time to conclude.
- (i) Applicant/accused having been released on bail in other cases and complying the conditions.
- (j) The passport of the accused is already surrendered.”

8 *Prima facie*, at this stage, we are of the view that the manner in which the accused were granted liberty by the Delhi High Court to move the Metropolitan Magistrate for the grant of bail and the order of the Metropolitan Magistrate are a shocking exercise of judicial power and a breach of judicial discipline. In the order of this Court dated 14 August 2020, the specific submission which was considered was that the order subject to which interim bail had been granted on 30 October 2017 had been complied with by the deposit of Rs 750 crores. There are specific findings in the order of this court that the deposit of Rs 750 cores was directed by Mr Sanjay

Chandra and Mr Ajay Chandra and the amount which had been realized in the Registry was as a result of the monetization of the assets of Unitech Limited under the auspices of the Justice Dhingra Committee. That apart, the Court adverted to the serious circumstances which had come on the record in the form of the report of the forensic auditors, M/s Grant Thornton which indicated money laundering and siphoning of company funds to offshore locations. These funds are the moneys paid by the home buyers. In the teeth of the observations of this Court, we find that the conduct of the accused in moving an application for withdrawal before the Delhi High Court with liberty to move the Magistrate for bail and seeking regular bail before the Metropolitan Magistrate is an overreach of the jurisdiction of this Court.

9 Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the accused submits that the Special Leave Petitions before this Court originated in the order of the Delhi High Court declining to grant interim bail. Hence, it has been submitted by the learned counsel that by the refusal of interim bail, the accused were not precluded from applying for regular bail before the Metropolitan Magistrate. Moreover, it has been submitted that there may have been a delay on the part of the accused in depositing the amount by 31 December, but the actual amount which has been deposited is in excess of Rs 750 crores.

10 *Prima facie*, at this stage, neither of the two submissions can be accepted. As regards the quantum of deposit, the order of this Court dated 14 August 2020 expressly directed that the deposit which was required in terms of the order dated 30 October 2017 was by the accused and that the amounts which were realized by the monetization of assets of the company could not

be regarded as a deposit by the accused. Moreover it is evident that the accused themselves had been moving this Court in the interim for bail on medical grounds. Though, this Court is seized of the entire dispute pertaining to the defaults by Unitech Limited and a Board of Management appointed by the Union of India has been placed in charge, several other steps have been taken including conducting a forensic audit and directing the agencies of the Union of India to investigate into all aspects of the matter. In this backdrop, it would be unacceptable for the accused, during the pendency of the proceedings before this Court to seek the liberty of the Delhi High Court and then move the Chief Metropolitan Magistrate and obtain an order of bail. The finding of the Magistrate to the effect that the accused have already deposited more than Rs 750 crores "as directed by the Supreme Court" with its Registry is plainly incorrect and a deviation from the findings specifically recorded in the order dated 30 October 2017. We are, therefore, of the clear view that an attempt has been made to overreach the process of this Court and an order of bail has been sought and obtained, to defeat the control which is being exercised by this Court.

- 11 In these circumstances, we are constrained to issue notice which we hereby do to the accused, Mr Sanjay Chandra and Mr Ajay Chandra. In the meantime, we order and direct that pending the return of notice, the accused shall on or before 22 March 2021 surrender to the Tihar Jail. The order of the Chief Metropolitan Magistrate, Patiala House Courts dated 13 January 2021 is stayed pending further orders. The accused shall file their affidavits within a period of one week from today.
- 12 List the Special Leave Petitions on 7 April 2021.

Civil Appeal No 10856 and SLP(Crl) Nos 5978-5979 of 2017

1 List the matters tomorrow (19.3.2021) at 2.00 pm.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master



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