

ITEM NO.301

Court 4 (Video Conferencing)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).10856/2016

BHUPINDER SINGH

Appellant(s)

VERSUS

UNITECH LTD.

Respondent(s)

WITH

SLP(Cr1) No. 5978-5979/2017 (II-C)

(IA No. 63800/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 26041/2020 - CLARIFICATION/DIRECTION

IA No. 63801/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No.63683/2020 - DIRECTIONS

IA No. 63686/2020 - EXEMPTION FROM FILING ATTESTED AFFIDAVIT)

Date : 14-08-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE M.R. SHAH

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**UPON hearing the counsel the Court made the following
O R D E R**

IA Nos 63800 of 2020 and 63683 of 2020

- 1 These applications have been filed by Mr Sanjay Chandra and Mr Ajay Chandra, claiming that they have complied with the condition imposed by this Court in its order dated 30 October 2017 for the grant of bail.
- 2 Mr Mukul Rohatgi, learned senior counsel, in support of the applications, submits:
 - (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.
- 3 Mr Rohatgi submits that since the amount which has now been brought into the Registry of this Court is in excess of Rs 750 crores, the applicants should be released on bail.
- 4 Mr K M Nataraj, learned Additional Solicitor General appearing on behalf of Delhi Police, on the other hand, opposed the applications. The learned ASG argued that:

- (i) The order dated 30 October 2017 clarifies that the amount which has been deposited in other special leave petitions shall not be included for the purpose of computing the amount required to be deposited;
 - (ii) The applicants were required to deposit an amount of Rs 750 crores on or before 31 December 2017 which they admittedly failed to do;
 - (iii) Since the applicants failed to deposit the required amount by 31 December 2017, they are not entitled to bail; and
 - (iv) On 23 January 2019, this Court, while rejecting the application for bail, had expressly observed that since the conditions had been imposed by a three-Judge Bench of this Court, it was not open to a two-Judge Bench to modify the conditions contained in the order dated 30 October 2017.
- 5 Moreover, it has been submitted by the learned ASG and several other intervening counsel appearing on behalf of the flat buyers, including, Mr M L Lahoty, Ms V Mohana, Mr Nikhil Nayyar, learned senior counsel and Ms Shobha Gupta and Dr Harish Uppal, learned counsel as well as by Mr Pawanshree Agrawal, the *amicus curiae*, that there has been a fundamental change of circumstances since the passing of the order dated 30 October 2017, as noted by this Court in its order dated 18 December 2019. M/s Grant Thornton were appointed by this Court as forensic auditors and have submitted a report which highlights the manner in which moneys have been siphoned off from Unitech Limited during the period when the applicants were in the management of the Company. It has, hence, been submitted that in this view of the matter, there is no occasion for this Court to enlarge the applicants on bail.

6 The order of this Court dated 30 October 2017 contains the following directions:

“...the petitioners shall be admitted to bail subject to the condition that they shall deposit a sum of Rs.750 crores in the Registry of this Court which shall be kept in an interest earning fixed deposit. The deposit shall be made by the end of December 2017. If the petitioners deposit the amount within the said time, liberty is granted to mention.”

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 realised as a result of the demonetisation of the assets of Unitech Limited.

9 In the applications for bail, which have been filed on behalf of the applicants, an amount of Rs 770,10,72,557 is stated to have been brought into deposit in the Registry of this Court. The Table is extracted below:

“S.No.	Amount deposited	Date of deposit	Mode of confirmation with date
1	544,12.74,557	Till July 2019	Letter from the Registry dated 29.11.2019
2	7,99,50,000	18.10.2019	Office report dated 11.12.2019 (Listing dated 12.12.2019)
3	98,68,48,000	14.01.2020	Office report dated 18.12.2019 (Listing date

			20.01.2020)
4	50,00,00,000	20.01.2020	Receipt from the Registry with Receipt No 28093
5	69,30,00,000	10.07.2020	Office report dated 13.07.2020 [SLP(C) 9019/2019, Listing date: 15.07.2020
	Total: 770,10,72,557"		

- 10 At the cost of repetition, it is important to note that the amount which has been brought in is through demonetisation of assets. A significant part of the process of demonetisation has been carried out under the auspices of the Justice Dhingra Committee appointed by this Court.
- 11 Under the circumstances, since the conditions which were imposed in the order dated 30 October 2017 have not been complied with, we are unable to accept the submission that the applicants should be released from custody on the ground that they have complied with the conditions on which they were admitted to bail.
- 12 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.

- 13 Mr K M Nataraj, learned ASG, is directed to file separately a comprehensive affidavit apprising this Court of the steps which have been taken by the investigating agencies of the Union of India, in pursuance of the above directions and the report of the forensic auditors, before the next date of listing. In the order of this Court dated 23 January 2019, the trial Judge was directed to take up and complete the stage of framing of charges on an expeditious basis having regard to the fact that the proceedings for framing of charges were listed on 7 February 2019. Mr Nataraj shall also ensure that a status report is filed on the position in that regard.
- 14 At this stage, we are clearly of the view that since the order dated 30 October 2017 has not been complied with, there is no question of this Court directing the release of the applicants from custody.
- 15 For the above reasons, we are not inclined to allow the prayer which has been made in the applications. Both the applications stand dismissed.
- 16 Mr Sanjay Chandra, who had been granted interim bail by the orders of this Court dated 7 July 2020 and 31 July 2020 on the ground of the Covid status of his parents, shall surrender by 17 August 2020.

List IA Nos 65076 of 2020, 26041 of 2020 and the report of the *amicus curiae* dated 29 July 2020 on 24 August 2020. On that day, the resolution plan submitted by the newly constituted Board of Unitech Limited, together with IA No 64112 of 2020

shall be considered.

Office report dated 13 August 2020

The office report indicates that two FDRs are maturing on 28 August 2020 and 2 September 2020. These be renewed for a further period of 91 days.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER