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$~ ***via* Video-conferencing**

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 23rd July, 2020

\+ BAIL APPL. 1353/2020

DR. SHIVINDER MOHAN SINGH ..... Applicant

Through: Mr. N. Hariharan, Sr. Adv. with Mr.Tanveer Ahmed, Mr. Mahesh Aggarwal, Mr. Shri Singh, Mr. Abhishek Singh, Mr. Nirvikar Singh, Ms. Shally Bhasin & Ms. Maneka Khanna, Advs.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Amit Mahajan, CGSC with Mr.Nitesh Rana, SPP, Ms. Mallika Hiremath, Adv. & Ms. Ramanjit Kaur, DD.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant/Dr. Shivinder Mohan Singh seeks regular bail in the complaint case arising from Enforcement Case Information Report No. ECIR/05/DLZO-II/2019 dated 24.07.2019 ('ECIR', for short) registered under sections 3/4 of the Prevention of Money

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Laundering Act 2002 ('PMLA', for short) by the respondent/Directorate of Enforcement ('ED', for short).

Overview :

2. The backdrop of the present application is :

(a) that the applicant was arrested on 10.10.2019 in case FIR No. 50/2019 registered under sections 409/420/120-B IPC at PS : Economic Offences Wing (EOW), New Delhi, which are the predicate/scheduled offences under the PMLA. On 03.12.2019 the applicant was granted interim bail for a period of 7 days by the learned Special Judge in the predicate offence; upon the expiry of which period, the applicant duly surrendered;

(b) that on 12.12.2019, the applicant was also arrested in the ECIR by the ED;

(c) that the applicant remained in the ED's custody for 14 days, during which time his statements were recorded under section 50 of the PMLA; after which, on 26.12.2019, the applicant was remanded to judicial custody;

(d) that on 01.01.2020, the applicant was also arrested by the PS: EOW in another case bearing FIR No. 189/2019 registered under sections 409/120-B IPC, in which also he stands remanded to judicial custody;

(e) that on 10.01.2020, the ED filed its complaint under sections 44/45 of the PMLA before the learned Special Judge,

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(PMLA), Saket District Courts, New Delhi, in which the applicant was named as an accused. Although the ED claims that further investigation is going-on in the matter, no supplementary complaint has been filed since 10.01.2020;

(f) that a regular bail application filed by the applicant before the learned Special Judge (PMLA) was rejected *vidé* order dated 17.06.2020.

3. In all, there are four accused in the ED's complaint : Malvinder Mohan Singh (applicant's brother), Shivinder Mohan Singh (the applicant), Sunil Godhwani and M/s RHC Holding Pvt. Ltd.

4. Broadly, the ED's allegations and contentions are the following :

(a) the applicant is stated to be a 50% shareholder and one of the promoters of one M/s RHC Holding Pvt. Ltd. ('RHC', for short), which company along with the applicant and other associate entities in-turn is said to have held about 50% shareholding of one M/s Religare Enterprises Ltd. ('REL', for short) as on 31.03.2016;

(b) M/s Religare Finvest Ltd. ('RFL', for short) is a non-banking financial company (NBFC) recognised by the Reserve Bank of India (RBI) and is stated to be engaged in the business of providing loan facilities to small and medium enterprises. RFL is stated to be a subsidiary of REL, with REL holding 99.99% equity shares of RFL till 2015-16. In 2016-17, the equity shareholding of REL in RFL was reduced to 72.28%

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and subsequently in 2017-18, increased to 85.63% and remained at same level till 2018-19;

(c) the essence of the ED's allegation is that between 2008 and 2016, RFL extended loan and other financial facilities to various entities to the tune of about INR 47,000 crores, of which a sum of around INR 2036.39 crores went into default; and the allegation is that this amount was given by RFL to entities which were, directly or indirectly, owned or controlled by the applicant, or in which the applicant otherwise had financial interest, including companies linked to RHC;

(d) it is further the allegation that the monies received from RFL by entities owned or controlled by the applicant, were given onwards by such entities to RHC and its group companies, which companies used these very funds to pay-back monies they owed to RFL. It is accordingly the allegation that the applicant utilised monies received indirectly from RFL, to repay loans that his other companies owed to RFL itself;

(e) the essential thrust of the allegations is that the applicant has misappropriated or 'siphoned-off' monies lent by RFL to entities owned or controlled by him, or which were otherwise part of the RHC group companies;

(f) It is the ED's contention that out of the said sum of about INR 2036 crores, investigation is complete in relation to

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about INR 450 crores, while investigation into the remaining amount is still going on;

(g) the ED confirms that provisional attachment of identified proceeds of crime has been effected to the extent of about INR 51 crores.

Applicant's Submissions:

5. Mr. N. Hariharan, learned Senior Counsel appearing on behalf of the applicant submits as follows in support of the applicant's plea for grant of bail:

(a) that the applicant was not on the Board of Directors of RFL at any point of time and had no connection with or control over its management and affairs;

(b) that in any case, RFL has not been arraigned as an accused in the matter;

(c) that the applicant was not even on the Board of REL, namely the holding company of RFL, from 2010 to late 2016, during which period the offences are alleged to have been committed;

(d) that furthermore, even REL has not been arraigned as an accused in the matter;

(e) that the affairs of RFL were managed and supervised by a Risk Management Committee and a Related Party Transaction Committee ('RPT Committee', for short), which committees operated under the Corporate Loan Book (CLB)

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Loan Approval Committees. Decisions for loan approvals were made by these committees but the applicant was not a member of any of these committees;

(f) that the applicant had nothing to do with the discussions, negotiations and decisions as regards disbursal of loans granted by RFL to any of the concerned borrowers; nor with the utilisation of such loans;

(g) that the applicant had no connection whatsoever with the day-to-day functioning even of the subsidiary companies of RHC nor with their dealings of sale and purchase of assets, shareholdings etc;

(h) that accordingly, the allegations against the applicant are at best allegations of vicarious liability, arising merely from his being a promoter of REL. There are only general allegations of the applicant being a conspirator, without any evidence being placed on record to even *prima facie* suggest any such conspiracy;

(i) that other things apart, investigation *vis-a-vis* the applicant stands completed; the complaint stands filed; and therefore further judicial custody of the applicant is neither required nor warranted;

(j) that the so-called on-going investigation by the ED as regards the alleged remaining amount of about Rs. 1600 crores is no ground for continued incarceration of the applicant;

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(k) that the ED having investigated transactions from 2008 to 2016, there is no allegation that the applicant tampered with any evidence or influenced any witnesses at any point of time;

(l) that the ED has stated in paras 4.1 and 4.3 of the complaint, that all documents and digital evidence, such as computers and hard-drives etc. have been seized and sent for forensic examination, by reason of which the applicant is in no position to gain access to or tamper with any such evidence;

(m) that further incarceration of the applicant would militate against the fundamental postulate of presumption of innocence; and would be in violation of the fundamental principle that bail is the rule and jail an exception;

(n) that the applicant was not on the Board of Directors of REL from 2010 to late-2016 and re-joined the REL Board, in non-executive capacity only, in September 2016;

(o) that REL and RFL have from time-to-time prepared and filed their accounts which have been subjected to internal and external audits and required public disclosures before statutory regulators, which negates the ED's allegation that the applicant has conspired to conceal any facts;

(p) that although the ED has alleged that regulators like the RBI had expressed concern regarding the loans extended by RFL *vidé* letters dated 06.01.2012, 03.05.2013 and 29/30.04.2014,

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it requires to be noticed that the RBI never took any action under Chapter III-B of the RBI Act 1934, which provision empowers the RBI *inter alia* to remove directors, to supersede the Board of Directors and even to wind-up an NBFC, none of which the RBI did;

(q) that while the RBI alleges that co-accused Sunil Godhwani used to issue instructions to others, like one Anil Saxena who was a Director of RFL and also Group CFO and Director of REL, there is not even an allegation that any such instructions were ever issued by the applicant;

(r) that in particular, communication dated 29.12.2014, purportedly signed by the applicant, only shows that the signatories were making *bona fide* efforts to seek strategic investment in REL based on certain contingencies; and that this does not amount to an authorisation or instruction to perpetuate any loan transaction. In the context of communication dated 29.12.2014, it is also pointed-out that letter dated 26.12.2014, which is under reference in communication dated 29.12.2014, has maliciously not been filed with the complaint;

(s) that allegations in the complaint pertaining to M/s Star Artworks Pvt. Ltd., M/s Tripoli Investments and Trading Company and M/s Volga Consultants Pvt. Ltd., do not inculpate the applicant in wrongdoing based on any direct or specific evidence;

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(t) that the allegations that the applicant had indulged in laundering of "public funds" by reason of the loan defaults suffered by RFL, are also without basis in view of the judgment passed by a Co-ordinate Bench of this court in ***G. Udayan Dravid & Ors vs. State & Ors***[1] in which the court held that funds that a bank (or, in this case an NBFC) invests or lends is not public money merely because the bank accepts deposits from the public;

(u) that the ED says they have as of now investigated an alleged amount of INR 450 crores, from the total alleged amount of INR 2036 crores; and that therefore it may take years for the ED to complete its investigation for the entire amount, in which case it would neither be fair nor necessary to hold the applicant in custody while the ED conducts its investigation internationally;

(v) that if the applicant is indicted as a promoter of the RHC Group of Companies under section 70 of the PMLA, that cannot be the basis for the applicant's continued incarceration, since section 70 itself grants to an accused the right to rebut such allegation during the course of the trial;

(w) that since the offence under section 3 of the PMLA is punishable by only upto 7 years, it is not a grave offence as contemplated *inter alia* in the judgment of the Supreme

[1] 2006 SCC OnLine Del 1484 ; para 20

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Court in ***P. Chidambaram vs. Directorate of Enforcement***[2] and ***P. Chidambaram vs. CBI***[3];

(x) that the applicant is neither a flight risk nor has he been shown to have any propensity to tamper with evidence or influence any witnesses, apart from the fact that the evidence is all documentary in nature and has already been collected as per the ED;

(y) that although the ED has made an allegation that, while in its custody, the applicant smuggled a mobile phone into the washroom, the falsity of such allegation is demonstrated by the fact that the ED took no action thereupon, either against the applicant or against any ED officer who was tasked with monitoring the applicant ;

(z) that although the ED alleges that it has registered two ECIRs based on two FIRs relating to predicate offences, such cases emanate from the same set of transactions, and have been mischievously separated, in order only to create separate proceedings; which cannot be the basis to deny the applicant bail, even more so since the ED has not placed any such ECIRs on record ;

(aa) that a Co-ordinate Bench of this court has already granted bail to Anil Saxena, who is a co-accused in the predicate

[2] 2019 SCC OnLine SC 1549 ; paras 23 & 24
[3] 2019 SCC OnLine SC 1380 ; paras 20, 27, 30 & 32

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offence in FIR No. 50/2019, *vidé* order dated 17.06.2020 made in Bail Appl. No. 1074/2020;

(bb) that by reason of his continued incarceration, now for almost 9 months, the applicant is unable to effectively instruct his lawyers and is thereby unable to effectively defend himself, in violation of his right to fair trial under Article 21 of the Constitution of India.

6. In support of his case, the applicant has cited the following judicial precedents :

(a) *G. Udayan Dravid & Ors vs. State & Ors* (supra): to argue, that even though banks accept deposits from members of the public and extend loans and other facilities to their clients and make profit out of such transactions, that does not mean that "public money" is involved in such transactions; and that most commercial transactions involve the public, however the only possible element of public money involved in these transactions would be the sales tax or VAT collected;

(b) *P. Chidambaram vs. Directorate of Enforcement* (supra): to argue that irrespective of the nature and gravity of the offence, the precedent of another case will not have a bearing on the grant or refusal of bail, even though it may have a bearing on the principle involved; and ultimately the consideration must be securing the presence of the accused to stand trial;

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(c) *P. Chidambaram vs. CBI* (supra): to submit that, the Supreme Court has observed that in the absence of any contemporaneous materials, no weight can be attached to the allegation that the accused has been influencing witnesses by approaching them (in that case);

(d) ***Anil Saxena vs. State of NCT of Delhi***[4] : to urge that a Co-ordinate Bench of this court, while granting bail to Anil Saxena, who is co-accused in the predicate offence in FIR No. 50/2019, has observed that the Risk Management Committee and the RPT Committee were aware of the proposal documents on the basis of which loans were approved; and that it is not an uncommon practice for lenders to extend loans on the strength of comfort provided by creditworthy and known persons;

(e) ***Jignesh Prakash Shah vs. State of Maharashtra***[5] : to point-out that the court observed that the very fact that investigation into whether proceeds of crime or part thereof were received by the applicant from defaulting borrowers would take time, would weigh in the favour of granting bail to the applicant (in that case);

(f) ***Paras Mal Lodha vs. Assistant Director, ED***[6] : to point-out that this court had granted bail to an accused under sections 3

[4] Bail Appl. No. 1074 of 2020, decided on 17.06.2020 by Delhi High Court ; para 26
[5] Bail Appl. No. 1263 of 2014, decided on 22.08.2014 by Bombay High Court ; para 21
[6] 2017 SCC OnLine Del 8676 ; para 8

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& 4 of the PMLA, as in the present case, where the alleged sum of money was connected to the accused (in that case) on the basis of statements of co-accused and his employees, which statements the court said are to be tested during trial;

(g) ***Sanjay Chandra vs. CBI***[7] : to argue that seriousness of the charge, though a relevant condition, is not the only factor that needs to be considered while granting bail; and that the object of bail is not punitive but to secure the presence of the accused for trial; and that the Supreme Court had granted bail to the accused in that case being conscious that the accused was charged with economic offences of huge magnitude;

(h) ***Nikesh Tarachand Shah vs. Union of India & Anr.***[8] : to argue that the twin conditions for granting bail under section 45 PMLA were held to be unconstitutional, and matters where bail was denied by reason of section 45 were remanded for consideration on merits without application of section 45 PMLA;

(i) ***Gaurav Gupta vs. Director of Enforcement***[9] : to say that statements of the accused recorded under section 50 of the PMLA after his arrest were inadmissible in evidence as being hit by Article 20(3) of the Constitution (in that case);

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[7] (2012) 1 SCC 40 ; paras 24, 39, 44 & 46
[8] (2018) 11 SCC 1 ; paras 53, 54
[9] 2015 SCC OnLine Del 9929 ; para 23

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(j) ***Raj Kumar Goel vs. Directorate of Enforcement***[10] : to urge that the twin conditions under section 45 PMLA were not to be applied to bail applications;

(k) ***Upendra Rai vs. Directorate of Enforcement***[11] : to argue that mere introduction of the words "under this act" in section 45 PMLA would not revive the twin conditions as imposed under the said section for grant of bail.

Respondent's submissions

7. Mr. Amit Mahajan, learned CGSC appearing for the ED has opposed the grant of bail essentially on the following grounds :

(a) that at the time when the offences were committed, REL owned 99.99% of RFL and the two promoters, namely the applicant and his brother Malvinder Mohan Singh, owned more than 50% shareholding in REL and the remaining about 49% shareholding vested in the public at large. Accordingly, the applicant was one of the promoters with substantial shareholding in REL, which in-turn owned 99.99% of the shareholding in RFL ;

(b) that the 19 major defaulters in repayment of loans to RFL are part of a cluster of companies either owned or controlled by the applicant or by various individuals and entities who are the applicant's family members, friends or staff members and

[10] 2018 SCC OnLine Del 8873 ; paras 23-25
[11] 2019 SCC OnLine Del 9086 ; para 22

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who were made directors and shareholders of such companies only as 'front' persons for the applicant. In this behalf, the ED has filed a chart depicting the ownership structure of the various defaulting companies, from which the ED shows that the money-trail and investigation in respect of 03 companies has been completed; while investigation in respect of the remaining 16 companies is still on-going;

(c) that in essence and substance, the wrongdoing alleged against the applicant is that loans were taken from RFL by several companies, which were acting as 'front' companies for the applicant, which monies were thereafter transferred to RHC group companies and other companies and entities that were owned/controlled by the applicant; and these companies then repaid the same monies to RFL towards discharge of loans taken by them from RFL. In this manner, the ED contends, the applicant indulged in 'evergreening' of loans;

(d) that in the process, while the monies owed by the applicant were repaid to RFL, the 'front' companies subsequently defaulted in paying back their loans to RFL, by reason of which not only RFL but other outside shareholders of RFL have also lost money;

(e) that the nature of the transactions may be explained by taking the example of one of the companies, which typifies what was done : it is alleged that on 24.08.2017, RFL gave an unsecured loan of INR 150 crores to one M/s Star Artworks

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Pvt. Ltd., which amount was immediately transferred by M/s Star Artworks Pvt. Ltd. to RHC, which is a private company owned by the applicant and his brother. RHC in-turn utilized the said amount of INR 150 crores for repaying its existing liability to RFL. In this manner an unsecured loan given by RFL to M/s Star Artworks Pvt. Ltd. was used for 'evergreening' of a previous loan taken by RHC from RFL. And this loan was taken by RHC on 10.02.2017 and 15.02.2017 when the applicant and his brother were controlling REL as well as the RHC Group of Companies;

(f) that it is further the ED's allegation that at the relevant time, when loans were approved and further routing of money was done, the applicant was holding a position whereby he could control the decisions taken by the respective companies;

(g) that it is also the ED's allegation that similar transactions were conducted by the applicant, or at his instance, through a number of companies, whereby ultimately RFL lost money ; and RFL's other shareholders also suffered losses;

(h) that the ED also says that directors of most of these companies have recorded statements under section 50 of the PLMA to the effect that they became directors only at the request and insistence *inter alia* of the applicant and that they had no knowledge of, nor any interest in, the management and affairs of these companies. The directors are stated to have said that they were persuaded to become directors only

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because they were family members, friends and/or close associates of the applicant. Some of these companies have no individual shareholders but were held by other companies, which were under the ownership or control *inter alia* of the applicant;

(i) that it is also the ED's case that sometime in 2017, some of these companies were purchased by RHC;

(j) that though the ED has filed a complaint under section 44 of the PLMA before the concerned court, the essential nature of investigation in a crime under the PMLA, such as the present case, is very different from the investigation of a conventional penal offence, inasmuch as in cases like this, the accused persons set-up a labyrinth of corporate entities and accounts, with a number of directors, shareholders and complex cross-holdings and structures, including by setting-up 'front' companies and 'shell' companies, to obfuscate the true nature of the transactions between the parties;

(k) that it is alleged that in cases such as this, the accused persons are the ultimate beneficiaries but in order to create a distance between the actual beneficiaries and the purported entities that carry-out these transactions, the accused persons also create a complex web of transactions. By reason of that, this kind of a matter requires in-depth and prolonged investigation to trace-out the transactions right upto the ultimate beneficiary. In the present case for example, it is

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contended that more than INR 2000 crores has been siphoned-off *inter alia* by the applicant through a very complex and intricate web of corporate entities and transactions, both within and outside India, which will require a long time to trace in order to pin the blame on the accused persons. By reason thereof, such investigation by its very nature takes a long time;

(l) that so far, the ED has been able to trace transactions aggregating to about INR 450 crores, whereas investigation in respect of the remaining about INR 1600 crores is still underway. It is argued however, that if the applicant is enlarged on bail, he would most definitely, whether directly or indirectly, ensure that persons who were in the know of things, including banks, financial institutions and others with whom investigation is being followed-up, do not disclose the true state of affairs to the investigating agency. It is further stated that the applicant may, if enlarged on bail, destroy evidence and records and thereby defeat the investigation process;

(m) that there are a total of 50 prosecution witnesses in the case and there is reasonable apprehension that the applicant would attempt to influence witnesses; and

(n) that since the on-going investigation involves foreign assets, such assets may be disposed of or evidence may be otherwise tampered with.

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8. In opposition to the grant of bail, the ED has relied upon the following judicial precedents :

(a) ***Directorate of Enforcement vs. Upendra Rai***[12] : to argue that in this case, bail was granted to a PMLA accused observing that the twin conditions as imposed by section 45 were *not revived* by the amendment to the statute; but that this order was stayed by the Supreme Court, attempting to urge that thereby the Supreme Court *implies* that the twin conditions for bail under PMLA *do stand* revived;

(b) ***Vidyut Kumar Sarkar vs. The State of Bihar & Ors***[13] : to say that in view of the stay of operation of order of the Delhi High Court in *Upendra Rai* (supra) by the Supreme Court, that judgment in any case cannot be applied to other cases;

(c) ***State of Bihar vs. Amit Kumar***[14]: to argue that where charge-sheet had been filed but the investigating agency intended to file an additional charge-sheet, presence of the accused in custody may be necessary;

(d) ***Y.S. Jagan Mohan Reddy vs. CBI*** [15] and ***Nimmagadda Prasad vs. CBI*** [16] : to argue that while considering the question of bail in economic offences, a different approach needs to be visited since such offences constitute a class

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[12] SLP (Crl.) 2598/2020, order dated 03.06.2020
[13] MANU/BH/0297/2020 ; paras 19 and 20
[14](2017) 13 SCC 751 ; paras 9, 11 & 14
[15] (2013) 7 SCC 439 ; paras 34-36
[16] (2013) 7 SCC 466 ; paras 22, 24-26

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apart and have deep-rooted conspiracies and involve huge loss of public funds, thereby posing grave threat to the economic health of the country;

(e) ***Serious Fraud Investigation Office vs. Nittin Johari & Anr.***[17] : to argue that in this case, the Supreme Court remanded the matter to the High Court to reconsider the bail granted to the accused in consonance with the twin mandatory conditions for grant of bail laid down in section 212 of the Companies Act 2013 and other general provisions of bail;

(f) ***State of Gujarat vs. Mohanlal Jitamalji Porwal & Anr.***[18] : to stress that economic offences are committed with cool calculation and deliberate design with an eye on personal profit while disregarding consequence to the community;

(g) ***Sunil Dahiya vs. State(Govt. of NCT of Delhi)***[19] : to submit that grant of bail in a case involving large magnitude of money would not only have an adverse effect on the progress of the case but also on people's trust in the criminal justice system; and that despite the filing of charge-sheet, bail was denied to the accused in this case.

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[17] (2019) 9 SCC 165 ; paras 25-32
[18] (1987) 2 SCC 364 ; para 5
[19] 2016 SCC OnLine Del 5566 ; paras 48-50 and 55

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Applicant's submissions in rejoinder:

9. In rejoinder to the submissions made on behalf of the ED, Mr. Hariharan further submits the following:

(a) laying emphasis on the factual matrix contained in the case of *P. Chidambaram vs. Directorate of Enforcement* (supra), it is argued that though the monetary sum involved in that case was about INR 305 crores, the 'gravity' of the offence was much higher since the allegations were against a former Finance Minister, in relation to what was allegedly done while he held public office, which would therefore have a greater impact on public faith in the system. Yet, the Supreme Court was pleased to enlarge the accused on bail after about 04 months of his initial arrest in the predicate offence;

(b) that in *P. Chidambaram vs. Directorate of Enforcement* (supra), the Supreme Court has considered earlier decisions as also the 'tripod test' before enlarging the accused on bail;

(c) that it has been pointed-out that some of the other decisions cited by the ED are not cases under the PMLA but were cases involving offences attracting life sentence or even capital punishment;

(d) to allay the apprehension expressed by the ED as to influencing witnesses or tampering with evidence, senior counsel contends that for one, unlike the statement recorded

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under section 161 Cr.P.C. which is not admissible in evidence, the witness statements recorded under section 50 of the PMLA are admissible and therefore witnesses will not be able to renege on what they have said in such statements;

(e) that while the ECIR in the case was recorded on 24.07.2019, the applicant was arrested several months later on 12.12.2019, and there is no allegation that during this period of about 05 months, the applicant made any attempt to tamper with evidence, influence witnesses or interfere in the investigation in any manner;

(f) that since the alleged offences are premised on financial transactions, all of which have taken-place through banking channels; therefore the evidence in the matter is essentially documentary. Senior counsel submits that the applicant has handed-over to the ED all records, whether physical or electronic, including computer systems, hard disks and other electronic equipment which contains the material that forms the basis of the allegations. In view of all such records having been handed-over, now there is no scope for alleging that the applicant may destroy any records or otherwise hamper further investigation, if any;

(g) that the transactions in question were conducted with RFL, which is a registered NBFC regulated by the RBI. Senior counsel points-out that a reading of the complaint would show that the RBI was cognizant of the transactions at the

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relevant time, but took no steps to either bar such transactions or to supersede the Board of RFL by reason of such transactions or indeed to revoke the licence of RFL as an NBFC. This, according to counsel, was because there was nothing illegal in such transactions;

(h) that statements recorded under section 50 of PMLA are *per se* admissible, in support of which senior counsel relies upon the judgment of a learned single Judge of this Court in *Raj Kumar Goel* (supra);

(i) that the confusion sought to be created by the ED as regards stay of this court's decision in *Upendra Rai* (supra) by the Supreme Court is unnecessary, inasmuch as the stay of the judgment by the Supreme Court has not wiped-out the view taken by the High Court. Infact, it is contended that the Delhi High Court has followed the same view in subsequent cases also while the matter in *Upendra Rai* (supra) is pending before the Supreme Court;

(j) that the present case is covered by the latest judgment in *P. Chidambaram vs. Directorate of Enforcement* (supra), which considers all earlier decisions;

(k) that most importantly, the Explanation to section 3 of the PMLA was added with effect from 01.08.2019, while the ECIR in the present case was recorded on 24.07.2019 i.e. before 01.08.2019 and is therefore not covered by the

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amendment, namely that the offence alleged against the applicant is not a continuing offence; and

(l) that keeping the applicant in custody any longer will seriously impact his right to defence in consultation with his lawyers and would thereby impact his fundamental right to a fair trial.

Recap of the law and principles of bail :

10. Section 45 of PMLA, which is the provision governing bail in that statute recites as under :

> *"**Section 45. Offences to be cognizable and non-bailable.** - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless--*
>
> *(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and*
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:*
>
> *Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-*
> *(i) the Director; or*
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by*

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> *a general or special order made in this behalf by that Government.*
>
> *(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.*
>
> *(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*

11. It would be useful at this point to give a conspectus of the law and the principles for grant or denial of bail. Extracts from some of the most relevant and topical judgements on this point are set-out in the paragraphs that follow.

12. Commenting on the consequences of pre-trial detention, in ***Moti Ram vs. State of M.P.***[20] the Supreme Court said :

> *"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."*
>
> (emphasis supplied)

13. In ***Babu Singh vs. State of U.P.***[21] the Supreme Court observed :

> *"18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the*

[20] (1978) 4 SCC 47
[21] (1978) 1 SCC 579

WWW.LIVELAW.IN

bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. ..... The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible."

(emphasis supplied)

14. Outlining the considerations for bail, in ***Ash Mohammad vs. Shiv Raj Singh & Anr.***[22] the Supreme Court expressed itself as follows :

"8. In Ram Govind Upadhyay v. Sudarshan Singh[23]*, it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in Prahlad Singh Bhati v. NCT, Delhi and stated as follows: (Ram Govind case, SCC p. 602, para 4)*

"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but

[22] (2012) 9 SCC 446
[23] (2002) 3 SCC 598

WWW.LIVELAW.IN

there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

"9. In Chaman Lal v. State of U.P.[24] *this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are: (SCC p. 525)*

"... (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge."

"10. In Masroor v. State of U.P.[25]*, while giving emphasis to ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that: (SCC p. 290, para 15)*

"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case."

"11. In Prasanta Kumar Sarkar v. Ashis Chatterjee[26] *it has been observed that (SCC p. 499, para 9) normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in*

[24] (2004) 7 SCC 525
[25] (2009) 14 SCC 286
[26] (2010) 14 SCC 496

WWW.LIVELAW.IN

compliance with the basic principles laid down in a plethora of decisions of this Court on the point.

> *"9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:*
>
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
>
> *(ii) nature and gravity of the accusation;*
>
> *(iii) severity of the punishment in the event of conviction;*
>
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
>
> *(v) character, behaviour, means, position and standing of the accused;*
>
> *(vi) likelihood of the offence being repeated;*
>
> *(vii) reasonable apprehension of the witnesses being influenced; and*
>
> *(viii) danger, of course, of justice being thwarted by grant of bail."*

* * * * * *

"20. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury's Laws of England it has been stated thus:

> *"166. Effect of bail.—The effect of granting bail is not to set the defendant [(accused) at liberty], but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned...."*

"21. In Sunil Fulchand Shah v. Union of India[27] *Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed: (SCC pp. 429-30, para 24)*

> *"24. ... Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains*

[27] (2000) 3 SCC 409

WWW.LIVELAW.IN

> *elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment* ***though the court would still retain constructive control over him through the sureties****. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word 'bail' is surety."*
>
> (emphasis supplied)

15. In ***Ashok Sagar vs. State***[28] the Delhi High Court has said this :

> *"35. Authorities on bail, and the jurisprudence relating thereto, are in overabundance, and it is hardly necessary to multiply references thereto. The principles governing exercise of judicial discretion in such cases, appear, however, to be well-settled. The following principles may immediately be discerned, from the aforementioned authorities:*
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> * * * * *
>
> *"(ii) While examining the issue, courts are* ***not to presume that the accused would flee justice****, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing.* ***Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail.***
>
> * * * * *
>
> *"(iv) Given this legal position,* ***the nature of the offence committed necessarily has a limited role to play****, while examining the merits of an application for bail. This is for a simple reason that the application being examined by the court is not for suspension of sentence, but for release during trial. If the court were to allow itself to be unduly influenced by the nature of the charges against the accused, and the seriousness of the crime alleged to have been committed by him, it would result in obliterating the distinction between grant of bail and suspension of sentence. Inasmuch as the applicant, in a bail*

[28] 2018 SCC OnLine Del 9548

WWW.LIVELAW.IN

> *application, has yet to be found guilty of the offence with which he is charged, the significance of the nature of the offence stand substantially reduced, while examining the application for bail. Courts have to be alive to the legal position – underscored in the very first paragraph of Dataram Singh (supra) - that every accused is presumed to be innocent until proved guilty."*
>
> (emphasis supplied)

16. In a recent decision in *Sanjay Chandra vs. CBI* (supra) the Supreme Court has held that :

> *"21. In bail applications, generally, it has been laid down from the earliest times that the* ***object of bail is to secure the appearance of the accused person at his trial*** *by reasonable amount of bail. The* ***object of bail is neither punitive nor preventative****. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that* ***punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty****.*
>
> *"22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases,* ***"necessity" is the operative test****. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
>
> *"23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and* ***it would be improper for any court to refuse bail as a mark of disapproval of former***

WWW.LIVELAW.IN

conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

"24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, ***they have not placed any material*** *in support of the allegation. In our view,* ***seriousness of the charge*** *is, no doubt, one of the relevant considerations while considering bail applications but* ***that is not the only test*** *or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice"."*

* * * * *

"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

* * * * *

"46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact

WWW.LIVELAW.IN

> *that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the* ***investigating agency has already completed investigation and the charge-sheet is already filed*** *before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*
>
> (emphasis supplied)

17. Most recently, in *P. Chidambaram vs. CBI* (supra) the Supreme Court has held :

> *"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The* ***following factors*** *are to be taken into consideration while considering an application for bail:- (i) the* ***nature of accusation*** *and the* ***severity of the punishment*** *in the case of conviction and the nature of the materials relied upon by the prosecution; (ii)* ***reasonable apprehension of tampering with the witnesses*** *or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the* ***likelihood of his abscondence****; (iv)* ***character behaviour and standing*** *of the accused and the circumstances which are peculiar to the accused; (v)* ***larger interest of the public or the State*** *and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. ....."*
>
> * * * * *
>
> *"33. The appellant is not a "flight risk" and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the*

WWW.LIVELAW.IN

> *prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail."*
>
> (emphasis supplied)

18. Furthermore in *P. Chidambaram vs. Directorate of Enforcement* (supra), the Supreme Court has explained the concept and application of 'gravity' of an offence in the following way :

> *"12. .... The **gravity can only beget the length of sentence** provided in law and **by asserting that the offence is grave, the grant of bail cannot be thwarted**. The respondent cannot contend as if the appellant should remain in custody till the trial is over.*
>
> * * * * * *
>
> *"23. .... Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of 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 provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be*

WWW.LIVELAW.IN

on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

(emphasis supplied)

19. It is also important to allude to section 45 of the PMLA while deciding this bail application. Now, the constitutional validity of the twin conditions laid down in section 45 for grant of bail has been expressly struck down by the Supreme Court in a recent decision in *Nikesh Tarachand Shah* (supra) where the Supreme Court has held as under :

> ***"50.*** *The learned Attorney General then relied strongly on Gautam Kundu v. Directorate of Enforcement*[29] *and Rohit Tandon v. Directorate of Enforcement*[30]*. Gautam Kundu is a judgment relating to an offence under the SEBI Act, which is a scheduled offence, which was followed in Rohit Tandon. In Rohit Tandon, Khanwilkar, J., speaking for the Bench, makes it clear that the judgment* ***does not deal*** *with the constitutional validity of Section 45 of the 2002 Act. Both these judgments proceed on the footing that Section 45 is constitutionally valid and then go on to apply Section 45 on the facts of those cases. These judgments, therefore, are not of much assistance when it comes to the constitutional validity of Section 45 being challenged.*
>
> * * * * * *
>
> ***"53.*** *The matter came to this Court by a certificate of fitness granted [Gorav Kathuria v. Union of India*[31] *] by the High Court. Sikri, and Ramana, JJ., by their order dated 12-8-2016 [Gorav Kathuria v. Union of India, (2018) 11 SCC 46 at pp. 69-70, para 29] , stated:*
>
> > *"Though the High Court has granted certificate to appeal, we have heard the learned counsel for some time and are of the*

[29] (2015) 16 SCC 1
[30] (2018) 11 SCC 46
[31] 2016 SCC OnLine P&H 3428

WWW.LIVELAW.IN

> *opinion that the impugned judgment of the High Court is correct. This appeal is, accordingly, dismissed."*
>
> *The complaint of the learned Attorney General is that this was done at the very threshold without hearing the Union of India. Be that as it may, we are of the opinion that, even though the Punjab High Court judgment appears to be correct, it is unnecessary for us to go into this aspect any further, in view of the fact that we have struck down Section 45 of the 2002 Act* ***as a whole****.*
>
> ***"54.*** *Regard being had to the above,* ***we declare Section 45(1) of the Prevention of Money-Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India****. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective courts which denied bail. All such orders are set aside, and the cases remanded to the respective courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act....."*
>
> (emphasis supplied)

Although there has been an amendment to section 45 after the above judgment, there is no subsequent decision of the Supreme Court holding the said two conditions to be constitutionally valid, even when brought back by way of the amendment. Accordingly this court must treat the said two conditions as invalid and struck-down.

Discussion and conclusions :

20. When viewed with plain objectivity, the following position emerges in this case :

    (a) *All* alleged offending acts and omissions, with which the applicant is charged, arise from financial transactions, done

WWW.LIVELAW.IN

in the course of commercial dealings, through banking channels;

(b) Almost 05 months passed between recording of the ECIR (24.07.2019) and the applicant's arrest by the ED (12.12.2019) in the present case. Even if it be said that the applicant had already been arrested on 10.10.2019 in the FIR for the predicate offences, that only makes it worse since the applicant's arrest in the FIR was more than 06 months after the FIR was registered on 27.03.2019. Substantial time had therefore elapsed before the ED considered it necessary to arrest the applicant in the ECIR. There is no allegation that during this phase, the applicant either tampered with evidence or influenced any witnesses or destroyed any records;

(c) The allegedly offending transactions cannot be undone, reversed, modified or altered in any manner since they are recorded and reflected in several records, including those of complainant in the FIR *viz*. RFL, regulatory bodies such as the RBI, Securities & Exchange Board of India, Registrar of Companies and the banks and financial institutions that processed these transactions;

(d) The records pertaining to the allegedly offending transactions, both physical and electronic, including equipment and hardware, have already been seized by the ED and are in its custody and control. In such a case, where the

WWW.LIVELAW.IN

prosecution would turn mainly on documentary evidence, which has already been collected and the complaint has been filed, no purpose would be served by keeping the applicant is judicial custody (cf. *Sanjay Chandra* and *P Chidambaram*, supra);

(e) Statements under section 50 PMLA have been recorded which are admissible in court; and in view *inter alia* of section 50(3) and the fact that proceedings before the empowered officers under section 50(2) and (3) are deemed to be judicial proceedings within the meaning of section 193 IPC, giving false or fabricated evidence in such proceedings would invite imprisonment upto 07 years as well as fine. It is therefore unlikely that witnesses would renege on such statements;

(f) Since a complaint under section 44 PLMA has been filed arising from ECIR dated 24.07.2019, it must be taken that investigation relating to that ECIR stands completed and closed;

(g) The ED has not indicated any foreseeable timeline for completing investigation in respect of the alleged remaining about INR 1600 crores and therefore to link the applicant's judicial custody to completion of that on-going investigation, if at all, would leave the key to the applicant’s custody with the ED, which is not acceptable to this court;

WWW.LIVELAW.IN

(h) Upon being queried, the ED has confirmed that it never sought to interrogate the applicant during his judicial custody;

(i) The applicant certainly has deep roots in society, what with his myriad business interests, vast properties, and large family. He is a business tycoon, too well known to go missing without trace. This, apart from the fact that requisite conditions can be imposed to prevent his unannounced exit from the country. The applicant is therefore not a flight-risk;

(j) While the financial implication of the alleged offence is no doubt large in quantum, and even accepting the ED's contention that several individual shareholders of RFL who had nothing to do with the applicant or his family, friends or associates, have suffered losses, it is not as if such losses can be compensated by keeping the applicant in judicial custody as an undertrial;

(k) Though the offences as alleged, if proved, are serious economic offences, that in itself cannot be the basis for denying bail since the nature of offence has a limited role to play while examining a bail application (cf. *Ashok Sagar* and *Sanjay Chandra*, supra*)*;

(l) Although the ED claims that further investigation is going-on in the matter, no supplementary complaint has been filed

WWW.LIVELAW.IN

since 10.01.2020, which is when the complaint in the present case was filed;

(m) While it may indeed take long and painstaking effort to unravel the entire alleged crime, when there is no real and probable risk of the applicant interfering in further investigation, as displayed by the past conduct of the applicant, that cannot be reason for denying bail;

(n) As observed by this court in its recent decision dated 18th June 2020 in Bail Application No. 913/2020 titled ***Navendu Babbar vs. State of NCT of Delhi***, criminal investigation is not a metaphorical fishing-rod handed to an investigating agency, to indulge its penchant for 'fishing around' for evidence, at its own leisure and in the fullness of time. Investigation has to be a time-limited process, to be conducted strictly within the structure and framework of applicable law;

(o) This court does not perceive any grave threat to the interests of the society or the public at large if, after the complaint has been filed, the accused is enlarged on bail, pending trial.

21. Sanctity must attach to filing of a complaint pursuant to an ECIR. It must, as a matter of law, be taken to be the culmination of investigation into the offence to the extent the offence is defined in *that* complaint. No one is seeking to prevent or forestall further investigation but for the sake of on-going investigation, this court cannot warp the entire concept of pre-trial imprisonment and bail.

WWW.LIVELAW.IN

22. Nowhere is it the law that an accused, yet to be tried, is to be kept in custody only on a hunch or a presumption that he will prejudice or impede trial; or to send any message to the society. If anything, the only message that goes-out to the society by keeping an accused in prison before finding him guilty, is that our system works only on impressions and conjectures and can keep an accused in custody even on presumption of guilt. While in certain cases such message may even quench the thirst for revenge of the lay society against a person they believe to be guilty, such action would certainly not leave our criminal justice system awash in glory. An investigating agency must come to court with the confidence that they have arrested an accused, based on credible material, and have filed a complaint or a charge-sheet with the certainty that they will be able to bring home guilt, by satisfying a court beyond reasonable doubt. But when an investigating agency suggests that an accused be detained in custody as an undertrial for a prolonged period, even after the complaint or charge-sheet has been filed, it appears that the investigating agency is not convinced of its case and so it fears that the accused may 'get-off' by discharge or acquittal; and that therefore the only way to 'punish the *accused*' is to let him remain in custody as an undertrial.

23. After all, the Supreme Court has said that *it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson* (cf. *Sanjay Chandra vs. CBI*, supra). How does one carry forward the Supreme Court precept that *punishment*

WWW.LIVELAW.IN

begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty, if we deny bail without cogent reason (cf. *Sanjay Chandra vs. CBI*, supra).

24. People's trust in the criminal justice system must rest on surer footing than on pre-trial punishment by keeping accused persons in prison. Statistics available on the Delhi Prisons website as on 31.12.2019 show that the proportion of undertrials to convicts in Delhi prisons is about 82 percent to 18 per cent. These numbers are telling. Prison is a place for punishment ; and no punishment can be legitimate without a trial. There must be compelling basis, grounds and reasons to detain an undertrial in judicial custody, which this court does not discern in the present case.

25. It is beyond contention that the consequences of pre-trial detention are deleterious; and that keeping an undertrial in jail seriously jeopardises the preparation of his legal defence. If kept in custody, the applicant will not be able to effectively brief and consult with his lawyers, collate evidence in his defence and thereby defend himself effectively. Thereby the applicant will be denied his right to fair trial guaranteed under Article 21 of the Constitution (cf. *Moti Ram* and *Babu Singh*, supra).

26. In light of the above, there seems to be no rationale for continuing the applicant's judicial custody as an undertrial in this case. As far as the possibility of the applicant committing any further offence is concerned, that ground is purely speculative and conjectural. So is the possibility of the applicant offering any inducement, threat or promise

WWW.LIVELAW.IN

to any prosecution witness or other such person. As observed above, the possibility of the applicant absconding also appears to be farfetched and can be addressed by imposing appropriate conditions of bail.

27. It goes without saying that, if and once convicted, the applicant would have to suffer requisite imprisonment as well as confiscation of his assets, in accordance with law.

28. It may also be recorded in the passing, that co-accused Anil Saxena has already been granted bail by a Co-ordinate Bench of this court in the predicate offence in FIR No. 50 of 2019; which order has also been upheld by the Supreme Court in Special Leave Petition (Criminal) Diary No(s). 13106/2020 *vidé* order dated 17.07.2020 though with some observations, which however do not detract from the grant of bail.

29. As a sequitur to the aforesaid discussion, this court is persuaded to the applicant to *regular bail* in the proceedings arising from ECIR No. ECIR/05/DLZO-II/2019 dated 24.07.2019 registered under sections 3/4 of the Prevention of Money Laundering Act 2002 upon the following conditions :

(i) The applicant shall furnish a personal bond in the sum of INR 1,00,00,000/- (INR One Crore Only) with 02 sureties of INR 25,00,000/- (INR Twenty-five Lacs Only) each from two family members, to the satisfaction of the Designated/Special Court;

WWW.LIVELAW.IN

(ii) The applicant shall surrender his passport to the Designated/Special Court;

(iii) The applicant shall not leave the country without permission of the Designated/Special Court and shall *ordinarily* reside in his place of residence as per prison records;

(iv) The applicant shall furnish to the Investigating Officer a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(v) The applicant shall cooperate in any further investigation, as and when required;

(vi) The applicant shall not, whether directly or indirectly, contact nor visit nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the matter;

(vii) In addition to the condition at (vi) above, it is specifically directed that the applicant shall also not, *whether directly or indirectly*, contact or visit or have any transaction with any of the officials/employees of the banks, financial institutions, entities etc., *who are concerned with the complaint* in this case, whether in India or abroad. ED is also directed to issue

WWW.LIVELAW.IN

written intimation to such officials/employees to not engage in any manner with the applicant;

(viii) The applicant shall disclose to the Investigating Officer in writing if the applicant engages, *whether directly or indirectly,* in opening or closing of bank accounts, or in incorporation, dissolution or closure of companies, whether in India or abroad; and shall furnish to the Investigating Officer such details as the Investigating Officer may require. This, the applicant shall do within 7 (seven) days of undertaking any such transaction. It is made clear that the applicant will *not require* any prior permission to engage in any of the aforesaid, except that he shall be under obligation to disclose the same to the Investigating Officer as above;

(ix) The Investigating Officer is further directed to issue a request to the Bureau of Immigration, Ministry of Home Affairs of the Government of India or other appropriate authority to forthwith open a 'Look-out-Circular' in the applicant's name, to prevent the applicant from leaving the country, without the permission of the Designated/Special Court.

30. Nothing in this judgment is to be taken as an expression of opinion on the merits of the pending complaint. It is also clarified that the observations in this judgment shall have no bearing on the cases against other accused persons, which cases shall be considered on their own merits.

WWW.LIVELAW.IN

31. The bail application is allowed in the above terms and the applicant is directed to be released subject to the above conditions, if not required in any other case.

32. The application stands disposed of.

33. Other pending applications, if any, also stand disposed of.

34. A copy of this order be sent to the concerned Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

JULY 23, 2020
uj/Ne/j