IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-31.08.2022

CRM-M-24033-2021(O&M)

Maninder Sharma.

.....Petitioner.

Versus

State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab.

.....Respondent.

2

CRM-M-32902-2021

Vinod Kumar.

.....Petitioner.

Versus

State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab.

.....Respondent.

3

CRM-M-32903-2021

Sunny Mehta.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondent.

AND

CRM-M-36121-2021(O&M)

Sandeep Singh.

.....Petitioner.

Versus

State of Punjab through State Tax Officer, Deptt of Excise & Taxation.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. A.S. Shera, Advocate for Petitioner
(in CRM-M-24033-2021).

Mr. Vishal Sodhi, Advocate for the Petitioner
(in CRM-M-32902-2021).

Mr. Shiv Kumar, Advocate for the Petitioner
(in CRM-M-32903-2021).

Mr. SS Grewal, Advocate with
Mr. P.S. Aulakh, Advocate for the Petitioner
(in CRM-M-36121-2021).

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Mr. Karanbir Singh, Advocate for
State Tax Officer, State Tax, Mobile Wing, Jalandhar.

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JASJIT SINGH BEDI, J. (ORAL)

This order shall dispose of four bail petitions filed under Section 439 Cr.PC for grant of regular bail in Complaint No.15 of 2021 titled as State Versus Vinod Kumar & Ors. Registered on 12.05.2021 under Sections 132(1) (a), (b) & (c) of Central Goods & Services Tax Act, 2017 and Punjab Goods & Services Tax Act, 2017 by **Maninder Sharma** bearing CRM-M-24033-2021, **Vinod Kumar** bearing CRM-M-32902-2021, **Sunny Mehta** bearing CRM-M-32903-3021 & **Sandeep Singh** bearing CRM-M-36121-2021.

2. The brief facts of the case as culled out from the complaint are as under:-

An investigation into the business activities of firms under subject has revealed that a group of persons as mentioned below have colluded and connived with each other to make a network of fake firms and defraud the state exchequer. All these below mentioned individuals have made a total of 40 firms and have evaded tax amounting to Rs.122.28 Crores. The common Email-ids, Phone numbers and PAN cards have been

used in all these firms to get the registrations and pass on the fraudulent Input tax Credit (ITC) to various beneficiary firms. No tax has been ever paid in the inward supply chain of these firms and a mechanism has been devised by all these individuals to cover the movement of clandestine goods with fake invoices so that fraudulent ITC could be availed for adjustment against the output tax liability. Further bank accounts given/uploaded at the GSTN Portal of these firms are different than the bank accounts through which money transaction has happened and even parallel and fake bank accounts have been opened to withdraw the cash in some of these firms It is also pertinent to mention that huge cash has been collected/ withdrawn from the bank accounts by same and common persons. Different roles were assigned in this group of individuals amongst each other such as getting registration on the PAN of some individuals and cash withdrawals by some other persons of the group. The verification of inward supplies of these firms from the E-Way portal revealed that the inward supply chain of these firms is NIL at subsequent stages and these firms itself were also found to be non-existent at their registered place of business. All these individuals are therefore individually and severally responsible for defrauding the state exchequer. Accordingly a case for arrest of the following 7 persons has been granted by Commissioner of State Tax, Punjab.

1) Mr. Vinod kumar, S/o S! Om Parkash Street, 1.0. 12, Amloh road, Khanna, Ludhiana.
2) Mr. Maninder Sharma, S/o Sh. Satya Varat Rattan, Street no. 1, ward no. 4, Nandi colony, Khanna, Ludhiana.
3) Mr. Harvinder Singh,S/o Sh. Sukhdev Singh H.No. 3660, Filli Gate Jagraon, Ludhiana.
4) Mr. Sandeep Singh,S/o Sh. Ikbal Singh Nabha Colony No. 01 Khanna, Ludhiana

5) Mr. Amarinder Singh,S/o Sh. Gurnam Singh H.No. 428, Uchha Vehra, GT road Khanna, Ludhiana

6) Mr. Sunny Mehta, S/o Sh. Kuldeep Mehta, H.No. C/18 St. No. 3 Jagat Colony Khanna, Ludhiana.

7) Mr. Sukhdev Singh S/o Sh. Kartar Singh, Shiva Tower Over Lock Road Near OBC Bank Ludhiana.

The person wise details of tax evasion done through firms registered in the name of members of this groups is as below:-

Sr. No.	**Name of Person**	**Address**	**Firms Regd. In Punjab**	**Firms Regd. Outside Punjab**	**Total Firms Regd.**	**Tax evaded**	**Remarks**
1	Vinod Kumar	Street No.12, Amloh Road, Khanna	3	0	3	7,40,00,287/-	
2	Maninder Sharma	Gali No.1, Ward No.4, Nandi Colony, Khanna	2	0	2	6,31,89,852/-	In addition, an amount of Rs.1.99 Crores received from bogus bank A/c of M/s Laxmi Iron Traders
3	Harvinder Singh	H.No.3660, Filligate Jagraon	3	3	6	37,44,56,536/-	
4	Sandeep Singh	Nabha Coloney No.01 Khanna, Ludhiana	5	3	8	177,355,995/-	
5	Amrinder Singh	H.No.428 Uchha Vehra, GT Road Khanna	7	4	11	22,67,83,552/-	
6	Sunny Mehta	H.No.C/18 St. No.3 Jagat Colony Khanna, Ludhiana	4	5	9	26,99,55,692/-	
7	Sukhdev Singh	Shiva Tower Over Lock Road Near OBC Bank Ludhiana	1	0	1	3,71,52,715/-	An amount of Rs.38.40 lacs cash withdrawn from bogus bank A/c of M/s Laxmi Iron Traders
Total			25	15	40	122,28,94,629	

As per the complaint evasion of tax was Rs.122,28,94,629/-

which has now increased to Rs.131,96,00,000/-.

Based on the detailed investigation conducted the complaint in question came to be filed under Section 132(1) (a), (b) & (c) of Central Goods & Services Tax Act, 2017 and Punjab Goods & Services Tax Act, 2017.

3. The Counsel for the petitioner **Maninder Sharma (**CRM-M-24033-2021) while referring to the various provisions of the Act contends that at best, the petitioner would be liable for punishment for fraudulently availing ITC of Rs.3,32,17,761/-. This would amount to commission of a bailable offence in terms of Section 132(5) of GST Act. In fact the respondent arbitrarily has alleged wrong ITC in Universal Exports in a mode and manner unknown to law with an intent to make the offence non bailable. Had the respondent determined and alleged wrong availment of ITC in two concerns in the mode and manner known to law i.e. on the basis of form GSTR-2A and form GSTR-3B, the amount would either be Rs.3,31,00,646/- as per form GSTR-2A and/ or Rs.3,32,17,761/- as per form GSTR-3B. Till date no demand has been determined either under Section 73 and/ or 74 of the GST Act and thus it would be premature to allege that there was a fraudulent availment of ITC of any amount by the petitioner. Further since the GST Act is a Special Act, the custody of the petitioner on and after 12.5.2021 was neither under Section 167 Cr.PC nor under Section 309 of Cr.PC. Therefore, the detention of the petitioner was illegal and contrary to law. It is lastly contended that the petitioner is in custody since 13.03.2021 and pre-charge evidence was still going on. As many as 66 witnesses were to be examined and since the maximum sentence prescribed was 05 years, the further incarceration of the petitioner was not required as

he had already undergone almost 1/3rd of his sentence if he were to be convicted.

The Counsel for the petitioner-**Vinod Kumar** (CRM-M-32902-2021) contends that all the three firms had been opened fraudulently in his name by misusing his PAN number. The bank account number which was uploaded on the GST portal does not belong to the petitioner. In the case of a person who makes any transaction specific OTPs and PINs are generated on the registered E-mail or mobile number of the concerned person but this Data has not been made a part of the investigation by the respondent. Further, no offence was made out against the petitioner under Section 132 (a) (b) (c) of GST Act. In fact some unknown persons have misused the provisions of the GST Act and got registered the firm in the name of the petitioner in the year 2019 when the procedure to obtain the GST Registration Certificate under the GST Act was not authentic or foolproof. Now, by inserting Clause 6-A in Section 25 of the GST Act some of the deficiencies and shortcomings have been removed by the government. In fact, the petitioner was a roadside soup vendor in Khanna, Punjab. It was Sukhdev Singh and Harinder Singh who were the real culprits. Even otherwise the investigation stands completed and no recovery has been made from the petitioner. A similar prayer for bail has been made on account of the length of custody as also stage of trial.

The Counsel for the petitioner-**Sunny Mehta** (CRM-M-32903-2021) contends that no show cause notice was issued by the respondent to him till date. The petitioner's documents had been misused. In fact he is the victim of fraud. The investigation stands completed and nothing was ever recovered from the petitioner. He contends that in another complaint under

Section 132 of the Act, the court has granted bail to Rajinder Bassi and Ganga Ram (Annexures P-4 & P-7). He further contends that the constitutional validity of Section 69 and 132 of the Act are under challenge in a writ petition before this Court. The petitioner was arrested on 12.3.2021 and the present complaint had been filed on 12.5.2021. A similar prayer for bail has been made on account of the length of custody as also stage of trial.

The Counsel for the petitioner **Sandeep Singh** bearing CRM-M-36121-2021 submits that the documents of the petitioner were misused by a person named Satnam Singh @ Satta who is working as accountant. The petitioner had given his documents to the said Satnam Singh as he was looking for a gold loan. In fact, the petitioner was working at a cloth shop at a salary of Rs.7,000/- per month and had asked the Taxation Officer to look into his background and make an inquiry about his credentials but the officer had ignored the submissions of the petitioner. He further contends that in the complaint it is not explained as to which firms out of 08 were registered in Punjab, Haryana and Rajasthan and, therefore, the complaint was beyond jurisdiction. The complainant had further failed to prove as to on what basis a conclusion had been reached that the petitioner had evaded tax amounting to Rs.17,73,55,995/-. It is contended that no notice under Section 70 of the GST Act was ever served upon the petitioner and he was arrested straightaway. Similar prayer for bail has been made on account of length of custody as also stage of trial.

4. Before proceeding further it would be apposite to examine the law regarding grant of bail as has been enumerated by the Hon'ble Supreme Court and the various High Courts from time to time and some of these

judgments have been enumerated herein below.

1. Sanjay Chandra versus CBI 2011(4) RCR (Criminal) 898:

> **"14) 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 can be 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. 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 un-convicted 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. **Apart from the question of prevention being the object of a 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 conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson**.
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> 15) In the instant case, as 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 has resulted in loss to the State exchequer**. Though, they contend that there is possibility of the appellants tampering 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 Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- 2005(1) RCR (Criminal) 703 : 2005 (1) Apex Criminal 307 : (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

16) This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of State of Rajasthan v. Balchand, (1977) 4 SCC 308, this Court opined:

> "2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating

witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

17) In the case of Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus:

"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that "the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable...."

Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before

following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr Bottomley.

6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. Lord Campbell, C.J. concurred in this approach in that case and Coleridge J. set down the order of priorities as follows:

" I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial .... It is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.

In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death."

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record - particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant is therefore not an exercise in irrelevance.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so of innocence has been recorded by one Court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused,

if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal."

18) In Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118, this Court took the view:

"22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 CrPC if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under

Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

19) In Babu Singh v. State of U.P., (1978) 1 SCC 579, this Court opined:

" 8. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit Court I had to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right. ...

16. Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the

process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record--particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice--to the individual involved and society affected.

18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the 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. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. 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.

20. Viewed from this perspective, we gain a better insight

into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so of innocence has been recorded by one Court. It may be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, it enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal."

20) In Moti Ram v. State of M.P., (1978) 4 SCC 47, this Court, while discussing pre-trial detention, held:

"14. The consequences of pre-trial detention are grave. Defendants presumed innocent arc 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."

21) The concept and philosophy of bail was discussed by this Court in Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281, thus:

" 6. "Bail" remains an undefined term in CrPC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration

of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression "bail" denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb "bailer" which means to "give" or "to deliver", although another view is that its derivation is from the Latin term "baiulare", meaning "to bear a burden". Bail is a conditional liberty. Stroud's Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

"... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed--that is to say, set at liberty until the day appointed for his appearance." Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off

from us, the more liberty we have. (See A.K. Gopalan v. State of Madras)

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt."

22) More recently, in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, this Court observed that "(j)ust as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important." This Court further observed :

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See Babba v. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar v. State of U.P., (2000) 9 SCC 443, Mahesh Kumar Bhawsinghka v. State of Delhi, (2000) 9 SCC 383].

23) The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in the case of Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280, thus:

" The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the

bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

24) In State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21, this Court held as under:

"18. It is well settled that the matters to be considered in 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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan: (SCC pp. 535-36, para 11)

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious

offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)"

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary."

25) **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 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 the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment 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. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.** The primary purposes of bail in a

criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. This Court in Gurcharan Singh and Ors. Vs. State, AIR 1978 Supreme Court 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

26) When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in the case of State of Kerala Vs. Raneef (2011) 1 SCC 784, has stated :-

> "15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of

the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

In **Dipak Shubhashchandra Mehta versus CBI and another, 2012(1) RCR (Criminal) 870** it was held as under:-

" 18) The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. **The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted**. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the

Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above.

19) **As observed earlier, we are conscious of the fact that the present appellant along with the others are charged with economic offences of huge magnitude. At the same time, we cannot lose sight of the fact that though the Investigating Agency has completed the investigation and submitted the charge sheet including additional charge sheet, the fact remains that the necessary charges have not been framed, therefore, the presence of the appellant in custody may not be necessary for further investigation**. In view of the same, considering the health condition as supported by the documents including the certificate of the Medical Officer, Central Jail Dispensary, we are of the view that the appellant is entitled to an order of bail pending trial on stringent conditions in order to safe guard the interest of the CBI.

In **Sharad T. Kabra versus Union of India 2017(4) RCR (Criminal) 108** it was held as under**:-**

" 3. The accused appellant is in custody for a period of over two years facing charges under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code, 1860 (for short "IPC"). Though charge-sheet has been submitted as far back as in May, 2015, the trial has not commenced. Even charges have not been framed against the accused appellant. It is stated at the bar that there are total of 13 cases against the accused appellant [8 cases for the offence(s) under the IPC and 5 cases for the offence(s) under the Prevention of Money Laundering Act, 2002 (for short "PMLA")].

4. From the materials on record, it appears that in the cases registered under the PMLA the accused appellant has been granted bail. Learned counsel for the accused appellant has submitted that in respect of the cases involving offences under the IPC [in which Central Bureau of Investigation (CBI) is investigating] the accused appellant has either been granted bail or has not been arrested and the present is the only case in connection with which he is in detention.

5. **Be that as it may, having regard to the period of custody suffered and the fact that the trial has not commenced we are of**

the view that the accused appellant should be released on bail. We order accordingly. Therefore, the appellant is ordered to be released on bail to the satisfaction of the learned Special Judicial Magistrate, CBI & Economic Offences, Indore (M.P.) in connection with Special Case No.02/2015 arising out of RC BD1/E/2014/0008.

6. At the same time, to take care of the apprehension expressed by the learned Solicitor General for India that the accused appellant may abscond like two other co-accused which apprehension is considered to be reasonable we direct that the learned trial Court will release the accused appellant on bail subject to such conditions including the condition requiring the accused appellant to report to the local police station at periodic intervals as may be considered appropriate and only after hearing the learned Public Prosecutor on the issue of conditions to be imposed for grant of bail.

In **P. Chidambaram versus Directorate of Enforcement 2020 AIR (Supreme Court) 1699** it was held as under:-

" 16. In the above background, perusal of the order dated 15.11.2019 impugned herein indicates that the learned Single Judge having taken note of the rival contentions in so far as the triple test or the tripod test to be applied while considering an application for grant of regular bail under Sec. 439 Cr.PC, has answered the same in paragraphs 50 to 53 of the order, in favour of the appellant herein. The learned Solicitor General has however sought to contend that though there is not much grievance with regard to the conclusion on 'flight risk', the finding on likelihood of tampering and influencing witness has not been considered in its correct perspective. The finding in that regard has not been assailed and in such event, the appellant in our opinion cannot be taken by surprise. Even otherwise as rightly observed by the learned Single Judge the evidence and material stated to have been collected is already available with the Investigating agency. Learned Solicitor General would however contend that still further materials are to be collected and letter rogatory has been issued and as such tampering cannot be ruled out. In the present situation the appellant is not in political power nor is he holding any post in the Government of the day so as to be in a position to interfere. In that

view such allegation cannot be accepted on its face value. With regard to the witness having written that he is not prepared to be confronted as he is from the same state, the appellant cannot be held responsible for the same when there is no material to indicate that the appellant or anyone on his behalf had restrained or threatened the concerned witness who refused to be confronted with the appellant in custody.

17. The only other aspect therefore for consideration is as to whether the further consideration made by the learned Judge of the High Court, despite holding the triple test in appellant's favour was justified and if consideration is permissible, whether the learned Judge was justified in his conclusion.

18. While opposing the contention put forth by the learned Senior Counsel for the appellant that the learned Judge of the High Court ought not to have travelled beyond the consideration on the triple test and holding it in favour of the appellant, the learned Solicitor General would contend that the gravity of the offence and the role played by the accused should also be a part of consideration in the matter of bail. It is contended by the learned Solicitor General that the economic offences is a class apart and the gravity is an extremely relevant factor while considering bail. In order to contend that this aspect has been judicially recognised, the decisions in the case of **State of Bihar & Anr. vs. Amit Kumar, (2017) 13 SCC 751; Nimmagadda Prasad vs. CBI, (2013) 7 SCC 466; CBI vs. Ramendu Chattopadhyay, Crl Appeal.No.1711 of 2019; Seniors Fraud Investigation Office vs. Nittin Johari & Anr.; (2019) 9 SCC 165; Y.S. Jagan Mohan Reddy vs. CBI, (2013) 7 SCC 439; State of Gujarat vs. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364** are relied upon. Perusal of the cited decisions would indicate that this Court has held that economic offences are also of grave nature, being a class apart which arises out of deep-rooted conspiracies and effect on the community as a whole is also to be kept in view, while consideration for bail is made.

19. On the consideration as made in the above noted cases and the enunciation in that regard having been noted, the decisions relied upon by the learned senior counsel for the appellant and the principles laid down for consideration of application for bail will require our consideration. The learned senior counsel for the appellant has relied upon the decision of the Constitution Bench of this Court in the case of

Shri Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565 with reference to paragraph 27 which reads as hereunder:

> " It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 Allahabad 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 Allahabad 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused

> person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."

We have taken note of the said decision since even though the consideration therein was made in the situation where an application for anticipatory bail under Section 438 was considered, the entire conspectus of the matter relating to bail has been noted by the Constitution Bench.

20. The learned senior counsel for the appellant has also placed reliance on the decision in the case of Sanjay Chandra vs. CBI, (2012) 1 SCC 40 with specific reference to paragraph 39 which reads as hereunder:

> " 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."

The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it

has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration.

21. **Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. 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 on case to case basis on the facts involved therein and securing the presence of the accused to stand trial**.

22. In the above circumstance it would be clear that even after concluding the triple test in favour of the appellant the learned Judge of the High Court was certainly justified in adverting to the issue relating

to the gravity of the offence. However, we disapprove the manner in which the conclusions are recorded in paragraphs 57 to 62 wherein the observations are reflected to be in the nature of finding relating to the alleged offence. The learned senior counsel for the appellant with specific reference to certain observations contained in the above noted paragraphs has pointed out that the very contentions to that effect as contained in paragraphs 17, 20 and 24 of the counter affidavit has been incorporated as if, it is the findings of the Court. The learned Solicitor General while seeking to controvert such contention would however contend that in addition to the counter affidavit the respondent had also furnished the documents in a sealed cover which was taken note by the learned Judge and conclusion has been reached.

23. The question as to whether the Court could look into the documents while considering an application for bail had arisen for consideration in the very case between the parties herein in Criminal Appeal No.130/2019 wherein through the judgment dated 05.09.2019 while considering the matter relating to the order dated 20.08.2019 whereby the High Court had rejected the bail, this Court had held that it would be open for the Court to receive the materials/documents collected during the investigation and peruse the same to satisfy its conscience that the investigation is proceeding in the right lines and for the purpose of consideration of grant of bail/anticipatory bail etc. At the same time, this Court, had disapproved the manner in which the learned Judge of the High Court in the said case had verbatim quoted a note produced by the respondent. If that be the position, in the instant case, the learned Judge while adverting to the materials, ought not have recorded a finding based on the materials produced before him. While the learned Judge was empowered to look at the materials produced in a sealed cover to satisfy his judicial conscience, the learned Judge ought not to have recorded finding based on the materials produced in a sealed cover. Further while deciding the same case of the appellant in Crl. Appeal No.1340 of 2019, after holding so, this Court had consciously refrained from opening the sealed cover and perusing the documents lest some observations are made thereon after perusal of the same, which would prejudice the accused pre-trial. In that circumstance though it is held that it would be open for the Court to peruse the documents, it would be against the concept of fair trial if in every case

the prosecution presents documents in sealed cover and the findings on the same are recorded as if the offence is committed and the same is treated as having a bearing for denial or grant of bail.

24. Having said so, in present circumstance we were not very much inclined to open the sealed cover although the materials in sealed cover was received from the respondent. However, since the learned Single Judge of the High Court had perused the documents in sealed cover and arrived at certain conclusion and since that order is under challenge, it had become imperative for us to also open the sealed cover and peruse the contents so as to satisfy ourselves to that extent. On perusal we have taken note that the statements of persons concerned have been recorded and the details collected have been collated. The recording of statements and the collation of material is in the nature of allegation against one of the co-accused Karti Chidambaram- son of appellant of opening shell companies and also purchasing benami properties in the name of relatives at various places in different countries. Except for recording the same, we do not wish to advert to the documents any further since ultimately, these are allegations which would have to be established in the trial wherein the accused/co-accused would have the opportunity of putting forth their case, if any, and an ultimate conclusion would be reached. Hence in our opinion, the finding recorded by the learned Judge of the High Court based on the material in sealed cover is not justified.

25. **Therefore, at this stage while considering the bail application of the appellant herein what is to be taken note is that, at a stage when the appellant was before this Court in an application seeking for interim protection/anticipatory bail, this Court while considering the matter in Criminal Appeal No.1340/2019 had in that regard held that in a matter of present nature wherein grave economic offence is alleged, custodial interrogation as contended would be necessary and in that circumstance the anticipatory bail was rejected. Subsequently the appellant has been taken into custody and has been interrogated and for the said purpose the appellant was available in custody in this case from 16.10.2019 onwards. It is, however, contended on behalf of the respondent that the witnesses will have to be confronted and as such custody is required for that purpose. As**

noted, the appellant has not been named as one of the accused in the ECIR but the allegation while being made against the co-accused it is indicated the appellant who was the Finance Minister at that point, has aided the illegal transactions since one of the co-accused is the son of the appellant. In this context even if the statements on record and materials gathered are taken note, the complicity of the appellant will have to be established in the trial and if convicted, the appellant will undergo sentence. For the present, as taken note the anticipatory bail had been declined earlier and the appellant was available for custodial interrogation for more than 45 days. In addition to the custodial interrogation if further investigation is to be made, the appellant would be bound to participate in such investigation as is required by the respondent. Further it is noticed that one of the co-accused has been granted bail by the High Court while the other co-accused is enjoying interim protection from arrest. The appellant is aged about 74 years and as noted by the High Court itself in its order, the appellant has already suffered two bouts of illness during incarceration and was put on antibiotics and has been advised to take steroids of maximum strength. In that circumstance, the availability of the appellant for further investigation, interrogation and facing trial is not jeopardized and he is already held to be not a 'flight risk' and there is no possibility of tampering the evidence or influencing\intimidating the witnesses. Taking these and all other facts and circumstances including the duration of custody into consideration the appellant in our considered view is entitled to be granted bail. It is made clear that the observations contained touching upon the merits either in the order of the High Court or in this order shall not be construed as an opinion expressed on merits and all contentions are left open to be considered during the course of trial.

26. For the reasons stated above, we pass the following order:

i) The instant appeal is allowed and the judgment dated 15.11.2019 passed by the High Court of Delhi in Bail Application No.2718 of 2019 impugned herein is set aside;

ii) The appellant is ordered to be released on bail if he is not required in any other case, subject to executing bail bonds for a sum of

Rs.2 lakhs with two sureties of the like sum produced to the satisfaction of the learned Special Judge;

iii) The passport ordered to be deposited by this Court in the CBI case shall remain in deposit and the appellant shall not leave the country without specific orders to be passed by the learned Special Judge.

iv) The appellant shall make himself available for interrogation in the course of further investigation as and when required by the respondent.

v) The appellant shall not tamper with the evidence or attempt to intimidate or influence the witnesses;

vi) The appellant shall not give any press interviews nor make any public comment in connection with this case qua him or other co-accused.

vii) There shall be no order as to costs.

In **Satender Kumar Antil versus Central Bureau of Investigation and another, 2022 AIR (Supreme Court) 3386** it was held as under:-

"ECONOMIC OFFENSES (CATEGORY D)

66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:-

Precedents

P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. 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 provide 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 on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

Sanjay Chandra v. CBI (2012) 1 SCC 40:

"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.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

xxx xxx xxx

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 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."

ROLE OF THE COURT

67. **The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up**

consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, has observed that:

" 67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of Cr.PC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. PostIndependence, the recognition by Parliament [Section 482 CrPC, 1973] of the

inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."

(emphasis supplied)

69. We wish to note the existence of exclusive Acts in the form of

Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:

"General right to bail of accused persons and others.

4.-(l) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act."

70. Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.

71. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offense shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.

72. The Bail Act of United Kingdom takes into consideration various factors. It is an attempt to have a comprehensive law dealing with bails by following a simple procedure. The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence. They also include Special Acts as well. We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom. Our belief is also for the reason that the Code as it exists today is a continuation of the preindependence one with its modifications. We hope and trust that the Government of India would look into the suggestion made in right earnest".

SUMMARY/CONCLUSION

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

(k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

(l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

Various High Courts have considered the law relating to the grant of bail in various cases and some of them have been enumerated hereunder:-

In **Suresh Kalmadi versus CBI** **2012(5)RCR (Crimial) 556** it was held as under:-

" **13. Thus the requirements that have to be balanced at this stage are the seriousness of the accusations, whether the witnesses are likely to be influenced by the petitioners being enlarged on bail during trial and whether the accused are likely to flee from justice is released on bail. As stated earlier, prima facie a case for offence under Section 467 Indian Penal Code is made out, the punishment prescribed for which is up to life imprisonment. Thus, the accusations against the petitioners are serious in nature. However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in Sanjay Chandra (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice**.

15. Thus, in nutshell the allegations of threatening the witnesses and tampering with the evidence are when the witnesses were working

under the petitioners and they were threatened and harassed to toe the line of the petitioners. However, whether the said threat can raise an apprehension that the petitioners are likely to influence the witnesses during the trial is an issue which has to be examined by this Court. It may be noted that the statements of these witnesses i.e. PW-1, PW-2 and PW-6 were recorded by the CBI when the petitioners had not been arrested. Thus, it is apparent that the witnesses were harassed and threatened only till they were working under the petitioners. Thereafter there was no influence on the witnesses and they made their statements fearlessly before the CBI. Thus, the evidence on record that in the past witnesses were intimidated does not prima facie shows that there is any likelihood of threat to the prosecution witnesses. I find no merit in the contention of the learned counsel for the CBI that the mere presence of the petitioners at large would intimidate the witnesses. Further one co-accused who was actually found influencing the prosecution witness is not the petitioner before this Court.

16. As regards delay in trial, it may be noted that the charge sheet was filed on the 20th May, 2011 and thereafter twice supplementary charge sheets with list of witnesses and documents have been filed. After the charge sheet was filed, time was consumed in providing it in E-form with hyperlinking. After the scrutiny of the supplementary charge, the matter will now be listed for arguments on charge. Though the learned Trial Court has directed that the trial be conducted on day to day basis, however, in the main charge sheet itself 49 witnesses have been cited. Thereafter, further witnesses have been cited in the two supplementary charge sheets. Thus, the trial is likely to take time.

17. The petitioner Suresh Kalmadi has been in custody for over eight months and petitioner V.K. Verma for ten months. There is no allegation that the petitioners are of having committed economic offences which have resulted in loss to the State Exchequer by adopting the policy of single vendor and ensuring that the contract is awarded only to STL. Whether it was a case of exercise of discretion for ensuring the best quality or a case of culpability will be decided during the course of trial. There is no allegation of money trial to the petitioners. There is no evidence of the petitioners threatening the witnesses or interfering with evidence during investigation or trial. There is no allegation that any other FIR has been registered against

the petitioners.

In **Anil Kumar versus State of Punjab 2013(3) RCR (Criminal) 854** it was held as under:-

" *7. Learned counsel for the petitioners have relied upon Dipak Shubhashchandra Mehta vs. C.B.I. and another, 2012(1) RCR (Criminal) 870 (SC), Sanjay Chandra vs. CBI, 2011(4) RCR (Criminal) 898 (SC), Rajinder Kumar vs. State of Haryana, 2012(1) RCR (Criminal) 481 (P&H) and Desh Raj vs. CBI, 2013(1) RCR (Criminal) 346 (P&H)***.**

8. Learned counsel for the State contended that petitioners are involved in economic offence of high magnitude. There is a big scam. The Government officials in connivance with the contractors have caused a loss of more than L 4.75 crores to the State exchequer. They have prepared forged and fabricated documents, vouchers and payment bills. As such they should not be released on bail as they may tamper with the evidence.

I have considered the rival contentions raised by the learned counsel for the parties and perused the judgments cited at bar by the learned counsel for the petitioners.

9. The latest judgment cited by the learned counsel for the petitioners is of the Hon'ble Supreme Court in Dipak Shubhashchandra Mehta (supra) wherein the entire law has been discussed. The Hon'ble Supreme Court in para No.18 in Dipak Shubhashchandra Mehta's case (supra) has held as under: -

> " 18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the

complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

Further, the Hon'ble Supreme Court in the case of ***Sanjay Chandra (supra***) has held as under:-

" 15. In the instant case, as 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 has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering 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 Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an

individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of nonbailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

11. I am conscious of the fact that serious allegations of connivance and causing financial loss to the State exchequer have been levelled against the petitioners. There are also allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.

12. Second argument is regarding tampering with the evidence. I have considered this contention also. The entire case is based on the documentary evidence i.e. forged vouchers, bills and thereafter the payment to various contractors and others in connivance with the Government officials. This is not a case based on the oral testimony of individuals. No doubt the allegations against the petitioners are serious in terms of the alleged huge loss caused to the State exchequer, that by itself should not deter this Court from enlarging the accused on bail specially when they are already behind bars for about seven or more months. I do not see any good reason to continue the judicial custody of the petitioners that too after completion of investigation and submission of charge-sheets/supplementary charge-sheets. The conclusion of the trial will take long time and their presence in custody may not be necessary for further investigation.

13. In view of this, I am of the view that petitioners are entitled to grant of bail pending trial on stringent conditions in order to allay the apprehension of the investigating agency. It is not necessary to canvass and go into the details of various other issues canvassed by learned counsel for the parties and the cases relied upon by learned counsel for the petitioners in support of their contentions. I have not expressed any opinion on the merit of the case.

In **Giri Raj versus State of Haryana, <u>2019(1) RCR (Criminal) 530</u>** it was held as under:-

" *17.* In ***State Vs. Jaspal Singh Gill, reported in AIR 1984 Supreme Court 1503,*** the Supreme Court expressed the view that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar

to the accused, a reasonable possibility of the presence of the accused not being required at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations.

18. The Delhi High Court in Anil Mahajan's case (supra) has summarised certain points, which are as under :-

(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised

judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code, 1973 are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437(1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for ail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in maind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In

view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are: (i) the likelihood of the accused fleeing from justice and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs

to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute 13 of 15 prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.

19. It has also been held in various judgment of Hon'ble the Apex Court as well as of this Court that criminal prosecution is not a proceeding for recovery of the dues of the investors but is meant for punishing the guilty. In case of economic offences, the object of criminal prosecution is to protect the investors and help them in recovery of the money. It can be a presumption but the detention of accused in the jail would not aid the recovery. It has also been held that the purpose is not to recover the amount but to punish the accused persons.

20. Hon'ble the Apex Court in Sanjay Chandra's case (supra) has held in para Nos.27 and 28 as under :-

> "27. In `Bihar Fodder Scam', this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further

detention of the appellants as pre-trial prisoners would not serve any purpose.

28. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize 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."

In Dipak Shubhashchandra Mehta's case (supra), Hon'ble the Apex Court while relying upon the judgment of Sanjay Chandra's case (supra) allowed bail in case involving economic offences of huge magnitude. This Court in Anil Kumar's case (supra) scanned various authorities on the issue and held in favour of accused for release on bail.

21. Keeping in view the facts and circumstances of the present case and by considering that the offence is triable by Magistrate; the custody which is more than 11 months; even a single witness has not been examined; the delay is there on the part of the complainant himself as alternative remedy has already been availed and no useful purpose would be served by keeping the petitioner in custody, the present petition is allowed and petitioner, namely, Giri Raj is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

In **Permanand versus State of Haryana (CRM-M-45975-2021 decided on 22.11.2021)** it was held as under:-

“ Learned State counsel opposes the grant of bail to the petitioner on the ground that he and his co-accused have forged judgments and decrees of a Court and that too for at least 187 persons.

In a magisterial trial, the petitioner is in custody since 07.04.2021; investigation qua the petitioner is complete and

therefore, neither is the petitioner needed for the same nor can he influence it; the main allegation with regard to forging of judgments and decrees is against co-accused Jaidev Singla and Nitesh (since dead); there is no other criminal case pending against the petitioner; no further recovery is also required to be made from him; co-accused Govind, who had approached this Court through CRM-M-31235-2021 – Govind vs. State of Haryana has been granted regular bail by this Court and that the petitioner's trial in which 13 witnesses have been cited by the prosecution is yet to begin and therefore it is likely to take a long time to conclude.

In view of the above, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail.

Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Bhiwani, the petitioner is directed to be released on bail".

In **D.K. Shivakumar versus Directorate of Enforcement 2019 (4) JCC 4037:-**

" 35. While dealing with the bail application, it is not in dispute that three factors have to be seen viz. i) flight risk, ii) tampering evidence iii) influencing witnesses.

36. Regarding the flight risk, neither argued by learned Additional Solicitor General nor placed any material on record, therefore, flight risk of the petition is ruled out.

37. Regarding tampering with the evidence, it is not in dispute that the documents relating to the present case is in the custody of the prosecuting agency, Government of India and the Court. Moreover, presently, the petitioner is not in power except he is a Member of Legislative Assembly. Therefore, in my considered view, there is no chance of the petitioner to tamper with the evidence.

38. On the issue of influencing the prosecution witnesses, the respondent has not placed any record to establish that either the petitioner or his family members or associates ever tried to contact any of the witnesses not to disclose any information regarding money earned by him for self and family members or associates. Moreover, petitioner has been examined extensively. All the 14

witnesses have already been examined.

39. He was arrested on 3rd September, 2019 and remained 15 days in the custody of respondent and thereafter in judicial custody. He is no more required for investigation or interrogation by the prosecution.

40. Moreover, he remained 4 days in Hospital and that in ICU wherein Angiography was also performed on the petitioner.

41. In view of the discussion above, I am of the considered opinion, the petitioner is entitled for bail on merits and medical grounds as well. Accordingly, the petitioner shall be released on bail with conditions as under:-

(i) On furnishing personal bond for an amount of Rs. 25 lacs with two sureties of the like amount to the satisfaction of the Trial Court.

(ii) He shall not leave the country without permission of Court.

(iii) Also shall make himself available for investigation, if required by the prosecuting agency.

(iv) He shall not influence the prosecution witnesses directly or remotely.

In **Surinder Pal Singh versus State of Punjab (CRM-M-22982-2020 decided on 30.09.2020):-**

" *9. The aforesaid decision has also been quoted and accepted by the Supreme Court in case of 'Dipak Shubashchandra Mehta Vs. C.B.I. and Anr.' 2012(1) R.C.R. (Criminal) 870 and by this Court in 'Giri Raj Vs. State of Haryana' 2019(1) R.C.R. (Criminal) 530 and 'Anil Kumar Vs. State of Punjab' 2013(3) R.C.R. (Criminal) 854 as also by the Delhi High Court in 'Suresh Kalmadi Vs. CBI' 2012(5) R.C.R. (Criminal) 556, in which it was observed -*

"13. Thus the requirements that have to be balanced at this stage are the seriousness of the accusations, whether the witnesses are likely to be influenced by the Petitioners being enlarged on bail during trial and whether the accused are likely to flee from justice if released on bail. As stated earlier, prima facie a case for offence under Section 467

> Indian Penal Code is made out, the punishment prescribed for which is up to life imprisonment. Thus, the accusations against the Petitioners are serious in nature. However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in Sanjay Chandra (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice."

10. Similarly, in the case of 'Mahesh Kumar Vs. Central Bureau of Investigation' 2014(8) R.C.R. (Criminal) 1650, the Delhi High Court after considering the ratio of the Apex Court's decisions in cases of Sanjay Chandra and Dipak Shubhashchandra Mehta's 9 of 12 (Supra) granted bail to the accused persons, who were similarly accused of economic offences under various Sections of P.C.Act inspite of having found that there was good material against them by observing inter-alia -

> "40. Having perused the charge-sheet, prima facie it cannot be contended that the respondent/CBI has failed to make out a case of conspiracy for the offences punishable under Section 120B I.P.C. read with Sections 7, 8 and 12 of the PC Act. In any event, at this stage, the allegations levelled by the prosecution have to be taken on their face value. The Court must also ensure that there is no pre-judging and no prejudice is caused to either side, and the merits of the case must be left to be decided by the trial court [Ref: Puran Etc. v. Rambilas & Anr. (2001) 6 SCC 338, Ram Govind Upadhyay v. Sudarshan Singh and Ors. (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr, 2004 (7) SCC 528]."

11. The situation of the Petitioner clearly appears to be covered by the ratio of aforesaid decisions since admittedly the Challan has been submitted against him more than four months ago and there is no requirement for his further detention especially in view of the fact that he was taken into custody in the present case before he

could be released on bail granted to him by the Himachal Pradesh High Court. Ld. State Counsel has nevertheless also contended that considering the nature of offences involved there is every likelihood that the Petitioner will abscond and flee from justice on account of which he should not be released on bail. This submission, however, does not appear to be substantiated considering the previous background of the Petitioner's arrest and implication in FIR No.161 dated 21.9.2018. It is a matter of record that he had previously been granted bail on 24.5.2019 by a Coordinate Bench of this Court in the said FIR registered against him. Thereafter he remained on bail and was also diligently attending the Trial Court as can be seen from the Zimni Order of the Court in the said case passed on 18.12.2019, a copy of which has been filed on behalf of Petitioner in this case on 24.9.2020. Perusal of the said Order passed by the Ld. Special Judge/P.C.Act, S.B.S. Nagar clearly goes to reveal that the Petitioner while on bail was physically present on that date with his counsel when partial examination of PW1 Manoj Kumar (who incidentally happens to be again the complainant in the present case) was recorded and then deferred at the instance of the prosecution side itself. The matter was thereafter adjourned to 20.2.2020 for the same purpose. However, the Petitioner was in the meantime arrested by the CBI on 3.1.2020 in connection with the case started against him in the State of Himachal Pradesh, in which he was ultimately granted bail on 11.3.2020, on which date, he was arrested in the present case on the strength of a Production Warrant while still in custody. It is therefore, clear that in spite of having been granted bail on 24.5.2019 in FIR No.161 of 2018 of the same Police Station, the Petitioner had never misused his liberty and was diligent in attending the Court till 18.12.2019, after which he was arrested, and there is no material to indicate that he had tried to flee away.

12. Even the next submission raised on behalf of State to the fact that if released on bail he could tamper with the evidence also appears to be unfounded since the Petitioner is admittedly suspended from his post as Head Cashier in the concerned Bank,

and is therefore, unable to have any access to the Bank record and documents, which would essentially constitute the evidence to conduct his prosecution, and this view was also taken by the Himachal Pradesh High Court in granting him bail in Para 9(d) of its relevant Order (Annexure P-4).

13. For the aforesaid reasons, this Court finds the Petitioner to be entitled to regular bail in the present case considering his long detention exceeding 6½ months, and the fact that Challan against him has been filed long ago. He is, therefore, ordered to be released on bail subject to imposition of appropriate terms and conditions to ensure his attendance, which are left to the discretion of the Ld. Trial Court/Duty Magistrate concerned.

In **Dr. Jogender Singh versus State of Haryana (CRM-M-35475-2020 decided on 12.11.2020)** it was held as under**:-**

8. Learned counsel further submitted that even in case of economic offences, conditions can be imposed while granting regular bail. Learned counsel by referring to Sanjay Chandra vs. CBI, 2012(1) SCC 40; Bhadresh Bipinbhai Sheth vs. State of Gujarat and another, (2016) 1 SCC 152; Bhagirrathsinh vs. State of Gujarat, (1984) 1 SCC 284 and Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273; Criminal Appeal No.1831 of 2019 (Arising out of S.L.P. (Criminal) No.10493 of 2019) titled 'P.Chidambaram Vs. Directorate of Enforcement' decided on 04.12.2019 further submitted that basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same, the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would fall 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 circumstances, while considering the application for bail, 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 conclusion will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

9. I have considered the submissions made by learned counsel for the parties.

10. In Sanjay Chandra's case (supra), the Hon'ble Apex Court has held that it is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the accused is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter the Court from enlarging the accused on bail when there is no serious contention of the State that the accused, if released on bail, would interfere with the trial or tamper with evidence.

11. Keeping in view the aforesaid factual position, I deem it appropriate to negate the contention of learned State counsel for dismissal of the bail in view of serious allegations and pending investigation of the case. Petitioner is in judicial custody since 07.09.2020 and is not required for any further investigation of the case. The offences are triable by the Magistrate.

XXX XXXX XXXX

13. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

In **Ram Pal versus State of Punjab (CRM-M-19812-2021 decided on 15.12.2021)** it was held as under**:-**

" 8. On thoughtful consideration, this Court deems it appropriate to allow regular bail to the petitioner(s) herein for the following reasons:-

(i) It is an admitted fact that none of the petitioners herein have been nominated as an accused either by CBI or ED, which agencies are also looking into the scam that has taken place at the behest of Chairman/Directors of the Company.

(ii) It is also admitted fact that as on date, petitioners are in custody and the matter has already been investigated and the challan stands presented in a magisterial trial and therefore, question of interfering in the investigation by the petitioners would not arise. As far as the question of influencing the witnesses is concerned, it would be worthwhile to note that they would be official witnesses, who would be giving their testimony on the basis of documents already in their possession and therefore, possibility of influencing them is far off.

(v) The Hon'ble Supreme Court in *Subhash Chandra's case* (supra) while granting bail to the accused has held as under:-

27) In `Bihar Fodder Scam', this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period more than six

> *months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose.*
>
> *28) We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize 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."*

6. Therefore, effectively, what has been held in the aforementioned judgments is that it would be 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 yet been convicted or that in any circumstances he should be deprived of his liberty only upon the belief that he will tamper with the witnesses/evidence, if granted bail except in the most extraordinary circumstances. Undoubtedly, the seriousness of the charges against the accused are no doubt one of the relevant considerations while considering the bail application but it would not be the only factor. The other relevant factor would be the sentence that could be imposed upon the said accused after trial and conviction. If seriousness of the charge was the only test then it would not be balancing the constitutional rights. Further, while considering the grant of bail, the triple/tripod test would also be a relevant consideration. The three factors

as set out in the said test are:- *(i) Whether the accused is a flight risk; (ii) Whether the accused will tamper with the evidence, if granted bail & (iii) whether the accused could influence the witnesses, if granted bail.*

7. Since the grant or refusal of bail lies in the discretion of the Court the discretion is to be exercised with regard to the facts and circumstances of each case. However, bail is not to be denied to satisfy the collective sentiments of a community or as a punitive measure.

8. Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.

9. Coming back to the facts of the present case, it may be pertinent to mention here that the petitioners were arrested on 13.03.2021 and the complaint came to be filed on 12.05.2021. Therefore, as on date they have undergone a total custody period of approximately 01 year and 06 months. The maximum sentence that could be awarded would be 05 years. As yet, even the charges have not been framed and as many as 66 prosecution witnesses are yet to be examined. Therefore, at any rate, the trial cannot be concluded any time soon. Further no serious apprehension has been expressed by the prosecution of the petitioners being flight risks, or that they would tamper with the evidence or influence witnesses in case bail was granted to them. Even otherwise the evidence is primarily documentary in nature and in custody of the State.

10. In view of the aforementioned circumstances, the further incarceration of the petitioners would be wholly unnecessary. Thus without commenting on the merits of the case, the aforementioned petitions are allowed and the petitioner- **Maninder Sharma** son of Sh. Satya Varat Rattan (in **CRM-M-24033-2021**), petitioner-**Vinod Kumar** son of Sh. Om Parkash (in **CRM-M-32902-2021**), **Sunny Mehta** son of Sh. Kuldeep Mehta (in **CRM-M-32903-2021**) and **Sandeep Singh** son of Sh. Ikbal Singh (in **CRM-M-36121-2021**) are ordered to be released on bail subject to the satisfaction of the Trial Court, concerned which is at liberty to impose any stringent conditions that it deems appropriate.

11. Further, the Petitioners are directed to surrender their passports before the Trial Court or furnish an affidavit in case they do not possess any passport.

12. If any attempt whatsoever is made by the petitioners and/or his/their family members/friends to contact/threaten/intimidate any of the witnesses of the case, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 31, 2022
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***