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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1238 OF 2022

Chetan Vallabhdas Pabari — Applicant
Vs.
The State of Maharashtra — Respondent

WITH

BAIL APPLICATION NO. 1234 of 2022

Jitendra Kantilal Shah — Applicant
Vs.
State of Maharashtra — Respondent

WITH

BAIL APPLICATION NO. 1201 of 2022

Premal Kiran Goragandhi — Applicant
vs.
State of Maharashtra & Anr. — Respondent

WITH

BAIL APPLICATION NO. 1211 of 2022

WITH

INTERIM APPLICATION NO. 1718 OF 2022

WITH

INTERIM APPLICATION NO. 1532 OF 2022

WITH

INTERIM APPLICATION NO. 2095 OF 2022

Anil Kumar s/o. Ramchandra Prasad — Applicant
Vs.
State of Maharashtra — Respondent

WITH

BAIL APPLICATION NO. 1287 OF 2022

Nandkishor Amilal Badsiwal — Applicant
Vs.
State of Maharashtra — Respondents

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WITH
BAIL APPLICATION NO. 1341 OF 2022

Nutakki Sai Prasad s/o. Rangarao Applicant
Vs.
State of Maharashtra & Anr. Respondents

WITH
BAIL APPLICATION NO. 1232 OF 2022

Kantilal Achalji Shah Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 939 of 2022

Deepen Arun Parekh Applicant
Vs.
State of Maharashtra & Anr. Respondents

WITH
INTERIM APPLICATION NO. 2456 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 939 of 2022

Indian Overseas Bank Intervener
in the matter between
Deepen Arun Parekh Applicant
Vs.
State of Maharashtra & Anr. Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.957 OF 2022

Kamlesh Manohar Kanungo Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

WITH
INTERIM APPLICATION NO. 2465 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 957 of 2022

Indian Overseas Bank Intervener
in the matter between
Kamlesh Manohar Kanungo Applicant
Vs.

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Central Bureau of Investigation (EOB) & Anr. Respondents

ANTICIPATORY BAIL APPLICATION NO. 959 of 2022

Kirti Vishwanath Kedia Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

WITH
INTERIM APPLICATION NO. 2462 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 959 of 2022

Indian Overseas Bank Intervener
in the matter between
Kirti Vishwanath Kedia Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

ANTICIPATORY BAIL APPLICATION NO. 1045 of 2022

Pujit Ravikiran Aggarwal Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

(ALL APPLICATIONS IN CBI SPECIAL CASE NO.1638/2019)

Mr. Kocharekar with Mr.Rahul Gaikwad i/b Gravitas Legal for the applicant in BA/1238/2022
Mr. Aabad Ponda, Senior Advocate with Mr. Vinayak Siraskar i/b. Kiran Jain & Co. for the applicant in BA/1234/2022 And BA/1232/2022.
Ms. Isha Jain with Shikhar Khandelwal i/b. Kiran Jain & Co. for the applicant in BA/1201/2022.
Mr. Niranjan Mundargi with Ms. Keral Mehta i/b. H.H. Nagi and Associates for the applicant in BA/1287/22.
Mr. Aabad Ponda, Senior Advocate i/b. Mr. Sumit Krishnakumar Tiwari for the applicant in BA/ 1341/22
Mr. Rahil A. Siddiqui for the applicant in BA/1211/22.
Mr.Ashok Mundargi, Senior Advocate, a/w Mr. Niranjan Mundargi. Ms. Keral Mehta, Mr. Punit Damodar, Ms. Nikita Vardhan and Mr. Vishal Tiwari i/b. Kanga & Co. for the applicant in ABA/939/2022.
Mr. Aabad Ponda, Senior Advocate with Sajal Yadav, Shalabh Saxena, Mitul Shah, Raj Raut i/b. Mr. Harsh Gangurde for the applicants in ABA/ 957/2022.

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Mr. Aabad Ponda, Senior Advocate i/b. Mr. Anukul Seth for the applicant in ABA/959/2022.
Mr. Niranjan Mundargi with Ms. Keral Mehta and Mr. Prashant Pawar for the applicant in ABA 1045/22.
Mr. Anil C. Singh, ASG a/w. Kuldip Patil, Savita G., Amita Kuttikrishnan, Aditya Thakkar, Smita Thakur, Pranav Thakkar for CBI, EOB.
Ms. Aparajita Chandra for Indian Overseas Bank.
Mr. Ayaan Hafiz i/b. India Law Offices LLP for intervener in IA/2456/2022, IA/2462/2022 and IA/2465/2022.

..

CORAM : BHARATI DANGRE, J
RESERVED ON : 14th OCTOBER, 2022
PRONOUNCED ON : 21st DECEMBER, 2022

P.C.

1] Seven Bail Applications and four Anticipatory Bail Applications are filed in CBI Special Case No.1638/2021, which arise out of FIR-RC0682017E005 registered on 23.05.2017, which invoke Section 420, 467, 468, 471, 120 the Indian Penal Code alongwith Sectio 13(2) r/w 13(1)(d) of the PC Act,1988.

2] The Applicants in all these Applications claim that they were never arrested during the course of investigation nor they evaded the arrest and they were interrogated, on registration of the FIR and have rendered their co-operation to the Investigating Officer throughout the investigation procedure.

The Applicants were however taken into custody after they had appeared before the Special, CBI Court, in response to the summons received by them and when they moved distinct applications seeking their release on bail by pressing into service the decision of the Apex Court in **Satender Kumar Antil vs. CBI**[1], their applications were

1 (2022)10 SCC 51

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rejected by a common order passed by the Special Judge. The rejection is on the ground of the gravity and nature of offence, ignoring the binding precedent from the Apex Court.

Heard learned senior counsel Mr.Ashok Mundargi, Mr.Aabad Ponda, Mr. Niranjan Mundargi, Mr.Rahil Siddiqui for the Applicants. I have also heard Mr.Anil Singh, Assistant Solicitor General a/w Advocate Kuldeep Patil and Ms.Amita Kuttikrishnan for CBI.

3] It is noticed that all the applicants in the Applications listed before me are enjoying the interim protection conferred upon them by order dated 08.04.2022 and further order dated 20.04.2022. The interim protection is in force till date when I heard the Applications.

4] Before I proceed to deal with the rival contentions advanced before me, I must briefly make reference to the accusations faced by the applicants in the Charge-sheet.

A case was registered by CBI EOB, Mumbai on 23.05.2017 on the basis of a written complaint lodged by Sh.D. Palany Samy, General Manager, Indian Overseas Bank (IOB), Mumbai against M/s.Parekh Aluminex Ltd (M/s.PAL) and its CMD late Amitabh Arun Parekh and Shri Rajendra Madanlal Gothi, Shri Devanshu Pravinbhai Desai, Kirankumar Chandulal Parikh, Vikram Vasudev Mordani, Deepen Arun Parekh, the Directors of M/s.PAL as well as Mr.Chetan Pabari, Chartered Accountant and Proprietor of M/s.C.V. Pabari & Co. and other unknown persons/public servants for the offences punishable under Section 120-B read with 420 of the IPC and 13(2) read with 13(1)(d) of the PC Act, 1988.

During investigation, it is revealed that the above-mentioned accused persons connived with each other and availed Bank loan from

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Indian Overseas Bank, Nariman Point Branch, Mumbai to the tune of Rs.292.20 Crores and thereby cheated the Bank by submitting false and fabricated documents which was against the interest of the Bank. Thereby the accused persons committed offences punishable under Section 120-B read with 420, 467, 468, anda 471 of the Indian Penal Code and 13(2) read with 13(1)(d) of the PC Act, for cheating IOB and thus caused wrongful loss of Rs.297.56 Crores to IOB and corresponding wrongful gain to themselves. The amount was classified as NPA on 01.07.2015.

5] The charge-sheet filed in the subject CR highlight details of the transactions and has ascribed distinct role of each of the applicants before me. Amitabh Parekh the CMD of the Company had inducted the Directors and it is alleged that he was managing the entire and day to day affairs of the Company without involving the other Directors, till his demise on 06.01.2013. The charge sheet accuse him of entering into criminal conspiracy with the chartered accountant to get more funds through enhancement of loans to M/s.PAL from bank under consortium. They are accused of inflating the turn over, sale, purchase, profit figures etc. in the balance sheet, in systematic manner to avoid its detection by any statutory agency including the banks. The fraudulent turn over ws projected as being genuine and Chetan Pabari, the Chartered Accountant, CA, is alleged to have inflated the sale by creating false non-existing sundry debts, who are with high outstanding amounts, which reflected the norms of the Bank being satisfied as regards full utilization of the working capital.

Kamlesh Kanungo is alleged to have fraudulently shown purchase of raw materials from M/s.Sikkim Ferro Alloys Ltd. and M/s.Suryakiran Ferro Pvt. Ltd.

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Deepen Parekh, elder brother of Amitabh Parekh, is accused of having played active role in the criminal conspiracy in perpetration of the fraud and accusations levelled against him is, he inflated financial data/figure of M/s.PAL and based on this inflated figures, Amitabh Parekh availed more loan from the bank.

The charge sheet allege that the accused persons assisted and facilitated Shri Amitabh Parekh to syphone off the loan prceeds through the personal and trust account for benefit of their personal and family members.

6] In short, the accusations faced by the applicants in the charge-sheet is to the effect that the accused persons conspired together for committing fraud upon the Bank and since this involved Nandkishor Amilal Badsiwal, Chief Manager of the Bank and one Anil Kumar, Manager, IOB, sanction was also sought under Section 19 of the Prevention of Corruption Act and pending sanction, right was reserved to file supplementary charge-sheet.

At the end of the investigation, charges came to be crystalized in the following manner :

> **"**It is therefore prayed that cognizance of the offences committed by the accused company i.e. M/s. Parekh Aluminex Ltd. (M/s.PAL), Deepen Arun Parekh, Chetan Vallabhdas Pabari, M/s.Sikkim Ferro Alloys Ltd., M/s. Gorla Infrastructure Pvt. Ltd, Kamlesh Manohar Kanungo, M/s. Jai Bhagwati Impex Pvt. Ltd. M/s. Jai Shelters Pvt. Ltd. Kirti Vishwanath Kedia, Arun Kantilal Parekh, Devkrishna Gordhandas Gandhi, Premal K. Goragandhi, M/s. Bhushan Foil Pvt. Ltd., M/s. Bhagyodaya Ferro Alloys Pvt. Ltd., M/s. Bhumika Foils Pvt. Ltd., M/s. Suryakiran Ferro Alloys Pvt. Ltd, M/s. Rockford Structure Pvt Ltd., Kantilal Achlaji Shah, Jitendra Kantilal Shah, M/s, Trisons Metalex Pvt. Ltd. (now M/s.Stainless Metalex Pvt. Ltd.), Pujit Aggarwal, Manurpasad Maganlal Trivedi, N.Sai Prasad and P. Narsimha Rao punishable offences u/s 120-B read with 420, 467, 468 and 471 of the

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> IPC and Section 13(2) read with 13(1)(d) of the POC Act, 1988, may be taken and to initiate process against the above mentioned accused persons for causing their appearance to face the trial."

7] It is not in dispute that the Applicants were never arrested by the CBI during investigation and the charge sheet came to be filed on completion of investigation before the CBI Court. The investigation lasted for 3 years.

The applicants were served with summons to attend the Court in person on 04.04.2022 and on their appearance on the said date and the Applicants, Chetan, Premal, Kantilal, Jitendra, Nutakki Saiprasad, Nandkishor,Anil Kumar who appeared personally offered bail bonds at post cognizance stage, but they were arrested and sent to Judicial Custody. Upon the Bail Application being filed by order dated 05.04.2022, their applications came to be rejected by the Special Judge.

The reason for doing so is reflected in the order dated 04.04.2022 and 05.04.2022 which read thus :

> "Considering the gravity and nature of offence and in the larger interest of society, as accused/applicants involved in causing wrongful loss to the huge public money which runs in crores in all Rs.750 Crores that too value of it is in the year 2012. If we consider the value of it at present, same would be around Rs.2000 crores. Accordingly, applications are deserves to be rejected."

8] As far as accused, who are seeking anticipatory bail, sequence of events reflect that they appeared in pursuance of the summons and moved application seeking adjournment for two weeks after furnishing their bail bond at post cognizance stage and being remanded to Jail Custody and this application resulted into issuance of NBW against them by the CBI Special Judge by order dated 05.04.2022 with the

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following observations :

> " The law on the point is settled that at the first instance, the accused has to appear personally and after surrendering himself before the Court, he has to apply for bail and if the accused is released on bail, his personal attendance may be dispensed with at the discretion of the trial Court. Further, pursuant to the dicta in the case of Satender Kumar Antil vs. SBI, SLP (Cri) No.5091 of 2021 vide Order dated 7th October 2021, wherein for the category of B and D offences, which is applicable to the process issued, bail applications to be decided on merits. So, to decide bail application, if any filed physical appearance of accused in unnecessary. As accused remained absent without sufficient cause , issue NBW against accused No.2, 6, 9, 11, 21, 22 R/o 12.04.2022. Head of the Branch, CBI, EOB to depute special team to get execution of Non Bailable warrant. Matter adjd. for appearance of accused No.27 and 28 on 11.04.2022."

9] In this scenario, they approached this court seeking their release in the event of their arrest. The Application being moved on 07.04.2022 and they received order from this Court on 08.04.2022, protecting them from arrest by specifically recording statement on behalf of the learned counsel for CBI that they were never arrested during investigation and they had duly co-operated during in the investigation.

Interim relief in favour of the Applicants continued to remain in force till today.

10] The learned counsels representing the Applicants would vehemently submit that the impugned order passed by the Special Judge is in utter violation of the directives issued by the Hon'ble Apex Court in case of **Siddharth vs. State of U.P.[2],** as well as latest decision of the Hon'ble Apex court in the case of **Satender Antil vs. CBI** (*supra*).

2(2021)1 SCC 676

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The submission is, the gravity and seriousness of the offence, no doubt, may be a criteria in determining the entitlement of an accused to be released on bail, either under Section 438 or 439 of the Code of Criminal Procedure, but when the Apex court has specifically laid down law to the effect that if the Investigating Officer did not deem it necessary to arrest the accused during the course of investigation, there is no need to effect the arrest now, when the investigation is complete and the charge sheet is filed, particularly when all the Applicants have deep roots in the society and there is no likelihood of them fleeing the course of justice. It is submitted that this aspect has been clearly ignored and the learned CBI Judge was impressed by the loss of huge public money, in all Rs.2200 Crores including a sum of Rs.750 Crores of Consortium Bank, the valuation being estimated in the year 2012.

Without discussing need for the detention of the Applicants, when they had co-operated during investigation, it is submitted that the learned Judge, has not bothered to focus on the merits of the matter, and was highly influenced by the offence being, “Economic Offence”.

11] Per contra, the learned ASG assisted by Mr.Patil has invited my attention to the gravity and seriousness of the offence, though they do not dispute that the Applicants were never arrested when they were interrogated during the course of investigation and that they have not disobeyed the process issued to them and they appeared before the Court as directed. However, Mr. Singh would argue that careful reading of the Supreme Court decision in no manner is indicative of a principle that if the accused is not arrested during the course of investigation, he can never be arrested on filing of charge sheet as the case would vary on the basis of facts and the accusations.

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12] In case of **Satender Antil v/s. CBI** (*supra*), the Hon'ble Apex Court once again took a review of the provisions of 'Bail' in the background of the fact that, Jails in India are flooded with under-trial prisoners and of this, majority of them have been charged with offences punishable for less than 7 years. In the backdrop of the mindset, the vestige of colonial India, on part of investigating Agency, notwithstanding the fact that arrest is draconian measure resulting in curtailment of liberty and it to be applied sparingly, is far from reality. Reiterating the principle "Bail is the rule and Jail is an exception", the Apex Court emphasized the presumption of innocence of a person, accused of an offence, through a legal fiction, placing onus on the prosecution to prove the guilt before the court.

On analysing the provisions pertaining to arrest, contemplated in the Code of Criminal Procedure, their Lordships of the Apex Court deliberated on Section 170 of the Code which provided procedure to be followed when cases are forwarded to the Magistrate, where evidence is found to be sufficient and which contemplate that, the Officer shall forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon the police report and try the accused or commit him for trial.

13] By making reference to its earlier decision, in the case of **Siddharth vs. State of U.P** (*supra),* it was held that this power is to be exercised after completion of the investigation by the Agency concerned. It is construed as procedural compliance from the point of view of the Court alone, where the investigating Agency has got a limited role to play. The observations to the following effect is the

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thrust of the decision and is found to be contained in Para 36, which read thus :-

> "36. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2022) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application."

14] The observations in **Siddharth vs. State of U.P** (*supra)* are extensively quoted with specific reference to the decision of the Delhi High Court in case of High Court of Delhi vs. CBI[3], which has received an imprimatur.

The pertinent observations in case of **Siddharth vs. State of U.P** (*supra)* also deserve a mention here and I deem it fit to reproduce the same :-

3 2004 SCC OnLine Del 53

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"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172]. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case [Joginder Kumar v.State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in

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> view of the provisions of Section 170 CrPC. We consider such a course misplaced and contrary to the very intent of Section 170 CrPC."

15] In the earlier decision in case of **Satender Antil vs. CBI, 2021 (10) SCC 773,** the offences were classified into four distinct categories, with the economic offences punishable under Special Act containing provisions of bail like NDPS, PMLA, UAPA and Companies Act, being categorized as 'C', whereas, economic offences not covered by special Acts being categorized as Category 'D'.

While focusing its attention on the economic offenes the following observations of the Apex Court are of great significance :-

> "7. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs.CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:
>
> (a) seriousness of the charge, and
>
> (b) severity of punishment.
>
> Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

16] The above observations, were further deliberated in the subsequent Judgment in the case of **Satender Antil vs. CBI, (2022)10 SCC 51,** where after making reference to the earlier decision in case of **P. Chidambaram v. Directorate** of Enforcement[4], the Court focused upon the issue whether economic offences should be treated as a class of its own or otherwise.

4 2020(13)SCC 791

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17] While determining the said issue, the Apex Court make reference to another decision in case of **Arnab Manoranjan Goswami v. State of Maharashtra**[5], where it was specifically held that the Court must be alive to the need to safeguard the public interest, in ensuring that due enforcement of criminal law is not obstructed and at the same time the duty of the courts across the spectrum is to ensure that criminal law does not become a weapon for the selective harassment of citizens.

While suggesting the Parliament to bring a Special Law in form of Bail Act, distinct directions came to be issued and the important and relevant one are reproduced as under :

> "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)."

18] The respective counsel for the Applicants have, therefore, asserted that though three things determine grant of bail, whether under Section 438 or 439 of Cr.P.C., being gravity of the accusation, likelihood of tampering the case of prosecution and the flight risk, in the present case, the CBI Court has chosen to emphasis on only one of them, being the gravity of offence.

19] The learned counsel for the Applicants heavily fall upon the decision, in the case of **Siddharth vs. State of U.P** (*supra)* which has clarified the provision contained in Section 170 Cr.P.C., which contemplate a term "Custody" and it has been interpreted to mean neither police or judicial custody, but presentation of the accused by the Investigating Officer before the Court, while filing the charge-sheet or thereafter.

5 (2021)2 SCC 427

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20] Admittedly, the Applicants, in furtherance of the summons received pursuant to the cognizance being taken by the Additional Sessions Judge, recording prima-facie involvement, responded to the summons and appeared before the concerned Court. The Court recorded that they are taken in judicial custody and remanded some of the accused till a particular date. The others, who appeared before the Court, filed application for exemption, whereas some moved application seeking their release on bail. The accused were directed to remain present on the next date and the Bail Applications were heard on merits.

21] On the next date, i.e. on 05.04.2022, the learned Judge rejected the Applications and while dealing with the decision of the Apex court in case of **Satender Antil v.s SBI, (***supra***)** which was pressed into service by the respective counsel, the learned Judge has made the following observations :

> "7. After going through the said judgment, the guidelines enumerated therein for grant of bail, when accused is not arrested during investigation, is not applicable to offences involving economic offences. The present case is relating to the economic offence, wherein loss caused to the bank, which is a public money. Prima facie there is constitution of offence punishable under Section 467 of IPC, which is punishable upto imprisonment for life. It is clarified that the investigating officer has not leveled offence under Section 467 of IPC but this Court has minutely perused the record, more particularly, documents viz. audited balance sheet, bills, invoices, which are forged one and those documents come within the purview of forgery of valuable security. So, applicants/accused are not entitled for bail on the sole ground that they are not arrested during the investigation and co-operated throughout in the investigation. So applications are to be decided on merits."

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.. He drew distinction on the basis of the facts deducible from the case of **Satender Kumar Antil vs. SBI, (supra),** in the following words :

> "9. Further, with reference to the case of Siddharth (supra) in the case of Satender Kumar Antil (supra) by order dated 16.12.2021, it is clarified that "if during the course of investigation, there has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto to arrest the petitioner, an aspect in general clarified by us in Criminal Appeal No.838/2021 in **Siddharth Vs. State of Uttar Pradesh and Anr. dated 16.08.2021**." It is to be noted that the said clarification is applicable to the cases, where accused persons are taken in custody at the time of filing chargesheet. In the present case, summons were issued to the applicants/accused. Pursuant to it, they appeared and their bail applications are decided on merit.

.. At the end his decision, he focused on the gravity of the offence by recording as under :

> "Thus, prima facie evidence on record indicates that applicants/accused involved in grave offence affecting the economy of country and are continued to reap the benefits of crime committed by them, as huge amount, which runs in crores of rupees. The offence is graver in the sense that it does not affect just one individual, but the victim is the national economy. So on the basis of gravity of offence and enormity of it, bail can be rejected. The reference is made to the case of **CBI, Hyderabad vs. B. Ramaraju, 2011 Cri.L.J. 301**, wherein Hon'ble Supreme Court cancelled the bail of accused Ramaraju purely on the basis of enormity and gravity of the offence. So, the gravity of offence and nature of evidence against the accused, this can be a ground for the rejection of bail."

.. Brushing aside the argument, that there are no chances of tampering with the evidence or fleeing from justice, by recording that "these factors do not play significant role in the present case, as prima-facie accused/Applicants are involved in grave and serious economic

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offence and which causes loss of crores of rupees and that money belong to the public at large",

22] With the aforesaid reasoning applications are rejected. The Apex Court in case of Satender Antil (*supra*) has slso highlighted upon the other provisions contained in the code of Criminal Procedure and clarified that Section 170 do not impose an obligation on the Officer in charge to arrest each and every accused at the time of filing of the charge sheet, particularly in the cases where the accused had cooperated with the investigation throughout.

It is noted by me that there is no denial by the CBI that the Applicants were never arrested during investigation, but on the charge sheet being filed the CBI Court has detained them by refusing to release them, when they produced themselves before the Court. There is no apprehension expressed by CBI that the Applicants will abscond. Personal liberty of an individual is enshrined in our constitution and has been held to be an integral part of Article 21. The occasion to arrest an accused during investigation arises, since custodial interrogation becomes necessary or it is a heinous crime or where there is possibility of influencing the witness or accused may abscond. A distinction has been drawn between existence of the power to arrest and the justification for its exercise in the case of Joginder Kumar v.s State of UP[6].

23] When the charge sheet is carefully perused, it becomes apparent that the investigation is largely premised on the documentary evidence. The accusation of criminal conspiracy levelled in the charge sheet will ultimately have to be established by the prosecution during trial. The

6(1994) 4 SCC 260

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transactions referred to in the charge sheet is in form of a chain and the prosecution is duty bound to establish the connect between different transactions. Ultimately it was Mr.Amitabh Parekh, the CMD of M/s. PAL, who is alleged to be a key conspirator, who is no more alive. The charge sheet specifically reflect that he was in charge of the affairs of the Company and conducted its day to day business. The financial year for which the turnover/sales are alleged to be inflated is the year 2008-2009 to the year 2012-2013 when Amitabh Parekh was very much alive. The accounts of M/s. PAL were classifed as NPA with effect from 29.03.2013 during his life time.

Thus, the charge sheet has clearly discerned the role of each accused person and precisely that is the reason why their custody was not sought during the course of investigation by the CBI. In these circumstances, merely because huge amount is involved in the subject CR do not justify their custody since the CR is registered in the year 2019 and the incidents of cheating, forgery and fraudulent and dishonest use of the documents is for the year prior to 2013.

24] In the wake of the material in the charge sheet, I do not think that the applicants should be kept behind bar, though they may take the consequences of the accusation levelled against them in the charge sheet. In any case, they are protected by interim orders passed by this Court which deserve to be confirmed with the additional conditions being imposed upon them to the following effect, which shall be read in addition to the conditions, subject to which they were released on bail by this court.

Needless to state that the Applicants shall continue to abide by the other conditions imposed upon them while releasing them on bail by the interim order.

Hence, the following order :

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ORDER IN BAIL APPLICATIONS

(a) Bail Application Nos.1238/2022, 1234/2022/ 1201/2022, 1211/2022, 1287/2022, 1341/2022, 1232/2022 are allowed.

(b) The orders dated 11.04.2022, 20.04.2022 and 28.04.2022 are made absolute.

(c) The Applicants shall surrender their passports, if any, before Investigating Officer within a period of one week of their release.

(d) Applicants shall not not leave the Country without prior permission of the Special CBI Court.

ORDER IN ANTICIPATORY BAIL APPLICATIONS

(a) Anticipatory Bail Applications Nos.939/2022, 957/2022, 959/2022 and 1045/2022 are allowed.

(b) The orders dated 08.04.2022 and 19.04.2022 are made absolute.

(c) The Applicants shall surrender their passports, if any, before Investigating Officer within a period of one week of their release.

(d) Applicants shall not not leave the Country without prior permission of the Special CBI Court.

All Interim Applications are also disposed off.

All concerned to act on an authenticated copy of this order.

[BHARATI DANGRE, J]

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