2025:CGHC:6842

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 16.01.2025

ORDER DELIVERED ON 06.02.2025

MCRC No. 7176 of 2024

1 - Amit Singh S/o Sh. Ravindra Singh Aged About 34 Years Residing At- Shristi Palazo, Avanti Vihar Raipur, Chhattisgarh

... Applicant

versus

1 - State of Chhattisgarh through ACB/EOW, Raipur, Chhattisgarh,

... Respondent(s)

For Applicant	:	Shri Sunil Otwani, Advocate along with Shri Shobit Koshta and Shri Shashank Mishra, Advocate
For Respondent/State	:	Dr. Saurabh Kumar Pandey, Addl. AG

(Hon'ble Shri Justice Arvind Kumar Verma)

C A V Order

The applicant has filed the instant bail application before this Court in terms of the provisions of Section 483 (1) of the *Bharatiya Nagarik Suraksha Sanhita* 2023 ('BNSS' for short) for grant of bail in

connection with Crime No. 04/2024 registered with Anti Corruption Bureau, District Raipur under Sections 420,467,468,471,120-B IPC and 7 & 12 of the Prevention of Corruption Act.

FACTUAL ASPECTS OF THE CASE

2. Facts of the case in brief are that on 11.07.2023, after receiving communication from the Enforcement Directorate and on due verification and being satisfied that *prima facie* a cognizable offence was committed, FIR No. 04/2024 came to be registered under Section 7 & 12 of the Prevention of Corruption Act and Sections 420,467,471 and 120-B IPC against 71 accused persons. The said charge sheet reveals that applicant Anil Tuteja along with Anwar Dhebar was the head of the criminal syndicate comprising of high level State government officials, private persons and political executives of the State Government who were operating in the State of Chhattisgarh along with Trilok Singh Dhillon, Arunpathi Tripathi and Niranjan Das. The syndicate used to collect illegal money in three different ways from the sale of liquor which is classified by the syndicate itself into three parts:

> Part A- illegal commission charged from liquor supplier for official sale of liquor in the State of Chhattisgarh.
> Part B – Sale of unaccounted illicit countrymade liquor from State run shops done with the involvement of distillers, hologram manufacturers, bottle makers, transporters, man power management and District Excise Officials.
> Part C – Annual Commission from distillers for allowing them to operate a syndicate and divide the market share amongst themselves.

3. In the investigation, it has ben revealed that massive corruption took place in the State Excise Department and the accused/applicants were involved in altering the liquor policy for personal gratification through illegal means. It has been revealed in the investigation that the liquor was divided into two categories namely Country Liquor and Indian Manufactured Foreign liquor (IMFL). The country liquor is produced in the State of Chhattisgarh through three distilleries ie. M/s. Chhatisgarh Distilleries Ltd., M/s. Bhatia Wines and Merchants Pvt. Ltd. and M/s. Welcome Distilleries Pvt. Ltd.

4. It has been further revealed that since it was difficult to extract cash bribes for foreign liquor makers in recept of IMFL and FL and there was strong demand for good quality foreign brands, in the month of April 2020, the syndicate introduced a fourth type of mechanism to extort bribes from FL makers by introducing the concept of FL-10A licenses. These licenses were given to three chosen associates of Anwar Dhebar who used to buy and sell the foreign liquor as an intermediary to the Chhattisgarh Government warehouses and generated commission of around 10% on foreign liquor.

5. The licenses were given with a promise that 50-50% of the final profit amount of the FL-10A licensees be paid to the syndicate. The people who were given the FL-10A licenses were ready to hike the prices and ensure payment of cash bribes ie. Sanjay Mishra (M/s. Nexgen Power Engitech Private Ltd.), Atul Kumar Singh and Mukesh Manchand (M/s. Om Sai Beverage pvt. Ltd) and Asheesh Saurabh

Kedia (M/s. Dishita Ventures Private Ltd.) and thus total earning of Rs. 1660,41,00,056/- was made by the syndicate causing huge loss to the State exchequer.

6. The case against the present applicant is that he is the nephew of co-accused Arvind Singh who is one of the main player of the syndicate. Said Arvind Singh chose the present applicant who is his near relative for monitoring the production of B-Part liquor in the distilleries, transportation of additional bottles, supplying of duplicate holograms and collecting the sales amount of B-Part fro the shops and sending it to Vikas Agarwal. It is alleged that the applicant has been charged for the offences under Sections 420,467, 468,471, and 120-B IPC and Sections 7 & 12 of the Prevention of Corruption Act.

SUBMISSION ON BEHALF OF THE APPLICANT

7. Contention of Shri Otwani, learned counsel for the applicant is that the subject FIR has been registered illegally and is untenable in law because it is evident from the fact that the material collected by the respondent has already been quashed and they are preceding with the quashed material with the sole intent of frustrating the fundamental and constitutional right of the applicant. He contended that the co-accused has filed petitioner before the Apex Court for quashment of the Fir and he had been granted interim relief. Further contention of the learned counsel for the applicant is that the investigation carried out by the ED in the liquor ECIR is null, void *ab initio*, without jurisdiction and illegal and therefore the subject FIR which has been registered on the complaint of

the ED is also without jurisdiction. Similarly, the letter under Section 66 of the PMLA and the material collected by the ED cannot form the basis of any tenable action in law including the registration of FIR and resultantly all proceedings arising therefrom including the arrest of the applicant are illegal. He contented that the Apex Court was pleased to quash Prosecution Complaint dated 4.07.2023 filed against the applicant and categorically held that there was neither any scheduled offence in the liquor ECIR nor were there any proceeds of crime therefore the entire genesis of registration of the subject FIR including the issuance of the letter under Section 66 of the PMLA, 2002 by the ED which led to the registration of the subject FIR has been quashed and held to be illegal by the Apex Court.

8. It has been contended that the Apex Court had quashed the Prosecution Complaint dated 04.07.2023 filed against the applicant and had categorically held that there was neither any scheduled offence in the liquor ECIR nor was there any proceeds of crime therefore the entire genesis of registration of the subject FIR including the issuance of the letter Section 66 of the PMLA, 2002 by the ED which led to the registration of the subject FIR has been quashed and held to be illegal by the Apex Court.

9. He further contended that the Departmental Enquiry conducted by the jurisdictional department ie. Commercial Tax (Excise) Department, State of Chhattisgarh in relation to the same allegations did not find any illegality in relation to the same transactions. However, the same has

been suppressed while registering the subject FIR despite the settled law that in case of exoneration on merits in a Departmental Enquiry, criminal prosecution on the same set of facts and circumstances cannot be allowed to be continued. He has referred to the judgment in the matter of **Radheshyam Kejriwal Vs. State of West Bengal and Another (2011) 3 SCC 581**.

10. He submits that the subject FIR has been registered in a completely malafide manner. The respondent and the investigating agencies are acting at the behest of the political masters and are making repeated attempts to arrest the applicant and other persons in relation to the alleged offence. He contended that the very registration of the liquor ECIR and the investigation carried thereunder are without jurisdiction and the action of the ED including addressing letters under Section 66 of the PMLA in the same ECIR causing the registration of the subject FIR is without jurisdiction. *Prima facie,* the subject FIR is illegal and tenable in law and there was absolutely no ground made out for arresting and keeping the applicant in custody. Keeping the applicant behind bars in relation to an illegal case is a serious violation of the fundamental rights under Article 21 of the Constitution of India.

11. Next contention of Shri Otwani, learned counsel for the applicant is that no notice or summons were issued to the applicant prior to his arrest. It is contended that the applicant has been arrested under the garb of search operation and he had been summoned as part of preliminary enquiry. He has relied upon the judgment of the Apex Court

in the matter of **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273,** it has been held that :

> "5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.
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> 6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a

> mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest."

12. Similarly in the matter of **Satedra Kumar Antil Vs. CBI (2022) 10 SCC 51,** it has been held as under:

> "7. The word 'trial' is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors."

13. It has been further held that:

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.

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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 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."
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> ROLE OF THE COURT
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> 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.
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> 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 1uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."

14. It is therefore contended by the learned counsel for the applicant that no useful purpose would be served by continuing the custody of the applicant. The applicant is in judicial custody and he had duly cooperated in the investigation and his statements were recorded therefore no useful purpose would be served in keeping him in custody. The search proceedings and the examination of the applicant has

already been concluded and there is no material to be obtained from him nor any recovery has been made from him. In plethora of judgments, the Apex Court has held the basic rule of "….*Bail, Not Jail"* ***(State of Rajasthan Vs. Balchand (1977) 4 SCC 308)*** *and "….bail is the ride and committal to jail an exception."* In **Gurcharan Singh Vs. State (Delhi Admn.) (1978) 1 SCC 118,** that the object of bail is neither punitive nor preventive.

15. He submits that the respondent/Agency has alleged that it s a huge scam having wide implication in the society but in the light of the judgment passed by the Apex Court in the matter of **Jalaludin Khan Vs. Union of India 2024 INSC 604** that the role of each accused has to be seen while as an independent. There is no substantial admissible evidence brought on record by the respondent which would establish that the applicant was involved in the activity of manufacturing duplicate holograms, illegal commission from the liquor suppliers for unaccounted official sale of liquor of sale off the record unaccounted illicit country liquor. He submits that there are no ingredients of the offence punishable under Sections 420,467,468,471,120-B IPC and 7 &12 of the PC Act.

16. Another Contention of the learned counsel for the applicant is that the applicant satisfies the triple test for grant of bail. It has been held in catena of judgments that at the time of consideration fo the application for bail, the Court should consider three factors:viz. (I) flight risk; (ii) likelihood of tampering with evidence and (iii) likelihood of influencing

witnesses. Pertinently all the three facts are satisfied by the applicant and as such the applicant may be granted bail.

17. It is contended that the applicant is not a flight risk and that any conditions may be imposed on him. He submits that the applicant has cooperated with the investigation and his statements have been recorded. It is contended that ground of arrest has not been supplied to the applicant in terms of Article 22 of the Constitution of India read with Section 50(1) of the Code of criminal Procedure, 1973. IN the judgment of the Apex Court dated 3.10.2023 passed in the matter of **Pankaj Bansal Vs. Union of India and Others (Cr.A. No. 3051-3052 of 2023)** and in the matter of **Prabir Purkayatha Vs. State (NCT of Delhi) dated 15.05.2024.**

> "Article 22 of the Constitution of India reads as under:
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> "22. Protection against arrest and detention in certain cases.
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> No person who is arrested shall be detained in custody without being informed as soon as many be of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioners of his choice.
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> …… ….. ….. …..
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> Section 50 Cr.P.C. reads as under:
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> "50. Person arrested to be informed of grounds of arrest and or right to bail.
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> (a) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
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> (b) where a police officer arrests without warrant

> any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrest for sureties on his behalf."

18. It has also been contended by learned counsel for the applicant that in the matter of **Pankaj Bansal (supra)** held that that the grounds of arrest needs to be physically served to the accused and non-supply of grounds of arrest would render an arrest as illegal and the person is liable to released forthwith. Relevant portion has been reproduced as under:

> "26. The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Prayer (iii) in the writ petitions filed by the appellants pertained to this. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in Vijay Madanlal Choudhary (supra). Similarly, in V. Senthil Balaji (supra), this Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them.
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> 29. In this regard, we may note that Article 22(1) of the Constitution WP (Crl.) No. 2465 of 2017, decided on 01.12.2017 = 2017 SCC OnLine Del 12108 2017 Cri LJ (NOC 301) 89 = 2017 (1) AIR

Bom R (Cri) 929 provides, *inter alia*, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance."

30. We may also note that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence

punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

32. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person

straightaway, as held in V. Senthil Balaji (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

33. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such

person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned

to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

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35. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.

> 36. The appeals are accordingly allowed, setting aside the impugned orders passed by the Division Bench of the Punjab & Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto."

19. In the aforesaid settled proposition, in the matter of **Prabir Purkayastha (supra)** the Apex Court has held as under:

> 30. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.
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> 31. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal(supra) laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the accused appellant is noted to be rejected.
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> 49. 49. It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters,

> viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature."

20. It is contended by learned counsel for the applicant that the said judgment is squarely applicable to the present case and as has been provided in the matter of **Prabir Purkayastha (supra)** wherein it was stated as under:

> "20. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offences has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested

> person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India."

21. He has further relied upon the matter of **Ram Kishor Arora Vs. Directorate of Enforcement** wherein it has been held that reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be 24 hours of the arrest wherein it was stated as under:

> "21. In view of the above, the expression "as soon as may be" contained in Section 19 of PMLA is required to be construed as- "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. Since by way of safeguard a duty is cast upon the concerned officer to forward a copy of the order along with the material in his possession to the Adjudicating Authority immediately after the arrest of the person, and to take the person arrested to the concerned court within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest."

22. It has been held in **Prabir Purkayastha (supra)** that if the charge sheet is filed it cannot mean that the rights of the accused is not violated by the judgment and has held as under:

> “22. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality 3 (2000) 8 SCC 590 committed at the time of arresting the accused and the grant of initial police custody remand to the accused.”

23. In the matter of **Gautam Navlakha Vs. National Investigation Agency, Cr.A.No. 510 of 2021**, it has been held as under:

> 101. Now, as far as the non-fulfillment of the conditions under Article 22(1) and the duty of a Magistrate exercising power to remand, we notice the judgment of this Court rendered by a Bench of three learned Judges in The matter of: Madhu Limaye and Others;16. Therein, the petitioners were arrested apparently for offence under Section 188 of the IPC which was non-cognizable. The officer did not give the arrested persons the reasons for their arrest or information about the offences for which they had been taken into custody. this was a case where the Magistrate offered to release the petitioners on bail but on the petitioners refusing to furnish bail, the Magistrate remanded them to custody. The proceeding before this Court was under Article 32. It was in fact, initiated on a letter complaining that the arrest and detention were illegal. It was 16(1969)1 SCC 292 contended that the arrests were illegal as they were arrested for offences which were non-cognizable. In fact, it was found that the arrest were effected without specific order of Magistrate. It was also contended that Article 22(1) was violated. What is relevant is the following discussion:-

> “12. Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Article 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye.”

102. We may further notice that in In Arnesh Kumar vs. State of Bihar and Another; this Court taking note of indiscriminate arrests issued certain directions. We may notice: -

“8.2. Before a Magistrate authorizes detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorize his further detention and release the accused.

In other words, when an accused is 17 (2014) 8 SCC 273 produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will

authorize the detention of an accused.
8.3. The Magistrate before authorizing detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorizing the detention and only after recording his satisfaction in writing that the Magistrate will authorize the detention of the accused."

24. He further contended that the prosecution agency has placed heavy reliance on certain statements of the co-accused persons. To this, he has placed his reliance upon the decision of **Haricharan Kurmi Vs. State of Bihar AIR 1964 SC 1184,** wherein it has been held as under:

> "13. As we have already indicated. this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. in dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbuttv(1) a confession can only be used to

> "lend assurance to other evidence against a co-accused". In In re. Peryaswami Noopan,(2) Reilly J. observed that the provision of s. 30 goes not further than this : "where there is evidence against the co-accused sufficient, if,. believed, to support his conviction, then the kind of confession described in s. 30 may be thrown into the scale as an additional reason for believing that evidence." In Bhuboni Sahu v. King(1) the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board observed that a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in s. 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.

25. The statement of a co-accused is generic piece of evidence under Section 30 of the Evidence Act but not evidence as defined under Section 3 of the Evidence Act. Solely on the basis of statement of a co-accused, there cannot be conviction it has to be corroborated with other evidences as well. Int he entire final report there is no documentary evidence to establish that the applicant has been collecting money from the *hawala* operators and circulated the same among various bureaucrat and politicians as protection money. He has further relied upon the judgment of **Surinder Kumar Khanna Vs. Intelligence Officer (2018) 8 SCC 271.** The proposition of law has been further reiterated by the Apex Court in **Deepak Bhai Patel Vs. State (2019) 16**

SCC 547. Relevant paras in the matter of **Surinder Kumar (supra)** are reproduced herein below:

> 11. In Kashmira Singh v. State of Madhya Pradesh, this Court relied upon the decision of the Privy Council in Bhuboni Sahu v. The King8 and laid down as under:
>
> > “Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. The King "It does not indeed come within the definition of" 'evidence' contained in section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross- examination." Their Lordships also point out that it is "obviously evidence of a very weak type..... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities."
> >
> > They stated in addition that such a confession cannot be made tile foundation of a conviction and can only be used in "support of other evidence." In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence?

> Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the judge refuses to believe him except in so far as he is corroborated ?
>
> (1952) SCR 526 (1949) 76 Indian Appeal 147 at 155 In our opinion, the matter was put succinctly by Sir 'Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty9 where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused "or, to put it in another way, as Reilly J. did in In re Periyaswami Moopan10 "the provision goes no further than this--where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession de- scribed in section 30 may be thrown into the scale as an additional reason for believing that evidence."

Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an

event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

12. The law laid down in Kashmira Singh (supra) was approved by a Constitution Bench of this Court in Hari Charan Kurmi and Jogia Hajam v. State of Bihar11 wherein it was observed:

> "As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerburty a confession can only be used to "lend assurance to other evidence against a co-accused". In re Periyaswami Moopan Reilly. J., observed that the provision of Section 30 goes not further than

> this: “where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence”. In Bhuboni Sahu v. King the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of “evidence” contained in Section 3 of the Evidence Act.

It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence”. It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the

fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh where the decision of the Privy Council in Bhuboni Sahu case has been cited with approval."

14. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence For example: State vs. Nalini, (1999) 5 SCC 253, paras 424 and 704 and acquit the appellant. The appellant shall be

> released forthwith unless his custody is required in connection with any other offence."

26. It is a well settled law that the statement of co-accused person is an extremely weak piece of evidence and cannot be treated as substantive evidence as against the other co-accused persons.

27. Next contention of learned counsel for the applicant is that the applicant has already suffered long period of pre-trial custody and the trial has not yet commenced. It has been time and again reiterated it has been reiterated by the Hon'ble Apex Court that right to speedy trial is a facet of the Fundamental Right to life of an accused under Article 21 of the Constitution of India. He has referred to the decision of the Apex Court in the matter of **Manish Sisodia Vs. CBI and ED (2023) SCC OnLine SC1393** in para 27 as under:

> "27. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement48, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565. and Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the

accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in Satender Kumar Antil v. Central Bureau of Investigation and Another, (2022) 10 SCC 51 this Court referred to Surinder Singh Alias Shingara Singh v. State of Punjab (2005) 7 SCC 387 and Kashmira Singh v. State of Punjab, (1977) 4 SCC 291 to emphasize that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In Vijay Madanlal Choudhary (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life.

49 In P. Chidambaram v. Central Bureau of Investigation, (2020) 13 SCC 337, the appellant therein was granted bail after being kept in custody for around 62 days.

This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorized officers to ensure fairness, objectivity and accountability. Vijay Madanlal Choudhary (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself.

In our opinion, Section 436A should not be

construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra and Others (2021) 2 SCC 427, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

29. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnapping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an

offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."

28. In the matter of **Manish Sisodia Vs. ED and CBI (2024) SCC OnLine SC920**, it has been held as under:

> 49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.
>
> 50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.
>
> 51. Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra and Another6 wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh, Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar9, Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation and Another. The Court observed thus:
>
> > "19. If the State or any prosecuting agency including the court concerned

> has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

29. In cases where the fundamental right to speedy trial of the accused is violated, the State or the prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime. He has referred to the decision of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra 2024 SCC OnLine SC 1693,** wherein it has been held as under:

> "19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

30. He contended that the applicant shall be severely prejudiced and prejudged if he is continuously remanded to custody. It is imperative for the proper and effective defence of the applicant and as a step to ensure the fair trial fo the applicant he may be granted bail unless there are overwhelming considerations otherwise. It is submitted that even

otherwise in terms of settled law, since further investigation is going on in the instant case, no charges have been framed and the trial cannot commence or likely to commence in the near future, the applicant may be released on bail.

31. Another contention of the learned counsel for the applicant is the presumption of innocence. He has referred to the judgment of **Satendra Kumar Antil Vs. CBI (2022) 10 SCC 51,** relevant paragraphs are mentioned herein below:

> 3. Innocence of a person accused of an offense is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.
>
> 14.Presumption of innocence has been acknowledged throughout the world. Article 14 (2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.
>
> 15.Both in Australia and Canada, a prima facie right to a reasonable bail is recognized based on the gravity of offence. In the United States, it is a common practice for bail to be a cash deposit. In the United Kingdom, bail is more likely to consist of a set of restrictions.
>
> 16.The Supreme Court of Canada in Corey Lee James Myers v. Her Majesty the Queen, 2019 SCC 18, has held that bail has to be considered on acceptable legal parameters. It thus confers adequate discretion on the Court

to consider the enlargement on bail of which unreasonable delay is one of the grounds. Her Majesty the Queen v. Kevin Antic and Ors., 2017 SCC 27:

“The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons. This right has two aspects: a person charged with an offence has the right not to be denied bail without just cause and the right to reasonable bail. Under the first aspect, a provision may not deny bail without “just cause” there is just cause to deny bail only if the denial occurs in a narrow set of circumstances, and the denial is necessary to promote the proper functioning of the bail system and is not undertaken for any purpose extraneous to that system. The second aspect, the right to reasonable bail, relates to the terms of bail, including the quantum of any monetary component and other restrictions that are imposed on the accused for the release period. It protects accused persons from conditions and forms of release that are unreasonable.

While a bail hearing is an expedited procedure, the bail provisions are federal law and must be applied consistently and fairly in all provinces and territories. A central part of the Canadian law of bail consists of the ladder principle and the authorized forms of release, which are found in s. 515(1) to (3) of the Criminal Code. Save for exceptions, an unconditional release on an undertaking is the default position when granting release. Alternative forms of release are to be imposed in accordance with the ladder principle, which must be adhered to strictly: release is favoured at the earliest reasonable opportunity and on

the least onerous grounds. If the Crown proposes an alternate form of release, it must show why this form is necessary for a more restrictive form of release to be imposed. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release. Where the parties disagree on the form of release, it is an error of law for a judge to order a more restrictive form without justifying the decision to reject the less onerous forms. A recognizance with sureties is one of the most onerous forms of release, and should not be imposed unless all the less onerous forms have been considered and rejected as inappropriate. It is not necessary to impose cash bail on accused persons if they or their sureties have reasonably recoverable assets and are able to pledge those assets to the satisfaction of the court. A recognizance is functionally equivalent to cash bail and has the same coercive effect. Cash bail should be relied on only in exceptional circumstances in which release on a recognizance with sureties is unavailable. When cash bail is ordered, the amount must not be set so high that it effectively amounts to a detention order, which means that the amount should be no higher than necessary to satisfy the concern that would otherwise warrant detention and proportionate to the means of the accused and the circumstances of the case. The judge is under a positive obligation to inquire into the ability of the accused to pay. Terms of release under s. 515(4) should only be imposed to the extent that they are necessary to address concerns related to the statutory criteria for detention and to ensure that the accused is released. They must not be imposed to change an accused person's behaviour or to punish an accused person. Where a bail review is requested, courts must follow the bail review process set

> out in R. v. St-Cloud, 2015 SCC 27, [2015] 2 S.C.R. 328."
>
> 17.We may only state that notwithstanding the special provisions in many of the countries world-over governing the consideration for enlargement on bail, courts have always interpreted them on the accepted principle of presumption of innocence and held in favour of the accused.
>
> 18.The position in India is no different. It has been the consistent stand of the courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt."

SUBMISSION ON BEHALF OF THE RESPONDENT

32. In reply to the submission of learned counsel for the applicant, it has been argued by Shri Saurabh Pandey, learned counsel for the respondent that on receiving communication from the Enforcement Directorate dated 11.07.2023, after due verification, *prima facie* a cognizable offence for commission of the offence under Section 7 & 12 of the Prevention of Corruption Act and Sections 420, 467,471 and 120-B IPC was registered against the applicant in Crime No. 04/2024. As per the said FIR, a criminal syndicate comprising of high level State Government officials, private persons, political executives of the State government working in the State were making illegal bribe collections by

controlling the high level management of important State departments and State Public Sector undertakings.

33. The sale of liquor in the State of Chhattisgarh was one of the major sources of illegal earning of the syndicate and Anil Tuteja, Anwar Dhebar and his associates Vikas Agarwal @ Subbu, Arvind Singh and Sanjay Arunpati Tripathi, MD, CSMCL and others were the members of the syndicate who collected illegal money in three different ways ie. Part-A, Part B and Part-C. After analyzing the information and the data shared by the Income Tax Department, on the basis of these documents and records, it is established that a well planned conspiracy was executed by the syndicate to ear illegal commission in the sale and licensing of liquor in the State of Chhattisgarh. It has also been revealed by the EOW that these unaccounted liquor was produced through three distilleries in the State ie. M/s. Chhattisgarh Distilleries Ltd., M/s. Bhatia Wines and Merchants Pvt. Ltd and M/s. Welcome Distilleries Pvt. Ltd. and thus massive corruption had taken place in the Excise Department since 2019. It is contended by Shri Pandey, learned counsel for the respondent that to regular the supply of liquor, and ensure quality liquor to users and to prevent hooch tragedies and to earn revenue for the State, excise departments were set up but the criminal syndicate led by Anwar Dhebar and Anil Tuteja turned all these objectives upside down. They have altered the liquor policy as per their whims and fancies and extorted maximum personal benefit for themselves.

34. It is submitted by learned counsel for the respondent that though with a noble objective, the State Government had established thee retail liquor shops in the State by changing the management of CSMCL but it became the tool in the hands of the syndicate and they used to enforce a parallel excise department. It has also been revealed that as part of the conspiracy, co-accused Arun Pati Tripathi was assigned with the task of maximizing the bribe commission collected on liquor procured by M/s. CSMCL and to make necessary arrangement for sale of no-duty paid liquor in the CSMCL run shops. He was assisted by Anwar Dhebar and Anil Tuteja, a Senior IAS Officer. In furtherance of the plans, the task of cash collection was given to one Vikas Agarwal @ Subbu and the logistics were set to be responsibility of another accused Arvind Singh.

35. He contended that since it was difficult to extract cash from foreign liquor makers in respect of IMFL and FL, as there was strong demand for good quality foreign brands, hence in the month of April 2020, the syndicate introduced fourth type of mechanism to extort bribe from FL makers with the concept of FL-10A licensees. These licensees were given the task of collection through mediator and buy the foreign liquor and sell it to the Chhattigarh Government Warehouses and generated commission of around 10% on foreign liquor. The licenses were given with a condition that 50-60% of the final profit amount of the FL-10A Licensee shall be paid to the syndicate. The FL-10A licensee holders were - Sanjay Mishra (M/s. Nexgen Power Engitech Private

Ltd.), Atul Kumar Singh and Mukesh Manchanda (M/s. Om Sai Beverages Pvt. Ltd.) and Asheesh Saurabh Kedia (M/s. Dishita Ventures Private Ltd.).

36. Thus, a total earning of Rs. 1660,41,00,056/- was made by the syndicate from the financial year 2019-2020 to 2022-2023 by causing huge loss to the State exchequer. Thereafter, on 26.09.2024, a supplementary charge sheet was filed against 4 persons namely Anurag Dwivedi, Deepak Duary, Dilip Pandey and the present applicant.

37. Shri Pandey, learned counsel for the respondent submits that the main ground raised by the counsel for the applicant is that the subject FIR has been registered illegally and is untenable in law because the Apex Court has already quashed the complaint filed by the ED and the present FIR has been registered by the State which is a second FIR and on the set of facts the UP police has also registered the FIR. However, the registration of FIR has been challenged by the co-accused in Cr.M.P. No. 721/2024 before the Division Bench of this Court which was dismissed vide order dated 20.08.2024 holding that there is a prima facie cognizable offence which required thorough investigation by the ACB/EOW and in the present crime 70 named persons including bureaucrats, politicians, businessman and others are involved and therefore the investigation in contravention of the order of the Apex Court is not tenable at this stage.

38. Next contention of learned counsel for the respondent is that the role of the applicant in the present liquor scam is that he is the nephew

of co-accused Arvind Singh who is the main player of the syndicate. Said Arvind Singh had emerged as a very important person in the criminal syndicate and was responsible for providing necessary resources to run the the syndicate whether it is for supplying duplicate holograms to the distillery or providing additional bottles to the distillery for the production of B-part liquor or transporting B-part from the distillery to the government liquor shops or collecting sales amount of B-part liquor from the shops and sending it to Vikas Agarwal and to monitor the production and manage the work, he needed trustworthy person. He chose his nephew Amit Singh ie. the present applicant to manage all these operations. Arvind Singh had involved other members of his family ie. Brother-in-law, Chitranjan Singh, Niranjan Singh, another nephew Abhishek Singh, son of his elder brother in law Vivek Singh @ Monu for different needs and activities of the syndicate.

39. Learned counsel for the respondent contended that the applicant assisted in collection of sales amount of B-Part liquor with the help of his uncle Arvind singh. The work of transport was opened by firm named Adeep Empire in the name of Pinky Singh, wife of Arvind Singh from where the liquor was transported from the warehouse to government liquor shops after getting tender from CSMCL. The applicant along with the transporting of liquor under CSMCL, used to bring the sale amount of B-Part liquor from the districts determined by the Excise Department to Raipur.

40. Shri Pandey, learned counsel for the respondent further contended that the applicant used to collect B-part of money from the officers of the Excise department and further handed over to one Sohan Verma at Golchha Apartment. It is contended that during this period, the maternal uncle of the present applicant Niranjan Singh, Chitranjan Singh and his elder maternal uncle's son Vivek Singh @ Monu besides Piyush Bijlani, Deepak Duari, Rahul Soni, Sohan Verma, Nitin Yadav, Yatiraj, Shiva, Prashant Kumar Das used to collect the B-Part money from the districts and bring it to Raipur.

41. Next contention of learned counsel for the respondent is that the present applicant on the instructions of the Excise Officer Janardhan Singh Kaurav, used to send duplicate holograms from Noida office to Raipur, contacted Prism Holograms, Raipur Unit In charge Dilip Pandey and supplied duplicate holograms to the distilleries. It is contended that the applicant in coordination with other accused persons Dilip Pandey and Prakash Sharma @ Chhotu used to handover the duplicate holograms to the distilleries.

42. Another contention of learned counsel for the respondent is that the work of transportation of B-part liquor from the distilleries to the shop was done by the present applicant. It is alleged that the applicant was transporting B-part liquor from Bhatia wines distillery to the shops to the districts through Adeep Empire Transporting firm. It is further contended that the additional empty bottles requirement of the distillery for filling B-part liquor which was purchased from Anurag Dwivedi from the

premises situated at Dhaneli Warehouse. The applicant along with his uncle Arvind Singh supplied empty bottles to Bhatia Wines Distillery, Welcome Distillery, Bilaspur. One Satyendra Gard was given the responsibility of supplying empty bottles to Chhattisgarh distillery. It is Anurag Dwivedi who used to buy empty *sheeri* bottles from the market but the purchase and sale was shown through the firm Adeep Empire of Amit Singh so that the illegal money received from the syndicate can be adjusted. It is contended that over invoicing was done in the empty bottles supplied through Adeep Empire and 20 percent breakage was shown. The extra bottles obtained in this way were used by the Welcome Distillery in filling B-part liquor. Another allegation against the applicant is he had played a role in monitoring and coordinating the production of B-part liquor in the distillery. After loading the liquor crates in the trucks and sending thee trucks, the applicant used to inform one Janardhan Kaurav and Vikas Agarwal and the same was sent to the designated districts and the account of sale amount was prepared in advance.

43. It is contended that the applicant registered a transport firm Jagdamba Enterprises, in the name of his father-in-law Shambhu lal Soni in 10.06.2020 which was formed to launder the illegal money earned by his family members by joining the illegal excise syndicate. The main work of this transport firm was to transport country liquor from the distillery to the districts. However in reality, the firm did not have any transport vehicle of its own but the vehicles of other transporters were

used. In the year 2020-21 to 2022023, CG Distillery Pvt. Ltd. and Bhatia Wines Merchants pvt. Ltd. paid the prescribed rate of Rs. 23/- (Rs. 20.54 +12%GST) per case to Jagdamba enterprises but the firm paid different rates every year to the attached transport vehicle. The transportation work of the firm was done by 12-13 different transporters and among them were Dilip Pillai, Harjeet Singh, Trilochan Pal, Surendra Kumar Khatuwa, Rakesh Singh Thakur and others and they were paid Rs. 18.96 including loading, unloading and other expenses per box. Thereafter in the year 2022-23, were paid on an average per box rate of Rs. 15.05 and thus, the distillery paid Rs. 20.54 after deducting GST per box to Jagdamba Enterprises firm in al these years. But the firm showed payment of Rs. 20.15 (1.90%, 769% and 26.73% repectively profit to the firm). Thus, the gross profit of Jagdamba Enterprises firm earned Rs. 1,97,25,020/- in the three years which was created by the applicant to legalize the illegal money earned by him from the liquor scam by showing it as a transport business.

44. On 20.09.2022, Rs. 50,00,000/- was transferred from the account number of Canara Bank of Jagdamba Enterprises firm to Anwar Dhebar. Thus, financial transactions continued and it is clear that the accused has adjusted the illegal money obtained in the illegal money obtained in the liquor scam through the firm Jagdamba enterprises formed in the name of his father-in-law.

45. Another company Adeep Agrotech Pvt. Ltd. in the name of Pinky Singh, wife of co-accused Arvind Singh was registered at Nawagarh

Road, Bemetara and the total net profit was shown as 94,55,664/-, Rs. 2,43,28,783/- and in this way property worth Rs. 10 crores has been created in the name of Adeep Agrotech.

46. It has been submitted by learned counsel for the respondent that during investigation, the agency has prepared panchnama regarding the seizure of duplicate hologram and recorded the explanation memorandum of the applicant. Shri Pandey, learned counsel for the respondent contended that the legal ground for rejecting the bail to the applicant is that the findings of the Apex Court in **State of UP Vs. Amarmani Tripathi (2005) 8 SCC 21** are applicable in the present case. Relevant portion has been reproduced as under:

> Reliance is next placed on Dolat Ram and others vs. State of Haryana 1995 (1) SCC 349, wherein the distinction between the factors relevant for rejecting bail in a non-bailable case and cancellation of bail already granted, was brought out :
>
> "Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused

absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

17. They also relied on the decision in S.N. Bhattacharjee vs. State of West Bengal 2004 (11) SCC 165 where the above principle is reiterated. The decisions in Dolat Ram and Bhattacharjee cases (supra) relate to applications for cancellation of bail and not appeals against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail.

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 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 vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that 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 vs. Rajesh Ranjan, 2004 (7) SCC 528:

"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 vs. Sudarshan Singh, 2002 (3) SCC 598 and Puran vs. Ram Bilas 2001 (6) SCC 338."
>
> This Court also in specific terms held that:
>
> "the condition laid down under section 437(1)(i) is sine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

47. It enunciates the factors to be considered while granting bail. The Apex Court *inter alia* held that the relevant factors for considering 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 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. It has also been held that mere fact that the accused had been incarcerated for a certain period of time is also not a factor for granting bail.

Therefore the general rule that this Court will not ordinarily interfere in matters relating to bail, is subject to exceptions where there are special circumstances and when the basic requirements for grant of bail are completely ignored by the High Court.…"

48. In the matter of **Gulabrao Babukar Deokar Vs. State of Maharasthra (2013) 16 SCC 190**, has observed that :

> In the instant case, the attempts made by the appellant to pressurize the witnesses and even the investigating officer are clearly placed on record through the affidavit of the Deputy S.P. Mr. Pawar. On that ground also it could be said that the appellant will be pressurizing the witnesses if he is not restrained. This being the position, we cannot find any fault with the order of the High Court cancelling the bail on that ground also. The order does record the cogent and overwhelming circumstances justifying cancellation of bail. The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case, and they must squarely be dealt with by the Court while

passing an order on bail applications."

49. Similarly, in the matter of **Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118,** Apex Court has held that held that it is necessary to consider relevant factors while granting bail and if those relevant facts (as enumerated in Amarmani Tripathi (supra) have not been taken into consideration while considering the application for bail, the bail is found on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Lastly, it is submitted that at the stage of bail, the statements under Section 161 Cr.P.C, can be looked into and has relied upon the judgment of the Apex Court in the matter of **Indresh Kumar Vs. State of Uttar Pradesh in Criminal Appeal No. 938 of 2022**. Lastly, it is submitted that on the basis of the above mentioned submissions, it is apparent that the applicant was involved in the same and therefore, the bail application is liable to be dismissed.

CONSIDERATION OF BAIL APPLICATION

50. Heard learned counsel for the parties, their rival submissions and the documents on record.

51. To decide the case in hand, the factors enumerating in the case should be taken in consideration while granting or refusing bail in a non-bailable case. The apex court in the matter of **State of UP Vs Amarmani Tripathi, reported in 2005 (8) SCC 21,** vide paragraph- 18 and in **Criminal Appeal no. 448 OF 2021 (@ Special Leave Petition (Crl.) No. 3577 0F 2020) (Sudha Singh Versus The State of Uttar**

Pradesh & Anr, judgment delivered on 24-04-2021] has decided certain factors to be taken in consideration while deciding bail application in non-bailable offences as under:-

> "It is well settled that the matters to be considered in an application for the bail are:-
>
> (i) whether there is any *prima-facie* or reasonable ground to believe that the accused has committed the offence;
>
> (ii) nature and gravity of 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, behavior, 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 the justice being thwarted by grant of bail.

52. Indeed, these guidelines are not exhaustive, nonetheless, these have to be considered while passing an order in a bail application in a non-bailable offence. The aforementioned factors for grant or refusal of bail in non- bailable offences as the case in hand are discussed under the following headings:

7. *Prima-facie* or reasonable ground to believe that the applicant/accused has committed the offence:-

> It is profitable to reiterate here, that case FIR No. RC0042023A0003 dated 08.02.2023 has been registered by the CBI, Jammu u/s 120-B of IPC r/w Section 7 of the

Prevention of Corruption Act 1988 against the petitioner on the basis of complaint dated 07.02.2023 lodged by one Pankaj Kumar Verma S/o Sh. Sarvan Kumar R/o Lotus Villa, 232 Sector-1 Jalpura Greater Noida UP alleging demand of bribe of Rs.2.30 lacs by accused Sajad Ahmed Chief Accounts Officer JKTDC through Shokat Ali for processing of payment in respect of bills submitted by the complainant, on receipt of the complaint the verification thereof was carried out by Sh. Sanjay Kumar PSI wherein demand of bribe by the accused Sajjad Ahmed from the complainant through Shokat was confirmed, pursuant to which a trap was laid and both the accused persons namely, Sajjad Ahmed Chief Accounts Officer JKTDC and Shokat Ali Lecturer Govt. Polytechnic College Jammu were caught red-handed while demanding and accepting bribe of Rs.2.30 lacs from the complainant in presence of independent witnesses and both the accused were arrested and taken into custody on 08.02.2023 after following all the legal procedure. From the allegations it clearly transpires, that there is a *prima-facie* case against the applicant. The disputed point for determination before this court is, even when there is a *prima-facie* case against the accused, what should be the approach of court in the matter of grant or refusal of bail ?

53. From the allegations, it clearly transpires, that there is a *prima-facie* case against the applicant. The disputed point for determination before this court is, even when there is a *prima-facie* case against the accused, what should be the approach of court in the matter of grant or refusal of bail ?

54. To appreciate this fact, it has to be taken note of that while granting bail to the applicant it is necessary for the court to examine the nature and gravity of the circumstances under which the offence is committed. It is a trite law that personal liberty is a very precious fundamental right enshrined in Article 21 of the Constitution of India and deprivation of liberty is a matter of grave concern. It should be curtailed only when it becomes imperative to the peculiar facts and circumstances of the case. When a person is arrested on the allegations of commission of non-bailable offence, two conflicting interests are pitted against each other, that is, liberty of individual involved and interest of society so as to prevent crime and punish criminal. It becomes responsibility of the courts to weigh the contrary factors. The object of detaining a person in judicial custody is to direct him to join the investigation, secure his presence at trial, he may not interfere with investigation, intimidate witnesses, tamper with evidence, flee from justice, chances of repeating the offence etc., and if this purpose can be fulfilled by putting certain conditions and securing bail bonds, it would be an ideal blending of two apparently conflicting claims.

55. A fundamental postulate of Criminal Jurisprudence is the presumption of innocence, which means a person is believed to be innocent until found guilty. Another facet of our Criminal Jurisprudence is that grant of bail is the general rule and putting a person in jail is an exception (Bail but not jail). Grant or denial of bail is entirely the discretion of a Judge considering a case, but such discretion should be exercised judiciously and not arbitrarily. After referring to the observation in Emperor v. Hutchinson, reported in AIR 1931 All. 356, where the Court held that grant of bail is the rule and refusal is the exception, this Court added:

> "6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory". The observations and directions in Dataram Singh (supra) were in the context of arrest and long custodial detention in a crime case under Section 138 of the Negotiable Instruments Act, 1881 for issuing cheques and then stopping payment of the cheque. Bail application had been rejected, first by the Trial Court and then by the High Court even after about five months of detention of the accused in custody.

56. *Ex facie*, the allegations are grave, the punishment is severe and it cannot be said that there are no materials on record at all. **P.Chidambaram Vs. Directorate of Enforcement"** reported in **(2020)**

13 SCC 791, wherein Hon'ble Apex Court held as hereunder:

> “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."

57. Specifically, heed must be paid to the stringent view taken in this regard for grant of bail with respect to economic offences. In this regard, it is pertinent to refer to the following observations of this Court in **Y.S. Jagan Mohan Reddy:**

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deeprooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
>
> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character 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/State and other similar considerations."
>
> This Court has adopted this position in several decisions, including Gautam Kundu v. Directorate of Enforcement and State of Bihar v. Amit Kumar. Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences."

58. In the present case, the applicant has been charged for the offences punishable under Sections 420, 467, 468, 471, and 120-B IPC and Sections 7 & 12 of the Prevention of Corruption Act. It is the case of the prosecution that from the charge sheet, it is alleged that the present applicant was involved in the criminal syndicate and was helping in the liquor scam through his transport firm Adeep Empire and Adeep Agrotech Pvt. Ltd. He was also involved in the collection of sales amount of B-Part liquor and sending duplicate holograms to the distilleries. As per the allegation, the applicant used to monitor and coordinated in the production of B-part liquor in the distilleries and adjusted the illegal money obtained through the syndicate in Jagdamba Enterprises and had earned huge profit. During investigation, it was found that massive corruption had taken place in the Excise Department since the year 2019. Instead of earning revenue for the State, the present applicant in association with the syndicate had caused huge financial loss to the State exchequer and the estimated proceeds of crime is around Rs. 16,000 + crores.

59. In the matter of **Nimmagadda Prasad v. Central Bureau of Investigation**,**(2013) 7 SCC 466** their Lordships of the Supreme Court have held that economic offence is a grave offence affecting the economy of the country as a whole and observed as under:-

> “23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country’s economic structure. Incontrovertibly,economic offences have serious repercussions on the

> development of the country as a whole.
> 25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

60. It is the case of prosecution that on receiving communication from the Enforcement Directorate and after due verification and on being satisfied, the EOW registered FIR No. 04/2024 under Sections 7 & 12 of the Prevention of Corruption Act and Sections 420, 467, 468, 471, and 120-B IPC against the applicant. It has been revealed that a criminal syndicate has been operating in the State of Chhattisgarh which was extorting illegal commission in the sale of liquor and was also involved in unauthorized sale of unaccounted liquor through government liquor shops. During the course of investigation, plethora of evidence regarding criminal involvement and illegal gratification of number of government officers including the applicant has been unearthed and their role in the crime has been established.

61. It is apparent that the applicant was one of the main accused in the liquor scam. Having regard to the nature of allegations made against the applicant and the manner in which the present applicant is alleged to have involved in the commission of the offence and that the investigation is still going on and also taking note of the fact that the applicant along with the co-accused persons has caused huge financial

loss to the State exchequer and the estimated proceeds of crime is around Rs. 16000 + crores.

602 This huge unexplained money and the disproportionate wealth earned through the syndicate and causing loss to the State Exchequer and for which the proceeding under Sections 7 & 12 of the Prevention of Corruption Act is said to have been registered against the present applicant. The law in regard to grant or refusal of bail is very well settled. The general principles regarding granting or refusing bail are enumerated in several judgments of the Apex Court. Generally, the following matters are to be considered in granting or refusing bail to a person accused of a non-bailable offence (1) The nature of the offence (2) The severity of the punishment which conviction will entail (3) The character, behaviour, means and standing of the accused (4) The circumstances which are peculiar to the accused (5) The status and position of the accused in relation to the victim or the complainant (6) Reasonable possibility of securing the presence of the accused during the trial (7) Reasonable apprehension of the witnesses being tampered with (8) The larger interests of the public or the State or the society (9) Likelihood of the accused fleeing from justice (10) Absence or presence of materials in support of the accusation (11) Likelihood of the offence being repeated (12) Frivolity in prosecution.

63. The court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established

between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

64. Economic offences, having deep-rooted conspiracies and involving huge loss of public funds, need to be viewed seriously and considered as grave offences (See **Y.S. Jagan Mohan Reddy v. CBI : (2013) 7 SCC 439 : AIR 2013 SC 1933**). An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community (See **State of Gujarat v. Mohanlal Jitamalji Porwal : (1987) 2 SCC 364 : AIR 1987 SC 1321**). Economic offences have serious repercussions on the development of the society as a whole. The entire community would be aggrieved if the economic offenders, who ruin the economy of the State, are not brought to book in a proper manner.

65. ‘Bail is the rule and jail is the exception’ is the well established principle but competing forces present in the facts and circumstances of each case have to be measured before enlarging a person on bail. Socio-economic offences have deep impact affecting the moral fiber of the society and it is a matter needs to be considered seriously (See State of Bihar v. Amit Kumar @ Bachcha Rai : AIR 2017 SC 2487).

64. In the present case, the applicant was involved in the criminal acts of the syndicate and that he received commission from the liquor suppliers. However, no recovery of unaccounted money has been made

in this regard and as per the investigating agency, the investigation is pending, hence, a conclusive determination of their role is yet to be made. However, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case.

CONCLUSION

66. Thus, keeping in mind the binding observations of their Lordships of the Supreme Court in cases of **Balakrishna Dattatrya Kumbhar & Nimmagadda Prasad (supra)** that economic offences are grave offence affecting the economy of the country as a whole and serious repercussions on the development of the country and in view of the fact that corruption is a really a human rights violation specially right to life liberty, equality and non discrimination, and it is an enormous obstacle to the realization of all human rights and the charges alleged against the applicant are extremely serious and have been committed in the State of Chhattisgarh, further taking into consideration the fact that charge-sheet has been filed against the applicant this Court is not inclined to grant regular bail to the applicant.

67. In view of the aforesaid circumstances, the prayer for grant of bail to the applicant is liable to be rejected and it is hereby rejected.

Sd/-

(Arvind Kumar Verma)
Judge