



2024:CGHC:38639  
AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

ORDER RESERVED ON 17.09.2024

ORDER DELIVERED ON 30.09.2024

**MCRC No. 4769 of 2024**

1 - Trilok Singh Dhillon S/o Lt. Surta Singh Dhillon Aged About 59 Years  
R/o Block 12-B, Plot No. 123, Nehru Nagar East, Bhilai, Dist. - Durg,  
Chhattisgarh-490020

**... Applicant**

**versus**

1 - State Of Chhattisgarh Through The Investigating Officer, Economic  
Offences Wing/ Anti-Corruption Bureau, Gaurav Path, Opp. Jai Jawan  
Petrol Pump, Telibandha, Raipur, Chhattisgarh-492001.

**... Respondent**

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| For Petitioners         | : | Mr. Siddarth Agrawal, Sr. Advocate assisted by<br>Mr. Harshwardhan Parganiha, Ms. Arshiya<br>Ghose, Mr. Anshul Rai, Ms. Saloni Verma and Mr.<br>Harshit Sharma, Advocates |
| For<br>Respondent/State | : | Mr. Mahesh Jethmalani, Sr. Advocate assisted by<br>Mr. Vivek Sharma, Addl. Advocate General and<br>Ms. Mugdha Pandey, Advocate  |

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**(Hon'ble Shri Justice Arvind Kumar Verma)**

C A V Order

This is the first bail application under Section 439 of the Cr.P.C.  
for grant of regular bail filed by the applicant as he has been arrested in

connection with FIR No.04/2024 dated 17.01.2024 (arrested on 25.04.2024) registered by the EOW/ACB, Chhatisgarh for commission of offences punishable under Sections 420,467, 471 & 120(B) of the IPC and Sections 7 and 12 of the Prevention of Corruption Act.

2. Brief facts of the case are as under:

(i) An income tax complaint was filed on 11.05.2022 against Anil Tuteja, Anwar Dhebar and 12 others under Sections 276(c), 277, 278,278E of IT Act read with Section 120-B, 190,191,199,200,204 IPC for the alleged collection of kickbacks through an organized syndicate.

(ii) ECIR/RPZO/11/2022 ("ECIR 11") was registered by ED in Prevention of Money Laundering Act (PMLA Act) on 18.11.2022 on the basis of Section 120-B in the aforesaid IT complaint. The applicant was arrested on 11.05.2023 and the prosecution complaint was filed on 04.07.2023 against seven accused persons including the applicant.

(iii) The ED had sent a letter dated 11.07.2023 under Section 66(2) of the PMLA to the ACB, Chhattisgarh disclosing that the investigation in ECIR 11 had allegedly disclosed generation of INR 2161 Crore proceeds of the crime. Pertinently, the applicant was not named therein. It is further alleged that the applicant is involved in collecting illegal commission charged from the liquor suppliers for sale of liquor and also in sale of off-the record unaccounted illicit country liquor from State run shops. On the basis of this letter, the present FIR No. 04/2024 was registered by ACB Chhattisgarh on 17.01.2024.

(iv) On 08.04.2024, the Hon'ble Supreme Court quashed the prosecution complaint filed in ECIR 11 *inter alia* holding that there is no scheduled offence and hence, there can be no proceeds of crime under the PMLA Act.

(v) The charge sheet came to be filed on 29.06.2024 against the applicant and three others (ie. Arunpati Tripathi, Anwar Dhebar and Arvind Singh). The allegation against the present applicant is that he and his entities (Dhillon City Mall and Petrosun Bio Refineries) received commissions and unsecured loans from FL10A license holders and rice millers on behalf of Anwar Dhebar and the applicant utilized the same to purchase 18 flats in the name of his employees and further investigation is going on.

3. Contention of the learned Sr. Counsel Mr. Siddarth Agrawal for the applicant is that:

(a) the investigation *qua* the applicant is concluded and the trial is likely to take time therefore custodial detention is no longer necessary and is violation of the rights of the applicant under Article 21 of the Constitution of India.

(i) It has been consistently held by the Hon'ble Supreme Court that the right to speedy trial is enshrined in Article 21 of the Constitution, irrespective of the nature of crime and bail cannot be withheld as a punitive measure without trial. He has relied upon the judgment of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another,***

**2024 SCC Online SC 1693; Satender Kumar Antil Vs. CBI and Another (2022) 10 SCC 51 and Sanjay Chandra Vs. CBI (2012) 1 SCC 40.**

The Supreme Court in **Sanjay Chandra v. CBI, (2012) 1 SCC 40**, has observed as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention

being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by

the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

(ii) The principle that 'bail is the rule and jail is the exception' has been emphasized by the Hon'ble Supreme Court in a plethora of recent decisions, even in the context of special statutes with more stringent conditions for bail. He has relied upon the judgment of ***Manish Sisodia Vs. ED, 2024 SCC Online SC 1920; Kalakuntla Kavita Vs. ED, 2024 SCC Online SC 2269.***

In ***Kalvakuntla Kavita (supra)***, it has been held by the Supreme Court that

“10. On perusal of the record, we find that in CBI case, charge sheet has been filed and in ED case complaint has been filed. As such, the custody of the appellant herein is not necessary for the purpose of investigation.

11. The appellant has been behind the bars for the last five months. As observed by us in the case of ***Manish Sisodia (supra)***, taking into consideration that there are about 493 witnesses to be examined and the documents to be considered are in the range of about 50,000 pages, the likelihood of the trial being concluded in near future is impossible.

12. Relying on the various pronouncements of this Court, we had observed in the case of ***Manish Sisodia (supra)*** that the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.”

(iii) Charges cannot be framed at this stage as further investigation remains pending. Further the first Charge sheet itself has over 295 prosecution witnesses and 146 documents running into thousands of pages. Thus, there is no likelihood of completion of trial in the near future.

4. It is further contended that even after the grant of bail to the applicant in ECIR 11, he did not abscond and cooperated with the investigation. There is no material to allege any reasonable apprehension that the applicant may be a flight risk or tamper with the evidence. On merits, it is the prosecution case that the applicant conspired with the illegal liquor syndicate and received commissions on behalf of co-accused Anwar Dhebar which is not supported by any credible evidence.

5. Further contention of the counsels for the applicant is that the prosecution has acted in a pick and choose manner in investigation, which is impermissible. The charge sheet is silent on the role of the distillery owners and FL10A license holders who are admittedly part of the conspiracy and beneficiaries of the same.

The Distillery Owners Naveen Kedia (Chhattisgarh Distillery Ltd.) Bhupendra Pal Singh Bhatia (Welcome Distillery) and Rajendra Jayaswal (Bhatia Wine Distillers) have not even made an accused, though the three distiller entities are named as Accused No. 45-47 in the FIR.

FL10A license holders: Mukesh Manchanda (Om Sai Beverages); Atul Kumar Singh and Vijay Bhatia (Om Sai Beverages); Abhishek Singh and Manish Mishra (M/s. Nexgen Power Engitech) and Asheesh Saurabh Kedia (Disha Ventures) were named as Accused No. 38-44 in FIR but neither they were arrested nor named as absconding in the charge sheet.

6. In fact some of the rice millers who have admitted to over invoicing along with distillers who have detailed the alleged role played by the distilleries in raising commissions, such as Manish Kedia and Sanjeev Fatehpuria have not been made an accused. It has been contended by the State that further investigation is pending and hence, a conclusive determination of their role is yet to be made. However, the said persons have already been named as prosecution witnesses in the charge sheet (at Sl. No. 17 and 105 of the list of the prosecution witnesses).

7. A pick and choose manner of investigation raises a doubt on the credibility of evidence, specially where the evidence of similarly placed persons is then relied upon against the other accused. Thus, it may be considered a relevant factor for grant of bail. Reliance has been placed in the matter of ***Soma Chakravarty Vs. State (2007) 5 SCC 403; State of Madhya Pradesh Vs. Sheetla Sahai and Others (2009) 8 SCC 617; Ramesh Manglani Vs. ED (2023) SCC Online Del 3234; Sanjay Kansal Vs. ED, 2024 DHC 3765.***

8. It has been contended that the applicant has already undergone incarceration of 95 days on the very same set of allegations and there was no necessity of arrest in the present case. Lastly, it is contended that the applicant is aged about 60 years and established businessman in Bhilai, Chhattisgarh and besides his implication in ECIR 11, he has no criminal antecedents. It is contended that one of the co-accused has been granted bail by this Court vide order dated 15.02.2024 in M.Cr.C. No. 60/2024 and the other co-accused has been protected by the High Court in Cr.M.P. No.721/2024 vide order dated 01.04.2024 therefore the present applicant may be released on bail.

9. Per contra, learned Sr. Counsel, Mr. Mahesh Jethmalani on behalf of the State opposing the submissions of the learned Senior Counsel for the applicant submits that a criminal syndicate comprising of high level State Government officials, private persons and political executives of the State Government were operating in the State of Chhattisgarh and the accused/applicant and three others were the main conspirators of this syndicate along with Anil Tuteja, Anwar Dhebar and Others. It is further contended that this syndicate collected illegal money in three different ways which is as follows:

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.

10. Contention of Mr. Jethmalani, learned Sr. counsel on behalf of the State is that a total sum of Rs. 1660,41,00,056/- earning was made by the syndicate from the financial year 2019-20 to financial year 2022-23 which is nothing but loss caused to the State Exchequer which has been acquired by the criminal syndicate from the offence of conspiracy.

From the investigation done till date, it is clear that massive corruption has taken place in the Excise Department of Chhattisgarh since 2019. The evidence against the present applicant is that the applicant is a liquor contractor. In order to siphon the commission amounts, companies namely AFS Agro Private Limited and Petrosun Bio Refinery Private Limited were formed. Petrosun Bio Refinery Private Limited is formed in the year 2019 and belongs to the applicant and in both the companies, the purchase of broken rice (*kanaki* rice) supplied by the rice millers (which was required by the distilleries as raw material for liquor production) was started. This rice purchased from the rice millers was then sold to the three distilleries. However, the rice millers directly supplied *kanaki* rice to all the three distilleries. In both these companies 20% profit was being earned on paper only through over invoicing. Both the companies ran their business from the year 2019 to 2022 only. The company of the applicant collected 5.50 crores through

over invoicing which was actually money given by the distillers of the syndicate as petty commission, called as Part- A commission.

11. During investigation, the statement of rice millers namely, Jugal Kishor Paliwal, Manish Kedia, Harsh Goyal, Manoj Agarwal, Rajendra Agrawal, Sachin Agrawal and Santosh Agrawal were recorded and all of them have stated that the rice millers were already supplying *Kanaki* rice to the three distilleries. A meeting was held to transfer the amount of Rs. 50 crores owed to the syndicate in the account of Trilok Singh Dhillon's firm.

12. An amount of Rs. 23 crores was deposited as unsecured loan in the account of Trilok Singh Dhillon's firm ie. Dhillon City from 16 companies including Dishita Ventures and Om Sai Beverages. Out of these 16 companies, 14 companies were *benami* and used to show entries in the accounts by showing the business of rice etc. During investigation, it was revealed that the money which came into the account of Trilok Singh Dhillon's firm was to be used by the people of the syndicate. From the statements given by the rice millers namely Jugal Kishor Paliwal, Manish Kedia, Harsh Goyal, Manoj Agarwal, Rajendra Agrawal, Sachin Agrawal and Santosh Agrawal confirm that they supplied rice to Dhillon's companies on the instructions of the Syndicate and then this rice was further sold by the companies of the present applicant to distilleries by over invoicing. Reliance has been placed in the judgment of Hon'ble Supreme Court in the matter of ***State of UP Vs. Amarmani Tripathi (2005) 8SCC 21*** in paras 16 to 19 and

21 wherein certain factors have been enunciated to be considered while granting bail.

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 :

"4. 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 [Prahlaad 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."

19. 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."

20. In *Panchanan Mishra Vs. Digambar Mishra* (2005) 3 SCC 143:2005 SCC (Cri) 660, this Court observed:

"the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime.... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tapering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

21. 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. “

13. Further reliance has been placed in the matter of ***Gulabrao Babukar Deokar Vs. State of Maharashtra (2013) 16 SCC 190***, it has been held that :

“28. 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.”

14. Similarly, in the matter of ***Mahipal Vs. Rajesh Kumar (2020) 2 SCC 118***, it has been held as under:

“14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in

contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a *prima facie* view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a *prima facie* or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

15. The decision of this Court in *Prasanta* has been consistently followed by this Court in [Ash Mohammad v Shiv Raj Singh](#), (2012) 9 SCC 446; (2012) 3 SCC (Cri) 1172, [Ranjit Singh v State of Madhya Pradesh](#) (2013) 16 SCC 797; (2014) 6 SCC (Cri) 405, [Neeru Yadav v State of U.P.](#) (2014) 16 SCC 508; (2015) 3 SCC (Cri.) 527, [Virupakshappa Gouda v State of Karnataka](#) (2017) 5 SCC 406; (2017) 2 SCC (Cri.) 542 and [State of Orissa v Mahimananda Mishra](#) (2018) 10 SCC 516; (2019) 1 SCC (Cri) 325.

15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an (2012) 9 SCC 446 (2013) 16 SCC 797 (2014) 16 SCC 508 (2017) 5 SCC 406 (2018) 10

SCC 516 assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In [Neeru Yadav v State of Uttar Pradesh](#),<sup>12</sup> the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Justice Dipak Misra (as the learned Chief Justice then was) held:

“12....It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting

bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a *prima facie* view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a *prima facie* or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order of the High Court in the present case, in so far as it is relevant reads:

“2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. Learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.”

**14.** In the matter of ***Indresh Kumar Vs. State of Uttar Pradesh in Cr.A. No. 938 of 2022*** , it has been held that at the stage of bail, statements made under Section 161 Cr.P.C. can be looked into. Likewise, in the matter of ***Girish Sharma and others Vs. State of Chhattisgarh and Others (2018) 15 SCC 192***, it is held that

“the prosecution is entitled to cite accused as witness even without recourse to Section 306 IPC having regard to larger interest of justice to strengthen prosecution case against more serious accused.”

15. It is contended that 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. Lastly, it has been contended that the ED is investigating the offence committed by the applicant under PMLA and ACB/EOW is investigating the offences of PC Act and IPC. Both the offences are separate and distinct from each other and the jurisdiction of both the agencies are different and independent. The period spent in jail for one offence cannot be counted for other offences and for the above reason, the bail application filed by the present applicant ought to be rejected.

16. I have heard learned Senior counsels for the parties and perused the documents available on record with utmost circumspection.

17. The instant FIR has been filed against the applicant pursuant to the reference received from ED under Section 66(2) of the PMLA on 11.01.2024 on the basis of material collected during investigation of ECIR11. It is the case of the prosecution that the Enforcement Directorate has conducted money laundering investigation in file No. ECIR *RPZO11/2022* based on the complaint filed by the IT Investigation Wing at Tis Hazari Court and 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. The investigation revealed that the applicant played a pivotal role in facilitating the payment of bribes to the syndicates in collusion with other co-accused.

18. It has been pointed by Mr. Jethmalani, the learned Senior counsel on behalf of the State that till date, in the ACB case i.e. FIR NO. 4/2023, the charge sheet has been filed against the applicant and after going through the facts of the case, it appears that *prima facie* offence is made out against the applicant. The material collected during the investigation goes to show that the nature of the offence committed by the applicant has caused huge financial loss to the State exchequer and the estimated proceeds of crime is around Rs. 2161 crores. In the matter of **State of Gujarat v. Mohanlal Jitmalji Porwal** (1987) 2 SCC 364, the Supreme Court while considering a request of the prosecution for adducing evidence inter alia, observed as under:-

“5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for

the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

19. In **State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatreya Kumbhar,(2012) 12 SCC 384**, the Supreme Court has held that corruption is violation of human right and observed as under:-

“Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights’ violation in itself, as it leads to systematic economic crimes.”

20. Further, in the matter of **Nimmagadda Prasad v. Central Bureau of Investigation, (2013) 7 SCC 466**, the Supreme Court has 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.”

21. In the matter of **Subramanian Swamy v. Central Bureau of Investigation, (2014) 8 SCC 682** the Supreme Court (Constitution Bench) while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946 unconstitutional, observed as under:-

“Corruption is an enemy of nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequence.”

“Corruption is any enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corruption officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation.”

While granting or refusing to grant bail would be tentative in nature, nonetheless the Court is expected to express *prima facie* opinion while granting or refusing to grant bail which would demonstrate an application of mind, particularly, dealing with the serious economic offences.

22. It is *prima facie* clear that on the one hand, the prosecution agency is claiming that the matter is of a huge economic loss to the State Exchequer and the offence is of highly serious nature and on the other hand, the distillers who are allegedly supplying illegal liquor worth Rs.1200 crores have not been made accused despite the fact that their name has been mentioned in the complaint made by the ED as member of the syndicate. Even though some of the witnesses have admitted in their statement before the police and statement recorded under Section 164 of the Cr.P.C. that they were involved in the syndicate crime but they are listed as prosecution witnesses without being granted pardon by the competent court. *Prima facie* it appears that the prosecution has adopted an inconsistent stance being both hot and cold in its approach and has acted in a pick and choose manner in investigation. However, Shri Jethmalani, learned Senior Counsel contended that the prosecution agency has no time to make those persons accused as the investigation is still going on. He further contended that 3-4 charge sheets are yet to be filed and this is merely a preliminary charge sheet even though there is no such provision as "preliminary charge sheet" in Cr.P.C. The law provides that after completion of investigation, report shall be forwarded to the Magistrate, who is empowered to take cognizance of the offence based on a police report as provided under Section 173(2) of the Cr.P.C. and the police has a right to further investigate the matter and shall forward further report/reports to the Magistrate in the form prescribed. Be that as it may, the applicant cannot take advantage at

this stage because further investigation is going on and as per argument of learned Sr. Counsel on behalf of the State, 3-4 charges sheets are yet to be filed. In the present case, he was involved in the criminal acts of the syndicate and is in possession of the proceeds of crime and that he received commission from the liquor suppliers in his bank account.

23. Another contention of the counsel for the applicant is that the applicant may be granted bail on the ground of parity.

This Court in the bail application filed by the co-accused in M.Cr.C. No.3455/2024 has granted bail mainly on medical grounds as he was suffering from severe medical issues and was in need of constant medical supervision therefore, looking to the seriousness of his health condition (as mentioned in para 11 of the order), he was permitted to take recourse to the treatment in a super specialty hospital for the opinion of medical expert. In the present case, there is no such serious medical issue with regard to the applicant and therefore, the applicant in the present case cannot claim for grant of bail on the ground of parity.

24. Coming back to the facts of the present case, it is an admitted position that the applicant is in custody since 08.05.2024 and there are several witnesses who are yet to be examined by the EOW and the investigation is going on. However, the present status of the proceedings is that the trial has not commenced. Though the statement

under Section 161 Cr.P.C. by the applicant himself which unravels about his role in the alleged offence and is corroborated by other witnesses.

25. The Court after examining the entire documents found substantial material indicating a strong nexus between the applicant and the other accused persons in the commission of the crime. There were documents and evidences that reflected numerous cash transactions and being involved in the extraction of illegal wealth.

26. Thus taking into consideration the facts and circumstances of the case, noticed hereinabove and taking into account, the nature and gravity of the offences, the role of the applicant and also taking into account the severity of the punishment prescribed for the aforesaid offences, relying upon the decisions of the Supreme Court in aforesaid cases (supra), held that corruption is a enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Prevention of Corruption Act, 1988 and further taking in view that corruption is really a human rights violation specially right to life, liberty, equality and non-discrimination and it is an economic obstacles to the realization of all human rights and also taking into consideration that charge-sheet has been filed against the applicant and the nature of accusation and gravity of offence, the applicant is charged which is extremely serious therefore, in the opinion of this Court, it is not proper to order release of present applicant on regular

bail for the reasons mentioned hereinabove. Accordingly, I am not inclined to allow the prayer for bail made by the applicant.

27. Consequently, the bail application filed by the applicant under Section 439 of Cr.P.C. is rejected.

Sd/-  
(Arvind Kumar Verma)  
Judge