

**(THROUGH VIDEO CONFERENCING FROM RESIDENCE)**

**CBI Vs. Manoj Prasad & Ors.  
RC No. 13(A)/2018/CBI/AC-III/ND**

***The present matter has been taken up via CISCO Webex platform / video conferencing hosted by Sh. Narender Kumar, Reader of this Court in terms of orders of Hon'ble High Court bearing No. R-235/RG/DHC/2020 dtd. 16.05.2020, 16/DHC/2020 dtd. 13.06.2020, 22/DHC/2020 dtd. 29.06.2020, 24/DHC/2020 dtd. 13.07.2020, 26/DHC/2020 dtd. 30.07.2020, 322/RG/DHC/2020 dated 15.08.2020 and 417/RG/DHC/2020 dated 27.08.2020 in the presence (on screen) Sh. V. K. Pathak, Ld. PP for CBI along with IO Sh. Satish Dagar (SP), Inspector Sanjay Jha and Sh. Avnish Kumar, Pairvi Officer for CBI and Sh. Ajit K. Singh along with Ms. Seema Seth, Ld. Counsel(s) for A-1 & A-2 and Sh. Sunil Sethi, Ld. Counsel for A-3.***

**22.09.2020 (At 11:30 AM)**

Present : Sh. V. K. Pathak, Ld. PP for CBI along with IO Sh. Satish Dagar (SP), Inspector Sanjay Jha and Sh. Avnish Kumar, Pairvi Officer for CBI.  
Sh. Ajit K. Singh along with Ms. Seema Seth, Ld. Counsel(s) for A-1 & A-2  
Sh. Sunil Sethi, Ld. Counsel for A-3.

Accused Manoj Prasad (A-1), Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal (A-3) are present.

The matter was proceeding at the stage of pronouncement of orders on the bail application(s) / modification of bail application of the above said accused persons.

Vide separate detailed order of even date, announced in the open Court today through Video Conferencing / CISCO Webex



Platform, the bail application(s) moved on behalf of Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal (A-3) have been allowed and they both have been admitted to bail on executing personal bond of Rs. 1,00,000/- (Rs. One Lakh) each with two sureties of like amount each subject to the condition that they will not leave the country without the specific permission / orders of this Court and they will also deposit their passport(s) immediately with the court.

Further, both of them will mark their presence with the IO or with the CBI on every 2<sup>nd</sup> and 4<sup>th</sup> Monday of every month, month by month, without fail till further orders. In case Monday happens to be a holiday, the accused persons will report on the next working day. The above accused persons shall also make themselves available for interrogation in the course of further investigations as and when required by the CBI / Investigating Agency. In case of non-cooperation / non joining on their part, the CBI will be at liberty to move an application seeking cancellation of their bail(s).

The accused persons shall also not temper with evidence or attempt to influence or intimidate the witnesses. Needless to reiterate again that in case of violation of any of the express provisions of the bail as above, the investigating agency / CBI shall be at liberty to move an application seeking cancellation of concession of bail(s) granted to the accused persons.

However, vide the same detailed order, the application of accused Manoj Prasad (A-1) for modification of the bail order dated 01.06.2019 has been dismissed.

Put up for furnishing of bail bonds by accused persons Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal



(A-3) in the Court and further proceedings on 23.09.2020.

The e-mail copy / signed scanned copy of this order be sent to the Computer Branch, RADC by the Reader for uploading on the official website.

This signed order sheet be retained on the record to be put on the judicial file as an when the normal court work resumes.

The present ordersheet has been dictated to Sh. Amit Makhija, Sr. PA attached with the undersigned.



(Sanjeev Aggarwal)  
Special Judge (PC Act)(CBI)-02  
Rouse Avenue District Court  
New Delhi/22.09.2020

**IN THE COURT OF SH. SANJEEV AGGARWAL, SPECIAL JUDGE  
(PC ACT) (CBI)-02, ROUSE AVENUE DISTRICT COURT, NEW DELHI**

**CBI Vs. Manoj Prasad & Ors.**

**Case RC No. 13(A)/2018/CBI/AC-III/ND**

**u/S. : 120B IPC r/w Sec. 420, 120B r/w 385 IPC,  
120B r/w 7A & 8 of PC Act, 1988 (as amended in 2018)  
and substantive offence(s) thereof**

**22.09.2020 (At 11:30 AM)**

**ORDER**

1. Vide this common order, I shall dispose off three separate application(s), one moved on behalf of applicant / accused Manoj Prasad (A-1) for modification of the bail order dated 01.06.2019, and two other application(s) moved on behalf of applicant / accused persons Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal (A-3) for grant of bail.

2. The above application(s) were taken up via CISCO Webex platform, facilitated by Reader of this Court in the presence (on screen) of Sh. V. K. Pathak, Ld. PP for CBI along with IO Sh. Satish Dagar (SP), Inspector Sanjay Jha and Sh. Avnish Kumar, Pairvi Officer for CBI and Sh. Ajit K. Singh along with Ms. Seema Seth, Ld. Counsel(s) for A-1 along with Manoj Prasad (A-1), Sh. Rakesh K. Khanna, Senior Advocate along with Sh. Ajit



K. Singh, Ld. Counsel for A-2 along with Someshwar Srivastav @ Somesh Prasad (A-2) and Sh. Hariharan, Senior Advocate along with Sh. Sunil Sethi, Ld. Counsel for A-3 along with Sunil Mittal (A-3) in person.

3. Brief facts are :

**“Case RC 13(A)/2018/AC-III was registered on 15.10.2018 against certain public servants, as also against Sh. Manoj Prasad, Somesh Prasad and others u/S. 120-B IPC Section(s) 7, 13(2) r/w 13(1)(d) of PC Act, 1988 on the basis of written complaint dated 15.10.2018 of Sh. Satish Babu Sana alleging harassment and extortion by way of demand of illegal gratification in connection investigation of CBI case RC 224 2017A 0001/AC-VI/CBI/SIT relating to Moin Akhtar Qureshi & Others. In the complaint, the complainant above alleged that he appeared before Sh. Devender Kumar DSP on 12.10.17 in connection with RC RC 224 2017A 0001/AC-VI/CBI/SIT and was questioned by him. Thereafter, on the basis of notice dated 17.10.2017, he attended CBI office, New Delhi on 23.10.17, and was questioned regarding transactions with Moin Akhtar Qureshi, he was again called on 01.11.2017 and was again questioned on same issues. Thereafter, again on 30.11.17, wherein he expressed his inability and assured to send the details as desired by IO through courier.**



**Thereafter, he left Hyderabad for Dubai on 02.12.17, where he met Manoj Prasad known to him 10 years prior, he told him his problem, to which he said that he had very good connections in CBI and assured to help him by using these connections through his brother Somesh Prasad. Manoj Prasad also introduced him with his brother Somesh Prasad in his office after which Somesh Prasad called a CBI officer over telephone in his presence and explained the issue to him. After talking to said CBI officer over phone, he assured his problem would be solved and no further notices shall be received by him. Somesh told Sana that he would have to pay Rs. 5 Crores to the CBI officer through him in order to get favour, out of which Rs. 3 Crores would be paid as an advance and remaining Rs. 2 Crores at the time of filing of chargesheet in the case, in lieu of which CBI officer would manage clean chit to him.**

**It has been further alleged by the complainant that on asking of Somesh as to whom he spoke, he showed him DP of one of his whatsapp contact picture by saying he was the CBI officer to whom he had spoke and who would favour him on payment of Rs. 5 Crores. The officer was disclosed by him to be Special Director CBI. Later on complainant Googled and verified the same to be correct.**

**It is further alleged that to get rid of unbearable harassment and mental agony, he paid an equivalent of INR 1**



**Crore to Manoj Prasad in his office in Dubai in 1<sup>st</sup> week of December 2017. Thereafter, on being informed by Somesh Prasad about the details of one Sh. Sunil Mittal (Mob. 9810058407), his contact person, arranged payment of an amount of Rs. 1.95 Crores to Sh. Sunil Mittal on 13.12.2017 at about 9:25 PM in the parking area of Press Club of India, Raisina Road, through his person namely Sh. Puneet (Mob. 9654429000) after this payment Somesh travelled to India on 14<sup>th</sup> December 2017 and on 15<sup>th</sup> or 16<sup>th</sup> called him on his Dubai number from (Somesh's) Singapore number and told complainant that he would call the complainant from the CBI officer's room at Delhi within 5 minutes. He again called on Dubai number of complainant and asked him to listen to the conversation during which he heard the voice of a person talking to another person and he heard the officer giving instructions to some other person to look into his matter. After 10 minutes Somesh called him and informed him that he had just heard the voice of Special Director. It was further alleged that there was immense pressure on him to part with more money and Manoj informed him that he was getting frequent messages from Somesh telling him that he was under lot of pressure from the concerned CBI officer for delivery of money. Manoj also once disclosed to him that there were frequent exchange of whatsapp messages between him and Somesh which include some of the messages received by**



Somesh from the concerned. It is further alleged that after payment of Rs. 2.95 Crores, he did not receive any notice for some time. However, he again received notice on 13.02.2018 from Sh. Devender Kumar, DSP CBI on E-mail asking him to appear on 19.02.2018. He contacted Manoj to which he asked him to pay up the balance of Rs. 2 Crores to avoid issuance of further notice. Thereafter, he met Manoj in Dubai who asked him to pay up the rest of amount to get issue settled.

It is alleged that he received a mail from IO DSP Devender Singh on 26.02.18 for sending documents, which he sent through E-mail and courier. Thereafter, he did not get any notice till May 2018, whereafter he received notice for 09.06.2018, to which he requested for a date, after which IO directed him to come with Accountant for explaining accounts. Though, he did not receive any notice till 24.09.18. Then while complainant was leaving for Paris in the night of 25.09.18 where he was detained as LOC was opened against him, accused was asked to report to IO in Delhi on 27.09.2018, but he informed IO he would appear on 01.10.2018.

It is further alleged that complainant become disturbed and afraid and contacted Manoj Prasad to get relief from notice(s) and made many communications including whatsapp calls and whatsapp messages. Manoj Prasad told him all this was happening due to non payment of balance amount and also



informed that he had spoken to concerned CBI officer and had been informed that CBI will not harass or arrest him. He was made to promise to pay Rs. 2 Crores by Manoj Prasad and as per his instructions on 9<sup>th</sup> morning, he sent an E-mail expressing his inability to attend the CBI office.

It was further alleged that complainant further paid Rs. 25 Lakhs through his person Puneet to the person of Manoj Prasad at Karol Bagh. He also sent 25,000/- Dirhams (Rs. 5 Lakhs approx.) through his friend Surya to Manoj Prasad at Dubai on 15.10.2018 for flight tickets of earlier visit of Somesh, whereafter Manoj Prasad asked him to send 30,000/- Dirhams (Rs. 6 Lakhs approx.) for his own tickets which were delivered through one Sh. Muthu (driver of Surya). After registration of RC/ FIR, Manoj Prasad was arrested on 16.10.18 at New Delhi (IGI Airport). IO Sh. Devnder Kumar DSP was arrested on 22.10.18. After completion of investigations, only accused Manoj Prasad was chargesheeted for the offence(s) u/S. 7A and 8 of PC Act 1988 and Section 420 IPC. However, vide detailed order dated 07.03.2020, cognizance of the offence(s) u/S. 120B IPC r/w 420 IPC, 120B r/w 385 IPC, 120B IPC r/w Section 7A and 8 of PC Act 1988 (as amended in 2018) and substantive offence(s) thereof was taken and besides Manoj Prasad, accused Somesh Prasad and Sunil Mittal were also summoned.



4. In reply to application of Manoj Prasad for modification of bail order, it is stated by CBI that further investigations in the instant case are still continuing pending receipt of LR execution reports and other connected matters, and as such presence of the applicant / accused is very much required in the investigations for which condition for the availability before the IO has been rightly imposed by the Hon'ble Court, while granting bail and needs to be continued in the interest of effective further investigation, hence it is prayed that the said application be dismissed.

5. In reply to the bail application of Someshwar, it is stated that the complainant in this case has levelled specific allegations against the applicant / accused based on which the present case RC/ FIR has been registered and later the complainant also made a statement u/S. 164 CrPC on 20.10.18 corroborating the contents of his complaint dated 15.10.2018. However, there is plethora of evidence collected during investigations in the form of electronic records retrieved from the mobile phones of his co-accused brother Manoj Prasad and the complainant Sh. Satish Babu Sona proving that he was deeply involved in the crime, which is further corroborated from his intercepted telephonic conversations with his co-accused father in law Sh. Sunil Mittal, father Shri Dineshwar Prasad and Sh. Prakash Singh Negi. His complicity in the crime gets corroborated from the result of polygraph test and forensic psychological assessment which confirmed that the applicant / accused is deceptive and is not revealing the true facts about this case, further he has not produced the two mobile



phones used by him during the relevant period on one pretext or the other and also refused to open his E-mail account and show the contents thereof for investigation further.

It is stated that accused is facing investigations / trial in a case of commission of offences of serious nature as such by no stretch of imagination can be called as law abiding Indian National as also he is an NRI holding Indian Passport living abroad since 2005. There is an apprehension that if he is granted bail, he will temper with the evidence required to be collected through LR's sent to USA / UAE. Therefore, it is prayed that his bail application be dismissed.

6. With regard to the bail application of Sh. Sunil Mittal besides the facts mentioned in the chargesheet, it is averred that the complainant in this case specifically mentioned his name and mobile number as receiver of Rs. 1.95 Crores from Punit Kharbanda, based on which the present RC / FIR has been registered and complainant also made a statement u/S. 164 CrPC on 20.10.18 corroborating the contents of his complaint dated 15.10.2018. Further there is lot of evidence collected during investigations in the form of technical / electronic circumstantial and scientific to corroborate the version of complainant and his employee Sh. Punit Kharbanda that the applicant / accused was the receiver of the bag containing Rs. 1.95 Crores from Puneet Kharbanda on 13.12.2017. This fact is further corroborated from his intercepted telephonic conversations with his co-accused son-in-law Someshwar Srivastav @ Somesh Prasad.



His complicity in crime gets corroborated further from the result of polygraph test and forensic psychological assessment which confirmed accused is deceptive and is not revealing the correct information.

On the other hand in the said tests Sh. Punit Kharbanda was found to be truthful on the point of delivery of money to the applicant / accused Sunil Mittal. It is also stated that as far as need of his custodial interrogation is concerned, the LR execution reports from USA / UAE are yet to be received and decision on his custodial interrogation or otherwise was to be based on the outcome of the same. It is also stated that Mr. Mittal is admittedly a senior advocate enrolled with Delhi High Court Bar Association and therefore, can influence witnesses including intimidating the witnesses and temper with the evidence and can leave the country and never return to face trial. Therefore, it is stated that his application for bail be dismissed.

7. Ld. Counsel for (A-2) has argued that he has joined investigations whenever he has been asked to do so by the investigating agency. In fact he has done so on numerous, more precisely on 11 occasions, fully cooperated with the investigating agency, he had also undergone polygraph test, his voice sample was also taken, he was never sought to be arrested at any point of time, nor he is flight risk. There are no chances of influencing the witnesses or intimidating them or tempering with the evidence. Therefore, in these circumstances, he is entitled to bail.



Ld. Counsel for A-2 has also filed written submissions in support of his contentions and also relied upon the following judgments in support of his arguments :

- 1. Court on its Motion Vs. Central Bureau of Investigation 2004 SCC Online Del 53;**
- 2. Court on its own Motion Vs. State Crl.Ref. 4/2017;**
- 3. Court on its own Motion Vs. State 2018 SCC Online Del 12306;**
- 4. Lt.Gen. Tejinder Singh Vs. CBI 2014 SCC Online Del 4560;**
- 5. P. Chidambaram Vs. Central bureau of Investigation 2019 SCC Online Sc 1380;**
- 6. Sanjay Chaturvedi Vs. State 2006 SCC Online Del 1126;**
- 7. Deepika Gupta Vs. State 2019 SCC Online Del 9155.**

Ld. Counsel for (A-3) has argued that he had joined investigations on numerous occasions, fully co-operated with the same, whenever called by the investigating agency, he is respectable senior advocate of the Hon'ble Delhi High Court, there are no chances of him absconding or tempering with evidence or influencing the witnesses, never sought to be arrested at any point of time by the investigating agency. Therefore, he is entitled to grant of bail.



8. On the other hand, Ld. PP for CBI has argued that judgment relied upon by Ld. Defence Counsel(s) namely ***Court of its own motion Vs. CBI & Lt. Tejinder Singh Vs. CBI (supra)*** are not applicable to this case, as investigations in those cases had been completed, whereas in the present case further investigations are still continuing and pending, substantial investigations are still under process, as information has been sought from UAE / USA through LR's. He has further argued that there are recorded conversations between accused Sunil Mittal (A-3) and accused Someshwar (A-2) and as per CDRs of (A-3) and employee of complainant namely Puneet Kharbhanda, their locations were the same i.e. Gymkhana Club, where Rs. 1.95 Crores was delivered to A-3 for A-2 on behalf of complainant. Therefore, he strongly opposes the above bail application(s) as well as application for modification of bail order of accused Manoj Prasad (A-1).

9. Ld. Counsel(s) for accused persons have relied upon following judgment(s) in support of their contentions that in those cases, where the accused has not been arrested during the investigations by the IO, nor he has been forwarded to the Magistrate under Sec. 170 CrPC, then in those cases, even if the offence(s) are non bailable in nature even then on moving of bail application, he or she is to be enlarged on bail. In support of this, they have relied upon following two judgment(s) of Hon'ble Delhi High Court:

(i) ***Court of its own motion Vs. CBI 109 (2003) DLT 494 (Single Judge);***



(ii) **Lt. Gen. Tajinder Singh Vs. CBI dated 05.09.14.**

10. In **Court of its own motion Vs. CBI (supra)**, in para 26, it was held as under:

**“26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.**

**Directions for Criminal Courts :**

**(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.**

**(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.**

**(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may**



**either give direction to the accused to appear or issue process of summons.**

**(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.**

**(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.**

**(vi) That the Court shall always keep the mandatory provisions of Section 440, Cr.P.C. in mind while fixing the amount of bail bond or surety bond which provides that the amount of bond shall never be "excessive" amount and take into consideration the financial condition, the nature of offence and other conditions, as "Excessive" amount of bond which a person is not in a position to furnish amounts to denial of bail in a non-bailable offence and conversion of bailable offence into non-bailable offence as the fundamental concept of granting bail on bond is security of appearance of the accused person to answer the charges and face the trial. Nothing more nothing less.**

**Principles that govern the grant or refusal of bail in other kinds of cases and shall be followed in letter and spirit are as under:**

**(a) bail should not be refused unless the crime charged is of the highest magnitude and the punishment of it prescribed by**



**law is of extreme severity;**

**(b) bail may be refused when the Court may reasonably presume, some evidence warranting that no amount of bail would secure the presence of the convict at the stage of judgment;**

**(c) bail may be refused if the course of justice would be thwarted by the person who seeks the benignant jurisdiction of the Court to be freed for the time being;**

**(d) bail may be refused if there is likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice; and**

**(e) bail may be refused if the antecedents of a man who is applying for bail show a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail;**

**(f) similarly, the Court shall not while releasing a person on bail put any condition, say in the form of deposit of extra amount or FDR etc. of any amount which is beyond the conditions permissible under Section 439, Cr.P.C.”**

Further in ***Lt. Gen. Tajinder Singh Vs. CBI (supra)***, in relevant para(s), it has been held as under :

**‘13. Now comes the question whether Learned Special Judge was justified in rejecting the bail application of the petitioner or not.**

**14. Supreme Court has laid down the guidelines for grant or refusal of bail under the provisions of Section 437 Cr.P.C in**



plethora of cases. Some of the significant cases need to be referred in brief. First of such cases is Gurcharan Singh and others v. State AIR 1978 SC

179. Guidelines provided by Supreme Court are as under :-  
" Section 437 Cr.P.C provides as to when bail may be taken in case of non-bailable offences. Sub-sec (1) of S. 437 Cr.P.C makes a dichotomy in dealing with non-bailable offences. The first category relates to offences punishable with death or imprisonment for life and the rest are all other non-bailable offences. With regard to the first category, S. 437(1) Cr.P.C imposes a bar to grant of bail by the Court or the officer in charge of a police station to a person accused of or suspected of the commission of an offence punishable with death or imprisonment for life, if there appear reasonable grounds for believing that he has been so guilty. Naturally, Therefore, at the stage of investigation unless there are some materials to justify an officer or the court to believe that there are no reasonable grounds for believing that the person accused of or suspected of the commission of such an offence has been guilty of the same, there is a ban imposed under S. 437(1), Cr.P.C against granting of bail. On the other hand, if to either the officer in charge of the police station or to the court there appear to be reasonable grounds to believe that the accused has been guilty of such an offence there will be no question of the court or the officer granting bail to him. In all other non-bailable cases, judicial discretion will always be exercised by the court in favor of granting bail subject to sub-section (3) of Section 437, Cr.P.C with regard to imposition of conditions, if necessary. Under sub-section (4) of S. 437, Cr.P.C an officer or a court releasing any person on bail under sub- sec (1) or sub-sec(2) of that section is required to record in writing his or its reasons for so doing. That is to say, law requires that in non- bailable offences punishable with death or imprisonment for life, reasons have to be recorded for releasing a person on bail, clearly disclosing how discretion has been exercised in that behalf."

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**17. In nutshell, the following principles emerge for grant or refusal of bail under Section 437 Cr.P.C.:-**

**(i) Bail should not be refused unless the crime charged is of the highest magnitude and the punishment of it assigned by law is of extreme severity;**

**(ii) Bail should be refused when the court may reasonably presume, some evidence warranting that no amount of bail would secure the presence of the convict at the stage of judgment;**

**(iii) Bail should be refused if the course of justice would be thwarted by the person who seeks the benignant jurisdiction of the Court to be freed for the time being;**

**(iv) Bail should be refused if there is likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice; and**

**(v) Bail should be refused if the antecedents of a man who is applying for bail show a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.**

**XXXX XXXX XXXX XXXX**

**20. The directions issued for criminal Courts are contained in para 26 of the report, which are extracted as under :**

**'26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.**

**Directions for Criminal Courts :**

**(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according**



to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

(vi) That the Court shall always keep the mandatory provisions of Section 440, Cr.P.C. in mind while fixing the amount of bail



**bond or surety bond which provides that the amount of bond shall never be "excessive" amount and take into consideration the financial condition, the nature of offence and other conditions, as "Excessive" amount of bond which a person is not in a position to furnish amounts to denial of bail in a non-boilable offence and conversion ofailable offence into non-ailable offence as the fundamental concept of granting bail on bond is security of appearance of the accused person to answer the charges and face the trial. Nothing more nothing less.**

**Principles that govern the grant of refusal of bail in other kinds of cases and shall be followed in letter and spirit are as under:**

**(a) bail should not be refused unless the crime charged is of the highest magnitude and the punishment of it prescribed by law is of extreme severity;**

**(b) bail may be refused when the Court may reasonably presume, some evidence warranting that no amount of bail would secure the presence of the convict at the stage of judgment;**

**(c) bail may be refused if the course of justice would be thwarted by the person who seeks the benignant jurisdiction of the Court to be freed for the time being;**

**(d) bail may be refused if there is likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice; and**

**(e) bail may be refused if the antecedents of a man who is applying for bail show a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail;**

**(f) similarly, the Court shall not while releasing a person on bail put any condition, say in the form of deposit of extra amount or FDR etc. of any amount which is beyond the conditions permissible under Section 439, Cr.P.C.'**

However, the judgment of Hon'ble Delhi High Court of Hon'ble Single



Judge in re: **Sanjay Chandra Vs. CBI dated 23.05.2011** lays down law contrary to 1<sup>st</sup> judgment i.e. **Court of its own Motion Vs. CBI (supra)** on the same lines. Further, while rendering the judgment of **Lt. Gen. Tajinder Singh (supra)** which is the later judgment. The above judgment was not referred to. Therefore, the above judgment in my respectful view was rendered *per incurium*, as contrary judgment of **Sanjay Chandra Vs. CBI**, above was not referred therein.

11. Further in appeal i.e. **Criminal Appeal No. 2178/2011** Hon'ble Supreme Court in **Sanjay Chandra Vs. CBI dated 23.11.11** against the dismissal of bail order of Hon'ble Single Judge held in para 15 as under :

***“15. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to accused pending trial or in appeal against convictions. Since the jurisdiction is discretionary, it has to be exercised with great caution by balancing valuable rights of liberty of an individual and interest of society in general”***

12. Further in judgment of **Data Ram Vs. State of U.P. (2018) 3 SCC 22** it was held in para 7 as under :

***“7. However, we should not be understood to mean that bail should be granted in every case. The grant of refusal of bail is entirely within the discretion of the Judge hearing the matter, although the discretion is unfettered it must be exercised judiciously and in a humane manner and compassionately.”***

13. Further in ***Mauji Ram Vs. State of U.P. 596 SC Criminal Appeal No. 1150 of 2019 dated 29.07.2019***, it was held in para 13 as under :

***13. Time and again this Court has emphasized the need for assigning the reasons while granting bail (Ajay Kumar Sharma Vs. State of U.P. (2005) 7 SCC 507, Lokesh Singh Vs. State of U.P. & Anr (2008) 16 SCC 753, Data Ram Vs. State of U.P. & Anr 2018 3, SCC 22), although it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence, yet it must appeal from perusal of order that Court has applied its mind to the relevant facts in light of material.”***

If the bail has to be compulsorily granted in above cases as argued, then where is the discretion or need to give reasons for grant of bail or for application of mind or to consider other factors, which are yardstick for grant or refusal of bail in non bailable offence(s) in my respectful view.

14. These issues have been finally settled by Hon'ble Division Bench of Delhi High Court in ***Court on its own motion Vs. State decided on 13.11.2018 in Cr. Ref. 1/2018***, the relevant para(s) of which are reproduced as under :

***“35. What emerges from the aforesaid observations of the Supreme Court, and on a reading of Section 437 Cr PC is the following:***

***(i) The power of the Court to grant or refuse bail is a discretionary power and the exercise of the said discretion is circumscribed by germane and relevant considerations. The discretion has to be exercised with care and caution by balancing the valuable right of the individual, and the interest***



**of the society in general.**

**(ii) The basic rule in respect of an accused in a cognizable, non-bailable offence, and an under-trial is to grant him bail. The option to commit him to jail is the exception. This is because refusal of bail is a restriction on the personal liberty of the individual, which is guaranteed under Article 21 of the Constitution and, therefore, the personal liberty of the accused/under trial should not be curbed lightly.**

**(iii) Pre-conviction incarceration of the accused/ under trial is a preventive measure, and not a punitive one. Denial of bail in an otherwise deserving case to the accused/ under trial cannot be actuated with the desire to punish the accused/ under trial.**

**(iv) The option of denying bail, and subjecting the accused/ under trial to incarceration would be resorted to by the Court where there are apprehensions that the accused/ under trial may: flee from justice; thwart the course of justice; appear to be likely to commit other offences while on bail, or; likely to intimidate witnesses or destroy evidence. These considerations are illustrative and not exhaustive;**

**(v) The gravity or heinousness of the offence involved, and the severity of the punishment that the accused may be subjected to is a relevant consideration, as it is likely to induce the accused to avoid the course of justice where the offence is grave and the punishment therefor is severe, and must weigh with the Court when considering the question of bail, or jail;**

**(vi) The conduct of the accused/ under trial - particularly, post the involvement in the case, is also a relevant consideration. Thus, if the accused/ under trial has not abused the trust placed by the Court in him, that would be a factor in his favour while considering his application for grant of bail.**

**(vii) The other circumstance, namely his roots and family background; his age; his antecedents, and; his status in the society are other considerations which would be taken into**



**account at the time of consideration of grant, or refusal, of bail to the accused/ under trial.**

**(viii) The court can curb (though not completely eliminate) the possibility of the accused fleeing from justice, by subjecting him to conditions such as requiring him to furnish his personal bond; surety bonds; surrendering his passport; reporting at the police station on regular intervals to mark his attendance etc.**

**(ix) In a case where the accused is alleged to have committed an offence punishable with death or imprisonment for life, or in a case where the accused appears to be a repeat offender whose case is covered by clause (ii) of sub section (1) of section 437, ordinarily his bail may be refused. However, in cases falling under one or more of the first two provisos to Section 437 (1) Cr.P.C., the bail may be granted upon consideration of the relevant circumstances taken note of herein.**

**(x) The considerations in granting bail are common - both to cases falling under Section 437 (1) Cr P.C, and cases falling under Section 439 (1) Cr.P.C, namely: the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the likelihood of the accused jeopardizing his own life**

**being faced with a grim prospect of possible conviction in the case; the likelihood of the accused tampering with evidence or influencing witnesses; the history of the case as well as of its investigation, and other relevant grounds which cannot be exhaustively set out.”**

Further in para 37, it was held as under :

**37. When the chargesheet is filed before the court of Magistrate without arresting the accused xxxxx. It is not open**



**to the Court to examine whether the exercise of discretion by IO not to arrest the accused despite rejection of his anticipatory bail application by this court has been properly exercised.**

**XXXX**

**XXXX**

**XXXX**

**Thus the Metropolitan Magistrate cannot examine whether the discretion of the IO to arrest or not the accused has been properly exercised. He is only concerned with the chargesheet.”**

In the above judgment, it was finally concluded :

**“The existence of aforesaid circumstances merely enables the court to consider the application for grant of bail u/S. 437(1) CrPC. However, the considerations which go into the making of the decision, whether to grant bail or not are those that we have exhaustively considered and set out herein above. Thus, it would depend on the circumstances of the individual case, whether or not the accused should be released on bail by the court under Section 437(1) CrPC.”**

15. From the ratio of the aforesaid judgment of the Hon'ble Division Bench, it is apparent that the bail is a discretionary relief and the circumstances laid down in the said judgment(s) enables the court to consider the application for grant of bail u/S. 437 (1) CrPC. Further, the considerations which go into the making of decision, whether to grant bail or not would depend upon the circumstances of the individual case i.e. whether the accused should be released on bail or not. At the same time, the non arrest of the accused during the investigations is an important consideration or factor, which has to be taken into while considering the



bail application of the accused. Further it is not open to the court to examine whether the exercise of discretion by the IO to arrest or not to arrest the accused has been properly exercised.

16. That the above view is also fortified by the judgment relied upon by Ld. Counsel(s) for A-2 and A-3 in support of their arguments i.e. ***P. Chidambaram Vs. Directorate of Enforcement (Criminal Appeal No. 1831/2019, arising out of SLP (Criminal) No. 10493 of 2019) decided on 04.12.2019***, in which the Hon'ble Supreme Court held in relevant para as under :

***21. Such consideration with regard to 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 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 accused to stand trial.***

In para 15 of the said judgment, it was held as under :

***15. ....“The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for***



***bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner."***

17. Keeping in mind the principle(s) for grant / refusal of bail laid down in the aforesaid judgments as discussed above, it appears from perusal of the record and the arguments of the prosecution as well as the defence that both the accused persons have already joined the investigations on umpteen occasions, despite that the investigating agency did not chose to arrest them during the investigations despite they being available at all times. The stand of the CBI / investigating agency is most ambivalent with regard to the matter in hand, on the one hand, they did not arrest the accused persons at any point of time when they appeared before them during the investigations and on the other hand, they are opposing their bail application(s) tooth and nail. The said stand can be described by way of English idiom '***run with the hare and hunt with the hounds***' i.e. to be good on terms with both sides.



18. No doubt, as per the averments made in the charge sheet, there are serious allegations that the accused persons i.e. (A-1), (A-2) and (A-3) in conspiracy with each other cheated / extorted the complainant Satish Babu Sana of huge amount of money on the pretext of helping him in connection with the investigations of CBI case RC 224 2017A 0001/AC-VI/CBI SIT, and thereby extorted money from him on making him believe that A-2 was having very good connections in the CBI and as well as with one Special Director of CBI and they will manage clean chit to the complainant in the said case on payment of Rs. 5 Crores in the said RC, out of which, substantial amount, as per the allegations mentioned in the chargesheet above was delivered to the accused persons, due to the registration of the present FIR, there was huge bickering in the higher echelons of the CBI i.e. amongst the top level officers and due to which the IO as well as the said Special Director had to endure agony for a long time.

19. The accused persons had also been substantially cooperating in the investigations, though as per the allegations of the investigating agency, the A-2 had not handed over his mobile phones and had also not cooperated in opening his E-mail by supplying the password, which somewhat hampered the investigations. However, lot of time has passed since the initial registration of the FIR. Further there are no allegations till date of intimidating the witnesses, substantial investigations have already been done, therefore, there are no chances of tempering with the evidence. Further investigations only pertain to scientific investigations in the nature

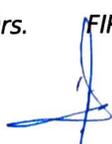


of LRs from UAE / USA which cannot be possibly tempered by the accused persons, there is no flight risk as (A-2) is not involved in any other case and (A-3) is a designated senior advocate, who is also not involved in any other case.

20. In these facts and circumstances, it is a fit case where both the accused persons i.e. Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal (A-3) are entitled to bail on executing personal bond of Rs. 1,00,000/- (Rs. One Lakh) each with two sureties of like amount each subject to the condition that they will not leave the country without the specific permission / orders of this Court and they will also deposit their passport(s) immediately with the court.

Further, both of them will mark their presence with the IO or with the CBI on every 2<sup>nd</sup> and 4<sup>th</sup> Monday of every month, month by month, without fail till further orders. In case Monday happens to be a holiday, the accused persons will report on the next working day. The above accused persons shall also make themselves available for interrogation in the course of further investigations as and when required by the CBI / Investigating Agency. In case of non-cooperation / non joining on their part, the CBI will be at liberty to move an application seeking cancellation of their bail(s).

The accused persons shall also not temper with evidence or attempt to influence or intimidate the witnesses. Needless to reiterate again in case



of violation of any of the express provisions of the bail as above, the investigating agency / CBI shall be at liberty to move an application seeking cancellation of concession of bail(s) granted to the accused persons.

21. Both the bail applications of accused persons Someshwar Srivastav @ Somesh Prasad (A-2) and Sunil Mittal (A-3) stand disposed off as above.

22. Regarding the application of accused Manoj Prasad (A-1) for modification of the bail order dated 01.06.2019, the direction to the said accused to report at the CBI office on 2<sup>nd</sup> and 4<sup>th</sup> Monday of every month cannot be said to be onerous, but rather appears to be just and reasonable. Moreso, as the further investigations are still pending and important scientific piece of evidence is still to be retrieved / received by way of LRs from USA / UAE, therefore, no good ground for modification of bail order dated 01.06.2019 qua accused Manoj Prasad (A-1) is made out. As a consequence his application for modification of the bail order dated 01.06.2019 stands dismissed.

**Nothing expressed hereinabove shall have any bearing on the merits of the case.**

The e-mail copy / signed scanned copy of this order be sent to the Computer Branch, RADC by the Reader for uploading on the official

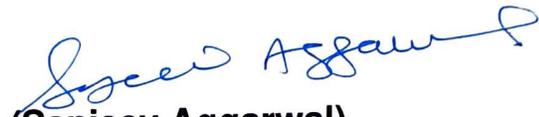


website.

A copy of the order be retained on record to be put in the judicial file as an when normal court work stands resumed.

The present order has been dictated to Sh. Amit Makhija, Sr. PA. attached with the undersigned.

**Announced in the Open Court  
through Video Conferencing/  
CISCO Webex Platform  
on this 22<sup>nd</sup> day of Sept., 2020.**

  
**(Sanjeev Aggarwal)  
Special Judge (PC Act) (CBI)-02  
Rouse Avenue District Courts  
New Delhi**

**(THROUGH VIDEO CONFERENCING FROM RESIDENCE)**

**CBI Vs. Alok Kumar Sharan & Ors.  
CC No. 378/2019**

***The present matter has been taken up via CISCO Webex platform / video conferencing hosted by Sh. Narender Kumar, Reader of this Court in terms of orders of Hon'ble High Court bearing No. R-235/RG/DHC/2020 dtd. 16.05.2020, 16/DHC/2020 dtd. 13.06.2020, 22/DHC/2020 dtd. 29.06.2020, 24/DHC/2020 dtd. 13.07.2020, 26/DHC/2020 dtd. 30.07.2020, 322/RG/DHC/2020 dated 15.08.2020 and 417/RG/DHC/2020 dated 27.08.2020 in the presence (on screen) of Sh. V. K. Pathak, Ld. PP for CBI along with Sh. Avnish Kumar, Pairvi Officer for CBI and Sh. Vikas Walia, Ld. Counsel for A-1, Sh. N.B. Paonam, Ld. Counsel for A-2, Sh. K. K. Tiwari, Ld. Counsel for A-3 and Sh. Rahul Sharma, Ld. Counsel for A-4 and A-5.***

**22.09.2020**

Present : Sh. V. K. Pathak, Ld. PP for CBI along with Sh. Avnish Kumar, Pairvi Officer for CBI.

Sh. Vikas Walia, Ld. Counsel for A-1.

Sh. N.B. Paonam, Ld. Counsel for A-2.

Sh. K. K. Tiwari, Ld. Counsel for A-3.

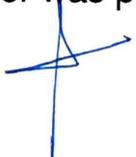
Sh. Rahul Sharma, Ld. Counsel for A-4 and A-5.

Accused Alok Kumar Sharan (A-1), L.Binodini Devi (A-2), Prakash Shamharkar (A-3) are present on bail.

Accused Anil Kumar Mangal (A-5) is present in person.

M/s. Sai Flytech Aviation Pvt. Ltd. (A-4) is represented through Anil Kumar Mangal (A-5).

The matter was proceeding at the stage of PE.



At request of accused Anil Kumar Mangal (A-5) and in the interest of justice, the NBWs issued against the said accused vide order dated 06.02.2020 are stayed till the next date of hearing.

Put up for PE on **28.10.2020**.

The e-mail copy / signed scanned copy of this order be sent to the Computer Branch, RADDC by the Reader for uploading on the official website.

This signed order sheet be retained on the record to be put on the judicial file as and when the normal court working stand resumed.

The present order has been dictated to Sh. Amit Makhija, Sr. PA attached with the undersigned.



(Sanjeev Aggarwal)  
Special Judge (PC Act)(CBI)-02  
Rouse Avenue District Court  
New Delhi/22.09.2020