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HIGH COURT OF DELHI: NEW DELHI

Date of Decision : 28.11.2011

1. Bail Appl. No.1565/2011

SHARAD KUMAR

..... Petitioner

Through: Mr. Altaf Ahmed, Sr.
Adv. and Mr.R.Shanmugasundara,
Sr.Adv. with Mr.V.G.Pragasam,
Mr.S.J.Aristotle, Mr.Sudershan
Rajan, Advs.

Versus

CBI

..... Respondent

Through: Mr. Mohan Parasaran,
ASG with Ms.Sonia
Mathur, Standing
Counsel for CBI with IO
DSP Rajesh Chahal.

2. Bail Appl. No.1567/2011

KANIMOZHI KARUNANITHI

..... Petitioner

Through: Mr. Altaf Ahmed, Sr.
Adv. and
Mr.R.Shanmugasundar
a, Sr.Adv. with
Mr.V.G.Pragasam,
Mr.S.J.Aristotle,
Mr.Sudershan Rajan,
Advs.

Versus

CBI

..... Respondent

Through: Mr. Mohan Parasaran,
ASG with Ms.Sonia
Mathur, Standing
Counsel for CBI with IO
DSP Rajesh Chahal

3. Bail Appl. No.1564/2011

KARIM MORANI

..... Petitioner

Through: Mr.Siddharth Luthra,
Sr. Adv. with
Mr.Sandeep Kapur,
Mr.Shivek Trehan and
Mr.Udit Mehdiratta,
Advs.

Versus

CBI

..... Respondent

Through: Mr. Mohan Parasaran,
ASG with Ms.Sonia
Mathur, Standing
Counsel for CBI with IO
DSP Rajesh Chahal.

4. Bail Appl. No.1566/2011

RAJIV AGARWAL

..... Petitioner

Through: Mr.N. K. Kaul, Sr. adv.
with Mr.Gurpreet, Adv.

Versus

CBI

..... Respondent

Through: Mr.Mohan Parasaran,
ASG with Ms.Sonia
Mathur, Standing
Counsel for CBI with IO
DSP Rajesh Chahal

5. Bail Appl. No.1568/2011

ASIF BALWA

..... Petitioner

Through: Mr.Vijay Aggarwal &
Mr. Gurpreet Adv.

Versus

CBI

..... Respondent

Through: Mr.Mohan Parasaran,
ASG with Ms.Sonia
Mathur, Standing
Counsel for CBI with IO
DSP Rajesh Chahal

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. These are five bail applications of Asif Balwa (A-13), Rajiv B. Aggarwal (A-14), Karim Morani (A-15), Sharad Kumar (A-16) and Kanimozhi Karunanithi (A-17) for grant of regular bail in respect of 2G Spectrum Scam case, which were registered vide RC DAI 2009 A 0045 by the CBI. All these applications are disposed of by a common order as they are interconnected and, moreover, the stand of the CBI in all these applications is common.
2. Briefly stated that the facts of the case are that on 21.10.2009, Anti Corruption Branch of CBI had registered the aforesaid FIR on the allegations of criminal conspiracy and criminal misconduct against the unknown officials of Department of Telecommunications, Government of India and some unknown private persons/companies and others under Section 120B IPC

and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 in respect of allotment of Letters of Intent, Unified Access Services (hereinafter referred to as 'UAS') Licenses and 2G Spectrum by the Department of Telecommunications. CBI had filed the first charge sheet on 02.04.2011 in the Court of learned Special Judge, Patiala House Courts, New Delhi against A.Raja, the then Minister of Communications and Information Technology (A-1), Siddhartha Behura, the then Secretary, Telecom (A-2), R.K.Chandolia, the then P.S. to the Minister (A-3), Shahid Balwa and Vinod Goenka, Directors, M/s Swan Telecom Pvt. Ltd. (A-4 and A-5 respectively). M/s Swan Telecom Pvt. Ltd (A-6), Sanjay Chandra, Managing Director, M/s Unitech Wireless Tamil Nadu Ltd. (A-7), M/s Unitech Wireless Tamil Nadu Ltd. (A-8), Gautam Doshi, Group Managing Director of Reliance, ADA Group (A-9), Surendra Pipara, Group President of Reliance,

Anil Dhirubhai Ambani Group (A-10), Hari Nair, Sr. Vice President of Reliance, ADA Group (A-11) and M/s Reliance Telecom Ltd. (A-12).

3. A supplementary charge sheet was filed in respect of this very FIR on 25.4.2011 in the Court of learned Special Judge for offences under Section 120B IPC read with Section 7/11/12 of the Prevention of Corruption Act, 1988 against Asif Balwa (A-13) of M/s Kusegaon Fruits & Vegetables Pvt. Ltd., Rajiv B. Agarwal (A-14), Director, Kusegaon Fruits & Vegetables Pvt. Ltd., Karim Morani (A-15) of M/s. Cineyug Media & Entertainment Pvt. Ltd., Sharad Kumar (A-16), Director/Promoter of M/s. Kalaighar TV Pvt. Ltd. and Kanimozhi (A-17) Promoter/Stakeholder of M/s Kalaighar TV Pvt. Ltd. In addition to this, the charge sheet also named A-1, A-4 and A-5.

4. An attempt was made by A-16 and A-17 to get regular bail before the Court of Special Judge and the High Court, which proved to be unsuccessful, whereupon SLP(Crl.) Nos.4584-4585/2011 were filed by them before the Supreme Court in which order was passed on 20.06.2011, dismissing the SLPs but giving the liberty to the accused persons to renew the applications for bail after framing of the charges. Similar attempt had been made by some other accused persons but I am not referring to the same as nothing turns on it. The orders on the SLP's of A-16 and A-17 have been referred, by way of sequence of important events, which took place.
5. All the petitioners renewed their applications for grant of regular bail in terms of the liberty granted by the Supreme Court after framing of the charges on 22.10.2011, but these applications were also rejected

by the learned Special Judge, which lead to the filing of the present bail applications before this Court.

6. In the meantime, Supreme Court in another batch of Criminal Appeal Nos.2178 to 2182 of 2011, arising out of the SLP(Crl.), pending before it, passed orders on 23.11.2011, granting regular bail to A-6, A-8, A-9, A-10 and A-11, who were sent for trial by virtue of the first charge sheet.
7. Though, the present batch of bail applications were listed for hearing on 01.12.2011, however, on account of the applications of the co-accused having been allowed by the Supreme Court and the applications on behalf of the accused having been filed, the date of hearing was preponed to 25.11.2011 from 01.12.2011.
8. It has been contended by Mr. Altaf Ahmed, the learned senior counsel appearing for Sharad Kumar and Kanimozhi, that in view of the orders of the Supreme

Court in Sanjay Chandra's case (supra) granting them regular bail in respect of the aforesaid FIR, the present petitioners are placed on a much better footing, and therefore, they also deserve to be enlarged on bail. The learned senior counsel has handed a comparative chart of charges, which were framed against Sharad Kumar and Kanimozhi in comparison to the other accused persons, who were granted bail by the Apex Court. It was contended that the charges against Sharad Kumar and Kanimozhi were much milder and carrying lesser punishment than the one in respect of which the bail was granted by the Apex Court. It was further contended that this was in addition to the common charges, which were framed against all the 17 accused persons. To give an over-view of comparison of these charges, I deem it proper to reproduce the comparative table of the charges given by the learned senior counsel.

Substantive Individual Charges

Name	Charges	Name	Charges
Accused granted bail		Accused seeking bail	
Sanjay Chandra (A-7)	Section 420 r/w 120B IPC	Kanimozhi Karunanithi (A-17)	Section 12 r/w section 7 in the alternative Section 11 of PC Act r/w 120 B IPC (5 years)
Vinod Goenka (A-5)	Section 420 r/w 120 B, Section 12 r/w section 7 or in the alternative Section 11 of P.C. Act r/w 120 B IPC Section 193 r/w 120 B IPC	Sharad Kumar (A-16)	Section 12 r/w Section 7 or in the alternative Section 11 of P.C. Act r/w 120 B IPC (5 years) Section 193 r/w 120 B IPC (7 years)
Gautam Doshi (A-9)	Section 109/420 r/w 120 B IPC		
Hari Nair (A-10)	Section 109/420 r/w 120 B IPC		
Surendra Pipara (A-11)	Section 109/420 r/w 120 B IPC		

<u>Charges Common to All 17 Accused</u>
Section 120B r/w 409/420/468/471 IPC and sec. 7 or in the alternative sec. 12 and 13(2) of the P.C. Act, 1988.

9. Based on the aforesaid comparative table, it was contended by Mr.Ahmed, learned senior counsel, that since the maximum sentence in respect of which the petitioners have been charged is only five years in comparison to the seven years of punishment which could be imposed on the accused Sanjay Chandra and others, who were granted bail, therefore, on the principle of parity, the petitioners deserve to be extended the benefit of grant of bail.
10. The second submission of the learned senior counsel is that the trial Court had taken a wrong view both earlier as well as now when it rejected the application for grant of regular bail by referring to a great deal of alleged

planning committed by the accused persons and the magnitude of the offence. Similar reasoning was given by the High Court but the Supreme Court has not approved the grounds for rejection of the bail applications of Sanjay Chandra and others as convincing and if that be so, on the same analogy, the petitioners' bail applications could not be rejected by the learned Special Judge afresh.

11. The third submission of Mr.Ahmed, learned senior counsel, is that admittedly this is a case where there is no apprehension of the petitioners fleeing from the processes of law and tampering with the evidence more so when the substantive evidence, which is sought to be adduced by the CBI against the present petitioners, happens to be documentary evidence, which the petitioners themselves are relying in order to prove their defence that the amount of Rs.200 crores, alleged

to have been received by Kalaingar TV, was a loan. It is contended that as a matter of fact it was a genuine loan transaction between M/s.Cineyug Media and Kalaingar TV and which amount actually stood repaid in the month of February, 2011, therefore, there was absolutely no question of petitioners either tampering with the evidence. It was further contended that this fact is fortified by the fact that even the CBI did not have any objection for the grant of bail to the present petitioners in respect of the aforesaid offences and yet this plea of the CBI was not accepted. It is contended that the learned Special Judge has erroneously observed that the petitioners are highly placed and influential persons, and therefore, there is a likelihood of their influencing the witnesses, while as there was absolutely no prima facie evidence or much less likelihood in this regard.

12. Lastly, Mr.Ahmed, the learned senior counsel, has contended that the Apex Court has granted bail to the five accused persons in this very FIR taking cognizance of the fact that the accused are charged of economic offence of huge magnitude and if proved, it may jeopardize the economy of the country, yet at the same time, the Court observed that it cannot lose the sight of the fact that the charge sheet has already been filed and charges have been framed and keeping in view the voluminous nature of documents and the number of witnesses, which are to be examined by the prosecution, it will not be conducive to keep the accused persons incarcerated indefinitely during the period of trial, when there is no serious challenge to their fleeing from the processes of law or tampering with the evidence or not subjecting themselves to such orders as the Court may pass from time to time. It was also contended that the Supreme Court has reiterated the

denial of bail to an accused has to be done as an exception and for cogent and sound reasons, as it affects his right to liberty guaranteed under Article 21 of the Constitution.

13. While going through the order of the Supreme Court in Sanjay Chandra's case (Supra), it was pointed out by the learned senior counsel Mr. Ahmed that there was no mention of Section 409 IPC in para 13, which carries life imprisonment. It was said that it was an inadvertent omission. Similarly, in para 25 of the order also, the maximum punishment shown is seven years, while as Section 409 IPC simpliciter or conspiracy to commit the said offence under Section 409 IPC carries imprisonment for the principal offence, which would be life. It was asked from the learned senior counsel whether this Court notwithstanding this fact could proceed ahead with the decision on the bail applications

of the petitioners on the assumption that the Supreme Court has taken into consideration the offence under Section 409 IPC independently or read with Section 120B IPC as one of the offences with which co-accused Sanjay Chandra and others were charged, yet granted them bail?

14. The learned senior counsel contended that the Supreme Court has dealt with the applications of Sanjay Chandra and others as a whole while considering the enormity of charges and the magnitude of the alleged scam and yet granted bail to the accused. Therefore, this Court cannot assume or presume that Section 409 IPC was not in the knowledge of the Court yet bail was granted. The learned senior counsel did not attach any significance to this omission and wanted the Court to take note of the charges against the accused persons read as a whole since the Apex Court has dealt with the

charges as a whole and not individual charges of the accused.

15. It was in this background, the learned senior counsel placed reliance in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors.*, **(1985) 1 SCC 260** and *M/s.Bayer India Ltd. & Ors. Vs. State of Maharashtra & Ors.*, **(1993) 3 SCC 29** to contend that by virtue of Article 141 of the Constitution, the orders and the directions, which were passed by the Apex Court in Sanjay Chandra's case (supra) are binding on this Court in order to maintain 'hierarchical system of Courts'.
16. So far as, Kanimozhi's case is concerned, it was also argued by Mr. Ahmed, the learned senior counsel that in her case by virtue of Proviso to Section 437, if the accused is a woman, she is entitled to a bail even if the offence, which is alleged to have been committed by her

carries life imprisonment, as this is the mandate of the legislature, a woman, a sick person and a person under the age of 16 has been treated as a separate Class in itself and given special treatment. It is further contended that if this limitation has been removed in the case Magistrate, obviously, this Court being a Superior Court does not suffer from any such limitation also and it has much wider powers.

17. So far as the Karim Morani's case is concerned, Mr.Luthra, learned senior counsel has adopted the arguments urged by Mr.Ahmed, the learned senior counsel and added further that so far as Karim Morani (A-15) is concerned, he is also seeking bail on the medical grounds. He has contended that the applicant/Karim Morani (A-15) has a history of coronary disease and has stated to be suffering from a condition called Ecstasia. It is alleged to be a condition because of

which the applicant is stated to have undergone three Angioplasties in the year 1993, 1997 and 1998 and an open heart surgery in the year 2007, wherein he has received 6 bypass grafts as well as re-boring of two major vessels. It has been further stated that his heart only pumps 45% to 50% of blood as compared to a healthy person. Apart from this, there are number of other diseases like Arthritis in knees, lumber spondylitis, cervical spondylitis etc., which, in my view, are not very serious and life threatening but the condition of the heart although presently is stable and is not an immediate cause of concern, however, it is certainly a condition which can get out of control because of stress and lack of proper medical care, if the petitioner is kept incarcerated during the period of trial which is likely to be fairly long, keeping in view the voluminous record and the number of witnesses to be examined.

18. Mr.N.K.Kaul, learned senior counsel, who appeared for the petitioner, Rajiv Agarwal, has also supplemented the submissions made by Mr.Ahmed, learned senior counsel and contended that so far as the CBI is concerned, as it did not have any apprehension regarding the tampering of evidence or the accused persons fleeing from the processes of law, the continued incarceration of the petitioner was tantamounting to denial the benefit of bail by way of punishment for the offences of which he was charged, though they are yet to be proved against the petitioner. It was contended that the Apex Court has clearly in Sanjay Chandra's case (supra) observed that nobody should be deprived of his liberty only on the belief that he will tamper with the evidence, if left at liberty except in "most extraordinary circumstances". He has also drawn the attention of the Court to the various paras in the order of the Apex Court and observed that though the discretion to grant bail is with

the Court but it has been observed that it has to be exercised with a great care and caution by balancing the valuable right to liberty of an individual and the interest of the society in general.

19. Mr.Vijay Aggarwal, the learned counsel, who is appearing for Asif Balwa (A-13), has also adopted the arguments of the previous learned senior counsel and also cited couple of orders passed by the Apex Court in the matter of bail. These are *Utsav Bhasin Vs. State (NCT of Delhi)* passed in **SLP(Crl.) No.524/2009** and *Kamaljit Singh Vs. State of Punjab and Anr., (2005) 7 SCC 226*. Since these orders are not giving the facts of the case and they are very short orders, I do not feel that the learned counsel can get any help by referring to the said two orders.
20. I have carefully gone through the submissions made by the learned senior counsel for the petitioners as well as

the order of the Supreme Court in Sanjay Chandra's case (supra).

21. At the outset, the order of the Supreme Court has dealt with the previous judgments on the subject and reiterated the principles of law, which the Court has to bear in mind, while dealing with the application for grant of bail. One principle feature of this order, which is noticeable, is that it has put a great deal of emphasis on the personal liberty of the under trial, while considering the bail applications, which principle seem to have been obscured by the passage of time by Courts. To sum, these principles are reiterated as under:-

- (a) There is a presumption of innocence in favour of the accused till he is found to be guilty.
- (b) The bail is the rule and denial thereof is the exception. For the purpose of denial of the bail there must be extraordinary circumstances necessarily meaning that bail ought not to be

denied to an accused only on the ground of general sentiments of the community as it impairs the right to liberty guaranteed to an accused.

- (c) While considering the grant of bail, both the factors, namely, the seriousness of charges and the severity of punishment which the offence carries must taken into consideration.
- (d) The bail ought to be granted in a case where there are no chances of the accused fleeing away from the processes of law or in other words, the accused, who is released on bail must be readily and willingly available to submit himself to the custody of the Court at any given point of time.
- (e) The grant of bail ought not to be denied only on the perceived apprehension by the Court that the petitioner, if restored to a liberty, he will tamper with the evidence. There must be some prima facie evidence on record or reasonable and justifiable grounds to believe that in case the benefit of bail is extended to an accused he is going to misuse his liberty or so as to create

conditions which are not conducive to hold a fair trial.

22. Seen in the aforesaid backdrop, the question which arises for consideration is as to whether the petitioners who are charged for an offence of conspiracy under Section 120B IPC read with Section 409 IPC apart from other offences etc., which carry life imprisonment ought to be released on bail notwithstanding the fact that the order of the Apex Court is silent about the life imprisonment which the offence carries. In this regard, I feel merit in the contention of Mr. Ahmed, the learned senior counsel for the petitioners that although the Apex Court order does not find the mention of the word 409 IPC or the factum of life imprisonment which could be imposed for the said offence in the order, but it was cognizant of the fact that the all co-accused persons in the bail applications which were under its consideration were charged so. In addition to this, while dealing with

the facts of the case in the batch of applications of Sanjay Chandra's case (supra) it had taken the charges against all the co-accused as a whole and not individual charges, therefore, if that be the position, this Court ought not to deny the bail to the petitioners on account of the omission, though inadvertent, in the order of the Apex Court. I am of the view that when the Supreme Court has reproduced the facts of the case, given the magnitude of the offence, the severity of the punishment which it entails, it has taken into note of the fact of the accused persons in general being charged for an offence under Section 409 IPC or the conspiracy thereof which carry life imprisonment. If despite the aforesaid facts, the Supreme Court has released the co-accused persons Sanjay Chandra's case (Supra) on bail, the said benefit cannot be denied to the petitioners on the grounds of parity. Moreover, the offences of which the petitioners in general have been charged, carries a

punishment of five years under Prevention of Corruption Act or the IPC in comparison to the accused persons in Sanjay Chandra's case (supra) where it carried 7 years. So in a way petitioners stand is on better footing, therefore, they ought not to be denied the benefit of bail. Moreover, the Supreme Court order, which is passed in Sanjay Chandra's case (supra) is binding on the High Court. The High Court cannot while considering the bail applications of the present accused persons do hair splitting of the order of the Supreme Court and make out a distinction when there is none so as to deny the benefit of said order to the petitioners by saying that the petitioners are charged for the offence of conspiracy under Section 120B IPC read with section 409 IPC which carries the life imprisonment. It will be also in my view would be violative of Article 141 of the Constitution, which lays down that the High Court being the subordinate to the Supreme court must show

compliance and the respect to the orders of the Apex Court. In this regard, I am tempted to reproduce para 6 of the case titled *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors.*, **(1985) 1 SCC 260**, wherein it has been stated as under:-

".....It will never be necessary for us to say so again that 'in the hierarchical system of courts' which exists in our country, 'it is necessary for each lower tier', including the High Court, 'to accept loyally the decisions of the High tiers'. 'It is inevitable in hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary..... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted.' The better wisdom of the court below must yield to the higher wisdom of the court above. This is the strength of the hierarchical judicial system."

23. Similarly, in case titled *M/s Bayer India Ltd. & Ors. Vs. State of Maharashtra & Ors.*, **(1993) 3 SCC 29**, the Apex Court has observed as under:-

"While we certainly respect the independence of the High Court and recognize that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India."

24. Mr.Altaf Ahmed, the learned senior counsel has also cited number of other judgments to impress on this Court, the question that the omission to mention of Section 409 IPC or the absence of the word 'life imprisonment' in the Supreme Court order cannot be interpreted in a manner which may be detrimental to the interest of the petitioners on account of Article 141 of the Constitution of India as the Supreme Court has dealt with the facts of the case as a whole and was

cognizant of the fact that the charges against all the petitioners had crystallized. It was also aware that common charges with regard to the commission of offence were framed against all the accused persons, which entailed imposition of life imprisonment, yet it consider the case of the co-accused Sanjay Chandra's Case (supra) fit to grant bail. These judgments are *Official Liquidator Vs. Dayanand & Ors.* **(2008) 10 SCC 1**, *State of Bihar Vs. Kalika Kuer @ Kalika Singh & Ors.* **(2003) 5 SCC 448**, *Ajmer Singh Vs. State of Haryana,* **(2010) 3 SCC 746**, *Izharul Haq Abdul Hamid Shaikh & Anr. Vs. State of Gujarat,* **(2009) 5 SCC 283**, *Dinbandhu Sharma Vs. State,* **87 (2000) DKT 149**, *Director of Settlements, A.P. & Ors. Vs. M. R. Apparao & Anr.,* **(2002) 4 SCC 638**, *Saganthi Suresh Kumar Vs. Jagdeeshan,* **(2002) 2 SCC 420** and *Indian Airlines Vs. Union of India & Ors.,* **128 (2006) DLT 505 (DB).**

25. I do not consider it necessary to refer to these

judgments though, I have gone through the relevant pages cited during the course of submissions on account of the fact that I have already taken a view hereinabove that this Court being subordinate to the Supreme Court is bound by the order passed by the Apex Court in the facts of this very case. It will not be proper for this Court to dissect the order minutely and then try to make a distinction, so far as the case of the petitioner is concerned, when on the face of it there is none.

26. Seen in the light of the observations passed by the Apex Court in the aforesaid cases, I feel that it is not open to this Court to differentiate in the facts of Sanjay Chandra's case (supra) and the present case by invoking Section 409 IPC or Section 120 B IPC and say since the said offence carries life imprisonment, therefore, the benefit of the said judgment on the basis of parity cannot be extended to the petitioners. On the contrary, I feel that the case of the petitioners stands

on a better footing because the offence of which they are charged carries punishment of only five years in contrast to seven years which were imposable in the case of others.

27. The next point, which arises for consideration of the bail applications of the petitioners, is whether they will flee from the processes of law or they will be available for the purpose of facing the trial. As a matter of fact, it has never been the case of the prosecuting agency/CBI that so far as the petitioners are concerned, they are likely to flee from the processes of law. Almost all the accused persons have roots in the society, though living in different parts of the country with varied interest, therefore, there is no chances of their fleeing from the processes of law. In any case, their movements can be regulated by imposing conditions by the Supreme Court.

28. So far as the next ground on which the benefit of bail could have been denied to the petitioners is on account of the likelihood of the petitioners, tampering with the evidence or creating conditions, which are not conducive to the holding of a fair trial. Every petitioner says that the grant of bail to him will not create any impediment in the holding of a free and fair trial and that he would be available at all times to submit to the custody to the Court as and when called upon to do so. Similarly, in a given case, the prosecuting agency may not raise this objection or make a positive statement as has been done in the present case that it has no objection to the grant of bail to the accused persons.

29. I feel that though such a concession granted by the prosecuting agency may be a very relevant and important factor to grant bail but I do not feel that the Court is bound to accept such a statement blindly. The

Court is expected to exercise its own judgment and to see if there is any likelihood or chances of tampering with the evidence. This is because the Court has a constitutional duty to uphold the 'law' and it is well possible in a given case there may be various extraneous considerations, which may have prompted the prosecuting agency to give such a concession, which need not be gone into detail herein in this case. No doubt, the petitioners are influential or moneyed persons having extensive clout political or otherwise but I have examined the list of witnesses qua each of the accused persons, which was supplied by each of the learned senior counsel. A perusal of the list of witnesses shows that these witnesses are generally proving the documents of banking transaction or otherwise to show the movement of money transactions from D.B.Reality/D.B.Dynamic to Kusegaon to Cineyug and finally to Kalaignar T.V. and the reverse. Meaning

thereby that most of the evidence against the petitioners is documentary evidence and there is in my view no prima facie evidence or likelihood, which may persuade the Court to doubt that the petitioners have proclivities or reason to believe that they will create condition, which may not be conducive to hold the free and fare trial. Further, Mr.Mohan Parasaran, learned ASG appearing for the CBI has clearly taken the stand in the Court below, as well as before this Court that they have no objection in case the petitioners are released on bail as they do not apprehend that the petitioners will tamper with the evidence and that they have no objection to the grant of bail to the petitioners. There for on account of this consideration, bail cannot be denied to the petitioners.

30. So far as the Kanimozhi's case is concerned, she is entitled to invocation of additional ground of being a

woman as envisaged Proviso to Section 437 which lays down that in case an accused, who appears or produced before a Magistrate is a sick, infirm or a woman or a child less than 16 years of age, he is entitled to bail notwithstanding the offence of which he or she is charged may carry life imprisonment.

31. If the legislature in its wisdom has chosen not to put any limitation on the power of the Magistrate to grant bail to a specified category of accused persons, it was incumbent to the Court to consider this provision liberally in favour of the accused person Kanimozhi by the trial Court provided that there was no other factor coming against the accused to deny the grant of bail. To this extent, the order of the learned Special Judge is not sustainable.

32. Mr.Luthra, Mr.Kaul, the learned senior counsel and Mr.Vijay Aggarwal, Advocate have substantially adopted

the arguments of Mr.Ahmed, the learned senior counsel for the petitioners. I do not feel that, in the light of the analysis of the submissions made by Mr.Altaf Ahmed, the learned senior counsel, any separate ground urged by the remaining co-accused persons need to be dealt with separately except that in the case of Mr.Karim Morani. He is admittedly a patient, who has undergone various surgical procedures and has precarious health conditions, though for the present that has not been a cause for concern but that is certainly a ground, which has also weighed with this Court in extending the benefit of grant of bail to him as has been a special ground of being woman in the case of Kanimozhi Karunanithi.

33. In the light of the aforesaid facts and circumstances, I allow the bail applications of all the five accused persons and they are directed to be released on bail on their

furnishing a personal bond in the sum of Rs.5 lakhs each with two sureties for the like amount to the satisfaction of the learned trial Court, subject to the following conditions:

- (a) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts as may be necessary to the Court or to any other authority;
- (b) They shall remain present before the trial Court on all the dates fixed for hearing of the case. If anyone of them wants to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining present, they shall immediately give intimation to the trial Court and also to the Superintendent, CBI and seek permission of the Court that they may be

permitted to present through the counsel, and in such an event, they will not dispute their identity as the accused in the case;

(c) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit; and

(d) CBI will be at liberty to make an appropriate application for modification/recalling of the order passed by this Court, if for any reason, the petitioners violate any of the conditions imposed by this Court or creates any condition which is not conducive to the holding of a fair trial.

34. Expression of any opinion herein may not be treated as an expression on the merits of the case.

35. Copy of this order be sent to the trial Court.

36. Dasti under the signatures of the Court Master.

NOVEMBER 28, 2011
KP

V.K. SHALI, J.