

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 16th MARCH, 2018

DECIDED ON : 23rd MARCH, 2018

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BAIL APPLN. 573/2018

KARTI P CHIDAMBRAM

..... Petitioner

Through : Mr.Kapil Sibbal, Sr.Advocate; Dr.Abhishek Manu Singhvi, Sr.Advocate; Mr.Gopal Subramaniam, Sr.Advocate; Mr.Dayan Krishnan, Sr.Advocate; Mr.Mohit Mathur, Sr.Advocate with Mr.Arshdeep Singh, Mr.Amit Bhandari, Mr.Prateek Chadha, Ms.Aakash Lodha, Mr.Akshat Gupta, Mr.Aditya Chopra, Mr.Sanjeevi Seshadri & Mr.Nikhil Bhalla, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION..... Respondent

Through : Mr.Tushar Mehta, Sr.Advocate/ ASG with Mr.D.P.Singh, Ms.Sonam Gupta, Mr.Rajat Nair, Mr.Kanu Agrawal & Mr.Manu Mishra, Advocates. IO DSP R.Parthasarthy.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The petitioner seeks regular bail under Section 439 Cr.P.C. in case RC 220 2017-E-0011 dated 15.05.2017 registered under Section 120B read with Section 420 IPC; Section 8 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The bail application is contested by the respondent CBI.

2. I have heard learned Senior Counsel for the petitioner and learned Addl. Solicitor General for the respondent and have examined the file.

3. The accused persons named in the FIR are :
- (i) M/s. INX Media (P) Ltd., Mumbai (hereinafter “INX Media”), through the then Director, Indrani Mukherjea and others;
 - (ii) M/s. INX News (P) Ltd., (hereinafter “INX News”), through the then Director, Pratim Mukherjea @ Peter Mukherjea and others;
 - (iii) M/s. Chess Management Services (P) Ltd., (in short “CMS”), represented through its Director, the present petitioner and others;
 - (iv) M/s. Advantage Strategic Consulting (P) Ltd., (in short “ASC”), represented through its Director, Padma Vishwanathan @ Padma Bhaskararaman and others; and
 - (v) Unknown officers of the Ministry of Finance, Government of India and other unknown persons.
4. ‘INX Media’ was incorporated on 08.08.2006 to carry on the business of creating, operating, managing and broadcasting a bouquet of television channels, including Hindi and multiple vernacular entertainment channels.
5. On or about 13.03.2007, ‘INX Media’ applied to the Chairman, Foreign Investment Promotion Board (in brief “the FIPB”), seeking its approval for permission to issue by way of preferential allotment, in one or more tranches (i) upto 14,98,995 equity shares of ₹10 each, and (ii) upto 31,22,605 convertible, non-cumulative, redeemable preference shares of ₹10 each collectively representing

approximately 46.216% of the Issued Equity Share Capital of 'INX Media' on an "as converted" basis to three non-resident investors under the Foreign Direct Investment Route, namely :

- (i) Dunearn Investment (Mauritius) Pvt. Ltd.;
- (ii) NSR-PE Mauritius LLC; and
- (iii) New Vernon Pvt. Equity Ltd.

6. 'INX Media' also expressed its intention to make a downstream financial investment to the extent of 26% of the issued and outstanding equity share capital of 'INX News'.

7. The 'FIPB' at its meeting held on 18.05.2007 recommended the proposal of 'INX Media' for consideration and approval of the then Finance Minister. However, the 'FIPB' did not approve the downstream investment by 'INX Media' in 'INX News'. The recommendation of FIPB was approved by the then Finance Minister, the petitioner's father.

8. The 'FIPB' issued a press release dated 30.05.2007 indicating the details of proposals approved in the 'FIPB' meeting. The quantum of FDI / NRI inflow against 'INX Media' was shown as ₹4.62 crores. The approval was intimated vide a letter dated 31.05.2007.

9. In the FIR, it is alleged that in contravention of the terms of the approval of 'FIPB' conveyed vide letter dated 31.05.2007, 'INX Media' deliberately made a downstream investment to the extent of 26% in the capital of 'INX News'. The downstream investment included Indirect Foreign Investment by the same foreign investors and generated more than ₹305 crores Foreign Direct Investment in

‘INX Media’ as against the approved foreign inflow of ₹4.62 crores by issuance of shares to foreign investors at a premium of more than ₹800 per share.

10. It is further alleged that in order to wriggle out of the situation without any punitive action, ‘INX Media’ entered into a criminal conspiracy with the petitioner son of the then Finance Minister to get the issues resolved / addressed amicably by influencing the officials of the ‘FIPB’, taking wrongful advantage of his relationship with the then Finance Minister.

11. ‘INX Media’ through its letter dated 26.06.2008 tried to justify its action on both the counts. It is alleged in the FIR that ‘INX Media’ falsely claimed that the unapproved and unauthorized downstream investment was in accordance with the approval. ‘INX Media’ further justified the excess foreign inflow receipt, as premium received against shares issued.

12. It is alleged in the FIR that upon receipt of the aforesaid letter of ‘INX Media’, the concerned officials of FIPB, who had been influenced by the petitioner, ignored the illegalities on the part of ‘INX Media’. In abuse of their official position, these officials showed undue favour to the INX Group of Companies and advised ‘INX News’ to apply afresh for ‘FIPB’ approval in respect of downstream investment. It is further alleged that the officials of the FIPB ignored the request of the Department of Revenue to investigate into downstream investment made by ‘INX Media’ without FIPB approval.

13. The FIR further alleges that 'INX News', concealing the investment in 'INX Media' to the extent of 26%, again approached FIPB for permission for downstream investment in pursuance of a criminal conspiracy. Such deceitful and fallacious proposals were favourably considered by the officials of the Ministry of Finance and approved by the then Finance Minister. Concurrence to a "proposed investment" when investment had been made without the approval of the Finance Ministry, smacks of malafides and dishonest intention on the part of the officials of the Ministry, who did not take any punitive action against 'INX Media', but covered up the illegality by seeking an application from 'INX News' and granting permission to it. The permission gave an erroneous impression that 'INX News' was yet to receive the foreign investment.

14. It is alleged that pursuant to the criminal conspiracy with INX Group and the intermediaries, senior officials of the Ministry of Finance not only granted illegal approval, but also misinformed the investigation by the Investigation Wing of the Income Tax in this regard.

15. It is further alleged that in consideration for the services rendered by the petitioner to the INX Group, through 'CMS', payments were received against invoice raised on 'INX Media' by 'ASC'. As per source information, the reason for getting the invoice raised in the name of 'ASC' for services rendered by 'CMS' was to conceal the identity of the petitioner, since he was Promoter Director of 'CMS', when the invoice was raised and the payment was received.

16. Case of the prosecution is that 'ASC' was being controlled by the petitioner indirectly. It is further alleged that invoices for approximately 3.5 crores were raised in favour of the 'INX Group' in the name of other companies, in which the petitioner had sustainable interests either directly or indirectly. Such invoices were falsely raised for creation and acquisition of media content; consultancy in respect of market research; acquisition of content of various genre of audio or video, etc. INX Group, in its records, mentioned the purpose of payment of ₹10 lacs to 'ASC' as towards "Management consultancy charges towards FIPB notification and clarification."

17. In the FIR, it is stated that the acts and omissions, as aforesaid, prima facie, disclosed commission of offences mentioned previously against the accused persons named therein.

18. In nutshell, allegations contained in the FIR are that 'INX Media' entered into a criminal conspiracy with the petitioner and others pursuant to which irregular / illegal acts committed by INX Media; (i) in receiving excess Foreign Direct Investment than the amount approved by FIPB, (ii) Unauthorized downstream investment by 'INX Media' without the approval of the FIPB, were got scuttled by the petitioner by influencing the public servants of 'FIPB' unit of the Ministry of Finance by virtue of relationship with the then Finance Minister and thus prevented any punitive action being taken against the INX Group. The unknown officers / officials of the Ministry of Finance also by virtue of influence exercised over them by the petitioner by abusing their official position caused undue pecuniary

advantage to 'INX Media'. As a condition for such act, 'INX Media' paid substantial amounts to the companies in which the petitioner had sustainable interest directly or indirectly.

19. Learned Senior Counsel for the petitioner urged that the petitioner was illegally arrested by CBI on 28.02.2018 from Chennai airport and thereafter he remained in police custody till 12.03.2018. Subsequently, he was sent to judicial custody. It is vehemently urged that the allegations in the FIR against the petitioner are imaginary, highly improbable and malafide. The petitioner has been deliberately drawn into a small, routine commercial transaction between the two private companies for an alleged petty sum of ₹10 lacs. The petitioner had no control over business affairs of the company 'ASC'. The subject FIR has been deliberately strained and stretched to entangle the petitioner into mere allegations made without any factual or legal basis.

20. Learned Senior Counsel further urged that on 10.08.2017, Madras High Court granted interim stay of the operation of the Look Out Circular dated 16.06.2017 (Annexure 'P/7'). CBI Challenged it in SLP(C) No. 20699-20700 of 2017 before the Hon'ble Supreme Court; operation of the order dated 10.08.2017 was stayed. The petitioner was directed to appear before the Investigating Officer on 23.08.2017 along with necessary documentation in his possession for his defence. Complying with the said orders, the petitioner appeared before the Investigating Officer on 23.08.2017 and was questioned for about eight hours. He again voluntarily appeared before the investigating agency on 28.08.2017 to be interrogated for around seven hours.

21. On 20.11.2017, the petitioner was permitted to travel to United Kingdom from 01.12.2017 to 10.12.2017 by the Hon'ble Supreme Court and after availing the said permission, he duly returned to India on 10.12.2017. By an order dated 31.01.2018, the Supreme Court directed Madras High Court to hear the writ petition and dispose it off within two months. It is informed that Madras High Court has reserved the order after hearing arguments. From 15.02.2018 to 28.02.2018 again the petitioner was permitted to travel abroad i.e. United Kingdom by Madras High Court.

22. It is urged that upon petitioner's return from United Kingdom on 28.02.2018, the respondent CBI in a wholly illegal and arbitrary manner arrested him from the Chennai airport without disclosing any grounds or reasons for his arrest.

23. It is further informed that Bhaskararaman (a co-accused in the subject FIR) was arrested by the Directorate of Enforcement under the Prevention of Money Laundering Act, 2002 based on the scheduled offences mentioned in the subject FIR on 16.02.2018; he has since been granted regular bail by the learned Special Judge on 13.03.2018.

24. It is strenuously contended that no prima facie case is made out against the present petitioner. The present FIR has been lodged on the basis of 'source' information. The respondent – CBI has chosen not to name any public servant in the subject FIR filed under P.C.Act. Cheque issued for a sum of ₹10 lacs was in favour of a consulting company that had raised an invoice for the work done, accounted for the income and paid income tax on the amount.

25. Learned Senior Counsel further submitted that the 'FIPB' used to be chaired by the Secretary, Economic Affairs and it included four other Secretaries (Industry, commerce, External Affairs and Overseas Indian Affairs) and the Secretary of the Administrative Ministry concerned. As per the normal procedure, the recommendation of the 'FIPB' submitted to the Minister of Finance were again examined by the junior officers and then by the Additional Secretary and the Secretary, before putting up before the competent authority (Finance Minister). No single officer could take a decision on any proposal; it used to be a collective decision of six Secretaries. It is highly unbelievable that any single individual could have influenced any officials of 'FIPB' including all six senior Secretaries to the Government of India. The Finance Minister used to approve only those cases that were recommended by 'FIPB' and put up by the Secretary (Economic Affairs). There was no question of any irregularity or illegality in the approval granted to the proposal of 'INX Media' as alleged. The petitioner had no occasion to meet any of the Secretaries in the 'FIPB' to influence them in any manner whatsoever. It is further argued that the petitioner was never a director or shareholder of 'ASC' and had no control over its business. The delay in lodging the FIR has remained unexplained.

26. It is further contended that reliance on the statement of Indrani Mukherjea recorded under Section 164 Cr.P.C. is fallacious as she herself is facing trial in a murder case and continues to be in judicial custody for the last two years. The present criminal proceedings are malafide and are borne out of vendetta.

27. Learned Addl. Solicitor General urged that the filing of the instant bail application before this Court directly is an abuse of process of law. The present application is not maintainable before this Court as the petitioner had filed similar bail application to seek bail before the learned Special Judge and it was listed for hearing on 15.03.2018. Before that, the learned Trial Court had granted police custody remand to CBI and the petitioner was in CBI's custody till 12.03.2018. The orders granting police custody remand to CBI were never challenged by the petitioner.

28. It is emphasized that during police custody remand, the petitioner remained evasive throughout and declined to answer even normal basic questions. In spite of completely non-cooperative attitude of the petitioner, the investigating agency was able to gather substantial evidence suggesting that 'ASC' and other entities are 'benami' entities of the petitioner and are controlled by him. The investigation spread across various parts of the country is still in process and is at a very crucial stage. Cogent and credible evidence has been gathered establishing petitioner's involvement in the commission of serious criminal and grave economic offences. The petitioner being a very influential person, his past conduct of having destroyed evidence and influence witnesses and the fact that he being fully aware as to the areas where he must not allow the investigation to reach, it is a genuine and bonafide fear of the investigating agency that the petitioner would hamper investigation if enlarged on bail. The investigating agency has concrete evidence to show that the petitioner

before his arrest not only influenced or threatened the witnesses but also destroyed the evidence in anticipation of his arrest.

29. During arguments, learned ASG handed over a comprehensive compilation in a sealed envelope for the perusal of this Court to support his contentions. It is urged that during the course of investigation, sufficient oral and documentary evidence has been gathered to substantiate the various allegations in the FIR. It has been found that against the approved amount of ₹4.62 crores as FDI, 'INX Media' till May, 2008 received Foreign Direct Investment of ₹305 crores and till 2010 it increased to ₹731 crores. Reliance was placed on the statement of various officers including CFO and Legal Head of 'INX Media'. (Annexure 'B' in the compilation)

30. It is further urged that investigation revealed that prior to the approval dated 11.11.2008 accorded to 'INX News' by the 'FIPB' an amount of ₹43.90 crores had already been made by 'INX Media' in 'INX News' as downstream investment without the specific approval of the 'FIPB'. Again, reliance was placed on the statements of various officers (current and former) including CFO of INX Media and Company Secretary of 'INX News' detailed in the compilation.

31. Despite denial by the petitioner that neither he nor his company 'CMS' had ever rendered any service including FIPB related service to 'INX Media', during investigation, this allegation has also been substantiated. Evidence has been collected that 'CMS' did act in collusion with 'INX Media' on 'FIPB' related issues and was aware of the irregularities alleged on the part of 'INX Media' and eventually invoices in the name of 'INX Media' were raised by the companies in

which the petitioner had indirect control. Reliance was placed on the statements of various officers of 'CMS' and statement of Indrani Mukherjea recorded under Section 164 Cr.P.C. to buttress the submissions.

32. Incriminating evidence showing that invoice was raised by 'ASC' for the services rendered by 'CMS' in the garb of consultancy was collected. It has been established beyond reasonable doubt that the petitioner is the ultimate beneficial owner of 'ASC'. Investigation revealed that telephone bills of 'CMS', personal bills of mobile phones, maintenance charges of the office of the petitioner including other similar expenses are being paid and settled by 'ASC'. It has been urged that during investigation the petitioner caused destruction of evidence.

33. It is further urged that statements of senior officers of 'FIPB' were recorded and it was found that receipt of excess Foreign Investment by 'INX Media' over and above the approved FDI, has not been dealt with properly. Such officers, on the issue relating to downstream investment have stated that had such facts be known to them, they would not have recommended the proposal of 'INX News' for approval.

34. It is further contended that the petitioner during his visits abroad has been resorting to closure of accounts in his name and in the names of his companies in which suspected payments of crime proceeds are believed to have taken place. Reliance was placed on the confidential report received from the Financial Intelligence Unit.

35. Reliance has been placed upon authorities by CBI reported in : '*Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation*', 2013 (7) SCC 439; '*State of Gujarat vs. Mohanlal Jitamalji Porwal*', 1987 (2) SCC 364; '*State of Bihar and Anr. vs. Amit Kumar Alias Bachcha Rai*', 2017 (13) SCC 751; '*Gautam Kundu vs. Directorate of Enforcement (Prevention of Money Laundering Act)*', 2015 (16) SCC 1; '*Sunil Dahiya vs. State (Govt. of NCT of Delhi)*', 2016 SCC OnLine Del 5566; '*Suresh Thimiri vs. The State of Maharashtra*', 2016 SCC OnLine Bom 2602; '*Chhagan Chandrakant Bhujbal vs. Union of India*', 2016 SCC OnLine Bom 9938; '*Ram Pratap Yadav vs. Mitra Sen Yadav and Anr.*', 2003 (1) SCC 15; '*Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav and Anr.*', 2004 (7) SCC 528; '*Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr.*', 2010 (14) SCC 496; '*Anwari Begum vs. Sher Mohammad and Anr.*', 2005 (7) SCC 326, and '*Prahlad Singh Bhati vs. NCT, Delhi and Anr.*', 2001 (4) SCC 280.

36. True, the petitioner has filed the instant application under Section 439 Cr.P.C. before this Court without exhausting the remedy to seek bail before the Trial Court / Special Judge. It is a matter of record that the petitioner had moved the Trial Court seeking identical relief under Section 439 Cr.P.C. However, the bail application was not considered because on the request of the CBI, police custody remand of the petitioner was extended from time to time till 12.03.2018. Apparently, the Trial Court was not in a position to dispose off the bail application due to its orders granting police custody remand in the interregnum period. It is to be noted that the

petitioner did not challenge the orders of the Trial Court extending remand from time to time. When the instant application was taken up for hearing, it was specifically enquired from the learned Senior Counsel for the petitioner if the bail application was pending before the Trial Court. The learned Senior Counsel, on instructions, informed that the bail application fixed for consideration on 15.03.2018 would be withdrawn; it has since been withdrawn. The present application was received on assignment by this Court. As the bail application before learned Special Judge has already been 'dismissed as withdrawn', no useful purpose will be served to direct the petitioner to first approach the Trial Court to seek bail.

37. It is not at issue that both the Sessions Court and the High Court have concurrent jurisdiction to entertain the bail application under Section 439 Cr.P.C. There is no bar to the petitioner to approach the High Court to seek bail under Section 439 Cr.P.C. without first exhausting his remedy before the Sessions Court. Of course, it is desirable that the Trial Court must first be moved or approached before directly filing the application before High Court.

38. In the case of '*Sandeep Kumar Bafna vs. State of Maharashtra*', AIR 2014 SC 1745, Hon'ble Supreme Court permitted the petitioner therein to surrender before the High Court and thereafter to consider his bail application under Section 439 Cr.P.C. It was held that there were no restrictions to the High Court to entertain an application for bail provided the accused was in 'custody'.

39. Considering the peculiar facts and circumstances of the case and the withdrawal of the application for bail under Section 439

Cr.P.C. before the Trial Court, the application at hand cannot be dismissed as not maintainable.

40. At the outset, it may be mentioned that allegations against the petitioner as contained in the subject FIR alone are being taken into consideration for the purpose of grant / rejection of bail. It has come on record that the Directorate of Enforcement has instituted proceedings under Sections 3 & 4 of the Prevention of Money Laundering Act being ECIR No. 07/HIU/2017, where seemingly the petitioner is one of the suspects. The said proceedings are under challenge presently before the Hon'ble Supreme Court and interim protection has been granted to the petitioner for certain period. One of the accused Bhaskararaman in the said FIR has since been granted regular bail with certain conditions by the learned Special Judge by an order dated 13.03.2018. The investigation in the said matter is still underway. Allegations against Bhaskararaman as narrated in the order dated 13.03.2018 were that he was involved in assisting the main accused i.e. the petitioner in the instant FIR in the commission of the crime. As the said proceedings are pending adjudication before the competent Court, allegations regarding laundering of money being the crime proceeds of the present FIR would not be of much relevance for disposal of the bail application in the instant case to avoid prejudice to the case of either of the parties. The parties will be at liberty to raise all these issues in the said proceedings, if so permitted.

41. In '*Prasanta Kumar Sarkar vs. Ashis Chatterjee & Anr.*', 2010 (14) SCC 496, the Hon'ble Supreme Court observed :

“It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the 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 influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

42. Bearing in mind the above parameters / principles while considering an application for bail, the facts of the present case are being noted and appreicated.

43. The petitioner was arrested in this case on 28.02.2018 by the CBI from Chennai airport and was produced before the Duty Magistrate, Patiala House Courts to seek fifteen days’ police custody remand. The learned Metropolitan Magistrate committed the

petitioner to police custody till 01.03.2018. The police custody remand was subsequently extended from time to time and it remained in force till 12.03.2018. On 12.03.2018, CBI filed an application seeking fifteen days judicial custody remand of the petitioner. In the remand application, CBI informed the learned Special Judge that as during police custody, the petitioner was evasive and non-cooperative, no more police custody remand was required. By an order dated 12.03.2018, the petitioner was sent to judicial custody and he continues to be so till date. Remand application dated 28.02.2018 (annexure 'P/11') filed before the Court reveals that at the time of his arrest, the petitioner's baggage was searched. However, nothing relevant to the case was found therein and the baggage was handed over to Mr.Ganeshan, his representative. Pursuant to the search warrants obtained, premises of the petitioner and also of others associated with him were searched on 15.05.2017. Prior to the petitioner's arrest, comprehensive investigation was carried out by the CBI; voluminous record is stated to have been seized in this case.

44. During the course of arguments, a specific query was raised and the learned Addl. Solicitor General was asked if there was recovery of any incriminating material at the instance of the petitioner or from his possession during police custody remand from 28.02.2018 to 12.03.2018. Learned Addl. Solicitor General, on instructions, fairly admitted that there was no such recovery. Order dated 09.03.2018 records that two separate applications, one seeking permission to allow Indrani Mukherjea and Pratim Mukherjea @ Peter Mukherjea to be brought to Delhi for identification of place in Delhi in the presence

of the petitioner and the other seeking permission to confront the petitioner with co-accused Bhaskararaman were moved. When these applications were taken up for consideration at 02.00 p.m., CBI opted not to press the application seeking permission to allow Indrani Mukherjea and Pratim Mukherjea @ Peter Mukherjea to be brought to Delhi for identification of the place in Delhi in the presence of petitioner. The said application was dismissed as 'not pressed'. The application seeking permission to confront the petitioner with co-accused Bhaskararaman (since released on bail) being CA of the petitioner was allowed.

45. The incident whereby 'INX Media' allegedly entered into criminal conspiracy with the petitioner and others to receive excess FDI than the one approved by FIPB and also of making unauthorized downstream investment without approval of the FIPB and both being scuttled by the petitioner by influencing public servants of the FIPB Unit pertains to the year 2007-2008. Indisputably, the FIR in question was lodged on 15.05.2017 on 'source' information. No explanation has, however, been offered for the inordinate delay in lodging the FIR.

46. During investigation, statements of Indrani Mukherjea under Section 161 Cr.P.C. and 164 Cr.P.C. implicating the petitioner were recorded on 07.12.2017 and 17.02.2018 respectively. It is pertinent to note that Indrani Mukherjea was already in judicial custody in a murder case. In her statement, she did not offer any reasonable explanation for not implicating the petitioner and others at the earliest. Pratim Mukherjea @ Peter Mukherjea who is stated to be one of the accused in the FIR has yet not been arrested; his statement

either under Section 161 Cr.P.C. or 164 Cr.P.C. has not been recorded so far. According to Indrani Mukherjea's statement recorded under Section 164 Cr.P.C. she met the petitioner in June, 2008 at Hotel Hyatt and a demand of one million US dollars for settling / resolving the issues with 'FIPB' was raised. Advance payment of ₹10 lacs to be given through the banking channel in India as a part of demand of one million US dollars was asked for. This disclosure came to be made by Indrani Mukherjea on 17.02.2018 for the first time before the Chief Metropolitan Magistrate after recording her 161 Cr.P.C. statement before the Investigating Officer on 07.12.2017. She, however, did not elaborate in her 164 Cr.P.C. statement if any such payment of one million US dollars minus ₹10 lacs was ever paid, if so, to whom and by what mode. She in her statement further disclosed that other invoices besides the one of ₹11.50 lacs by 'ASC' were raised by the petitioner through his companies including 'ASC' for about ₹7,00,000/- lacs US dollars equivalent to approximately ₹3.5 crores as per exchange rates in 2008. She, however, informed that such payments were authorized by Pratim Mukherjea @ Peter Mukherjea who had taken over 'INX Media' as its Director and Executive Chairman. As noted above, Pratim Mukherjea @ Peter Mukherjea's statement has not been recorded to corroborate her version.

47. This Court is conscious that at the time of consideration of bail, a detailed examination of the evidence and elaborate documentation of the merits of the case, which may prejudice the prosecution or accused is to be avoided. It has, however, been held by the Hon'ble Supreme Court that there is a need to indicate in the order

reasons for prima facie concluding while bail was being granted particularly when the accused was charged of having committed a serious offence. [*Anwari Begum vs. Sher Mohammad & Anr.*’, 2005 (7) SCC 326]

48. Indrani Mukherjea claimed in 161 Cr.P.C. statement that in the said meeting at Hyatt, ‘INX Media’s Head Legal i.e. AS (name withheld) was present. In his statement recorded on 14.09.2017, ‘AS’, however, did not claim if he was present along with Indrani Mukherjea in any meeting with the petitioner at Hyatt. Certain other discrepancies have emerged in the statements of Indrani Mukherjea and AS which need not to be elaborated in the present proceedings.

49. In ‘*Haricharan Kurmi (CRA No.208 of 1963) & Jogia Hajam (CRA No.209 of 1963) Vs. State of Bihar*’, AIR 1964 SC 1184, evidentiary value of a confession made by co-accused person has been discussed. It was held :

“The statements contained in the confessions of the co-accused persons stand on a different footing. In cases where such confessions are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements. The stage to consider the said confessional statements arrives only after the other evidence is considered and found to be satisfactory. The difference in the approach which the court has to adopt in dealing with these two types of evidence is thus clear, well understood and well-established.....”

50. During investigation, the prosecution recorded statements of senior officers under Section 161 Cr.P.C. who were at the helm of affairs at 'FIPB' at the relevant time of grant of necessary approvals. They did not attribute or assign any specific and definite role to the petitioner in the crime. None of the senior officers claimed to have ever been approached or influenced in the grant of approvals by the petitioner. The said senior officers (names are not being disclosed here) did not name any official in the 'FIPB' who was ever prevailed upon by the petitioner or his associates to impact their decision. During the entire investigation, none of the public servants has been identified or apprehended so far who was allegedly approached or influenced by the petitioner to scuttle the action against 'INX Media' for the irregularities or illegalities committed by them. The senior officers merely informed the investigating agency that had the past history of the case been brought to the notice of the 'FIPB' in the agenda notes for the meeting held on 24.10.2008, the decision taken by FIPB would have been different. It was further informed that the downstream investment without specific approval was violation of the provisions of FEMA and its penalty was up to thrice the sum involved in such contravention.

51. It is not at issue that an invoice for a sum of ₹10 lacs plus service tax dated 26.06.2008 was raised by 'ASC' against professional charges towards management consultancy services upon 'INX Media' and its payment was made vide cheque No. 002914 of Kotak Mahindra Bank dated 15.07.2008 for ₹9,96,296/- after deduction of tax; it was cleared on 22.07.2008. Petitioner's contention is that the

invoice was raised in favour of a consultancy company with which he had no concern. The investigating agency, has, however, collected material to prima facie infer that though allegedly consultancy services were provided by 'CMS' of which the petitioner was a Director, the invoice, in fact, was raised by 'ASC'. It falsifies the petitioner's version that he had no concern whatsoever with 'ASC'. The prosecution has also relied upon various e-mails exchanged between the senior officers of 'INX Media' and Vice President of 'CMS' (names withheld). From the statements recorded under Section 161 Cr.P.C. of various individuals coupled with the e-mails exchanged, it can well be inferred that there was nexus between 'CMS' and 'ASC'. No plausible explanation has been given by the petitioner as to how and why, for consultancy services purportedly given by 'CMS', invoice in the sum of ₹10 lacs as professional fee was raised on behalf of 'ASC'. This incriminating circumstance, however, alone is not sufficient at this stage to deny bail to the petitioner as this payment was duly accounted for in the records and was received by a cheque. It is a matter of trial as to who was the ultimate beneficiary of this amount. No credible evidence has been produced on record regarding the exact relationship of the petitioner with 'ASC'.

52. Regarding other four invoices allegedly raised by ASC and other companies like Advantage Singapore Pvt. Ltd., the payments if any received, pertains to the case under Prevention of Money Laundering Act, 2002 which need not to be commented in the present bail application. Various other documents placed on record by

the investigating agency and certain information received from the financial institutions abroad is not relevant for the disposal of the bail application in the instant FIR. The investigating agency will be at liberty to raise all these issues in the said proceedings.

53. The petitioner has filed an additional affidavit before the Supreme Court categorically stating that all his assets are lawfully acquired, recorded in his books of accounts and are disclosed in all his statutory filings. The family has no other overseas property except one acquired legally. The only banking activity conducted by him during his visits to U.K. post registration of the FIR related to two accounts (account and sub-account) that were maintained by him with Metro Bank, U.K. and subsequent access to banking facility due to closure of the said bank account at the unilateral instance of the Metro Bank after complying with all statutory and KYC norms. The said account was opened in Metro Bank in U.K. only on 01.06.2016 and a linked sub-account was opened in November, 2016 by the very same bank. He further stated that he had never held any bank account abroad prior to that barring the time when he was a student in U.S. and U.K. between 1989 and 1995. It was further stated that all the remittances to the account in U.K. and another linked sub-account were only from him disclosed bank accounts in India of his wife and daughter and that of himself. The transfers were effected under the LRS of RBI through nationalized banks. The bank accounts in the U.K. never received any inward remittances from any other source, other than funds transferred by his wife, daughter and he himself from the nationalized banks in India. He further informed that bank

accounts in U.K. have been rendered non-operational as a consequence of a unilateral decision taken by the Bank.

54. Admitted position is that the petitioner was permitted to travel to United Kingdom from 01.12.2017 to 10.12.2017 by an order dated 20.11.2017 in SLP(C) 20699-20700 of 2017. The petitioner travelled to U.K. during that period and returned to India on 10.12.2017. Again, he was permitted to visit United Kingdom from 15.02.2018 to 28.02.2018 by Madras High Court by an order dated 16.02.2018 in WMP No.3031 of 2018 in WP No.21305/2017. The petitioner returned from United Kingdom on 28.02.2018 and from the airport itself he was arrested.

55. It is also not in dispute that the petitioner joined the investigation before CBI on 23.08.2017 in terms of the order dated 18.08.2017 of the Hon'ble Supreme Court. He again appeared before the Investigating Officer on 28.08.2017. On both the occasions, he was questioned / interrogated for sufficient duration. It is contended by the petitioner that after 18.08.2017 CBI did not issue any summons / notice to him to appear before the Investigating Officer or to supply any information or to produce any document.

56. Allegations against the petitioner primarily are for commission of offence punishable under Section 8 of Prevention of Corruption Act. The punishment for commission of the offence punishable under Section 8 is imprisonment for a term which may extend to five years with fine. Settled position is that generally 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.

57. There appears no possibility of the petitioner to flee from justice. His parents are senior advocates; he has family to take care of; he has roots in the society and is not a previous convict.

58. In a recent judgment '*Data Ram Singh vs. State of U.P. & Ors.*' in Crl.A.227/2018 decided on 06.02.2018, Supreme Court observed :

"2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

3. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge-sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is

hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436-A in the Code of Criminal Procedure, 1973.

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6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

7. We have been constrained to make these observations in the present appeal, in which the grant of bail has not been opposed by the State, but there is vehement opposition from the complainant.”

59. In the light of above discussion, in my considered view, the petitioner is entitled for bail. Hence, the petitioner is admitted to bail on his furnishing personal bond in the sum of ₹10 lacs with one

surety in the like amount to the satisfaction of the Trial Court with the following conditions :

- (i) The petitioner shall not leave India without prior permission of the Trial Court; he shall deposit his passport with the Trial Court, if not deposited so far.
- (ii) He shall not close any of his bank account in India or abroad before prior intimation to CBI; shall not change the entity or composition of any business concerns with which he is associated without prior intimation to CBI.
- (iii) He shall be available to the CBI for joining the investigation as and when required.
- (iv) In case of change of residential address or change in mobile number, CBI shall be duly informed before hand.
- (v) The petitioner shall not contact the prosecution witnesses; shall not temper with evidence; shall not criminally intimidate any witness in any manner.

60. Observations in the order shall have no impact on merits of the case.

61. Order '*dasti*.'

(S.P.GARG)
JUDGE

MARCH 23, 2018 / tr