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

\+ BAIL APPL. 2226/2019

Judgment reserved on : 12.09.2019
Date of decision : 13.09.2019

RAGHU MENON ..... Petitioner

Through: Mr. Akshay Singh, Ms. Tasha Singh, Mr. Madhar Sharma, Mr. Lakshay Verma & Mr. Farhat Arif, Advs.

versus

STATE ..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel (Crl.) for GNCTD with Mr. Kewal Singh Ahuja, APP for State.
SI Vikas Kumar, PS Dwarka South.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present bail application under Section 438 r/w Section 482 of the Cr.PC, 1973, the applicant/ petitioner seeks the grant of anticipatory bail in FIR No.354/2019, PS Dwarka which is indicated to have been registered on 29.07.2019 on the complaint of Mr. Vikas Arora, s/o Mr. Amarjeet Arora, President of M/s Europa Digital Ltd. situated at A-57, Sector-8, Dwarka, New Delhi for alleged commission of the offences punishable under Sections

420/406/467/471 r/w Section 120B r/w Section 34 of the Indian Penal Code, 1860.

2. The averments made in the FIR read to the effect:-

"12. F.I.R Contents (attach separate sheet, if reburied) Dated: 18.04.2019 To the DCP Dwarka Distt. New Delhi Subject: Fraud, cheating and misappropriation of money to the tune of Rs.50 Lakhs by Rajiv Gupta (9810023535), Raghu Menon (7011343749) & Adhiraj (+994509639566) all consultants and having their office at 38, Housing Society NDSE-1. New Delhi and prayer for registering FIR U/s 420, 467,471,120B 506 IPG. Sir, I, Vikas Arora, Working as President of M/S Europa Digital Limited having its registered office at A-57 Sector 8 Dwarka New Delhi-110077, wish to inform as herein under: l. Sir, our company M/s Europa Digital Limited is basically engaged in Diversified activities pertaining to manufacture, marketing and finance of Customer Electronic products, including high-end Smart LED Tvs and is an internationally acclaimed brand. 2 Our company had been in the process of expanding its business and for that reasons were in requirement of business loans/funds in the form of capital infusion for running, operation and management of its business. It was th this background that our company came in touch with one Mr. Rajiv Gupta, who claimed to a consultant and an expert in sourcing funds internationally. 3 The said Rajiv Gupta, called me at his office at 38, Housing Society NDSE-1, New Delhi, Wherein he was joined by MR. Raghu Menon and both of them represented that they had a third partner by the name of Mr, Adhiraj, stationed at Singapore and all of them primarily dealt sourcing of funds, ECB (external commercial borrowing) and were financial consultants to various reputed business houses. These people, after understanding our company's business need agreed for sourcing a fund for 5 million USD form Czar international Pte Limited, having its office at Singapore and at Baku, Azerbaijan, Which both Raghu and Rajeev represented that belonged to their third partner Adhiraj. 4. After, some discussion, Raghu Menon

represented that there would be some issue in obtaining a fund of 5 million USD for our company and suggested that they would be able to arrange SBLC from a Bank routed through their company-Czar international Pte Limited. 5 it may be mentioned herein that SBCL (standby letter of credit) is a guarantee that is made by bank on behalf of a client which ensures payment will be made even if their client cannot fulfill the payment. It is a payment of last resort from the bank, and ideally, is never meant to be used. An SBCL is frequently used as a safety, mechanism for the beneficiary, in an attempt to hedge out risks associated with the trade. Simplistically, it is a guarantee of payment which will be issued by a bank n the behalf of a client. It as also perceived as a "payment of last resort" due to the circumstances under which it is called upon. The SBLC prevents contracts going unfulfilled if a business declares bankruptcy or cannot otherwise meet financial obligations. Furthermore, the presence of an SBLC is usually seen as a sign of good faith as it provides proof of the buyer's credit quality and the ability to make payment. In order to set this up, a short underwriting duty is performed to ensure the credit quality of the party that is looking for a letter of credit. 6. Thus, the aforesaid Czar international Pte Limited were engaged as consultant for our company vide a letter to engagement dated 20.12.2018 and ultimately after discussion with them, a loan facility agreement was also executed between our company and Czar international Pte Limited on 19.02.2019 whereby the procedure was discussed and we also agreed to pay them commission of 3% plus 22% on the SBLC arranged by them for and on behalf of our company. 7. That the aforesaid loan facility agreement dated 19.02.2019 was followed by an indemnity Bond of our company as per prescribed format and the same were sent to Mr. Adhiraj of Czar international Pte Limited along with PDC s of our company. 8. As per the discussion with these people, Rajiv Gupta & Raghu Menon suggested that the aforesaid SBLC would be arranged in tranches (phased manner) and these SBLC would be arranged from the Kenya Bank, wherein the company *belonging to Adhiraj. E Czar international Pte Limited would be the beneficiary. The said SBLC would be credited in the accounts in the accounts of Czar international Pte Limited and then the said company would transfer & extend the said amount in the form of Loan to our company. These people through Adhiraj, as a first instance agreed to arrange SBLC for one million UDS from the Stanbic Bank Kenya Bank Limited.9. That all these persons represented that since the aforesaid SBLC was to be arranged for our company as ultimately the funds would be transferred by Czar international Pte Limited to our company. They prevailed on our company to also arrange for the underwriting duty, also known as the margin money for getting the aforesaid SBLC arranged from the Stanbic Bank Kenya Limited. 10. Both Rajiv & Raghu insisted that our company transfers the aforesaid margin money which was for and amount of 75000USD into the personal Bank Account of Adhiraj, who shall use the same for the margin money to be paid to Stanbic Bank Kenya Limited for preparing a SBLC for one million USD company insisted that it was not possible for them to arrange for such a huge amount. Wherein both of them insisted for the maximum amount and volunteered that the balance amount would be arranged by Adhiraj himself. It was on great pursuance and instance by both Rajiv & Raghu at their South extension office that our company transferred approximately Rs.500 Lakhs into the personal a/c of Adhiraj. 11 Our company trusted these people and it was absolutely due to the faith and sweet talks of these people, our company on 25.02.2019 transferred an amount or ... 50 Lakhs into the Kotak Bank Account of Adhiraj, owner of Czar international Prelimited. 12 After the transfer of the aforesaid amount in the account of Adhiraj, our company was told that the SBLC as discussed was being arranged and once the said SBLC is obtained the same would be credited in the account of Czar international Pte Limited and form there the funds would be transferred into the account of our company. 13. Sir, We had been closely following with these people since close to 2 months and also visiting their south extension office but ever* *since the transfer of the aforesaid 50 Lakhs on 25.02,2019. these people started showing their true colour. In order to fool our company initially they made stories that the SBLC has been made and also provided a copy of the SBLC, which we now understand is a forged document used for cheating our company. After the said forged SBLC, these people in conspiracy also supplied our company TT (telegraphic transfer) document, firstly showing funds to have been authorized to be transferred from Czar international Pte Limited to our company Europa Digital Limited after two days another TT was sent towards the actual transfer/post processing of funds from Czar international to our company and kept assuring that the funds would be available to our company shortly. 14 Although these people had been giving us assurance of transfer of funds to our company or in the alternative to return back our money of Rs. 50 Laksh but of late Mr. Rajiv Gupta has switched off his Mobile and is untraceable. Mr. Adhiraj does not pick the call and Mr. Raghu Menon although initially promised us to help, however of late when we go to the office of these people at South extension, Raghu says that Mr. Rajiv Gupta was an independent consultant and he used to use his office and he is not involved in the said transaction and also forwarded an Email from his email identity explaining his position. Mr. Raghu has threatened me of dire consequence, if I or person from our company set their foot in his office for demanding the return of money. 15. Sir, these persons have created our company, for over 50 Lakhs on the pretext that they would be arranging for funds of one million USD, but till date neither the funds have been arranged nor the money paid to them as margin money for preparing the SBLC is being returned to our company. It is appearing that these people have entered into a conspiracy by preparing forged and fabricated SBLC and TT documents to cheat our company and when we tried to confront them, they refused to take call and it seems all of them are panning to flee away from the hands of law. In view of the above facts and circumstances, I humbly pray that an FIR may be registered in the present case immediately and* *their passport be impounded under investigation. So that Rajiv Gupta (09810023535), RaghuMenon (07011343749) do no flee away to a foreign land & ultimately all of them including the said Adhiraj (+ 994509639566) are brought to book and our hard-earned money is recovered from these culprits. Thanking you. Your Faithfully For Eurpa Digital Limited SD English Vikas Arora President Do, PS Dwarka South register a case U/s 420/4 0 6/4 68/4 71/120B/3 4 IPG and investigation be handed over to SI Vikas Kumar, D-5399, SD English 28/7/19 SHO/Dwarka (S) Dt. 28/7/19 -----SHO Sahab U/s 420/406/468/471/120B34 Indian Penal Code, 1860---- CCTNS----- cctns Operator—Gomputer ----SHO---- Gomputer FIR Gopy SI Vikas Kumar No. D-5399----."*

3. The contention that has been raised by the petitioner is to the effect that all allegations made in the FIR against the petitioner are frivolous and baseless and that the petitioner has been falsely implicated in the instant case. The petitioner has submitted that the genesis of the entire matter pertains to two agreements i.e. an Engagement Agreement and a Loan Agreement dated 20.12.2018 and 02.02.2019 respectively between M/s Europa Digital Ltd. registered in India and Czar International Pte. Ltd. registered in Singapore and that these two agreements do not include the petitioner in any capacity. The petitioner has further submitted that till 04.03.2019, he had never spoken to the complainant nor had he had any kind of business relationship nor was he part of any transaction whatsoever with Mr. Vikas Arora or the company M/s Europa Digital Ltd.

4. It has been submitted on behalf of the petitioner that on 04.03.2019 while he was at the Goa Airport, he received a call at around 4:30 pm from a person named Mr. Vikas Arora, the Complainant and he mentioned that he was looking for a Mr. Rajiv

Gupta and that Mr. Rajiv Gupta is a freelancer had worked with the Petitioner's company on project to project basis and that the petitioner was told by the complainant that Mr. Rajiv Gupta was not picking up his calls and the petitioner asked the complainant to come to his office at South Extension the next day. The petitioner has further submitted that in as much as Mr. Rajiv Gupta had told him that he was looking for some funding and financing for a company and the petitioner had introduced him to a friend of his Mr. Adhiraj Kumar who was a financier telephonically. The petitioner has further submitted that he had only introduced two people who were in the same business which was a normal.

5. The petitioner has further submitted that on 05.03.2019, the complainant came to his office at around 10:15 am with 4 to 5 bad elements and forcefully occupied his office room and the reception area just to intimidate the petitioner and that the persons with the complainant started recording the conversation and the petitioner had sternly asked them to leave the office. The petitioner has further submitted that during the same meeting, the complainant had told the petitioner that he worked for Mr. Mukesh Bansal, Managing Director of Europa Digital Ltd and informed the petitioner that he met Mr. Rajiv Gupta and through him Mr. Adhiraj Kumar for organizing some funds for Europa Digital Ltd. and that the petitioner heard the entire conversation and told them that he would assist him because Mr. Adhiraj was known to the him since the last 16 years. It has further been submitted on behalf of the petitioner that this was the first time, he met the complainant and on 05.03.2019, the complainant forced the

petitioner to meet Mr. Mukesh Bansal at the Leela Ambience Hotel around 8 pm.

6. The petitioner has further submitted that the complainant started harassing, abusing and threatening him every day only because the petitioner knew Mr. Adhiraj Kumar and that he, the petitioner thus called up Mr. Adhiraj Kumar to speak to Mr. Mukesh Bansal and to the complainant Mr. Vikas Arora and requested Mr. Adhiraj Kumar to return the funds owed. The petitioner has further submitted that he even wrote an email to Mr. Adhiraj Kumar to deal with the matter and resolve it soon and that Mr. Mukesh Bansal sent a whatsapp message from phone no.9717984789 to the petitioner giving him details of the bank account (alleged hawala account as alleged by the petitioner) where he wanted US$ 20,000/- to be sent.

7. The petitioner has further submitted that neither Mr. Mukesh Bansal nor any representative of his have ever written an email to the company asking the company to return the money and that the next day, the complainant along with 4-5 bad elements came to his house inquiring about Mr. Rajiv Gupta and harassed the staff and threatened the office boy, Deepak Kumar with dire consequences, as a consequence of which the petitioner had to call the Police Control Room at 100 and even filed a complaint with the SHO, PS Kotla about the same incident. The petitioner has further submitted that the complainant and several unnamed persons on behalf of Mr. Mukesh Bansal have been harassing him on the phone as well as through messages in his office and at his residence both through verbal threats, abusive, messages and intimidation every day and that on enquiries

from Mr. Adhiraj Kumar, he, the petitioner learnt that there was an agreement signed on 19.02.2019 executed between M/s Europa Digital Ltd. and Czar International Pte. Ltd. through Mr. Mukesh Bansal and Mr. Adhiraj Kumar and that the finalization of the same took place at Hong Kong and the same defines the contractual relationship between the parties and details the terms and conditions to be followed by the parties involved and that Mr. Mukesh Bansal and Mr. Vikas Arora, the complainant who represented Europa Digital Ltd. have not even cancelled or terminated the agreement, which is still in existence.

8. The petitioner has also submitted that the complainant has not sought redressal of any kind before the country in terms of the agreement and that the FIR is being used by the complainant as an arm twisting mechanism and that the petitioner has no involvement whatsoever in the transaction between the parties and there is no connection between them and all that the petitioner has done was to introduce Mr. Rajiv Gupta, the co-accused to Mr. Adhiraj Kumar, the financier, another co-accused telephonically, which petitioner submits *per se* is not a crime.

9. The petitioner has further submitted that the complainant is using tactics to avoid the legalities which follow the termination of the contract as well as the expenses and difficulties in as much as the contract between the parties i.e. M/s Europa Digital Ltd. and Czar International Pte. Ltd. in which transaction, the petitioner is not involved in any capacity, indicated that the Indian Courts have no jurisdiction in the matter. The petitioner has further submitted that the complainant was using the petitioner as a means to extort money and

that there is not an iota of evidence against the petitioner and that the Engagement Agreement dated 20.12.2018 indicates that the governing laws in relation thereto are of the country of Singapore as well as the arbitration clause therein and that the governing laws of Kenya are applicable to the loan agreement dated 02.02.2019.

10. The petitioner has further submitted that he has been assisting the investigation and has been available for investigation and shall continue to do so and that the petitioner has been recently married and has been in the Ministry of Defence and other branches for years and has two daughters from his previous marriage to look after and that the allegations made of the petitioner having forged the SBLC (Standby Letter of Credit) in collusion with Mr. Rajiv Gupta and Adhiraj Kumar are false and submitted that the SBLC in question was issued under the agreement executed by M/s Europa Digital Ltd., the complainant company and Czar International Pte. Ltd. and that there is no individual who has entered into the transaction and that the agreements relate to companies. The petitioner has further submitted that there is no custodial interrogation of the applicant required and he has no previous adverse antecedents against him and that thus he be released on anticipatory bail.

11. The State vide its status report dated 05.09.2019 submitted that on enquiry having been conducted on the complaint of the complainant, Mr. Vikas Arora, president of M/s Europa Digital Ltd. (regd.), the bank account statement of the complainant's company and of the co-accused Mr. Adhiraj Kumar's bank account were received by the respondent and it was found that Rs.49,77,000/- were

transferred to the bank account of the accused Adhiraj who later returned Rs.2,85,000/- to M/s Europa Digital Ltd. and that the complainant had provided the hard copy and soft copy of Whatsapp chats and voice call recording containing conversations amidst the accused persons and the complainant.

12. The status report also indicates that the TT i.e. Telegraph Transfer which was sent by email to the Director of Europa Digital Ltd. from the account of the accused Adhiraj was found to be forged on enquiry from the concerned bank. As per the said status report, the co-accused Mr. Rajiv Gupta was arrested on 27.08.2019 and one day police remand was also granted and during the same, one lap top was recovered at his instance and he told that he used to open the emails of Adhiraj, the co-accused and of the petitioner Raghu Menon and attachments were downloaded in the laptop, it was stated that they would be sent to the FSL for some data extraction. The status report also reflected that the whatsapp chat and voice call recordings available on record indicate that the accused Rajiv Gupta was assuring the complainant that the funds required by the complainant would be arranged and that he was also taking the names of the petitioner and of the co-accused Aadi @ Adhiraj but the accused Adhiraj in conspiracy with the accused Rajiv Gupta and the accused petitioner did not return the money of the complainant and tried to further cheat the complainant by sending a forged TT through mail to complainant and that the accused Rajiv Gupta is stated to have been declared an absconder in CC No.7264/2019, PS Vikas Puri whereafter

he has been arrested and his voice sample was taken and sent to the FSL, Rohini on 04.09.2019.

13. The State has further submitted that during the police custody remand granted to Rajiv Gupta, he disclosed that the petitioner was the main conspirator in the case and he had created a whatsapp group namely "Singapore Sling" in which the accused Adhiraj and Rajiv Gupta were also added by him as members of the group and in this group all chats related to the deal with Mr. Mukesh Bansal (Europa Digital Pvt Ltd) were made and that the petitioner had also discussed about sharing of the commission of the deal. The State has submitted that the mobile phone containing this whatsapp chat has been seized as per the seizure memo and that the petitioner herein was not traceable and was not joining the investigation of the case.

14. In view of the said status report dated 05.09.2019 submitted by the State vide order dated 05.09.2019, the petitioner was directed to appear before the Investigating Officer of the case at PS Dwarka South on 06.09.2019 at 2:30 pm and was further directed not to leave the city and was directed to cooperate with the IO of the case with directions that he be not arrested till the next date of hearing in as much as there were averments in the said status report dated 05.09.2019 *inter alia* to the effect that there were chats and thus the petitioner's role was clearly brought forth wherein the transcript of the same was directed to be placed on record by the State.

15. The status report dated 09.09.2019 in terms of order dated 05.09.2019 was submitted on record. The said status report dated 09.09.2019 submitted by the State further indicates that as disclosed

by the co-accused Rajiv Gupta during the police custody remand, the petitioner herein who created the Whatsapp group namely Singapore Sling in which Mr. Adhiraj and Mr. Rajiv Gupta were also added by the petitioner as the members of the group and that in this group all chats related to the deal with Mr. Mukesh Bansal of M/s Europa Digital Ltd. were carried out and that the petitioner had also disclosed about sharing of the commission of this deal.

16. The State has submitted that the mobile phone containing these Whatsapp chats has already been seized as per seizure memo and that the petitioner pursuant to order dated 05.09.2019 of this Court has joined the investigation on 06.09.2019 and had been interrogated by the Investigation Agency in which he accepted that he had created the group namely 'Singapore Sling' in December, 2018 in which the other two co-accused Rajiv Gupta and Adhiraj were also added as the members and that the petitioner had discussed whether any money would be made in this transaction in the whatsapp group and his friend, the co-accused Adhiraj replied that 1% would be shared by each of them. The status report dated 09.09.2019 further reflected that on asking the petitioner whether his mobile phone contains the Whatsapp conversation, the petitioner replied that he usually deletes all chats in one or two days, so his mobile phone had no chats and that he had not saved the mobile numbers of the co-accused Rajiv Gupta and co-accused Adhiraj.

17. As per the status report dated 09.09.2019, pursuant to the notice under Section 91 of the Cr.PC, 1973, the petitioner produced his mobile phone and lap top through which he used to make conversation

with the co-accused Rajiv Gupta and Adhiraj and both the mobile phone and lap top had been seized to be sent to the CFSL. The status report further indicates that in order to unearth the conspiracy and trace out the money trail, the custodial interrogation of the petitioner is required.

18. Along with the said status report dated 09.09.2019, the State has placed on record the Whatsapp chats commencing from 07.12.2018, which *inter alia* indicates to the effect that the petitioner herein was the administrator of the Whatsapp group 'Singapore Sling' in which he added Mr. Adhiraj Verma and conversed to the effect:

> *"Dr. Raghu Menon created group 'Singapore Sling"*
>
> *Dr. Raghu Menon added you*
> *Dr. Raghu Menon*
> *Hi Adi. Hope you have discussed with Rajiv the percentage*
>
> *Adi Adhiraj Verma, Raghu*
> *Yes, Brother.*
> *3%. Total.*
>
> *Dr. Raghu Menon*
> *As discussed with you kindly send a detailed mail as what all needs to be done in Singapore, docs to carry, who, what when etc. and clear time frames.*
>
> *Adi. Adhiraj Verma, Raghu*
> *Yes. Client is calling me. At 2 pm India time.*
>
> *Dr. Raghu Menon*
> *This 3% will be split equally between you, rajiv and me.*
>
> *Adi Adhiraj Verma, Raghu*
> *Yes true.*

Dr. Raghu Menon
OK.
Adi do v make any money in this transaction and who will pay us?

Adi. Adhiraj Verma, Raghu
Yes we make.
1% each

Dr. Raghu Menon
1% of what? 60k?

Adi. Adhiraj Verma, Raghu
Whole deal
18% plus 3%. 3% is our share
Can we talk.
Can I get full name of digital."

19. The conversations of the Whatsapp messages between Mr. Rajiv Gupta and Mr. Vikas Arora referring to the petitioner's role of the date 06.01.2019, 18.02.2019 and 26.02.2019 are to the effect:

> *"1/6/2019, 11.41- Rajiv Gupta Dynaed: Pl note now, ADI & Raghu are taking a bigger risk as not only is the Guarantee being given but the funds are now in cash limits form.*
>
> *1/6/2019, 11:41- Rajiv Gupta Dynaed: No-one can even think of such a deal let alone offer it to Mr Bansal without collateral."*

20. The conversations of the date 17.01.2019 read to the effect:

> *"1/17/19, 17:55- Vikas Arora: Please share the address and locn*
>
> *1/17/19, 17:55- Vikas Arora: I will come there*
>
> *1/17/19, 17:55- Vikas Arora: Time?*

1/17/19, 17:57- Rajiv Gupta Dynaed: I am at NIC from 1030 to 1300…

1/17/19, 17:57- Vikas Arora: Nic?

1/17/19, 17:58- Rajiv Gupta Dynaed: We can meet after that at out office in South Ex 1

1/17/19, 17:58- Rajiv Gupta Dynaed: I will call you once finished at NIC

1/17/19, 17:58- Rajiv Gupta Dynaed: Come to South Ex 1 mkt & we will walk from there to office as parking is a problem near office"

21. The conversations of the date 06.02.2019 read to the effect:

"2/6/2019, 16:02- Rajiv Gupta Dynaed: I will inform you & a chq for same …. be handed over to Raghu tomorrow.

2/6/2019, 16:02- Rajiv Gupta Dynaed: Chq has to be given to Raghu tomorrow morning…. Awaiting value less of 7 lakh from Adi."

22. The conversations of the date 18.02.2019 read to the effect:

"2/18/19, 12:54- Rajiv Gupta Dynaed: C 38, Housing Society, South Ex 1…. Behind Petrol pump next to South Ex 1 market

2/26/19, 18:34- Rajiv Gupta Dynaed: Come tomorrow between 11 to 12.30…. Raghu will also be there."

23. The conversations of the date 01.03.2019 read to the effect:

"3/1/19, 18:24- Rajiv Gupta Dynaed: Now pl leave Raghu's office and we will preferably not interact anymore. Thanks."

24. The State has also placed on record the copies of emails dated 02.01.2019 sent by the co-accused Adhiraj to the present petitioner apprising of the proof of payment that had been done to the other parties against the charges for the SBLC, copy of email dated 02.01.2019 sent by the accused Adhiraj to the co-accused Rajiv Gupta and to the present petitioner stating that Mr. Adhiraj had received the email from the petitioner herein and would reply till the next date with papers. The conversation dated 16.01.2019 sent by Adhiraj Kumar to Mukesh Bansal also indicates that the said email was also sent to the petitioner herein.

25. During the course of submissions that were made on behalf of the petitioner it was reiterated that there was no custodial interrogation of the petitioner required and that the lap top of the petitioner had already been seized and that the petitioner had been joining the investigation.

26. On behalf of the respondent it has not been refuted that the petitioner had joined the proceedings but it is submitted that the custodial interrogation of the petitioner is required in as much as the communication received from the Citi Bank by the IO categorically states that the TT (Telegraph Transfer), copy of which was annexed by the Investigating Agency through its notice to the Citi Bank had never been received by the Citi Bank NA from the OCBC Bank and that the statement of the bank account bearing no.0077486224 maintained by the M/s Europa Digital Ltd. was wholly ficticious and no transaction had been made in the account since 11.01.2019. *Inter alia* reliance was

placed on behalf of the State on the verdict of the Hon'ble Supreme Court in ***P. Chidambaram Vs. Directorate of Enforcement,*** a verdict dated 05.09.2019 in Crl. Appeal No.1340/2019 arising out of SLP (Crl.) 7523/2019 with specific reliance on the observations in paras 74, 75, 76, 78, 79, 80 & 81 thereof, which read to the effect:

> *"74. In Siddharam Satlingappa Mhetre v. State of Maharashtra and Others (2011) 1 SCC 694, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
>
> *75. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, the Supreme Court held as under:-*
>
> *"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the*
>
> *applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305.)"*
>
> *Economic Offences:-*

76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364, it was held as under:-

"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

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

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support *thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." [underlining added]*

80. Referring to Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria (1998) 1 SCC 52, in Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora and others (1999) 5 SCC 720, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

27. It has been submitted on behalf of the State that in the present case in view of the economic offence allegedly committed in which the investigation so far and interrogation conducted of the petitioner brings forth that he has been aware of all facts of the deal between M/s Europa Digital Ltd. and Czar International Pte. Ltd. represented by the complainant coupled with the factum that it is necessary to unearth the

conspiracy between the petitioner and the two other co-accused to trace the money trail in which, an SBLC for one million US $ is stated to have been prepared in a forged manner which as per averments made in the FIR was made for the margin money to be paid to Stanbic Bank Kenya Ltd. for preparing the SBLC for one million US$.

28. On behalf of the petitioner reliance has been placed on the verdict of the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. (2011) 1 SCC 694*** with specific reference to the observations in paras 89 & 90, which read to the effect:

> *"89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.*
> *90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."*

29. It has been submitted on behalf of the petitioner that the matter relates only to a civil transaction and that the petitioner was unnecessarily being humiliated and that he be granted anticipatory bail and he would join the investigation of the case as and when required. In response to the reliance placed on behalf of the petitioner on the

verdict of the Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. (supra),*** learned Standing Counsel for the State submitted that reference to the observations in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. (supra)*** have been made in para 74 and 75 of the verdict of the Hon'ble Supreme Court in ***P. Chidambaram Vs. Directorate of Enforcement (supra)*** already adverted to hereinabove and that it has specifically been observed vide para 76 in ***P. Chidambaram Vs. Directorate of Enforcement (supra)*** that the power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences and that in ***Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105*** it has been held that in economic offences, the accused is not entitled to anticipatory bail.

30. It has been submitted on behalf of the State that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail in as much as they involve huge loss of public funds and need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole that are committed with deliberate design with an eye on personal profit regardless of the consequences to the community. It has also been submitted on behalf of the State that if the petitioner herein is given the protective cover of anticipatory bail, success in interrogation would elude and the investigation would be frustrated and collection of material and useful information would be difficult.

31. On a consideration of the submissions that have been made on behalf of either side, taking into account the factum that as the Whatsapp group 'Singapore Sling' was created by the petitioner of which he was the administrator as brought forth prima facie through the Whatsapp chats between the petitioner and the two co-accused persons and the factum that the petitioner was well aware also of the deal between the co-accused persons and the company of the complainant i.e. between Czar International Pte. Ltd. and M/s Europa Digital Ltd., coupled with the factum that as per averments made in the FIR, the SBLC was to be arranged from the Kenya Bank wherein the company belonging to the co-accused Adhiraj i.e. Czar International Pte. Ltd. was to be the beneficiary of the said SBLC, which was to be credited to the account of Czar International Pte. Ltd., which company would then transfer the said loan amount in the form of loan to M/s Europa Digital Ltd. and that the co-accused Rajiv Gupta and the present petitioner insisted that M/s Europa Digital Ltd. transfer the margin money amounting to US$ 75,000 into the personal bank account of the co-accused Mr. Adhiraj who used the same to be transferred to Stanbic Bank Kenya Ltd. for preparation of the SBLC for one million US$ which it was not possible for the complainant's company to do so whereupon the petitioner herein and the co-accused Rajiv Gupta persisted and insisted that the maximum amount be transmitted by M/s Europa Digital Ltd. and the balance amount would be arranged by the co-accused Adhiraj himself, the M/s Europa Digital Ltd. on the trust and faith on the petitioner and the co-accused Rajiv Gupta, thus transferred a sum of Rs.50 lakhs on 25.02.2019 into the

account of Adhiraj and were informed that the SBLC was being arranged and once it was obtained, the same would be credited into the account of Czar International Pte. Ltd. and from there, the fund would be transferred into the account of M/s Europa Digital Ltd. but after the said amount of Rs.50 lakhs had been transferred into the account of Mr. Adhiraj, the petitioner and the other two co-accused had started avoiding them and the petitioner had also started threatening the complainant with dire consequences and had got prepared forged and fabricated SBLC and TT documents to cheat M/s Europa Digital Ltd. in relation to which there is a communication from Citi Bank NA dated 23.05.2019 to the IO that the Citi Bank NA had never received any transaction from the OCBC Bank in relation to the account no.0077486224 maintained by M/s Europa Digital Ltd. and that there had been no transaction made into the account since 11.01.2019 till date.

32. The TT in question in relation to the bank account no. 0077486224, which is the account tof M/s Europa Digital Ltd. reads to the effect:

> *OCBC Bank noreply@notify.ocbc.com*
> *8:20 AM (2 hours ago)*
> *To SAINTGRANDUE*
> *Dear ADHIRAJ KUMAR*
> *Thank you for using OCBC business internet banking (Velocity @ ocbc)*
> *We wish to inform you that your Overseas Payment is: Processed.*
> *Here are the details:*
> *Organisation ID : SGCZARIPL*
> *Transaction date : 21 Feb 2019 12:18*

Amount : USD 200,900.00
Remarks : - EUROPA DIGITAL
Receiver Ac No. : 0077486224
Bank : CITI BANK INDIA
Value date : 25 Feb 2019
USD Ac No : 5012XXXXX301
Your reference No : SC3P190222544842
OCBC reference No.: SC3P190222544842
If you have any questions, please contact our Service Managers at 6538 1111 or , if overseas, at +65 6538 1111
We look forward to serving you again.
Your sincerely,
Implementation & Client Services
Global Transaction Banking
OCBC Bank."

which document as per communication dated 23.05.2019 was never received by Citi Bank NA, thus bringing forth prima facie that there has been a gross attempt of cheating M/s Europa Digital Ltd. by the petitioner in prima facie conspiracy with the co-accused persons by user *inter alia* of a forged telegraph transfer.

33. In the circumstances, it is not considered appropriate to grant the prayer made by the petitioner seeking the grant of anticipatory bail.

34. The BAIL APPL. 2226/2019 is thus dismissed and the interim protection granted vide orders dated 05.09.2019 and 12.09.2019 is withdrawn.

ANU MALHOTRA, J.

SEPTEMBER 13th, 2019/vm