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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 27.09.2019

Pronounced on: 30.09.2019

+ BAIL APPLN. 2270/2019 & CrI.M.A. 36692/2019

P. CHIDAMBARAM

..... Petitioner

Through Mr.Kapil Sibal, Mr.Abhishek Manu
Singhavi, Mr.Salman Khurshid,
Mr.Vivek Tankha, Mr.A.S. Chandiok,
Mr.N. Hari Haran, Mr.Dayan
Krishnan, Sr. Advs. with
Mr.Arshdeep Singh Khurana,
Mr.Kunal Vajani, Mr.Varun K.
Chopra, Mr.Amit Bhandari, Mr.Adit
Pujari, Mr.Hitesh Rai, Mr.Akshat
Gupta, Mr.Ayush Agarwal, Mr.Karan
Gogna, Mr.Aamir Khan, Mr.Aman
Singh Brar, Mr.Akshay Sahni,
Ms.Anshu Kapoor, Mr.Bilal Khan &
Mr.R.V. Prabhat, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through Mr.Tushar Mehta, Solicitor General,
Mr.Amit Mahajan & Mr.Ripu
Daman Bhardwaj, CGSC with
Mr.RajatNair & Mr.Kanu Agrawal,
Spl. Counsels, for CBI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

Vide the present bail petition, the Petitioner/accused herein Sh. P.

Chidambaram seeks bail in relation to the captioned case titled "***CBI v. INX Media Pvt. Ltd. & Ors.***" arising out of the First Information Report dated 15.05.2017 bearing No.RC2202017-E-0011, subject to such conditions or directions, as deemed fit by this Court.

1. Brief facts of the case, as stated in the petition, are that on 13.03.2007, INX Media Pvt. Ltd. filed an application seeking approval of the FIPB for permission to issue by way of preferential allotment in one or more tranches, (i) up to 14,98,995 equity shares of ₹10 each, and (ii) up to 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. It was also mentioned therein that INX Media, subject to provisions of the applicable law, has an intention to make a downstream financial investment to the extent of 26% of the issued and outstanding equity share capital of INX Media. However, this matter was not placed before the FIPB. On 18.05.2007, meeting of FIPB (comprising of 6 Secretaries to the Government of India) was held. FIPB recommended the proposal of INX Media in respect of the proposed issue of shares up to 46.216% of the issued equity.

2. The allegations against the Petitioner is that contrary to the approval

of FIPB, INX Media deliberately and in violation of the conditions of the approval:

- (a) made downstream investment to the extent of 26% in the capital of INX News without specific approval of FIPB which included foreign investment by the same foreign investors; and
- (b) brought in ₹305 Crores FDI in INX Media by issuing shares to the foreign investors at a premium of more than ₹800/- per share.

3. Accordingly, from February to April, 2018, three complaints were received by the Petitioner against INX Media/ INX News, all of which were marked to the then Revenue Secretary who in turn marked the said complaints to various authorities for enquiry.

4. In addition, pursuant to certain complaints received from the Investigation Wing of the Income Tax Department, the then Under Secretary, IFPB wrote to INX Media on 26.05.2008 sought clarifications regarding the downstream investment and the amount of FDI inflow. In response thereto, INX Media wrote to FIPB on 26.06.2008 intimating that the downstream investment will be as per approval of FIPB, the inflow of funds are including premium and are within the given limit of 46.216% approved by FIPB. It was further stated that till 26.06.2008, ₹305.36 Crores have been received by INX Media as FDI. However, on 09.07.2008 and 21.08.2008, FIPB wrote to INX News to submit fresh application for

downstream investment latest by 29.08.2008. Accordingly, on 21.08.2008, INX News submitted fresh application for downstream investment.

5. Thereafter, on 02.09.2008, relying on Press Note No. 7 (1999 series) dated 01.04.1999, the then Additional Secretary, Department of Economic Affairs, Ministry of Finance wrote letter to the CBDT that investment of ₹305 Crores was within the approval percentage of 46.216% of issued equity. Thereafter, on 24.10.2008, FIPB meeting was held and recommended the proposal for downstream investment. The Petitioner, the then Finance Minister, approved the downstream proposal of INX News on 30.10.2008. However, on 15.05.2017, after 10 years later, CBI registered an FIR alleging commission against Sh. Karti P. Chidambaram [arraigned as accused No. 3 in the said FIR under Section 120-B read with Section 420 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), Section 8 of the Prevention of Corruption Act, 1988 (hereinafter referred to 'PC Act') and Section 13(2) read with Section 13(1)(d) of the PC Act.]

6. Mr. Kapil Sibal and Mr. Abhishek Manu Singhvi, Senior Advocates appeared on behalf of the Petitioner and submitted that the Petitioner is a citizen of India, resident of New Delhi and a law-abiding citizen. The Petitioner is a Senior Advocate practicing in the Hon'ble Supreme Court of

India. Currently, he is a Member of Parliament (RS). He was formerly Union Minister of Finance (1996-1998, 2004-2008 and 2012-2014) and Union Minister of Home Affairs (2008-2012). He is a member of the Indian National Congress, which is the principal Opposition party in Parliament. The Petitioner is also a senior spokesperson of the Congress party as well as a prominent and widely-read columnist. Thus, he has deep roots in the society.

7. At the outset, it is submitted that the Petitioner is neither named as an accused nor as a suspect in the subject FIR. There is no allegation against the Petitioner in the body of the subject FIR. Further, the allegations in the subject FIR pertain to the grant of an FIPB approval in 2007-08, for which the subject FIR came to be registered after a period of almost 10 years based on alleged 'oral source' information. After more than a year of the registration of the subject FIR and despite the fact that the Petitioner was not named as an accused, the CBI issued a notice dated 28.05.2018 bearing no. '01/4406' under Section 41A of the Cr.P.C. directing the Petitioner to appear before the CBI on 31.05.2018 at 11.00 hours. Apprehending his arrest, the Petitioner was constrained to prefer a petition (being B.A. No. 1316/2018) before this Court under Section 438 Cr.P.C. seeking grant of anticipatory

bail. Vide Order dated 31.05.2018, this Court was pleased to issue notice in the abovementioned anticipatory bail application and was also pleased to grant interim protection to the Petitioner, which interim protection continued for a period of over 15 months. During the course of the proceedings in the said anticipatory bail application, on 03.07.2019, the CBI filed a 'Short Reply' to the said anticipatory bail application. During the pendency of the above bail application, the Petitioner was summoned by the CBI to appear on 06.06.2018, on which date the Petitioner duly appeared and answered all questions. Pertinently, the CBI did not summon the Petitioner thereafter until 20.08.2019. On 20.08.2019, this Court was pleased to dismiss the Petitioner's abovementioned anticipatory bail application at around 15:15 hours. On the same day, the counsel for the Petitioner sought an urgent listing and made an oral mention before the concerned officer of the department of the Hon'ble Supreme Court and was informed on or around 16.45 hours on 20.08.2019 that the permission has been granted, by the Hon'ble Chief Justice of India, to mention the matter at 10.30 AM on 21.08.2019 before the Senior Most Hon'ble Judge of the Hon'ble Supreme Court. The said facts were widely covered in the media and as such, it is submitted that the CBI was well aware of the said facts. At around midnight

on 20.08.2019, while the Petitioner was preparing his challenge against the Order dated 20.08.2019 with his lawyers, it came to the Petitioner's knowledge from media reports that the CBI, in a completely mala fide and illegal manner, and after a period of almost 15 months from the last summons, affixed a notice outside the Petitioner's residence directing him to appear before the CBI within 2 (Two) hours. Pertinently, the notice failed to mention the provision under which it was issued.

8. It is the Petitioner's case that the CBI had to issue a notice under Section 41A Cr.P.C. in view of the directions of the Hon'ble Supreme Court in ***Arnesh Kumar Vs State of Bihar, reported in (2014) 8 SCC 273***, since all offences alleged in the FIR were punishable up to 7 years at the time of commission of the alleged offences. The Petitioner duly responded to the said notice vide email dated 21.08.2019 sent through his counsel wherein it was *inter alia* stated as under:

"I am instructed to state that your notice fails to mention the provision of law under which my Client has been issued a notice at midnight calling upon him to appear at a short notice of 2 (Two) hours. Furthermore, kindly note that my client is exercising the rights available to him in law and had approached the Hon'ble Supreme Court on 20.08.2019 seeking urgent reliefs in respect of the Order dated 20.08.2019 dismissing his anticipatory bail application no.1316/2018 in the captioned FIR.

[...}

I therefore request you to not take any coercive action against my Client till then."

9. On 21.08.2019, the Petitioner approached the Hon'ble Supreme Court vide SLP (Crl.) No. 7525/2019 impugning the order dated 20.08.2019 passed by this Court dismissing the Petitioner's anticipatory bail application, which upon urgent mentioning, was directed to be listed before the Hon'ble Chief Justice of India for urgent hearing. Despite the above, on 21.08.2019, the CBI, without any notice to the Petitioner, approached the Ld. Trial Court for issuance of Non-Bailable Warrants against the Petitioner and the Ld. Trial Court was pleased to direct the issuance of the NBW's. Pertinently, in the application filed by the CBI before the Ld. Trial Court, the Petitioner's reply vide Email dated 21.08.2019) to the notice dated 20.08.2019 was not mentioned. Furthermore, a perusal of the order sheet of 21.08.2019 of the Ld. Trial Court whereby the NBW's were issued, shows that the CBI did not inform the Ld. Trial Court that the Petitioner's SLP was directed to be listed for urgent hearing on 21.08.2019, despite a specific query by the Ld. Trial Court, as recorded in the said order sheet. As such, the CBI misled the Ld. Trial Court to issue the NBW's against the Petitioner. Despite the pendency of the abovementioned SLP, the CBI, in a completely illegal and *mala fide*

manner, came to the Petitioner's residence at around 9.30-10 PM on 21.08.2019 and arrested the Petitioner in pursuance of the said Non-Bailable Warrants. The Petitioner was thereafter produced before the Ld. Trial Court on 22.08.2019 and the CBI preferred an application seeking 5 days police remand. Vide order dated 22.08.2019, the Ld. Trial Court was pleased to remand the Petitioner to CBI custody till 26.08.2019. On 26.08.2019, the Petitioner's SLP being SLP (Crl.) No. 7525/2019 was listed before the Hon'ble Supreme Court which dismissed it as infructuous in view of the subsequent arrest of the Petitioner. Vide Order dated 27.08.2019, the Hon'ble Supreme Court was pleased to clarify the above order dated 26.08.2019 and directed as under:

"The contentions raised by both the parties are left open to be considered at the appropriate stage on their own merits without being influenced by any of the views expressed by the High Court in the impugned order."

10. In the meantime, on 26.08.2019, the Petitioner was produced before the Ld. Trial Court and the CBI sought further 5 days police remand and the same was granted and thereafter, continue up to 05.09.2019, pursuant to the orders passed by the Ld. Trial Court. Thereafter, on 05.09.2019, the Petitioner was produced before the Ld. Trial Court and the CBI sought judicial custody of the Petitioner.

11. Mr. Kapil Sibal, learned Senior Counsel argued that Petitioner is a law-abiding citizen having deep roots in the society. The Petitioner is not a flight risk and is willing to abide by all such conditions as may be imposed by this Court while granting bail. Further, Petitioner is a respectable citizen and a former Union Minister of Finance and Home Affairs, the Petitioner cannot and will not tamper with the documentary record of the instant case, which is currently in the safe and secure possession of the incumbent Government or the Ld. Trial Court.

12. It is further submitted that it is evident from the past conduct of the Petitioner that he has always cooperated with the investigation and will continue to do so in the future, as and when called upon by the Investigating Agency or the Ld. Trial Court. The Petitioner does not have the propensity to evade the process of law, the Petitioner has throughout been available during the period of investigation and that the Petitioner has cooperated in every manner possible with the Investigating Agency.

13. Mr. Sibal submitted that in short reply dated 03.07.2019 filed by the CBI before this Court in the Petitioner's anticipatory bail application (being B.A. No. 1316 of 2018), the CBI did not even allege that the Petitioner is a flight risk or is likely to tamper with the evidence or is likely to influence

witnesses, even though the same are relevant considerations for grant or refusal of anticipatory bail. The only reason stated in the said short reply for opposing the Petitioner's anticipatory bail application was that custodial interrogation of the Petitioner is required. Pertinently, the Petitioner has already completed 15 days in the CBI's custody and as such, no further police custody is permissible under law.

14. It is also submitted that from a bare perusal of the order dated 20.08.2019, whereby this Court dismissed the Petitioner's anticipatory bail application, it is evident that:

- (i) no arguments were advanced by the CBI even alleging that the Petitioner is a flight risk or is likely to tamper with the evidence or is likely to influence witnesses; and
- (ii) draft chargesheet had already been prepared for the purposes of seeking sanction of prosecution against the Petitioner and therefore, it is clear that the investigation was already completed back in January 2019.

In any event, post the custodial interrogation of the Petitioner herein for a maximum period of 15 days, the investigation qua the Petitioner has admittedly come to an end.

15. Learned Senior Counsel further submitted that in the subject FIR, all the other accused persons have already been enlarged on regular bail or

anticipatory bail or statutory bail. Therefore, there is no reason to deny bail to the Petitioner in terms of the parameters laid down by the Hon'ble Apex Court as well as by the High Courts in a catena of judgments.

16. To strengthen the arguments above, learned Senior Counsel relied upon '*Manubhai Ratilal Patel vs. State of Gujarat, reported in (2013) 1 SCC 314*' and submitted that if police custody is not extended, judicial custody remand is not an automatic consequence. The Judge must apply his mind whether there is any justification for judicial remand or there is no need for any remand at all. The grounds on which an accused can be remanded to judicial custody are very different viz. (i) flight risk; (ii) tampering with evidence; and (iii) influencing witnesses. None of the said grounds are made out against the Petitioner. Every day of judicial custody has to be justified by the prosecution. Every day in custody is an interference with the liberty of the citizen.

17. Regarding flight risk and cooperation with Investigation, learned Senior Counsel submitted that Petitioner was summoned only once on 06.06.2018 by CBI and the CBI has neither recovered nor elicited anything incriminating from the Petitioner so far, despite having undergone custodial interrogation for the maximum permissible period of 15 days. The

Petitioner's residence in Chennai and New Delhi have been subjected to search and seizure operations by the Enforcement Directorate and the CBI on 16.05.2017 and 13.01.2018. No incriminating documents or materials were seized during these searches.

18. Regarding tampering and influencing witnesses, it is submitted that the alleged events in this relate to the year 2007-08 and the Petitioner was part of the dispensation in power for more than 6 years thereafter and there is not even an allegation that the Petitioner ever influenced any witness or tampered with any evidence. In any event, the material in this case is documentary in nature, in the form of three files of the Ministry of Finance, which are currently in the safe and secure possession of the incumbent Government or the Ld. Trial Court. As such, there arises no question of the Petitioner being able to tamper with the said documentary evidence. Further, the Petitioner has already been confronted with 5 officers of the Ministry of Finance who were involved in the processing of the FIPB proposal pertaining to INX Media and each of their statements have already been recorded by the respondent CBI. As such, there arises no question of influencing any witnesses.

19. Regarding allegation of influencing the Letters Rogatory (LR's), learned counsel for the Petitioner submitted that wielding his alleged influential position has so far ensured that the Investigating Agency does not get the details sought in the Letters Rogatory sent to concerned countries is, on the face of it, completely untenable and without any basis or material on record. This allegation is purely a presumption and while alleging so, the CBI has miserably failed to show as to and in what manner the Petitioner wielded his alleged "influential position" or has ensured that the Investigating Agency does not get the information sought in the aforesaid LR's from the Sovereign Governments. The material on record shows that the LR's were allegedly issued back in July, 2018. More than a year has elapsed since and, as per material on record, it appears that no replies have been received thus far. There is no material (such as SMS, Email, Letter, telephone call, etc.) of interference, as alleged or otherwise. It is preposterous to even allege that the Petitioner is capable of influencing foreign Sovereign Governments and/ or their institutions or investigating agencies from not sending their response to the LR sent by the Respondent CBI. Notwithstanding the above, CBI's apprehensions of influencing and tampering can be addressed by imposing necessary and sufficient conditions

on the Petitioner. However, the refusal of bail on the basis of mere apprehensions of the CBI of tampering with evidence and influencing the witnesses would be unjustified.

20. Learned counsel further submitted that since it was within the power of the officials of FIPB to grant post facto approval for any downstream investment, and the approval having rightly been given, the question of proceeding against the officials of FIPB and consequently, the then Finance Minister (i.e. the Petitioner) does not arise. Accordingly, even the arrest of the Petitioner is *mala fide*. Thus, the Petitioner is entitled for bail in view of the judgment of the Hon'ble Supreme Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr.***, reported in ***(2018) 3 SCC 22***, whereby it was held that "*Bail is the rule, jail is the exception*".

21. In addition, the material on record shows that the investigation was over as far back as January, 2019 when sanction was sought against the Petitioner. The Petitioner has already spent 15 days in CBI custody, wherein he was confronted with 5 officers of the Ministry of Finance (namely, Under Secretary-Sh. R. Prasad, OSD-Sh. P.K. Bagga, Director-Sh. Prabodh Saxena, Joint Secretary-Sh. Anup Pujari and Additional Secretary-Ms. Sidhushree Khullar), who were involved in processing the file relating to

FIPB approval for INX Media and each of them has stated during the course of investigation that:

- (i) They were never advised or directed or in any way influenced by the Petitioner, in any manner whatsoever, to grant the FIPB approval to INX Media:
- (ii) The approvals granted in INX Media were within the policy and legal framework and nothing contrary to norms was done. The investment of ₹305 Crores is squarely covered by Press Note No. 7, 1999 series dated 01.04.1999.

22. In addition, there is no allegation in the whole FIR that the decision of the FIPB Unit and the FIPB Board, approved by the Finance Minister was contrary to any policy or was beyond the scope or power of the FIPB Board or that the same could not be granted. In the absence of such an allegation of loss of public funds or of misuse of power to cause benefit, there can never be a prosecution under Section 13(1)(d) of PC Act. There is no allegation of demand of any monies from any person by the Petitioner for granting of FIPB approvals. Since proof of 'demand' is a *sine qua non* for prosecution under Section 13 of the PC Act, the offence under Section 13 of the PC Act is not made out qua the Petitioner. In this regard, learned counsel for the Petitioner has relied upon the cases of (i) ***Krishan Chander vs. State of Delhi***, (2016) 3 SCC 108, (ii) ***P. Satyanarayana Murthy vs. State of A.P.***,

(2015) 10 SCC 152 and, (iii) *B. Jayaraj vs. State of A.P., (2014) 13 SCC 55*.

23. It is further submitted that the only alleged overt act is payment and receipt of alleged illegal gratification of ₹10 lakhs. It has not even been alleged by the CBI that any other illegal gratification was actually paid or any such payments have been discovered. Pertinently, even as per the CBI's allegations, the said alleged payment of ₹10 lakhs has been made to one M/s Advantage Strategic Consulting Private Limited and not to the Petitioner. There is no loss to the public exchequer in this case. No public funds were involved in this case and it is also not a case of bank fraud or taking money out of the country or defrauding depositors or stealing money from a company. It is submitted that the instant case is not even an economic offence, so far as the CBI is concerned. On the contrary, ₹305 Crores has come into INX Media (i.e. the investee company) as FDI, well within the approval percentage of 46.216% of equity. The allegation is that ₹26 Crores was invested in INX News by INX Media. However, the date of allocation of share pursuant to the said alleged investment is not reflected anywhere in the material on record. As per normal procedure, the FDI proposal of INX Media was processed by several officers in the FIPB Unit. Thereafter, it was

put up to the FIPB (comprising of 6 Secretaries), which after due consideration, made its recommendation to the Ministry of Finance. In the Ministry, the case was once again examined by several officers (from the Under Secretary all the way up to the Additional Secretary) of the Department of Economic Affairs (DEA). Thereafter, the case was put up to the Secretary, DEA (who had previously considered and recommended the case as Chairman of the FIPB) who once again signed the file and put it to the competent authority (Finance Minister) on 28.05.2007. The Petitioner approved the file on the same day. Similarly, the downstream approval was processed, examined and recommended by all the above officers and put up to the competent authority (Finance Minister) on 30.10.2008. The Petitioner approved the file on the same day. From the above, it is evident no single officer can take a decision on any proposal. It is collective decision of 6 Secretaries, assisted by several officers in the FIPB Unit and the DEA, respectively. Therefore, it is preposterous to allege that any person could have influenced any official of the FIPB, including all 6 (Six) Senior Secretaries to the Government of India. During the entire interrogation of the Petitioner for 15 days, the Petitioner has not even been confronted with any documents or material concerning the alleged “Foreign Accounts” or the

alleged “properties owned by the Petitioner in abroad” or the alleged “Shell Companies”. There is not an *iota* of evidence against the Petitioner. Neither the CBI nor the ED have found even an *iota* of evidence of any payment by INX Media or INX News to the Petitioner. Further, not even an *iota* of evidence of any undisclosed bank account, or undisclosed property, or undisclosed shell company being owned/ held by the Petitioner. The Petitioner could not have been in conspiracy with INX Media or INX News and could also not have granted them a favour in April, 2007 or July-October, 2008 in as much as three complaints had been received by petitioner against the said companies in February-April, 2008, all of which were marked by him to the then Revenue Secretary, who in turn marked them to various authorities for enquiry. Further, a complaint from the then Secretary, Ministry of Information and Broadcasting was referred by the then Revenue Secretary to the Minister of Corporate Affairs. Eventually, all the aforesaid four complaints/ references reached the Serious Fraud Investigation Office (SFIO) and culminated in an SFIO Report. The CBI is deliberately withholding the file in which the complaints were referred to the Ministry of Company Affairs and to SFIO. In any event, the offences are yet to be tested (even *prima facie*) and therefore, remanding the Petitioner to

any further judicial custody would amount to pre-trial conviction and punishment. The Petitioner has no criminal antecedents. The Petitioner has been falsely named in the proceedings arising out of the FIR being RC No. 22(A)-2011-CBI, ACB and ECIR/05/DZ/2012 (i.e. both relating to the Aircel-Maxis Case) pending before the Ld. Special Judge (2G Spectrum Cases), Rouse Avenue Courts, New Delhi. In the said cases, the Petitioner has been granted anticipatory bail vide order dated 05.09.2019 passed by the Ld. Special Judge. The Petitioner is 74 years old and has age related issues such as Krohns, Dyslipidemia, hypertension, etc. The Petitioner has an unimpeachable record of service and integrity throughout 40 years of public life. Thus, the present petition deserves to be allowed.

24. On the other hand, Mr.Tushar Mehta, learned Solicitor General of India, appearing on behalf of respondent CBI submits that INX Media Pvt. Ltd. (an Indian Company) enters into a share subscription agreement with three foreign entities. The share-holding agreement is dated 26.02.2007. On 09.03.2007, Indrani Mukherjee and Pratim but known as Peter Mukherjee along with some third person met the petitioner in his office. On investigation, the visitors' register is stated to be destroyed because of lapse of time. However, the contemporaneous evidence is collected from Hotel

Oberoi which corroborates the statements of Indrani Mukherjee, that she and Peter Mukherjee were staying in Hotel Oberoi, New Delhi between 06.03.2007 and 09.03.2007 and they having used the Hotel vehicle for internal travel on 09.03.2007, which was used for travelling to the petitioner's office where the meeting was held. After the meeting dated 09.03.2007, the INX Media applied for FIPB approval vide application dated 13.03.2007 requesting for the following approval for FDI in the form of:

(a) Allotment of 14,98,995/- Equity shares of ₹10 each.

(b) Allotment of 31,22,605/- convertible preference shares of ₹10/- each.

25. Learned Solicitor General further submits that despite an already existing share subscription agreement for bringing ₹403 crores, deliberately an application was made showing FDI of ₹4.62 crores. The reason for this concealment have emerged during investigation and have been placed for perusal of this Court in the sealed cover. FIPB Unit prepared a proposal for FDI of ₹4.62 crores i.e. 46.216% of the equity (as per the amount and percentage stated in the application) and the same is passed granting approval to INX Media Pvt. Ltd. to bring FDI of ₹4.62 crores being 46.216% of its equity. Instead of ₹4.62 crores, INX Media Pvt. Ltd. brings

an FDI of ₹403 Crores without there being any approval for the same. This is how foreign direct investment of ₹403 crores came to India from three companies whose credentials are found during investigation. The said unapproved investment was surreptitiously sought to be justified by placing reliance upon Press Note No.7 of 1999. The said reliance is wholly untenable as it applies only to contingencies mentioned therein which is not in existence/were attracted to the present case.

26. He further submits that a part of this amount came to be invested by INX Media Pvt. Ltd. into INX News Pvt. Ltd. by way of down-stream investment. This excess FDI and the investments in INX News Pvt. Ltd. triggered various written complaints being made to the Finance Minister, which were received by him personally, and were sent to different agencies under his ministry for probing.

27. He further submits that an Application is made by INX News Pvt. Ltd. for “*fresh approval*” of downstream investment and not for *post facto* approval (as suggested by the petitioner). The Board was not informed about the complaints received by Finance Minister and sent only to the Revenue Secretary. The Revenue Secretary who is Member of the FIPB chose not to attend FIPB meeting in which this “*fresh proposal*” was

decided to be granted and his representative remained present and gave a dissent note.

28. It is submitted that sufficient evidence has come on record which has been placed before this Court in a sealed cover that Indrani Mukherjee and Peter Mukherjee met the petitioner even before the filing of the Application before FIPB Unit during which the petitioner assured them regarding the FIPB approval. However, in lieu thereof the petitioner directed that the '*business interest*' of his son should be taken care of and certain overseas transactions should be made in his favour. It has come on record that illegal gratification has been paid by and through other companies by Indrani Mukherjee and Peter Mukherjee to the companies controlled and owned by the co-conspirator and co-accused Karti P. Chidambaram viz. son of the petitioner. It has come on record that large sums of money has come into the companies owned and/or controlled by the co-conspirator Karti P. Chidambaram during the relevant period for the favours shown by the petitioner to INX Media. Sufficient evidence to prove that some of the payments were illegal gratification and for rest, investigation is in progress. It has also come on record that no services were rendered by these companies owned and controlled by the petitioner and Karti P.

Chidambaram to the companies from where the huge sums of money is received. Investigation has also revealed that contemporaneously large number of emails were exchanged between the representatives of INX Media and the company controlled by petitioner and Karti P. Chidambaram which pertained to grant of FIPB approval to INX Media.

29. He further submitted that in cases of conspiracy, it is well settled that there cannot be a direct evidence and conspiracy has to be seen from the surrounding circumstances during the trial.

30. To strengthen his arguments, learned counsel has placed reliance to the judgment of Hon'ble Supreme Court in case of ***Manohar Joshi v. State of Maharashtra: (2012) 3 SCCD 619*** held as under:

“178. There will never be any direct evidence of the officers being pressurized, nor will they say that they were to pressurized. Ultimately one has to draw the inference from the course of events, the manner in which the officers have acted and changed their stand to suit the developer and the fact that the son-in-law of the then Chief Minister was the developer of the project. As we have noted earlier the affidavit of the Commissioner clearly indicated that he tried to place the correct legal position initially but ultimately had to give in to the pressure from the superiors. Unless one is naïve one will have to agree with the conclusion which the Division Bench had drawn in para 136 of its judgment to the following effect”-

“we are left with only one conclusion which

we have to draw from the facts on record and, to quote the words of the petitioners, 'the conduct of Respondent 5 itself indicates that he had 'pressurized' the officials into taking an illegal action' and this, in our view, is certainly misuse of executive powers."

183. The facts of the present case are stronger than those in Shivajirao Nilangekar case²⁸. Here also a relationship is established. The basic order dated 21.8.1996 in this matter granting no objection to an illegal action is signed by the then Chief Minister himself. That was after personally calling for the file containing the report dated 17.4.1996 sent by the Municipal Commissioner much earlier. The entire narration shows that the then Chief Minister had clear knowledge about this particular file all throughout, and the orders were issued only because the developer was his son-in-law, and he wanted to favour him. Ultimately, one has to draw the inference on the basis of probabilities. The test is not one of being proved guilty beyond reasonable doubt, but one of preponderance of probabilities."

31. He further placed reliance on the case of **Rajiv Kumar v. State of U.P., (2017) 8 SCC 791**, where the Hon'ble Supreme Court has held as under:-

"45. The essential ingredients of the offence of criminal conspiracy are : (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of kinds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine quo non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy

and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.

46. After referring to **Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540** and **Ajay Aggarwal v. Union of India (1993) 3 SCC 609** in **State of Maharashtra v. Som Nath Thapa (1996) 54 SCC 659** in para 24, it was held as under : (Som Nath Thapa case.

24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy, knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. On some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.” (emphasis in original)

The above judgment was quoted with approval in **Ram Narayan Popli vs. CBI (Ram Narayan Popli v. CBI (2003) 3 SCC 641: 2003 SCC (Cri) 869)**.

32. He also placed reliance on **State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617** where Hon’ble Supreme Court has held as under:

“38. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of

an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy. Its ingredients are :

(i) an agreement between two or more persons ;

(ii) an agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

39. what is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.”

33. Learned Solicitor further submits that there is overwhelming surrounding contemporaneous evidence that FIPB approval was granted by the petitioner in pursuance of a criminal conspiracy with other accused including his son where illegal gratification was received by him on his behalf through the companies operated by his son.

34. Furthermore, sufficient evidence has also come on record that the petitioner has been using his might and his position to influence the witnesses of the present case. The two crucial witnesses have given statement detailing the manner in which they are being influenced.

35. In regard to the non participation of the accused during interrogation while he was under the protective cover of the pre-arrest bail order, Mr. Tushar Mehta further submits that the argument of the petitioner that he was called only once i.e. on 06.06.2018 for interrogation and therefore his subsequent arrest after a year and a half was not justified is completely untenable and misleading. It is submitted that the petitioner was issued a Notice under Section 41-A of Cr.P.C. on 28.05.2018 for his appearance on 31.05.2018. However, the petitioner instead of joining the investigation approached this Court seeking anticipatory bail. In the said bail application, this Court was pleased to pass an interim order protecting the petitioner from arrest. Pursuant thereto when the petitioner was called for interrogation on 06.06.2018, from his conduct the investigating agency came to a bonafide conclusion that the interrogation of the petitioner under the protective umbrella of a pre-arrest bail order was reducing the said interrogation into a mere ritual and farce. As such the investigating agency took a bonafide decision, in the interest of the investigation, to contest the said anticipatory bail application for custodial interrogation of the petitioner. The said fact/reason has been duly pleaded and considered by this Court as well as the Hon'ble Supreme Court in the judgments dated 20.08.2019 passed in

Bail Appl. No. 1316 of 2018 and judgment dated 05.09.2019 passed by the Hon'ble Supreme Court in SLP (Crl.) No. 7618 of 2019, which the petitioner craves leave to refer to and rely upon.

36. Learned Solicitor General further submits that the contention of the petitioner that the remand order were bad in law and he ought to have been released is also untenable in law. It is well settled that pursuant to arrest, the petitioner can only be sent to either police custody or judicial custody. In law he can only be released on bail provided that a bail application is moved by him and the Magistrate is satisfied that there are no grounds to remand the petitioner either to police custody or judicial custody. It is submitted that the law does not confer power upon a Magistrate to release an accused without there being an application of bail. In the present case it is matter of record that no bail application was ever moved by the petitioner before the learned Special Judge. The only application which was moved by the petitioner was the application for grant of interim bail which was also subsequently withdrawn by him. As such the contention of the petitioner that the learned Special Judge ought to have released him is completely unsustainable in law.

37. To strengthen his arguments, he placed reliance on the case of ***CBI V. Anupam K. Kulkarni: 1992 (3) SCC 41*** whereby the Hon'ble Supreme Court has held as under:

"7.....These observations make it clear that if an accused is detained in police custody the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody."

8. Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in Dharam Pal's case. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in Dharam Pal's case is correct.

10. However, taking into account the difficulties which may arise in completion of the investigation of cases of serious nature the legislature added the proviso providing for further detention of the accused for a period of ninety days but in clear terms it is mentioned in the proviso that such detention could only be in the judicial custody.

38. He also placed reliance on ***State (Delhi Administration) vs. Dharam Pal: 1981 SCC OnLine Del 368***, whereby the Hon'ble Supreme Court has held as under:

“We are concerned with the first part of this sub-section which authorises the detention of the accused in such custody as such Magistrate thinks fit. The provision shows, as indeed it must, that the Magistrate has a choice for determining the type of custody in which the accused person should be detained. As already pointed out, this provision contains the procedure for depriving a person of his liberty. It is a protection for the citizen or the accused person. The rule of law requires that a person should not be detained by an executive fiat. After the first 24 hours he can only be detained or kept in custody under the orders of a Judicial Magistrate who is a person quite independent from the police. It is this Magistrate who has to determine the period of the custody and the nature of the custody. It is an important safeguard regarding the liberty of a person. The safeguard is further apparent from the fact that the whole period of detention cannot exceed 15 days on the whole and can be altered from time to time. There is no mention in the provision of either police custody or judicial custody. Conceivably, the Magistrate would have to determine the nature of the custody according to the circumstances of the case. It might be the police or it might be the jail or it might be a mental asylum or it might be a children's home or the

Nari Niketan or some other institution. The nature of the custody would vary according to the type of person that the accused might be. Different considerations would arise if the person is a child or a woman or a minor or an apparent lunatic. Therefore, a discretion is given to the Magistrate to determine the nature of the custody.”

39. He further relied upon the case of ***Manubhai Ratilal Patel vs. State of Gujarat: (2013) 1 SCC 314***, whereby the Hon’ble Supreme Court has held as under:

“23. Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand, i.e., Sections 167 and 309. The Magistrate has the authority under Section 167(2) of the Code to direct for detention of the accused in such custody, i.e., police or judicial, if he thinks that further detention is necessary. 24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a

warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.”

40. In ***CBI vs. Anupam J. Kulkarni: 1992 (3) SCC 41***, it has been stated that:

“7.16. In Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni[13], it has been stated that where an accused is placed in police custody for the maximum period of fifteen days allowed under law either pursuant to a single order of remand or more than one order, when the remand is restricted on each occasion to a lesser number of days, the further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise.”

Thus, the exercise of jurisdiction clearly shows that the Magistrate performs a judicial act.

41. It is further submitted that contrary to what has been stated by the counsel of the accused/petitioner, it is a settled position of law that the gravity of the offence has nothing to do with the punishment provided for the same. The gravity is to be judged by the impact, the offence has, on the society, economy, financial stability and integrity of the country. It is further well settled that the economic offences constitute a class apart and a class by itself, as it cuts the very root of probity and purity of public

administration and results in eroding the public confidence which it reposes on the government elected by it.

42. It is stated that the gravity of the offence is also to be seen in view of the impunity with which a High Public Office has been abused for personal gains. In the present case, the petitioner accused who held a very high and influential office of the Finance Minister of the Country, used the same for personal gains, personally, as well as in connivance with his co-conspirators. The said fact itself makes the present case grave enough to deny bail to the petitioner.

43. In this context, it is respectfully submitted that it is well settled by catena of judgments that economic offences in itself are considered to be gravest offence against the society at large and hence are required to be treated differently in the matter of bail. The Hon'ble Courts have successively held that *“the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book as such offences affects the very fabric of democratic governance and probity in public life. A murder may be committed in the heat of moment upon passion 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....”

As observed in *State of Gujarat vs. Mohanlal Jitamalji Porwal*: (1987) 2 SCC 364].

44. Reliance in this regard has also placed to the cases of *P. Chidambaram vs. Enforcement of Directorate* in Criminal Appeal No.1340/2019 decided on 05.09.2019; *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 & Anr. Vs. Amit Kumar alias Bachcha Rai*: (2017) 13 SCC 751; *Gautam Kundu vs. Directorate of Enforcement*: (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 ; and *Chhagan Chandrakant Bhujbal vs. Union of India*: (2016) SCC Online Bom 9938.

45. Accordingly, learned Solicitor submits that in view of above material on record and settled position of law, the petitioner is not entitled for bail.

46. Heard learned counsel for the parties in length and perused the material produced before the Court and material in 'Sealed Cover'. Moreover, to understand the material on record, this Court interacted with Shri. R Parthasarathy, Dy. S.P./EOU-IV. Also gone through the material in 'sealed cover'.

47. While dealing with the bail application, it is not in dispute that three factors have to be seen viz. i) flight risk, ii) tampering evidence iii) influencing witnesses.

48. Regarding the flight risk, if the court put conditions viz. i) passport to be surrendered, ii) look out notice to be issued, iii) the accused shall not leave the country without permission of the Court (even via Nepal and Bhutan etc.), iv) if the order passed by the Court is transmitted to all the airports and concerned authorities in India and abroad, including INTERPOL, in my considered view, the flight risk can be secured. Moreover, there is no evidence on record that the petitioner tried to flee from India. The situation of 'Flight-Risk' is possible only if no look out notice is issued or an accused is not of so popular and can leave country

based upon forged passport in the name of other persons. Therefore, I agree with the contentions argued by Mr. Abhishek Singhvi, learned Sr. Advocate and not in agreement with the contentions raised by the learned solicitor general on the aforesaid issue.

49. Regarding the tampering with evidence, it is not in dispute that the documents relating to the present case is in the custody of the prosecuting agency, government of India and the Court. Moreover, the petitioner is not in power except he is a member of parliament. Therefore, in my considered view, there is no chance of the petitioner tampering with the evidence as argued by Mr. Kapil Sibal and Mr. Abhishek Singhvi, learned Sr. Advocates.

50. **Regarding influencing the witness, I will discuss later on.**

51. Regarding merits of the case, though not necessary since charge-sheet has not been filed, and the present petition is for bail, however, argued and learned counsel for the petitioner has heavily relied upon Press Note No. 7, 1999 series dated 01.04.1999. But, it is clearly mentioned therein that as per the existing provisions, the foreign collaboration approvals are subject to the conditions at the total non-resident shareholding including foreign holding or in the Indian company **should not exceed the amount as well as**

the percentage specified in the approval letter. For any proposal increase in the amount as also the percentage of non-resident shareholding, prior approval of the government is necessary.

52. It is pertinent to mention here that as per Press Note No.7, 1999 abovementioned, the proposals received by the Government for financial restricting in the following manner:

- (a) in the case of joint venture companies, proposals for increase in the amount of non-resident equity within the approved percentage of non-resident equity.
- (b) In case of wholly owned subsidiary or holding companies of foreign companies in India, proposals relating to enhancement of paid up capital. The government keeping in view the desirability of infusion additional funds as equity by the foreign companies, leading to increased investment inflows as reviewed existing provisions for obtaining prior approval of the government for increase in the amount of foreign equity **without change in the percentage of equity in the above type of cases** and decided that henceforth there would be no need for obtaining prior approval of FIPB/government for increase in the amount for equity within the

percentage of foreign equity already approved in all cases in which the original **approached cost upto** ₹600 crores. If, this Court agree with the contention of Mr. Sibal that only percentage to be seen, but not the amount, then maximum cap of ₹600 crores has no meaning and which is beyond the power of the Finance Minister. In that eventuality, only Cabinet of Ministers has power of approval, not the Board.

53. However, it is clarified that above procedure will not apply in cases of increase in the percentage of foreign equity as also where initial approval was granted by CCFI. As such, the case shall require prior approval of the FIPB/government as per the existing procedure.

54. In my considered view, INX Media Ltd (an Indian company) does not come under the aforementioned (a) & (b) category. Had INX Media Pvt. Ltd was in that category, there was no occasion for the said company to seek approval of FIPB/Government of India.

55. Regarding clarification dated 02.09.2008 of Ms. Sidhushree Khullar, the then additional Secretary, , department of economic affairs, Ministry of Finance, Government of India, in reference to D.O. letter no. **291/5/2008/IT (Inv.I)** dated 29.07.2008 from Ms. Sunita Kalia, Member, CBDT and ex-

officio, Additional Secretary to the Government of India had clarified that FIPB's approval was not for a specific amount in terms of money but for a specific number of shares, both equity and non-cumulative redeemable preference shares. The FDI received by the company include par value of the shares plus the premium. While the par value is always known, premium may or may not be known in advanced. The present policy is to permit companies to issue equity and preference shares and premium at par the accorded valuation and in compliance of SEBI/RBI guidelines.

56. Ms. Khullar further mentioned in communication dated 02.09.2008 that said the position was explained to Sh. Roopak Kumar, Deputy Director, Income Tax, Intelligence (II) on 07.08.2008. While the approved percentage is 46.216%, the company has allotted only 43.92 percent. Therefore, it is clearly within the permission accorded by FIPB. She further clarified while referring Press Note 7 of 1999, the prior approval of FIPB or government would not be needed for increasing amount of foreign equity as long as the percentage is within the approval obtained.

57. Regarding the second point which was about the downstream investment by Inx Media, Ms. Khullar stated that recently FIPB had received an application by the company which is under consideration.

58. It is not in dispute that FDI approval was granted by FIPB therefore, the reply to the D.O, letter dated 29.07.2008 of above named member, CPDT was to be decided by the FIPB. Moreover, Ms. Khullar was neither revenue secretary nor finance secretary in the ministry of finance, government of India, therefore, there was no occasion to clarify pursuant to D.O. letter dated 29.01.2008 vide her communication dated 02.09.2008. Thus it seems the aforementioned communication dated 02.09.2008 was without jurisdiction and has no relevance.

59. Admittedly, INX Pvt. Media Ltd. is an Indian company entered into a shareholding subscription agreement with three foreign entities vide shareholding agreement dated 26.02.2007.

60. After the meeting dated 09.03.2007, INX Media applied for FIPB approval vide application dated 13.03.2007, requesting for approval for FDI in the form of:

(a) allotment of 14,98,995/- Equity Shares of ₹10/- each

(b) allotment of 31,22,605/- convertible preference shares of ₹10/- each.

61. Despite an already existing, Share Subscription Agreement of bringing ₹403 Crores, an application was made showing FDI of ₹4.62

Crores, but not placed the agreement dated 26.02.2007, due to the reasons best known to them.

62. From the material it seems that FIPB Unit prepared a proposal for FDI of ₹4.62 Crores i.e. 46.21% of the Equity and the same is passed granting approval to INX Media, FDI of ₹4.62 Crores being 46.21% of equity. Instead of 4.62 Crore, INX Media brought a FDI of ₹403 Crores without their being any approval for the same.

63. The said unapproved investment seems surreptitiously sought to be justified by placing reliance upon Press Note No. 7 of 1999. The reliance is contrary to the material on record. It applies only to the contingencies mentioned therein, which is not in existence attracted in case of INX Media.

64. It is further important to note that a part of the amount mentioned above came to be invested by INX Media into INX News Private Ltd. by way of down-stream investment. This excess FDI and the investments in INX News Private Ltd. triggered various routine complaints being made to the Finance Minister which were received by him personally (as per the record produced by the CBI in sealed cover) and were sent to different agencies under his Ministry for probing the complaints and the follow up action taken by the petitioner. As per the investigation, an application was

made by INX News for fresh approval of downstream investment and not for “*post facto*” approval as argued by counsel for the petitioner.

65. It is also important to note that the Board was not informed about the complaints received by the petitioner, the then Finance Minister and sent only to the Revenue Secretary. The Revenue Secretary who was Member of the FIPB chose not to attend FIPB meeting in which “fresh proposal” was decided to be granted and his representative remained present and gave a dissent note.

66. During investigation, as per ‘Sealed Cover’ it is revealed that Indrani Mukherjee and Petter Mukherjee (accused) met the petitioner even before the filing of application before FIPB Unit during which the petitioner assured them regarding the FIPB approval and in lieu thereof, directed that the ‘*business interest*’ of his son Karti Chidambaram, who is also an accused, should be taken care of and certain overseas transactions should be made in his favour. It is also on the record that illegal gratification has been paid by and through other companies by Indrani and Peter Mukherjee controlled and owned by the co-conspirator and co-accused Karti P. Chidambaram viz. son of the petitioner.

67. It is also on record that large sums of monies has come into the companies owned and / or controlled by the co-conspirator – Karti P. Chidambaram during the relevant period for the favours shown by the petitioner to INX Media. It is also on record that no services were rendered by these companies owned and controlled by the petitioner and Karti P. Chidambaram to the companies from where the huge sums of money is received. In addition to the above, investigation has also revealed that contemporaneously large number of emails were exchanged between the representatives of INX Media and the company controlled by petitioner and Karti P. Chidambaram which pertain to grant of FIPB approval to INX Media.

68. In view of above, in cases of conspiracy, it is well settled that there cannot be a direct evidence and conspiracy has to be seen from the surrounding circumstances even during the trial, as held in case of *Manohar Joshi (Supra)* and *Rajiv Kumar (Supra)*. It is also on record that the petitioner was issued a notice under Section 41A of Cr.P.C. on 28.05.2018 for his appearance on 31.05.2018. However, the petitioner instead of joining the investigation approached this Court seeking anticipatory bail and this Court was pleased to pass an interim order protecting the petitioner from

arrest. Pursuant thereto, when the petitioner was called for interrogation under the protective umbrella of a pre-arrest bail reducing the said interrogation into a mere ritual and farce, therefore, the investigation agency contested the said anticipatory bail application and same was considered by this Court as well as in the Hon'ble Supreme Court in judgments dated 20.08.2019 and 05.09.2019, respectively.

69. It cannot be disputed that if case is proved against the petitioner, the offence is on the society, economy, financial stability and integrity of the country. The economic offences constitute a class apart and a class by itself, as it cuts the very root of probity and purity of public administration and results in eroding the public confidence which it reposes on the Government elected by it.

70. It is fact that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book as such offences affects the very fabric of democratic governance and probity in public life. A murder may be committed in the heat of moment upon passing being aroused. However, 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....” as observed by the Hon’ble Supreme Court in the *State of Gujarat vs. Mohanlal Jitamalji Porwal (Supra)*.

71. Thus, order of remand, for judicial custody, of the Trial Court is justified.

72. As argued by learned Solicitor General, (which is part of ‘Sealed Cover’, two material witnesses (accused) have been approached for not to disclose any information regarding the petitioner and his son (co-accused). This Court cannot dispute the fact that petitioner has been a strong Finance Minister and Home Minister and presently, Member of Indian Parliament. He is respectable member of the Bar Association of Supreme Court of India. He has long standing in BAR as a Senior Advocate. He has deep root in the Indian Society and may be some connection in abroad. But, the fact that he will not influence the witnesses directly or indirectly, cannot be ruled out in

view of above facts. Moreover, the investigation is at advance stage, therefore, this Court is not inclined to grant bail.

73. The bail application is, accordingly, dismissed with no order as to costs.

74. Order *dasti*.

CM APPL. No.36692/2019

75. In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

**SEPTEMBER 30, 2019
Pb/ab/ms/p**