

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

Reserved on: 11th March, 2019
Pronounced on: 20th August, 2019

+ **BAIL APPLN. 1316/2018 & Crl. M. A. 10976/2018**

P. CHIDAMBARAM

..... Petitioner

Through: Mr. Kapil Sibbal Mr. Abhishek
Manu Singhvi, Mr. Dayan
Krishnan and Mr. Mohit Mathur,
Senior Advocates with Mr. P. K.
Dubey, Mr. Arshdeep Singh, Mr.
Adit Pujari, Mr. Amit Bhandari,
Mr. Akshat Gupta, Mr. Avishkar
Singhvi, Mr. Ayush Agarwal, Ms.
Ishita Garg, Mr. Sanjeevi Seshadri
& Mr. Harpreet Kalsi, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Tushar Mehta, Solicitor
General with Mr. K. M. Natraj,
Additional Solicitor General and
Mr. Amit Mahajan, Central
Government Standing Counsel
with Mr. Rajat Nair, Advocate

And

+ **BAIL APPLN. 1713/2018 & Crl. M. (B) 1163/2018**

P. CHIDAMBARAM

..... Petitioner

Through: Mr. Kapil Sibbal Mr. Abhishek
Manu Singhvi, Mr. Dayan
Krishnan and Mr. Mohit Mathur,
Senior Advocates with Mr. P. K.
Dubey, Mr. Arshdeep Singh, Mr.

Adit Pujari, Mr. Amit Bhandari,
Mr. Akshat Gupta, Mr. Avishkar
Singhvi, Mr. Ayush Agarwal, Ms.
Ishita Garg, Mr. Sanjeevi Seshadri
& Mr. Harpreet Kalsi, Advocates

Versus

DIRECTORATE OF ENFORCEMENT, DELHI Respondent
Through: Mr. Tushar Mehta, Solicitor
General with Mr. K. M. Natraj,
Additional Solicitor General and
Mr. Amit Mahajan, Central
Government Standing Counsel
with Mr. Rajat Nair, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

1. In the above captioned first application [Bail Appln. 1316/2018], petitioner seeks pre-arrest bail in FIR No. RC220-2017-E-0011, under Section 120B read with Section 420 of IPC and Sections 8 and 13 (2) r/w Section 13(1) (d) of *The Prevention of Corruption Act, 1988* (henceforth referred to as the '*PC Act*'), whereas in the above captioned second application [Bail Appln. 1713/2018], petitioner seeks pre-arrest bail in ECIR/07/HIU/2017, registered under the provisions of *The Prevention of Money-Laundering Act, 2002* (henceforth referred to as the '*PMLA*').
2. With the consent of learned counsel representing both the sides, these applications have been heard together and are being disposed of by this common order.

3. It is the case of petitioner that M/s INX Media Pvt. Ltd. sought approval for FDI in a proposed TV channel upto 46.216 percent of the issued equity capital. The policy allowed investment upto 74 percent of equity. Foreign Investment Promotion Board (FIPB) Unit examined the proposal, found it to be in order and submitted the case to the Finance Minister. FIPB consisted of six secretaries to the Government of India and was chaired by the Secretary, Economic Affairs. FIPB unanimously recommended the proposal and placed it before the Finance Minister for his approval, along with several other proposals. In May, 2007, the Finance Minister (i.e. the petitioner herein) granted his approval in the normal course of official business.

4. According to learned senior counsel for petitioner, ten years later, based on alleged 'oral source of information', Central Bureau of Investigation (CBI) recorded an FIR on 15th May, 2017 against four companies, Karti P. Chidambaram (i.e. petitioner's son), unknown officers/officials of the Ministry of Finance and other unknown persons under Section 120B r/w Section 420 of IPC and Section 8 and Section 13 (1)(d) r/w Section 13(2) of the PC Act. The petitioner was not named as an accused or suspect; there is no allegation against the petitioner in the body of the FIR. The allegation in the FIR was that M/s INX Media Pvt. Ltd. had made down-stream investment without obtaining prior approval of the FIPB and, in order to regularize that investment, had approached the petitioner's son and made a payment of ₹10 Lakh to another company allegedly associated with petitioner's son. It is submitted that petitioner learnt that it is the case of the said company that it had received the said

payment towards consultancy work and further, the petitioner's son was never a shareholder or Director of the said company. It is further submitted by petitioner's counsel that ECIR/07/HIU/2017 is baseless, politically motivated and an act of vendetta against petitioner and his son, because petitioner is a vocal critic and opponent of the present Central Government both inside Parliament and outside. It is also submitted that petitioner is a sitting member of Rajya Sabha.

5. According to learned senior counsel for petitioner, based on ECIR/07/HIU/2017, registered by the CBI, Enforcement Directorate (ED) recorded an ECIR, which ED has maintained is an internal record. It is submitted by learned senior counsel for petitioner that copy of the said ECIR has not been given to petitioner. However, petitioner understands and states that ECIR is virtually the same as an FIR.

6. It is a matter of record that while entertaining both these bail applications, interim protection was granted to petitioner subject to joining investigation and that petitioner had joined the investigation. According to senior counsel for petitioner, respondent-CBI has sought sanction to prosecute petitioner in January, 2019, which means that draft charge-sheet has been put up before the authorities concerned to obtain sanction to prosecute petitioner. So, it is submitted that investigation by CBI is complete and there is no ground for ED to oppose the bail or to seek petitioner's custody. It is urged that since petitioner is cooperating in investigation, therefore, there is no ground to deny bail to petitioner.

7. Learned senior counsel for petitioner vehemently argued that there is no averment or allegation in the FIR that the petitioner accepted or

agreed to accept any gratification as a motive or reward for inducing any public servant and hence, *prima facie* the accusation under Section 8 of PC Act does not apply to the case of petitioner. It is further submitted that since offence under Section 8 of PC Act is not made out, therefore, the ED cannot lodge money laundering case against petitioner. Learned senior counsel for petitioner vehemently submits that offences under Sections 420/120B IPC and under the PC Act were not Scheduled Offences under the PMLA and so, petitioner cannot be prosecuted under the provisions of PMLA. It is pointed out by learned senior counsel for petitioner that minimum threshold for ED to acquire jurisdiction at the relevant time was ₹30 Lakh and in the instant case, there is no averment of any payment apart from ₹10 Lakh approximately, which was allegedly paid by M/s INX Media Pvt. Ltd. to M/s Advantage Strategic Consulting Pvt. Ltd., with which petitioner is not concerned whatsoever in any manner. The precise argument of learned senior counsel for petitioner is that if any of the offences are applied qua petitioner, it would amount to giving retrospective application to the provisions of the PMLA which would be violative of petitioner's fundamental rights enshrined under Article 20(3) of the Constitution of India, 1950. To submit so, reliance is placed upon decision in *Arun Kumar Mishra Vs. Directorate of Enforcement* 2015 SCC OnLine Del 8658.

8. It was pointed out by learned senior counsel for petitioner that in the case of co-accused *Karti Chidambaram*, this Court had stayed the arrest of petitioner in proceedings under the PMLA and so, petitioner is also entitled to similar relief. Learned senior counsel for petitioner

submits that there are no allegations of petitioner tampering with the evidence and nothing is to be recovered from petitioner and that co-accused of petitioner are already on anticipatory bail or statutory bail and thus, petitioner deserves to be granted pre-arrest bail, as his antecedents are impeccable.

9. It was also pointed out that petitioner is a sitting member of Rajya Sabha and there are no chances of his fleeing from justice. According to learned senior counsel for petitioner, offence of money laundering is a non-cognizable offence and investigation of ED is in violation of petitioner's fundamental rights. It is further submitted by learned senior counsel for petitioner that amendment made in the year 2018 in the PMLA does not restore Sub-Clause II of Section 45(1) of PMLA. So, it is submitted that petitioner deserves the concession of pre-arrest bail. In support of above submissions, reliance is placed upon Supreme Court's decisions in *Central Bureau of Investigation Vs. Ashok Kumar Aggarwal* 2014 (14) SCC 295; *Arun Kumar Mishra Vs. Directorate of Enforcement* 2015 SCC OnLine Del 8658; *Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another* (2016) 1 SCC 152; *Nikesh Tarachand Shah Vs. Union of India and another* (2018) 11 SCC 1 and decisions of High Court of Andhra Pradesh in W.P. 17525/2014 titled as *Tech Mahindra Limited Vs. Directorate of Enforcement*; CRLRC No. 3222/2016 titled as *Ashok Kumar Jain Vs. Asst. Director, Hyderabad*; W.P.No.37487/2012 titled as *M/S Satyam Computer Services Ltd. Vs. Directorate of Enforcement* and decision of High Court of Mumbai in Bail Appl. No. 286/2018 titled as *Sameer M. Bhujbal Vs. Assistant Director, Directorate of Enforcement &*

Ors. and decision of High Court of Madhya Pradesh in M.Cr.C.No.34201/2018, titled as *Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement.*

10. On behalf of respondents, it is submitted that Section 19 of PMLA empowers the ED to arrest petitioner on the basis of material collected so far and respondents have reason to believe that petitioner is guilty of offences of money laundering, cheating etc. and some of the proceeds of crime have been already identified and have been attached vide provisional attachment order of 10th October, 2018 and that petitioner's custodial interrogation is necessary in order to trace out further proceeds of the crime. According to respondents, petitioner's son *Karti Chidambaram* is involved in INX Media case, which is being currently investigated by CBI and ED and that petitioner's son has committed offences under the IPC and PMLA at the behest of petitioner. According to learned Attorney General of India, material on record manifestly indicates that petitioner was personally involved in the act of money laundering and he is also found to be a beneficiary of the Proceeds of Crime and to unearth the money trail, custodial interrogation of petitioner is essential. Learned Attorney General of India has sought to rely upon the diary of proceedings of investigation and has handed over a copy of the diary of proceedings of investigation in a sealed cover to the Court for perusal while seeking to maintain confidentiality in respect of these case diaries. Highlighting the non-cooperation in investigation by petitioner, learned Attorney General of India had vehemently submitted that in the absence of custodial interrogation of petitioner, investigation in this case

cannot be taken to its logical conclusion and in view of nature of gravity of offence, custodial investigation of petitioner be granted. It is submitted that petitioner is giving evasive replies and is not cooperating in the investigation while he is under the protective umbrella of interim orders.

11. Reliance is place upon decision in *CBI Vs. Anil Sharma* (1997) 7 SCC 187 to justify custodial interrogation of petitioner by pointing out that interrogation conducted under the protection order of the Court has proved to be a mere ritual in the instant case. It is also submitted that petitioner cannot claim parity with co-accused *Karti Chidambaram*, as the said co-accused had committed the offence in question at the behest of petitioner. In support of their case, respondents rely upon decisions in *State of Gujarat Vs. Mohanlal Jitamalji Porwal & Anr.* (1987) 2 SCC 364; *Prahlad Singh Bhati Vs. NCT, Delhi & Anr.* (2001) 4 SCC 280 *Ram Pratap Yadav Vs. Mitra Sen Yadav And Anr.* (2003) 1 SCC 15; *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.* (2004) 7 SCC 528; *Anwari Begum Vs. Sher Mohammad & Anr.* (2005) 7 SCC 326; *Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr.* (2010) 14 SCC 496; *Y.S. Jagan Mohan Reddy Vs. CBI* (2013) 7 SCC 439; *Gautam Kundu Vs. Directorate of Enforcement* (2015) 16 SCC 1; *Sunil Dahiya Vs. State* 2016 SCC Online Del 5566; *Suresh Thimri Vs. State of Maharashtra* 2016 SCC OnLine Bom 2602; *Chhagan Chandrakant Bhujbal Vs. Union of India* 2016 SCC OnLine Bom 9938; *State of Bihar & Anr. Vs. Amit Kumar @ Bachcha Rai* (2017) 13 SCC 751 and *Rohit Tandon Vs. Directorate of Enforcement* (2018) 11 SCC 46.

12. After having heard both the sides at length and on perusal of the FIR of this case, short reply of respondent-CBI, material on record and the decisions cited, I find that from the material collected by the Investigating Agency, it *prima facie* appears that ₹3 Crores approximately has come into the account of M/s Advantage Strategic Consulting Pvt. Ltd. (ASCPL) and other concerns during the tenure of the petitioner as the Finance Minister. The table below shows the payments made from Span Fibre and Satyam Fibres to ASCPL and associated entities:-

BROKER NAME	YEAR	PERIOD	TOTAL Amount in ₹	TDS DEDUCTED @	AMOUNT PAID in ₹	Paid by
ASCPL	2007-08	Q1	3875077	439046	3436031	Span
	2007-08	Q2	3462875	392344	3070531	Span
	2007-08	Q3	2617386	296550	2320836	Span
	2007-08	Q4	2573662	291596	2282066	Span
	TOTAL		12529000	1419536	11109464	
KRIYA FMCG DISTRIBUTORS PVT. LTD.	2007-08	Q1	2662667	301680	2360987	Span
	2007-08	Q2	2259514	256003	2003511	Span
	2007-08	Q3	1981732	224530	1757202	Span
	2007-08	Q4	1331656	150876	1180780	Span
	TOTAL		8235569	933089	7302480	
CBN PLACEMENT & MANAGEMENT CENTRE	2007-08	Q1	3186072	360982	2825090	Span
	2007-08	Q2	3109656	352324	2757332	Span
		Q3	1544592	175002	1369590	Satyam

		Q4	2257155	255735	2001420	Satyam
	TOTAL		10097475	1144043	8953432	
	Grand Total		30862044	3496668	27365376/-	

13. From the investigation conducted, it appeared that ASCPL and other concerns are beneficially controlled and managed by Karti P. Chidambaram. The beneficial ownership of Shri Karti P. Chidambaram in ASCPL and associated entity becomes clear from the projected facts enumerated as under:-

(a) In the year 2009-10, Shri Karti P. Chidambaram secured mandate from Vasan Healthcare to raise funds through Spark Capital from which Karti P. Chidambaram demanded money and in this connection several emails were exchanged between Karti P. Chidambaram and K. Ramamkrishnan of Spark Capital. Later on, Spark Capital received funds from three entities i.e. M/s Advantage Strategic Consulting Pvt. Ltd., Kriya FMCG and Northstar as per the details given below:

S. No.	Date	Name of the Entity	Invoice Description	Value
1.	20.03.2009	M/s Advantage Strategic Consulting Pvt. Ltd.	Consultancy on new business opportunities for the YE 31.03.09	9,50,000/-
2.	16.03.2009	M/s Kriya FMCG Distributors Pvt. Ltd.	Consultancy on new business opportunities for the YE 31.03.09	7,50,000/-
3.	10.03.2009	M/s Northstar Software Solution Pvt. Ltd.	Professional Charges towards Legal due Diligence & Researches.	8,00,000/-
4.	04.01.2010	M/s Northstar Software	Management Consultancy Fees	12,50,000/-

		Solution Pvt. Ltd.	towards professional services.	
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(b) When GIC, a leading global investment firm headquartered in Singapore, wanted to invest in Vasani Healthcare, Karti P. Chidambaram had demanded ₹20 Crores in lieu of shares of ASCPL in Vasani Healthcare for smooth closure of the transaction.

(c) One Shri R. Joseph Kennedy of Blue Bugs was given the task of designing the logo, stationery of M/s Castle Gordon Global Advisory Ltd., UK, development of its website, domain name registration, hosting and email facilities. An invoice of ₹ 46,175/- for the work was raised by Blue Bugs in the name of ASCPL. Shri Mike Nithavrianakis who had allegedly floated M/s Castle Gordon Global Advisory Ltd. is the Director and partner of Shri Karti P. Chidambaram in M/s Totus Tennis Ltd.

(d) Incorporation expenses of M/s Ausbridge Holding and Investments Pvt. Ltd. (in which Karti P. Chidambaram and Mohanan Rajesh were promoters, directors and shareholders) were paid by ASCPL vide cheque no. 116868 dated 23.02.2006. Karti P. Chidambaram held 95% shares in Ausbridge in 2006.

(e) Mohanan Rajesh, Director in ASCPL and a schoolmate of Karti P. Chidambaram has disclosed in his statement that on Karti's instructions ASCPL allotted 66.67% of the total share to Ausbridge Holding and Investments Pvt. Ltd., a company for purchase of shares of ASCPL was made by Mohanan Rajesh from his personal account and he was later compensated by way of payments from companies controlled by acquaintances of Shri Karti P. Chidambaram.

- (f) Ms. Meena Saundarajan, a family friend of Karti P. Chidambaram, had transferred about ₹30 Lakhs to Ausbridge through her companies for purchase of shares of ASCPL on instructions of Karti P. Chidambaram.
- (g) Expenses on internet used on the telephone number 9884216000 used by Karti.P Chidambaram.
- (h) Expenses on travel by Karti P. Chidambaram and his associates were borne by ASCPL. Also personal expenses of Karti P. Chidambaram were borne by ASCPL viz, repair of his Patek Phillippe watch, hotel stays, meals and tickets for tennis tournaments, paintings seized during searches from the office of Karti P. Chidambaram (Chess Global Advisory Services) etc. Even expenses of Sh. Murali, PA of Karti P Chidambaram were paid by ASCPL.
- (i) M/s Northstar Software Solutions Pvt Ltd, a company in which Sh. CBN Reddy was a Director issued invoices for collection of illegal gratification from INX Media in September 2008, after the FIPB approval was granted by Shri P Chidambaram. Sh. CBN Reddy is one of the Directors in ASCPL and also a tennis partner of Karti P.Chidambaram.
- (j) Devender Saharia of M/s AGS Health had received ₹11 Crores from M/s ASCPL on instructions of Karti P. Chidambaram in lieu of which Karti P. Chidambaram had got inducted his CA, Mr. S. Bhaskaraman and Mr. CBN Reddy as directors of ASG Health.
- (k) Mr. Manoj Mohanka, in his statement recorded on 14.10.2016 in Aircel Maxis case, has stated that 60 Lakh shares of Artevea Digital Ltd. of value 0.01 Pound each, were allotted to ASC, Singapore without any payment on the instructions of Karti P. Chidambaram. He explained that

when Artevea Digital Ltd., UK was in financial crises in the year 2008, its director Mr. Manoj Mohanka had met Karti P. Chidambaram for help in arranging funds for the company because Manoj Mohanka's wife, Payal Singh Mohanka, was a contemporary of Karti P. Chidambaram at Cambridge University, UK in 1990s. In response to the request, Karti P. Chidambaram had asked Manoj Mohanka to place him suitably so that he may act on behalf of Artevea, UK for raising capital and requested Manoj to allot the above shares amounting to ₹60 Lakhs approximately (60 Thousand Pounds). In compliance to the request M/s Artevea Digital Ltd. allotted 6 Lakhs shares without any payment and Karti P. Chidambaram failed to raise funds for Artevea but he did not return these 60 Lakhs shares or compensate any money for them.

(4) The recovery of paintings purchased by ASCPL from the premises of Karti P. Chidambaram during searches conducted on 13.01.2018, the statements of Shri S. Bhaskararaman recorded under Section 50 of PMLA, the extracts of books of accounts of ASCPL as recovered from the hard disks of Shri S. Bhaskararaman seized from the premises of Shri Karti P. Chidambaram on 1.12.2015, banks statements of ASCPL, statements of people dealing with ASCPL recorded under section 50 of PMLA, emails of Shri Karti P. Chidambaram, Shri S. Bhaskararaman etc. recovered from the aforesaid hard disks seized on 1.12.2015 all show that every aspect of the business affairs of ASCPL was controlled by Karti P. Chidamabram, every expense incurred by ASCPL no matter how small was approved by Karti P. Chidambaram, expenses of Karti P. Chidambaram were paid by ASCPL and the people making payments to

ASCPL said that the payments were made to Karti P. Chidambaram. This shows that the ASCPL was beneficially owned by Karti P. Chidambaram.

14. The investigation conducted reveals that ASCPL and other concerns are not conducting any genuine and *bona fide* business activities. The two Debit Notes raised by CBN Placement and Management Center dated 01.10.2007, 17.11.2007 and Debit Note dated 01.04.2008 of Kriya FMCG were prepared by Bhaskararaman, who had brought those Debit Notes for his signatures. He signed those Debit Notes and he had no idea about the parties mentioned in the Debit Notes. The money which was received from Span Fibre was utilised by him for purchase of shares in his name in ASCPL, Chennai and various other expenses and investments made in ASCPL on the instructions of Karti P. Chidambaram. Mohanan Rajesh has stated that Debit Notes raised by Kriya FMCG on Span Fibers, dated 1.10.2007 and 17.11.2007 bear the signatures of Mr. S. Sundar, who resigned in January, 2008.

15. The third Debit Note dated 1.4.2008 bears the signatures of Sh. C.B.N. Reddy, Director. The parties mentioned in the Debit Notes are not known to him. It is only now that he had come to know about the existence of these debit notes. Mr. S. Bhaskararaman, CA, had told him that Polyester Fibre was sold for M/s. Span Fibre for the reason that commission income was generated. He stated that the illegal gratification in the form of commission received from M/s SPAN Fibre India Pvt. Ltd. was split among M/s. ASCPL, M/s. Kriya FMCG and CBN Placement and Management Centre as Sh. CBN Reddy was the common link among the three entities, he was the director and major shareholder in M/s.

ASCPL, M/s. Kriya FMCG and proprietor of CBN Placement and Management Centre. The decision to split the said commission was collectively taken by Karti P. Chidambaram, Sh. CBN Reddy and Mr. Bhaskararaman himself. He further stated that the proportion of commission between ASCPL, CBN Placement and Kriya FMCG was also decided by Karti P. Chidambaram.

16. As per Bhaskararaman, CBN Reddy was the link between the 3 entities. Sh. CBN Reddy, however, has stated that this money belonged to Karti P. Chidambaram and that he has no knowledge of the work done. Thus, he admits that money is related to Shri Karti P. Chidambaram and that money was received by three entities acting together i.e. CBN Placement and Management Centre, Kriya FMCG and ASCPL. He also stated that no separate work was done by CBN Placement and Management Centre and M/s. Kriya FMCG. The Debit Notes were raised through CBN Placement and Management Centre. These Debit Notes bear the signature of Sh. CBN Reddy.

17. The investigation conducted further revealed that no brokerage services were actually rendered by ASCPL or associate entities (CBN Placement and Management Centre and Kriya FMCG). The investigation conducted with the buyers of PSF shows that they had never interacted with ASCPL or associate entities. This fact was also admitted by the directors of ASCPL, including Sh. CBN Reddy who is also the proprietor of CBN Placement and Management Centre and the director and shareholder of Kriya FMCG. Sh. Bhaskararaman, the main person behind the laundering of these funds also stated that these

debit notes were raised on the directions of Sh. Karti P. Chidambaram to show some transaction which in-fact did not occur. It is further revealed that fake invoices were raised to the companies by ASCPL and other concerns in order to show and legitimize the payments received from those companies which were in fact the bribe money for the favours shown by the petitioner. It is also established that the money was collected by Karti P. Chidambaram through these concerns on behalf of the petitioner for the favours shown by the petitioner to the companies who had transferred money into the account of ASCPL and other concerns. The illegal gratification collected was thereafter invested in other companies /entities. The money received by ASCPL from M/s Span Fibre India Pvt. Ltd. was nothing but illegal gratification received for the approval given by the Finance Minister for FDI in INX Media Ltd. The Bank statement of ASCPL for A/c No. 0602100003711 maintained with DCB Bank shows that ASCPL received money from M/s Span Fibre India Pvt. Ltd. in 2007-08, as follows :-

Sl. No.	Date	Amount in ₹
1	10.11.2007	34,36,031
2	21.01.2008	30,70,531
3	21.02.2008	23,20,836
4	29.05.2008	22,82,066
Total		1,11,09,464

18. The bank statement of ASCPL shows that initially this amount was invested by ASCPL in fixed deposits. Thereafter the money was invested

in shares of Vasana Health Care Ltd. Although the shares were acquired by Smt. Meera Arun for ₹3 Crores, she gifted the shares to her father and he immediately sold the same to ASCPL for ₹1.5 Crores at a price lower than the price at which they themselves bought the shares at a loss of ₹1.5 Crores. Even though the sale was at a price of ₹1.5 Crores, at the time of the sale, ASCPL paid Dwarkanathan (father of Smt. Meera Arun) a sum of ₹50 Lakhs and that too after one year. The balance sheet of ASCPL for the year 2007-08 and 2008-09 shows that at this time the only source of funds available to ASCPL was the money received from Span Fibre India Pvt. Hence, the share of Vasana Health Care Pvt. Ltd. (Vasana) acquired by ASCPL were generated from proceeds of crime as they had been acquired from the illegal gratification received by ASCPL for the approval granted by Finance Minister, P. Chidambaram to INX Media Ltd. The remaining payment of ₹1 Crore due for the shares of Vasana Health Care Pvt. Ltd. purchased by ASCPL was made on 29.10.2010, only after these shares were sold by ASCPL to Sequoia Capital India Growth Investment Holding (Sequoia) on 26.10.2010.

19. It was projected by the Investigating Agencies that ASCPL received ₹22,50,00,600/- from Sequoia for sale of Vasana shares and this money is tainted money as it arises out of sale of shares of Vasana Healthcare that are themselves acquired from tainted funds and is property involved in money laundering. It is further projected that the remaining shares of Vasana Health Care held by ASCPL is properly involved in money laundering and thereafter, ASCPL sold further 36245 share of Vasana to Vasana Medical Hall @ ₹5242/- per share at a total

value of ₹19 Crores. Therefore, it is projected that the amount of ₹19 Crores is also property involved in money laundering as it is arising from sale of shares of Vasan i.e. property involved in money laundering.

20. The investigation conducted further reveals as follows:-

Out of the above property involved in money laundering i.e. amount received by ASCPL from sale of shares of Vasan Healthcare, further property was purchased including that of AGS Healthcare acquired for ₹11 Crores. These shares are also property involved in money laundering as they were bought from tainted money. They were further sold by ASCPL for a sum of ₹29,49,25,885/- i.e. at benefit of ₹18.49 Crores approx. This money is again tainted money as it arises out of sale of property involved in money laundering. The funds of ₹22.5 Crores derived by ASCPL from the sale of shares of Vasan Health Care to Sequoia, funds of ₹19 Crores derived from the sale of shares of Vasan to Vasan Medical Hall and the profit of ₹18.49 Crores approx. on the sale of shares of AGS Health Care was arising out of sale of property involved in money laundering. So, the funds of ₹59.99 Crores are property involved in money laundering. In addition, Span Fibre (India) Pvt. Ltd. and Satyam Fibres (India) Pvt. Ltd paid an amount of ₹3 Crores to ASCPL and associate companies, out of which only ₹50 Lakhs was used and the remaining ₹2.5 Crores were Proceeds of Crime in the hands of ASCPL as both Kriya FMCG and CBN Placement and Management Centre channelled the money back to ASCPL. The remaining shares of Vasan held by ASCPL are also proceeds of crime. In addition ₹10 Lakhs were received by ASCPL from INX Media on 22.07.2008. ₹62.68 Crores

approximately worth properties are involved in money laundering by ASCPL as a result of criminal activity relating to a Schedule Offence.

The remaining shares (83,755) of Vasan Health Care (1,50,000 less 30,000 less 36,245 = 83,755) held by ASCPL are also proceeds of crime as they are derived from criminal activity relating to a Scheduled Offence.

21. This Court is conscious of the fact that personal liberty of a citizen is sacrosanct, but no one is above the law. Law makers cannot be allowed to turn into law breakers with impunity, particularly in cases of this magnitude. What is so far to be seen is the tip of ice berg. Pre-arrest is not meant for high profile economic offenders. Time has come to recommend to the Parliament to suitably amend the Law to restrict the provisions of pre-arrest bail and make it inapplicable to economic offenders of high profile cases like the instant one. It is need of the hour. The law must come down upon economic offenders with a heavy hand. It is often seen that when economic offenders are on pre-arrest bail, then the investigation conducted is at a superficial level, like in the instant case. This not only weakens mega scam cases but it actually stiffs the prosecution. This Court cannot permit the prosecution in this sensitive case to end up in smoke like it has happened in some other high profile cases. Tendering of charge-sheet after obtaining sanction for prosecution of petitioner cannot dilute the gravity of the offence in question. Both the sides have cited legal precedents but the facts of instant case *prima facie* reveal that petitioner is the king pin i.e. the key conspirator in this case. Law enforcing agencies cannot be made ineffective by putting legal

obstacles of offences in question being Scheduled or not Scheduled, as these legal pleas are sub-judice before Supreme Court and cannot persuade this Court to grant pre-arrest bail, as the gravity of offence committed by petitioner is quite evident from case diaries etc. produced by the Investigating Agencies. The gravity of offence committed by petitioner demands denial of pre-arrest bail to him.

22. Economic offences constitute a class part and need to be visited with a different approach in matters of bail. Taking note of huge magnitude of conspiracy angle qua petitioner, it would be premature to jump to a conclusion that provisions of PMLA would not apply to the instant case, as it cannot be said that the amount involved is below ₹30 Lakhs. Rather, money laundering involved in this INX Media Scam and Aircel Maxis deal scandal is of ₹3,500 Crores.

23. Supreme Court in *Y.S Jagan Mohan Reddy (Supra)* while dealing with a money laundering case, has reiterated 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.”

24. The pertinent observations made by Supreme Court in ‘*Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money-Laundering Act)*’ (2015) 16 SCC 1, which apply to the instant case, are as under:-

“32. We have heard the learned counsel for the parties. At this stage we refrained ourselves from deciding the questions tried to be raised at this stage since it is nothing but a bail application. We cannot forget that this case is relating to “money-laundering” which we feel is a serious threat to the national economy and national interest. We cannot brush aside the fact that the schemes have been prepared in a calculative manner with a deliberative design and motive of personal gain, regardless of the consequence to the members of the society.”

25. Applying the afore-noted dictum to the instant case, this Court finds that not naming of petitioner in FIR, is inconsequential, as petitioner has been projected to be the main accused on whose dictates the offence of this magnitude could be committed. Petitioner cannot claim parity with co-accused who are on bail. It cannot be forgotten that petitioner was the Finance Minister at the relevant time and he had given FDI clearances to INX Media Group for receiving overseas funds to the tune of ₹305 Crores. The alleged irregularities committed by petitioner makes out a case for refusing pre-arrest bail to petitioner. Simply because petitioner is a sitting member of Parliament, would not justify grant of pre-arrest bail to petitioner in this sensitive case. Offenders must be exposed, no matter what their status is. Petitioner is member of legal fraternity too. But this by itself does not and cannot justify concession of pre-arrest bail to him. Discretion to grant or deny pre-arrest bail cannot be exercised *de hors* the gravity of offence. It would be preposterous to say that prosecution of petitioner is baseless, politically motivated and act of vendetta as on the basis of material collected so far, it can be safely said that *prima facie* case is made out against petitioner, thereby, justifying denial of pre-arrest

bail to him. The magnitude of this case dissuades this Court to grant pre-arrest bail to petitioner.

26. The pertinent observations of Supreme Court in *CBI Vs. Anil Sharma (Supra)* which aptly apply to the instant case, are as follows:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

27. Supreme Court in *Y.S.Jagan Mohan Reddy (Supra)*, while dealing with multiple investigations involving multiple conspirators has reiterated that the approach to be followed while dealing with bail plea in cases involving criminal conspiracy to commit economic offences of huge magnitude relating to public money ought to be strict as fraudulent transactions affect the economic system to the detriment of the country. It was pertinently observed that economic crimes of such mammoth scale

are craftily planned and executed. Thus, grant of bail in cases like instant one will send a wrong message to the society.

28. In the instant case, in view of the enormous material placed on record in respect of distinguished entities, various transactions etc, this Court unhesitatingly opines that bail plea of petitioner is not acceptable. Recently, Supreme Court in *Rohit Tandon Vs. Directorate of Enforcement* (2018) 11 SCC 46 while dealing with the bail plea in a money laundering case, has again reiterated that white collar crimes/ economic offenders have deep rooted conspiracies involving huge amount of public funds and this should be viewed seriously and such offences ought to be considered as grave offences. Pertinently, the bail plea in the case of *Rohit Tandon (Supra)* was repelled by the Supreme Court while observing that duty of the Court at the bail stage is not to weigh the evidence meticulously but to arrive at a finding on the broad probabilities of the case.

29. This is a classic case of money laundering. The twin factors which have weighed to deny pre-arrest bail to petitioner are: (i) Gravity of offence and (ii) evasive replies given by petitioner to the questions put to him while he was under protective cover extended to him by this Court. The parameters governing pre-arrest bail and regular bail are altogether different. I have pondered over this matter for long and after weighing the pros and cons, I am of the considered view that the gravity of the offence committed in the instant case amply justifies denial of pre-arrest bail to petitioner. Grant of pre-arrest bail in a serious matter like instant one to an accused simply on the ground that investigation is complete and

charge sheet has been filed, would defeat the ends of justice. In bail matters, gravity of the offence is of utmost consideration which weighs with the Court in granting or refusing pre-arrest bail or regular bail. The facts of this case persuades me to decline pre-arrest bail to petitioner while refraining to comment on the merits of the case.

30. Upon considering the case set up against petitioner in its entirety, this Court is of *prima facie* opinion that it is not a fit case for grant of pre-arrest bail to petitioner. Consequentially, both these applications are accordingly disposed of, while observing that anything stated herein shall not be taken as an expression on merits at trial.

Dasti.

AUGUST 20, 2019

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**(SUNIL GAUR)
JUDGE**