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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 389 OF 2021

Partho Nirmal Dasgupta,

Age 55 years,

Flat No.203/204 Dosti Carnation,

Dosti Acres Complex, Wadala (East),

Mumbai - 400 037

Lodged in Taloja Jail, Thane

... Applicant/Accused No.15

V/s.

The State of Maharashtra

Through Crime Investigation Department

Crime Branch, Mumbai

C.R.No.143 of 2020 of DCB CID CIU

... Respondents

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Shardul Singh i/b. Mr. Arjun Singh Thakur for the Applicant

Mr. Shishir Hiray, Special P.P. a/w. Ankur Pahade and Sayee Sawant for the Respondent - State

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 16 FEBRUARY 2021

PRONOUNCED ON : 02 MARCH 2021

JUDGMENT:-

The applicant is arrested on 24 December 2020 in connection with C.R.No. 843 of 2020 registered with Kandivali Police Station on 6 October 2020 for offences punishable under Section 409, 420, 120B, 34 of Indian Penal Code. The investigation was then transferred to CID, Crime Branch vide C.R.No. 143 of 2020. Section 465, 468, 406, 174, 179, 201, 204, 212 were added.

2. The brief facts of the prosecution case as spelt out in the First Information Report are as follows :-

(a) The complainant is Deputy General Manager of Hansa Research Group Pvt. Ltd. It is alleged that on 6 October 2020, complainant was informed by the Assistant Police Inspector that on receipt of secret information, person named Vishal Ved Bhandari is taken in custody. During enquiry with him he has disclosed that he is working with Hansa Research Group Pvt. Ltd. as Relationship Manager. The said person has disclosed that barometers were installed in the houses of some persons for measuring TRP with the assistance of associates and he was inducing persons in whose house barometers are installed by luring them with money to watch India Today and certain channels.

(b) The complainant visited Police Station. His statement was recorded which has been treated as FIR. He stated that Hansa Research Group Pvt. Ltd. is a research company and working for Broadcast Audience Research Council (BARC) for installing barometers and looking after them. BARC is the only company in India which is concerned with measuring TRP (Television Rating Point) of TV channels and TV programs under the supervision of Television Regulatory Authority of India (TRAI) and Ministry of Information and Broadcasting (MIB). For measuring TRP, BARC installs barometers in specified homes and the said barometers are supervised by Hansa Research Group Pvt. Ltd. in Mumbai and Maharashtra.

(c) The persons who are designated to install barometers are appointed as Relationship Manager. They are given training to find out whether any malpractices are being followed while installing barometers by paying any gratification to the persons in whose house the barometers are installed.

(d) The TV channels whose TRP is high are benefited with advertisements resulting in earnings and it was noticed that some of the TV channels are indulging in malpractices to increase their TRP. The budget of advertisement on TV channels is based on TRP. In case of false TRP, loss is caused to advertisers. In the event of

malpractices, the broad-caster and advertiser suspect the functioning of BARC.

(e) On 11 June 2020 the audit team of complainant visited house of Ved Prakash Bhandari to inspect barometer installed in the house. It was noticed that one more meter was installed in the premises. On enquiry with the occupant of the house it is disclosed that his son Vishal Bhandari is working as Relationship Manager with Complainant's Company.

(f) On 17 June 2020, Vishal Bhandari was called in the office of BARC for enquiry. He disclosed that he has been working with Hansa Research Group Pvt. Ltd. since March 2019 as Relationship Manager. In November 2019 he was called by person named Vinay and informed that the persons in whose house barometer is installed be instructed to watch India Today News Channel atleast for two hours per day and for that he would pay commission to him and viewers. He agreed to do so. Vinay Tripathi met Vishal and he gave Rs.200/- per hour for five houses for watching India Today News Channel and Rs.5,000/- to Vishal as commission.

(g) Vishal admitted that malpractices were going on since November 2019 to May 2020 and he had received calls from various persons for conducting similar acts. He admitted that he has paid

amount to several persons for watching specified channels. The list of which was given in the complaint.

3. During the course of investigation several persons were arrested. The applicant was arrested on 24 December 2020. He was produced before the Court of learned Additional Chief Metropolitan Magistrate, 37 Court, Esplanade, Mumbai on 25 December 2020. Remand application refers to arrest of 14 accused. It was stated that charge-sheet is filed against Accused Nos. 1 to 12 on 24.11.2020. Further investigation under Section 173(8) is in progress. Accused No.13 was arrested on 13.12.2020 and accused No.14 was arrested on 17.12.2020. He was granted bail. Ten persons were shown as wanted in the case. The Applicant was impleaded as Accused No.15. The charges under Section 409, 420, 465, 468, 406, 120B, 174, 179, 201, 204, 212 r/w. 34 were invoked. The remand application further mentions that during the interrogation of Accused No.14 – Romil Vinodkumar Ramgadia, he had disclosed that he was involved in manipulation of TRP in connivance with the then Chief Executive Officer of BARC (Applicant). It was further alleged that applicant was interrogated and he disclosed that he was working as CEO with BARC from June 2013 to November 2019 and he has misused his position and manipulated TRP of certain TV channels. Police custody of the applicant was sought on various grounds. He was remanded to police custody till 28 December 2020. The applicant was again produced before the Court for remand on 28

December 2020. It was stated that mobile phone, lap-top, i-pad, TAG-HEUR watch, silver ornaments, etc. were recovered valued about Rs.2,23,900/- at the instance of the applicant. The applicant was again produced for remand on 30 December 2020. Similar grounds were made for custody. The Applicant was then remanded to judicial custody. Charge-sheet was filed against the Applicant.

4. The applicant preferred an application for bail before the Court of learned Additional Chief Metropolitan Magistrate, 37 Court, Esplanade, Mumbai. The said application was rejected by order dated 4 January 2021. While rejecting bail it was observed that investigation is at crucial stage. The applicant is an influential person who worked with BARC and the other persons or accused are yet to be interrogated. In such circumstances, it is requirement of further investigation to keep the present accused away from wanted accused and other material witnesses. Although the Applicant is in judicial custody, it does not mean that investigation is completed. At this juncture release of the applicant would hamper further investigation. Since the investigation is in progress, it will not be proper to release the accused on bail.

5. The applicant subsequently preferred an application for bail before the Court of Sessions. The said application was rejected by order dated 20 January 2021. The application was opposed by

the respondents on the ground that the applicant has played vital role. Investigation is not yet completed. However, charge-sheet is filed in the Court with request for further investigation under Section 173(8) of Cr.P.C. It was also urged by the prosecution that during the course of investigation, the Investigating officer has seized lap-top and mobile and it is necessary to verify the whats-app chats. There is voluminous rounds of chats in between the applicant and the owner/anchor of TV channels. There are serious chats recorded in the mobile of the applicant/accused which are required to be investigated. The chat shows complicity of the applicant with the TV channel owner. The learned Sessions Judge observed that thorough investigation is necessary in respect of whats-app chats. Although 14 persons are released on bail, the accused is mastermind of crime and played vital role for manipulation of TRP. The custody of the applicant is necessary and if at this stage accused is released on bail, then every possibility that he may tamper with the prosecution witnesses and evidence. In view of material available on record, face to face interrogation of accused is required. On the sole ground of investigation and tampering of evidence, the Court was not inclined to exercise judicial discretion in favour of the accused.

6. The tenor of order passed by the learned Magistrate and the learned Sessions Judge makes it apparent that bail was refused primarily on the ground that his custody is necessary for

investigation and that the applicant is likely to tamper with the evidence. It is pertinent to note that the applicant was in judicial custody at the relevant time. Charge-sheet was already filed against him when the application was rejected by Sessions Court. It is also necessary to note that the charge-sheet was filed even before completing the statutory period available to the Investigating Agency to complete the investigation. It appears from the documents produced by both the sides that application was made before the Trial Court seeking permission for interrogation of the applicant while in jail custody which was granted. It is the contention of the learned Counsel for the applicant that although the permission was granted by the Trial Court, nothing could be revealed during the interrogation and there was no serious attempt to interrogate the applicant qua the allegations against him.

7. Mr. Ponda, learned Senior Advocate representing the applicant urged several grounds in support of the prayer for bail. The submissions can be summarized as under :-

(i) The applicant is in custody from 24 December 2020. On completing investigation, charge-sheet is filed against him. Thereafter, supplementary charge-sheet is filed against the applicant. Further detention of the applicant is not necessary.

(ii) Although the applicant is charged of commission of offence under Section 420 of IPC, no person who is allegedly deceived had come forward to contend that loss is caused to him.

(iii) The person who could be allegedly a victim of alleged manipulation is an advertiser who could have placed his advertisement on the basis of the alleged manipulated TRP. However, no such person has come forward to lodge complaint.

(iv) The case of the prosecution is that the involvement of the applicant was disclosed during the interrogation of Accused No.14 – Romil Ramgadia. However, he has been granted bail by the Court of learned Magistrate. He had allegedly played vital role in manipulation. The applicant is arrested on the basis of statement made by him. The applicant was arrested after Accused No.14 was granted bail.

(v) According to prosecution, the applicant had committed breach of the Rules and Regulations of TRAI, The applicant is not charged for commission of the offence under the said Regulation. In any case, the offences stipulated therein are non-cognizable.

(vi) The alleged what's-app chats between the applicant and the owner of TV channel as well as the alleged e-mails between them

are in custody of the Investigating Agency. These are loose talks between them. It does not have link with manipulation of TRP.

(vii) The applicant cannot be kept in custody for indefinite period. The charge-sheet is filed. Under the garb of further investigation in accordance with Section 173(8) of Cr.P.C. the prosecution is trying to extend the custody of the applicant. However, it is required to be noted that the charge-sheet was filed immediately within 30 days after his arrest. It is submitted that even after filing charge-sheet, investigation proceeded and supplementary charge-sheet was filed.

(viii) The offences are triable by the Magistrate. 14 other accused are granted bail. The applicant need not be kept in custody for longer period. There is no embargo for granting bail which is prevalent in the special legislation such as MCOC, TADA, UAPA, etc.

(ix) The role of Accused No.14 – Romil is implicit from summary of the charge-sheet. According to prosecution, he was involved in TRP manipulation to cause benefit to certain channels with the aid of other persons. The Accused No.14 was working with BARC and was having the information about viewership of TV channels which was misused by him in connivance with the

applicant. It was found that Accused No.14 was indulging in manipulation of TRP and hence enquiry was conducted by BARC with the help of independent agency Acquisory Risk Consulting Pvt. Ltd., Mumbai which revealed that in connivance with other and in pursuance to conspiracy, he was involved in TRP manipulation and evidence in that regard was collected. The charge-sheet also discloses that the mobile phone of Accused No.14 was seized and it was disclosed that there was exchange of WhatsApp conversation for increase of TRP between the Directors of ARG Outlier Media Pvt. Ltd. and Accused No.14. Serious role is attributed to him which is apparent from the summery stipulated in final charge-sheet. However, he has been granted bail. All the arrested persons except the applicant are on bail. The allegations against applicant are false. The applicant himself had learned about violations of Code, Rules and Regulations by a channel with regards to landing pages and dual LCN's and had notified the Board members formed on oversight committee in June 2019, investigated the entire process thoroughly and published report dated 15.10.2019 certifying that process followed at BARC is accurate and unbiased and recommended to continue process. The report further states that there is no manual intervention in the process for treating outliers.

(x) The person with whom the Applicant had allegedly exchanged WhatsApp chats and that to whose channel the Applicant

had indulged in manipulation of TRP has been granted relief which is evident from the orders passed by the Court in the proceedings which are pending in this Court.

(xi) The prosecution is relying upon the recovery panchnama in respect to the articles allegedly recovered at the instance of the applicant. The articles includes electronic gadgets, watch and ornaments. These ornaments belong to the family of the applicant. Without any basis the Respondents had alleged that the ornaments are purchased out of the proceeds of crime. It is submitted that the allegation is baseless and the said articles cannot be in any manner linked to the crime. The jewellery belongs to wife of the applicant.

(xii) The applicant is not charged for any offence with regard to alleged serious chats recovered during the course of investigation by the Investigating Agency.

(xiii) The applicant is highly educated person. He was appointed as CEO of BARC for a period from June 2013 to November 2019. The question of tampering evidence does not arise. He relied upon decision of this Court in the case of ***Khemlo Sawant v/s. State (2001) Bom.C.R. (Cri.) 761*** in which it was observed that the apprehension of investigating agency that accused if released on bail, is likely to tamper with evidence. Such apprehension is misplaced, for the

simple reason that having regard to nature of allegations in the complaint, the crucial evidence is that of complainant himself. Therefore if attempt is made to pressurize complainant, it would be good case for cancellation of bail, but it will result in miscarriage of justice to keep applicant in custody on the basis of mere apprehension. Learned Counsel also relied upon decision of Supreme Court in ***Mahipal v/s. Rajesh Kumar and Anr. (2020) 2 SCC 118***, wherein it was observed that, the determination of whether a case is fit for grant of bail involves balancing of numerous factors, among which the nature of offence, the severity of punishment and a prima facie view of the involvement of accused are important. No straitjacket formula exists for Courts to access an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for grant of bail, the Court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of crime by accused. That is a matter of trial. Reliance is also placed on decision of apex court in the case of ***Ranjit Singh Sharma v/s. State (2005) 5 SCC 294 and P. Chidambaram v/s. CBI (2019) SCC OnLine SC 1380***.

(xiv) The applicant is ailing. His health condition has deteriorated. He is undergoing treatment.

8. The learned Special P.P. Mr. Hiray submitted that there is voluminous evidence against the applicant to show his involvement in the crime and offences under Section 420, Section 409 of IPC and other offences are clearly made out. It is submitted that the Petition filed by the other accused which is pending before the Division Bench is being vehemently opposed by the State. He relied upon the orders passed by the Division Bench from time to time. He submitted that the prosecution has not consented for extension of interim relief beyond 5 March 2021 and the said Petition has been listed for hearing on the issue of grant of interim protection on 5 March 2021. It is submitted that during the course of investigation the involvement of the applicant has been disclosed. There is cogent evidence on record to establish that the applicant has played vital role in manipulation of TRP to support the channel owned by ARG Outlier Media Pvt. Ltd. It is submitted that the applicant was CEO of BARC. The complainant's company were engaged to install barometers at the residential premises to measure TRP of TV channels. The applicant and the owner of ARG Outliers had acted in connivance with each other to increase the TRP of Republic Bharat and Republic TV. BARC is the only agency in this country to measure TRP of TV channels. The decision of advertising their products by the companies would depend upon the TRP of a particular program/channel. If the TRP is higher the parties choose to advertise their product at the rate charged by the

channel. The accused were involved in manipulating TRP of several channels. The applicant was controlling BARC. He acted in connivance with the accused who were working with Hansa Research Group Pvt. Ltd. The offence is of serious nature. The persons who had advertised are the victims they have suffered loss. It is not necessary that the victims should come forward to lodge the complaint. Criminal law can be set into motion by any person. On account of manipulation in TRP, the advertisers suspected credibility of BARC as well as Hansa Research Group Pvt. Ltd. and there was confusion in the mind of advertisers. The applicant has admitted that he is involved in manipulating TRP. He has earned huge amount in the manipulated transactions. Memorandum statement of the applicant was recorded vide panchnama during the course of investigation. There is recovery of valuable articles including the jewellery from the possession of the applicant. There is reason to believe that the valuables were purchased by the applicant out of the crime proceeds. The accused has admitted that he was going in concert with the co-accused including the owner of Republic TV who is also the accused in this case. There complicity and connivance is fortified by evidence on record. During the course of investigation, WhatsApp chats and e-mails were recovered. Those chats shows the acquaintance of the applicant and the co-accused. It is submitted that the chat also fortifies the manipulation of TRP by the applicant to cause benefit to the channel of co-accused. It is

submitted that the applicant was holding prime position with BARC during the relevant time. He misused this position. The forensic report which is part of charg-sheet collected during the course of investigation opines that the applicant is involved in manipulation of TRP. He also relied upon the statement of witnesses to substantiate the submission that the applicant is involved in commission of offences. He pointed out statement of Mr. Dinesh Krishna Pillai relating to forensic report and also the statement of Smt. Pekham Basu. Mr. Pillai in his statement dated 6 January 2021 has stated that his services were engaged for forensic audit of BARC. He examined the data and submitted audit report. It was opined that there was email conversation between the applicant Romil Ramgadia, Rushabh Mehta, Vyankatesh Samrat and Manasi Kumar with regard to TRP rating manipulation. Their involvement has been disclosed in the report submitted by him on 24 July 2020. The report with title Digital Forensic Services is part of record. The e-mails exchanged between the parties are part of Digital Forensic Services report. Mr. Hiray submitted that the findings incorporated in the said report which were reflected in the statement of Dinesh Pillai are vital and important which corroborates the prosecution case. The witnesses also stated that the applicant was aware of manipulation of the ratings and violation of process that was happening in BARC during his stint as CEO. It can be inferred that the applicant was involved in malafide transaction. Although

the applicant was expected to be custodian of the governance and ethics as he was CEO. There is evidence to show that the applicant aided the break down of governance and ethics in BARC. The statement also mentions that based on analysis of data it was noticed that Romil Ramgadia was involved directly and was in the note of rating changes being done to favour particular channel. There is strong indication that channel rating were pre-decided. The learned Special P.P. further submitted that crores of rupees were involved in these transactions. It is further submitted that the manipulations had wide connotations and the acts was spread over the country. It is submitted that BARC was appointed to measure TRP of channel system. The company was incorporated under the guidelines of TRAI and Ministry of Broadcasting. He pointed out the requisite rules in the guidelines. It is submitted that the policy guidelines for television rating agencies were issued by the Ministry of Information and Broadcasting, Government of India. These guidelines were made applicable to all rating agencies providing television rating services in India. The policy provides eligibility criteria and methodology for audience measurement. It also provides secrecy and privacy clause, data analysis, transparency, etc. The policy also provides for action upon non-compliance of guidelines. The policy also concerned with national security and other conditions. It is submitted that some of the chats which were recovered during the course of investigation, action against the applicant and the co-

accused are relating to security of the nation. However, in fairness, he admitted that no penal provision is initiated in respect to the said WhatsApp chats. Mr. Hiray further submitted that statement of Kumari Pekham Basu recorded on 4 January 2021 mentions the procedure followed for measuring TRP. The said witness have stated that there was no accurate information and false information was feed which was doubted. She filed a complaint but no action was initiated. She was working in market analysis division and she was ordered by Romil to upload the final data processing work. Raw data obtained for processing the work and final data was manipulated by the applicant to profitise the particular channel, Romil was helping particular channel by implying the META Rule method. Thus, manipulating the TRP and was telecasting the same channel, when Republic TV had supported broadcasting, TRP had increased and due to this, other TV channels had complained to BARC office about huge TRP of Republic TV channel. Statement of Pekham Basu is also recorded under Section 164(4) of Cr.P.C. in which she states that she was working in BARC from April 2016 to October 2020. She was holding post of Deputy General Manager. She was instructed by Romil Ramgadiya, Chief Operating Officer and Manishankar, H.R. Head. When she raised complaint Romil was annoyed. She also stated that applicant was involved in manipulation. Learned Special P.P. took me through several documents, statements which is part of charg-sheet and submitted

that the applicant has played prime role in TRP manipulation. He is not entitle for bail. Further investigation in relation to the chats and other factors is still in progress. Although the charge-sheet is filed, provision was made for further investigation in accordance with Section 173(8) of Cr.P.C. The learned Special P.P. also took me through the several chats which are part of charge-sheet and submitted that thorough investigation is required in relation to the conversation via chats between the applicant and the co-accused.

9. Mr. Hiray submitted that the fact that investigation is still in progress is evident from the fact that requisite application was made before the Trial Court seeking permission to interrogate the applicant. The application was granted. It is submitted that the applicant if released on bail is likely to tamper with the evidence. The custody of the Applicant is necessary to further investigate the offences. Sessions Court has rejected bail by assigning cogent reasons. He relied upon the decision of this Court in the case of ***Rana Kapoor v/s. Directorate of Enforcement and Anr.*** dated 25 January 2021 and submitted that the observations made in the said order are applicable to the present case. It is submitted that while granting bail the Court has to take into consideration nature of accusations, evidence in support, severity of punishment, magnitude of offence, etc. It is submitted that the Sessions Judge while rejecting the application for bail has considered all the aspects and found that

the Applicant is not entitled for bail. The applicant has not made out case to deviate from the observations of the Sessions Court.

10. Mr. Hiray further submitted that the applicant is mastermind in the present crime. The voluminous objectionable WhatsApp chats disclosed that the entire conspiracy was between the applicant, channel owner and anchor of particular TV channel. It is not the case of mere manipulation of TRP but it is more than that though the Investigating Officer filed charge-sheet against the accused, the record is required to be scrutinised. Investigation in relation to the WhatsApp chats is still in progress. The applicant is not entitle for parity as role attributed to the accused who were granted bail can be distinguished.

11. The learned Special P.P. has also handed over the sealed envelope containing the documents relating to the status of the investigation.

12. Having heard both the sides I have perused the documents. The charge-sheet contains about more than 4000 pages. The charge-sheet includes statement of witnesses, documents and the purported WhatsApp chats between the accused. From the documents on record it is apparent that the First Information Report was registered in pursuant to receipt of the alleged secret information by the police on 6 October 2020. The First Information Report

mentions that on receipt of the information, Vishal Ved Bhandari was taken into custody and enquiry was made with him. He disclosed that he is employed with Hansa Research Group Pvt. Ltd. (complainant's company) as relationship manager. He also disclosed about his involvement in increasing TRP of particular channel by inducing persons with gratification. Complainant's statement was recorded after he visited police station on receipt of call from the Assistant Police Inspector attached to Kandivali Police Station. The First Information Report then reproduced the version of the complainant. He has described the role of BARC and Hansa Research Group Pvt. Ltd. The complainant further stated that Vishal Bhandari was working as Relationship Manager with Hansa Research Group Pvt. Ltd. The complainant stated that Vishal Bhandari had disclosed about the manipulation of TRP. He also gave details of the persons with whom the transactions were conducted. The FIR is based on the information provided by Vishal Bhandari. It is pertinent to note that Vishal Bhandari was impleaded as accused in the case. The prosecution case proceeds with the version of the person who has been impleaded as an accused having involved in the manipulation of TRP. Vishal Bhandari was appointed as Relationship Manager by Hansa Group. It is alleged that it is disclosed that he acted in connivance with the other persons and paid gratification to the persons in whose houses barometers installed. It is relevant to note that Vishal Bhandari had not

disclosed the involvement of the Applicant in any manner. During the course of investigation, about 14 persons were arrested. Accused No.14 is Romil Ramgadia. He was arrested on 17 December 2020. He has been granted bail by the learned Magistrate on 4 January 2021. The case of the prosecution is that during the course of interrogation of accused No.14, he had revealed the involvement of the applicant in manipulation of TRP. Romil was also working with BARC. He was Chief Operating Officer. The charge-sheet provides the role played by Romil. According to the prosecution he was actively involved in the crime. The applicant was arrested on 24 December 2020 whereas Romil was granted bail by the Court of Additional Chief Metropolitan Magistrate vide order dated 24 December 2020. On perusal of the order granting bail to Romil, it can be seen that the Court had observed that charge-sheet is already filed against 12 accused. The allegations against him is that he had violated non-disclosure agreement. The Chief Operating Officer, ARG Outliers Media Pvt. Ltd. Priya is protected with pre-arrest bail. WhatsApp chats of the said accused were already recovered. Mobile handset, lap-top, ipad are seized by the Investigating Officer. The offence is exclusively triable by the said Court. The facts and circumstances show that the material part of investigation is completed. Hence, custodial detention of the said accused is not necessary. If he is released on bail, it will not hamper further investigation. So there is no propriety in keeping the said accused

behind bar till conclusion of trial. It is pertinent to note that according to prosecution, Romil has played a vital role. The prosecution proceeds on the basis that he was acting in connivance with the applicant. He was granted bail on the ground that the investigation is substantially completed, there is recovery of chats and chargesheet is already filed. The learned Special P.P. has however contended that bail granted to Romil is sought to be cancelled by the Respondents. It is required to be noted that bail was granted to him on 24 December 2020.

13. The applicant was in police custody for initial period and subsequently he was remanded to judicial custody. Although the prosecution contends that the custody of the applicant is necessary for further investigation and provision in that regard is made while filing charge-sheet, the fact remains that the charge-sheet was filed against the applicant within short time on 11.1.2021. However, it is now contended that the investigation is in progress. If investigation was at crucial stage, it is not clear as to why the charge-sheet was filed hurriedly even before completion of the statutory period available to file the charge-sheet. On perusal of documents, it is apparent that further investigation which was conducted was apparently on the basis of several WhatsApp chats and e-mails exchanged *interse* between the applicant and the co-accused. It is pertinent to note that the whats-app chats are already on record. Some of the chats which

were allegedly relates to sensitive information were allegedly received by applicant. Undisputedly no offence is registered with regards to the alleged sensitive chats.

14. It is also necessary to consider that the learned Magistrate had rejected the application for bail preferred by the Applicant primarily on the ground that the investigation is not completed and at that juncture release of the accused will hamper further investigation. In such circumstances, since the investigation is in progress, it will not be proper to release the accused on bail. Charge-sheet was filed. Thereafter, supplementary charge-sheet was filed. It is not clear as to how long the purported further investigation would continue. The applicant cannot be detained indefinitely in the facts of this case. The matter relates to several documents which are part of charge-sheet. The prosecution has already filed charge-sheet consisting of more than 4000 pages. Several statements of several witnesses are recorded. The accused cannot be incarcerated in custody for indefinite period particularly in the facts of this case and since the offences are triable by the Magistrate. The application of the applicant was subsequently rejected by the Sessions Court by order dated 20 January 2021. By that time the charge-sheet was filed. The learned Sessions Judge however observed that the applicant was in contact with television owner and he exchanged WhatsApp messages. It was observed that

police are verifying the WhatsApp chats and hence, the Court is of the opinion that the custody is necessary and if at this stage the accused is released on bail, then there is possibility that he may tamper with the prosecution evidence and witnesses. In view of the material on record, face to face interrogation of the accused is required and on the sole ground of investigation and tampering of evidence, the Court is not inclined to exercise judicial discretion in favour of the accused. Thus, from the orders passed by the Courts below, it is clear that bail was refused to the applicant primarily on the ground of investigation and tampering of evidence. The alleged chats are in custody of the police. There is no invocation of provisions of any law in respect to alleged sensitive chats, whether applicant shall be detained in custody for further investigation, when main charge-sheet is filed which was followed by supplementary charge-sheet.

15. The prosecution had preferred on application before trial court seeking permission to record statement of applicant who was in judicial custody. The learned Magistrate by order dated 3.2.2021 observed that charge-sheet is filed but as per Investigating Officer during further investigation new material came to his knowledge and it is necessary to make enquiry with accused. Considering the facts permission was granted to Investigating Officer for one hour on 4.2.2021 and 5.2.2021. On similar application, learned Magistrate

granted permission to Investigating Officer to interrogate applicant for one hour on 11.2.2021 and 12.2.2021. Thus, this process is completed. The contention of applicant is that there was no serious interrogation about the case.

16. The Special P.P. has tendered the sealed envelope containing certain documents which relates to status of investigation. It is required to be noted that two charge-sheets are filed in this case and according to prosecution they need to carry out further investigation. I am not expressing any view on the documents therein which were tendered for my perusal, in view of the observations of the Apex Court in the case of *P. Chidambaram v/s. Directorate of Enforcement (supra)*.

17. The Investigating Agency has so far arrested 15 persons including the applicant. 14 accused were granted bail. The applicant is the only person who is in the custody. The learned Sessions Judge has referred to face to face interrogation. It is not clear as to in what context face to face interrogation is required to be conducted. The applicant cannot be incarcerated in the custody till the arrest of the other accused. Accused Vishal Ved Bhandari who had spilled the beans about the manipulation of TRP and on whose information the prosecution proceeded was arrested and granted bail. He was Relationship Manager at Hansa Research Group Pvt.

Ltd. Bompellirao Narayan Mistry was arrested on 6 October 2020 and subsequently, granted bail. He was allegedly involved and tagged as the mastermind of the scam and involved with Vishal Bhandari. Shirish Satish Pattanshetty was arrested on 8 October 2020 and released on bail. He is owner of Fakta Marathi TV channel who was alleged beneficial of TRP manipulation. Narayan Nandkishor Sharma was arrested on 8 October 2020 and granted bail. He was owner of Box Cinema. Vinay Rajendra Tripathi was arrested on 12 October 2020 and granted bail. He was ex-employee of Hansa Research Group Pvt. Ltd. First Information Report refers to his involvement. He is the person who had allegedly approach Vishal Ved Bhandari with the proposal of manipulating TRP by payment of gratification to the persons in whose premises the barrow meters were installed. Umesh Chandrakant Mishra was arrested on 16 October 2020 and granted bail. He was Relationship Manager with Hansa Research Group in the past. Ramjee Dudhnath Sharma was arrested on 20 October 2020 and granted bail. He was working with Hansa Research Group Pvt. Ltd. in the past. Dineshkumar Pannalal Vishwakarma was also former employee of Hansa Research Group Pvt. Ltd. was arrested on 20 October 2020 and released on bail. Harish Kamlakar Patil was working as a vendor for TV channels was arrested on 22 October 2020 and released on bail. Abhishek Kolawade @ Ajit @ Amit @ Mahadik worked as vendor for television channels was arrested on 25 October 2020 and

released on bail. Ashish Chaudhari was partner in Crystal Broadcast Pvt. Ltd. was arrested on 28 October 2020 and subsequently released on bail. Ghanshyam Dilipkumar Singh was the head of Republic TV Distribution. He was arrested on 10 November 2020 and granted bail. Vikas Shankarlal Khanchandani was CEO of Republic TV. He was arrested on 13 December 2020 and granted bail. Romil Vinodkumar Ramgadia was arrested on 24 December 2020 and released on bail. He was Chief Operating Officer. The Applicant was arrested on the basis of the alleged disclosure made by him. On perusal of the bail orders of all these accused which were placed on record by learned Counsel for the applicant, it is apparent that the learned Magistrate had observed that there is no propriety in keeping the accused behind the bar till conclusion of trial. The Court has also considered that there is no likelihood that the accused would flee. Romil Ramgadia who was the Chief Operating Officer was granted bail on the grounds referred to herein above.

18. Statement of Pekham Basu indicate that she was working with BARC as Deputy General manager. Romil was working as COO. Complaints were made to him and Manish Kumar. She was removed from her department and transferred to another department. She did not make complaint to CEO. She concluded her statement alleging that applicant is involved in manipulation. The applicant has contended that BARC is a joint industry company

founded by stakeholder bodies that represent broad-casters, advertisers and media agencies. The members of board are owners and stakeholders of company and not CEO.

19. The learned Special P.P. has also contended that the applicant had admitted in his memorandum statement that he has played role in manipulation of TRP. He also admitted that huge amount was received by him from the owner of Republic TV. The valuable ornaments and other articles were recovered from him. It is a settled law that the statement of the accused made while in custody admitting guilt is inadmissible in evidence. Recovery of ornaments are linked to crime on inferences. It is also submitted that the manipulation of TRP was in respect of several barometers installed for conducting TRP in the entire country. The learned Counsel for the applicant however pointed out from the affidavit filed by the prosecution in Criminal Writ Petition (St.) No. 3143 of 2020 wherein it is mentioned that 6% of the barometers involved in India are installed in Mumbai and presently the TRP seems to be localized scam and the Mumbai Police have jurisdiction to investigate into the allegations in FIR No.143 of 2012.

20. The applicant had contended that his health condition is deteriorating. He was admitted to J.J. hospital and then discharged. Report was submitted to the Court stating that applicant's condition

is stable and prison hospital is taking care and medication would be provided to him. The prisoner will be referred to J.J. hospital or NMMC hospital at Vashi, Navi Mumbai.

21. The applicant has contended that he is permanently residing in Mumbai. He is working in the Media industry for last 22 years. The question of tampering does not arise because he is no more working in BARC. He was CEO from June 2013 to November 2019.

22. Considering the aforesaid circumstances, there is no impediment in granting bail to the applicant.

ORDER

(i) Criminal Bail Application No. 389 of 2021 is allowed.

(ii) The applicant is directed to be released on bail in connection with C.R.No.843 of 2020 registered with Kandivali Police Station and investigated by DCB/CID/CIU vide C.R. No. 143 of 2020 on executing PR bond in the sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with one or more sureties in the like amount;

(iii) The applicant shall deposit his passport with the

Investigating Officer;

(iv) The applicant shall not leave India without the prior permission of the Trial Court;

(v) The applicant shall report DCB CID CIU once in a month on 1st Saturday of the month between 11.00 a.m. to 1.00 p.m. for a period of six months and thereafter once in three months on 1st Saturday of the month between 11.00 a.m. to 1.00 p.m. till further orders.

(vi) The applicant shall not tamper with evidence; and

(vii) The applicant shall attend the Trial Court on the date of the hearing of the case regularly unless exempted by the Court.

(viii) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.2,00,000/- for a period of six weeks in lieu of surety.

(ix) Bail Application is disposed of.

(x) All concerned shall act on authenticated copy.

PRAKASH D. NAIK, J.

**Jyoti P.
Pawar** Digitally signed
by Jyoti P. Pawar
Date: 2021.03.02
14:30:54 +0530