

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3323 OF 2021**

Radha Kapoor Khanna)
R/o C-90, Panchsheel Enclave)
New Delhi) .. **Applicant**

Versus

1. Central Bureau of Investigation)
)
2. State of Maharashtra)
Through its Standing Counsel) .. **Respondents**

WITH

CRIMINAL BAIL APPLICATION NO.3325 OF 2021

Bindu Kapoor W/O Rana Kapoor)
R/o Flat 34 B, NCPA Apartments,)
Nariman Point, Mumbai) .. **Applicant**

Versus

1. Central Bureau of Investigation)
)
2. State of Maharashtra)
Through its Standing Counsel) .. **Respondents**

WITH
CRIMINAL BAIL APPLICATION NO.3326 OF 2021

Roshini Kapoor D/O Rana Kapoor)
R/o Flat 34 B, NCPA Apartments,)
Nariman Point, Mumbai) .. **Applicant**

Versus

1. Central Bureau of Investigation)
)
2. State of Maharashtra)
Through its Standing Counsel) .. **Respondents**

WITH
CRIMINAL BAIL APPLICATION NO.3334 OF 2021

Rajiv Anand)
R/o. 75, National Park,)
New Delhi – 110024).. **Applicant**

Versus

The State of Maharashtra)
Through CBI, EO-I, New Delhi) .. **Respondent**

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Mr. Amit Desai, senior counsel with Mr. Mahesh Jethmalani, senior counsel, Ms. Siya Chaudhary, Ms. Shruti Gujral, Mr. Archit Jayakar, Mr. Gopal, Mr. Prasad Sawant, Ms. Dhvani Parekh, Ms. Pooja Yadav and Ms. Juhi for the Applicants in Bail Application Nos.3323/21, 3325/21 and 3326/21.

Mr. Aabad Ponda, senior counsel with Mr. Puneet Arora, Ms. Puneeta Arora and Mr. Sahil Mahajan i/b M/s. Arora & Co. for the Applicant in Bail Application No.3334/21.

Mr. H.S. Venegaonkar for Respondent No.1-CBI.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 23RD SEPTEMBER, 2021
PRONOUNCED ON : 28TH SEPTEMBER, 2021

ORDER:-

1. The four applications are instituted by the Applicants, seeking their release on bail on being charge-sheeted. Barring the Applicant-Roshini Kapoor, all the three other Applicants are charge-sheeted in the second charge-sheet vide 13/07/2021.

All the four Applicants are represented by the respective senior counsel, who have vehemently pressed into service the most cherished principle, which forms integral part of the Constitution and the arguments revolve around the Applicants being deprived of their liberty, without following the due process of law. It is asseverated that liberty of a citizen is of paramount importance and it cannot be incised and the investigating agency should be conscious of the well settled principle that the power to arrest is altogether different than

the need for arrest. Denying a person his liberty is argued to be a serious matter and the collective submission is to the effect that the CBI did not deem it fit to seek the custody of the Applicants, during the course of investigation nor were they brought into custody when the charge-sheet was instituted, but when the Applicants put an appearance before the learned Special Judge, on issuance of summons and moved an application for bail, they ought to have been released on bail.

The fulcrum of the arguments of the respective learned senior counsel is the latest decision of the Hon'ble Apex Court in case of *Aman Preet Singh V. CBI through Director*¹ dated 02/09/2021, where the Hon'ble Supreme Court granted imprimatur to the judgment of the Delhi High Court in *Court on its own motion V. Central Bureau of Investigation*² and has settled the principles for a Magistrate while exercising the powers under Section 170 of the Criminal Procedure Code (for short, "**The Code**"). The parameters laid down in the aforesaid decision, which are argued to be based on a rationale that if a person has been enlarged and free for many years and when he was not arrested during investigation, to suddenly direct his arrest and to keep him incarcerated merely because the

1 Cri.Appeal No.929/21

2 2004(72) DRJ 629

charge-sheet has been filed, has been held to be contrary to the governing principles of grant of bail.

2. Drawing an analogy from the authoritative pronouncement in case of *Aman Preet Singh (supra)* and an earlier decision of the Hon'ble Apex Court in Case of *Siddharth V. State of U.P.*³, it is argued that as far as the present Applicants are concerned, during investigation their custody was not sought by the investigating agency and when the cognizance of the offence was taken, on 20/08/2021, the Court deemed it fit to issue summons and to obey the dictate, the Applicants put their appearance before the Special Judge and moved distinct applications seeking release on bail, in light of the well discerned principles in case of *Aman Preet Singh (supra)*. It is argued that the factum of they not having been arrested during investigation or not being produced in custody itself entitle them to be released on bail, without probing into the gravity of accusations. It is urged that other relevant considerations for being released on bail; flight risk and likelihood of tampering with the prosecution case neither existed during the course of investigation nor have been

³ Cri.Appeal No.832 of 2021 decided on 16/08/2021

expressed before the Trial Court. In these peculiar facts, the impugned order rejecting the bail applications, is subjected to heavy criticism as not adhering to the procedure established by law. It is also argued by the learned senior counsel that sometimes wrong practices, which are mechanically followed, may result into an inconvenient situation, but ultimately since the procedure can only be considered as handmaid of justice, substantive justice itself cannot be avoided. A decision of Allahabad High Court in case of *Vishwa Nathi Jiloka & Ors. V. Ist Munsif Lower Criminal Court, Baharaich & Ors.*⁴ and decision of the Kerala High Court in case of *Sreekumar V. State of Kerala*⁵, is pressed into service. Learned senior counsel would submit that such an approach would result in travesty of justice, which at any cost, cannot be tolerated. The hype created in case of economic offences in which the present case falls into is delusion is another submission and to that effect, decision of the Hon'ble Apex Court in case of *Sushila Aggarwal & Ors. V. State (NCT of Delhi) & Anr.*⁶ is cited. The pivotal point on which the release of the Applicants is sought to be propagated is the principle of 'Bail is the rule and jail is an exception'.

4 1989 SCC Online All 228

5 2008 SCC OnLine Ker 318

6 (2020) 5 SCC 1

3. I have heard Mr.Venegaonkar, learned counsel representing the CBI. He admit that the CBI did not seek custody of the Applicants during investigation, but he would urge that when the Applicants moved an application for being released on bail, on appearance before the Special Judge, by referring to the material compiled in the charge-sheet, the CBI opposed the application for release on bail, by inviting attention of the Court to the gravity of accusations and also expressing the chance of tampering with the case of the prosecution. He placed reliance on the decision of the Single Judge of Delhi High Court in case of ***Sharad Kumar V. CBI***⁷ and his submission is to the effect that once the Applicants had surrendered to the jurisdiction of the Special Court, the learned Judge was duty bound to consider the application for release on bail on the parameters recognized by the Code and in any case, merely because they were not arrested during investigation, will not solely make them entitled for being released on bail. Learned counsel would submit that the Applicants by arguing their applications on merit and having invited the order, now cannot make a grievance.

7 2011(125) DRJ 200

4. Before I advert to the rival contentions, a brief glance of the factual aspect must be adverted to.

On the basis of the source information dated 07/03/2020, FIR bearing No. RC 219 of 2020 E-0004 was registered in CBI EO-I Delhi, invoking Section 120-B r/w Section 420 of the IPC along with Sections 7, 12 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 as the substantive offences against M/s. Dewan Housing Finance Corporation Limited (“**DHFL**”), M/s. DOIT Urban Venture (India) Private Limited (“**DOIT**”) and other entities. The respective Promoters/Directors of the aforesaid entities were also arraigned as accused and one Mr. Rana Kapoor, the then Promoter / Director of M/s. Yes Bank Limited was arraigned as the prime accused. The gist of the accusations compiled by the prosecution can pithily culled out as under:

- (a) The investigation reveals that the DHFL, a licensed housing finance corporation recognized by National Housing Bank, falling in the category of Non Banking Finance Company (“**NBFC**”) was established to enable access to economical housing finance to lower and middle income groups in semi urban and rural parts of India. As on June, 2018, it had 209 branches and 113

service centers with a representative office in London. The capital base of the DHFL is equity capital and free reserves from accumulated profits forms its capital.

- (b) From April, 2018 onwards, DHFL was mobilising more funds for its alleged growth in business and its MD Kapil Wadhawan decided to borrow funds through NCDs from the market. Investigation reveals that M/s. Yes Bank subscribed NCDs of DHFL of the value of Rs.3700 crores which was the highest single subscription of an institution. The investigation revealed that M/s. DOIT Enterprises (India) Pvt. Ltd. was registered with RoC on 30/03/2012 and Radha Kapoor Khanna and Ms. Roshani Kapoor are the directors in the said company. Investigation revealed that M/s. DOIT is wholly owned by a company namely M/s. Morgan Credit Private Limited (MCPL) which in turn is equally held by three daughters of Rana Kapoor namely Radha K. Khanna, Raakhe K Kapoor and Roshini Kapoor (33% each). This company claimed that it is engaged in development / investment in new age Urban Ventures. However, investigation conducted so far revealed that this company has not carried out any actual business activity during the relevant period.

- (c) That during the period 2018-19 Rana Kapoor, the Promoter Director and the then CEO of M/s. Yes Bank Limited entered into a criminal conspiracy with Kapil Wadhawan, Promoter Director of M/s DHFL and others for extending financial assistance to M/s. DHFL by M/s. Yes Bank Limited in lieu of substantial undue benefit to himself and his family members through the companies held by them.
- (d) That in furtherance of the said criminal conspiracy during the month of April to June, 2018, M/s. Yes Bank Limited invested Rs.3700 crores in the short-term debentures of M/s. DHFL. Simultaneously, Kapil Wadhawan paid a kickback of Rs.600 crores given by M/s. DHFL (in which Kapil Wadhawan is a Promoter Director) to M/s. DOIT Urban Ventures (India) Private Limited, a wholly owned subsidiary of M/s. RAB Enterprises (India) Private Limited in which, Bindu Kapoor, wife of Rana Kapoor is a director and 100% shareholder. Furthermore, the daughters of Rana Kapoor namely Roshini Kapoor, Radha Kapoor Khanna and Raakhe Kapoor Tondon are 100% shareholders of M/s. DOIT Urban Ventures (India) Private Limited through M/s. Morgan Credits Private Limited.

(e) The Current Account of M/s.DOIT Enterprises (India) Pvt.Ltd. was opened with HSBC under signature of Roshini Kapoor. She became authorized signatory of the account along with Bindu Kapoor, Rana Kapoor and Raakhe Kapoor Tandon. In pursuance of conspiracy, DHFL has sanctioned mortgage loan of Rs.300 crores on 22/02/2017 to DOIT Enterprises (India) Private Limited and another bridge loan of Rs.300 crores on 27/04/2018 to the same company with name changed as M/s. DOIT Urban Venture (India) Private Limited and further in pursuance of conspiracy, a loan of Rs.600 crores was also sanctioned on 11/06/2018 by M/s. DHFL to close the earlier aforesaid two loans of Rs.300 crores each and no new disbursement was made. This was done with a motive to ever greening of old loans and to release the personal guarantee of Rana Kapoor, the then CEO of Yes Bank.

Investigation revealed that M/s.DOIT Enterprises (I) Pvt. Ltd. had applied for Mortgage loan of Rs.300 crores. The loan application dated Nil was signed by Bindu Kapoor as Director and Authorized Signatory of the Company M/s.DOIT Enterprises (I) Pvt. Ltd. The said mortgage loan was sanctioned on the irrevocable personal guarantee of Bindu Kapoor and Rana Kapoor, MD and CEO of Yes Bank and corporate guarantee of the companies related to the family of Rana Kapoor.

- (f) Investigation revealed that in pursuance of the criminal conspiracy, in order to avoid the detailed processing for enhancement of aforesaid mortgaged loan and to further avoid finance committee, Kapil Wadhwan, the then CMD, unauthorizedly sanctioned a bridge loan of Rs.300 crores to M/s. DOIT (new name of the DoIT Enterprises (India) Pvt. Ltd.) and allowed disbursement on 26/04/2018 in the account of M/s. DOIT without any due diligence, on the request of Radha K. Khanna made on the same date of the disbursement. This bridge loan was sanctioned to aforesaid company in violation of the guidelines of the project finance policy/retail credit policy and in absence of any scheme/policy for bridge loan.

Investigation further revealed that in pursuance of criminal conspiracy, another loan application for Rs.600 crores was given by M/s. DOIT under the signature of Radha Kapoor Khanna. Apart from the collateral security mentioned in the loan application, borrower also proposed personal guarantee of Radha Kapoor Khanna and corporate guarantee of M/s. Bliss Address Private Limited and M/s. DOIT Resort (Goa) Private Limited.

- (g) That it has been further alleged that loan of Rs.600 crores was sanctioned by M/s. DHFL to

M/s. DOIT Urban Ventures (India) Private Limited on the basis of a mortgage of a sub-standard property having very meager value and by considering its future conversion from agricultural land to the residential land. It is also alleged that M/s. DHFL has not redeemed the amount of Rs.3700 crores invested by M/s. YES Bank in its debentures till date.

- (h) Investigation revealed that the sanction of the above said loans were in gross violation of Loan Policy of DHFL, National Housing Bank Guidelines and was further the result of the criminal conspiracy entered by the accused persons with accused Rana Kapoor and his family members. Therefore, the actions taken by the accused persons resulted in undue financing favour to the family members of the accused Rana Kapoor. Investigation on the part of Rana Kapoor, his family members and their companies is going on.

5. It is necessary to refer to some events with reference to its dates. On completion of investigation, first charge-sheet came to be filed on 25/06/2020 whereas a supplementary charge-sheet is filed on 13/07/2021 by inserting Sections 468 and 471 of the IPC and the charge-sheet also indict Bindu Kapoor, Radha Kapoor as Directors of DOIT. Rajiv Anand, the

Group President and Business Head of Yes Bank is also charge-sheeted. The said charge-sheet was remitted by the Special CBI Court to the Chief Metropolitan Magistrate as there was no sanction against Accused No.8, who is a public servant. As the sanction came to be accorded, the charge-sheet was remitted to the Additional Sessions Judge, who recorded that *prima facie* offences with which the accused are charged, are made out. He took cognizance and directed that the trial shall proceed against them. Recording that grounds exist to issue summons against the accused persons named in the supplementary charge-sheet being Accused Nos.9 to 14, the summons are issued and the Investigating Officer is directed to furnish copy of the supplementary charge-sheet to all the accused persons. The matter is adjourned for hearing on charge/appearance to 4/9/2021.

6. On 04/09/2021, the prosecution has moved an application in case of Accused No.7 praying that she may be taken into judicial custody since certain new offences are added in the supplementary charge-sheet being offences punishable under Sections 468 and 471 of the IPC.

7. The Applicants Roshini Kapoor, Bindu Kapoor and Radha Kapoor filed Bail Applications under Section 439 read with Section 437 read with Section 88 of the Code seeking their release on bail on various grounds set out in the applications. The applications are filed on 08/09/2021 and pending final hearing of the applications, interim bail order is passed by learned Judge. All the three Bail Applications are rejected by the common order passed on 18/09/2021. As far as Applicant Rajiv Anand is concerned, he moved an Application for anticipatory bail on receipt of summons from the Trial Court. Expressing that there is no apprehension of arrest, the Application came to be rejected with liberty granted to move an application for regular bail. Accordingly, on 16/09/2021, the Applicant filed a regular bail application and entered his physical presence before the court. On 20/09/2021, the Application is rejected and the submission of Mr. Ponda is to the effect that the rejection is in derogation of the principles laid down by the Apex Court in case of Aman Preet Singh (supra).

8. The Code, which governs the procedure applicable to all the criminal proceedings succinctly sets out the distinction

between an 'inquiry', 'investigation' and 'judicial proceedings'. The Code provides not merely for judicial proceedings or trial of alleged offence, but contains exhaustive provisions for investigation thereof. Chapter XII of the Code sets out the provision for investigation into cognizable and non-cognizable offence, which include a specific provision for report to be submitted by the police officer on completion of investigation. Section 169 in the said Chapter provides for release of an accused when the evidence is deficient whereas Section 170 sets out the procedure, where there is sufficient evidence or reasonable ground to forward the accused to Magistrate, which would include forwarding of the accused under custody. Chapter XVI deals with commencement of proceedings before the Magistrate and includes Section 204, which provides for issuance of process, if in the opinion of the Magistrate taking cognizance of the offence, there is sufficient ground for proceedings against him. As per the Scheme contained in the Code, the investigation is a normal preliminary to an accused being put up for trial for a cognizable offence. Investigation thus commences on receipt of information relating to an offence committed, by an officer in charge of the police station and culminates on submission of the report under Section 173.

When the process is issued, the Magistrate may dispense with the personal attendance of the accused. Chapter XVIII enlists the procedure pertaining to trial to be conducted before the Court of Sessions. The investigation at the hands of the police, which stands crystallized in the form of charge-sheet when placed before the Court, the cognizance of the offence is taken if the material compiled in the charge-sheet disclose sufficient material to proceed with the trial. Once the cognizance is taken by the Court of competent jurisdiction, the accused comes under the control of the said court and would abide by the direction of the court and it is thereafter that he shall be subjected to trial. Taking cognizance, though not defined in the Code, it is understood as application of mind to the suspected commission of an offence.

9. When the accused, who is now charge-sheeted appears before the Court, he can be stated to be in judicial custody and submit to the directions of the Court. In case of **Nirmal Jeet Kaur v. State of M.P.**⁸, the Hon'ble Apex Court has observed as under:

“16. The crucial question is when a person is in custody, within the meaning of Section 439 Criminal Procedure Code? When he is in

⁸ (2004) 7 SCC 558

duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold to an officer with coercive power is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person."

10. It is imperative to state that the powers under Section 170 of the Code are to be exercised by the Magistrate as per the contingency emerging from the factual matrix qua each of the criminal proceeding being brought to the Courts' jurisdiction. It would be worth while, to observe that Section 170 in the Code is a procedural provision depending upon the facts and circumstances, emerging before the Court and cannot be in any case, classified as a mere formality, as sought to be advanced. Further, Section 170 contemplates grant of bail looking to the nature of formality if the offence is bailable. There is, however, no indication or mandate culled out in Section 170 as regards the power of the Magistrate to exercise his jurisdiction for grant of bail in cases where the offences are non-bailable.

In any case, the Magistrate or any Court, who is bestowed with the power to grant bail, will always have to follow the parameters and rigours enveloping the discretion for grant of bail. Nowhere in the Code there is a mandate for grant of bail in nature of formality, as is sought to be canvassed before me based on the provision contained in Section 170. It is crystal clear that the power and discretion to grant bail by any Court is envisaged in Sections 437 and 439 of the Code. It only in the case of bailable offences, the Court of Magistrate will release the person on bail, but that too after procuring security for his appearance on a fixed date as well as for his attendance before the Court, unless otherwise directed.

11. In absence of any provision or procedure for releasing an accused on bail in a non-bailable offence, as adumbrated in Section 170 of the Code, the powers available therein can be sought to be made applicable in every contingency, as buttressed in the present facts and circumstances.

For the aforesaid reasons, concededly the Applicants appeared before the Court and sought bail, by preferring an application under Section 439 of the Code and this assumes insurmountable significance in the present circumstances for

the obvious reason that the application for grant of regular bail before any Court would give rise to a presumption that the accused is in custody and that particular Court is duty bound to apply its mind to the material set forth before it, moreso for the reason that filing of charge-sheet *ipso facto* indicates commission of offences, as per the prosecution and the material collated is compiled in the charge-sheet. In any case, if material brought on record indicates the gravity of the offence and culpability as well as complicity of the accused persons then in that case, the Court is duty bound to exercise its power, which have been invoked by preferring an application as per Sections 437 and 439 of the Code.

12. The Court of the Magistrate or the Sessions Court cannot be held bereft of power and jurisdiction to grant bail or decline bail, once an application is preferred before it and in such a contingency, the said Court is duty bound to take into account the evident material, emerging from the charge-sheet. In cases where the offences alleged indicate that they are grave, heinous, barbaric, seditious or aimed at damaging the financial health of the State, then in that case the concerned Court is expected to take into consideration various factors

and parameters, including the gravity of the accusations which by this time are crystallized in form of the charge-sheet while deciding the entitlement of the accused as to whether to admit him to bail or otherwise.

13. Minute perusal of the judgments cited at the bar and also the recent decision of the Hon'ble Apex Court in case of **Aman Preet Singh (supra)** makes it abundantly clear that it is not the ratio for the proposition that any accused guilty of serious, heinous or a crime of high magnitude can be released on bail by operation of Section 170 of the Code. The Court in fact, is duty bound to apply its mind to variable factors, embalming the criminal proceedings before exercising its power for grant of bail or otherwise. In any case, total reliance placed on the judgment of the Apex Court cited supra, cannot come to the aid of the present Applicants obviously for the reason that going by their own act of they applying for bail indicates that they are in custody of the Court and, therefore, reliance placed upon Sections 87 and 88 of the Code, cannot be of much help in order to canvass automatic bail. The scrutiny of the judgments in case of **Siddharth (supra)** and **Aman Preet Singh (supra)**, *ipso facto* reveal that the said decisions are not

authority of law as regards grant of bail in grave and heinous offence as a matter of procedure or formality by merely invoking Section 170 of the Code. Parameters or yardsticks as laid down by the Delhi High Court in *Court on its own motion (supra)* itself indicate that the person who is not in custody can only seek benefit of Section 170. Moreover, para 22 of the decision of the Delhi High Court, which precedes the issuance of directions to the police/investigating agencies as well as the directions to Criminal Court, when carefully read, would reveal that while dealing with a situation, where the Special Court had returned the charge-sheet by forcing the CBI to arrest the accused, which otherwise never felt the necessity of arresting him even for the purpose of investigation and apprehension of the accused being denied benefit of bail in spite of offence being devoid of high magnitude and severe punishments, the learned Judge (His Lordship Justice J. Kapoor) referred to his earlier judgments issuing directions based on the legal position. While charting out the procedure to be adopted by the investigating agency, it is held that unless arrest is necessary for the purpose of investigation or custodial interrogation, it shall not be adopted as a routine course, but with a clarification that arrest may be necessary if the offence is of grave nature and

prescribes severe punishment. The directions for the Criminal Courts find its genesis in the well settled principle in case of *Joginder Kumar V. State of U.P.*⁹ that arrest cannot be made in a routine manner as it amounts to deprivation of a person's liberty. The illustration given is in regard to the offences under Section 498A, where though the accused is not arrested during investigation, he is directed to be arrested at the stage of filing of charge-sheet.

14. The fact, therefore, remains that the accused who has been allegedly involved in commission of heinous and grave offence, should be investigated and in view of the fact that if the incriminating material is to be seized or fruitful information is to be elicited then arrest can be adverted to. Arrest can also become necessary if the offence is of grave nature and there is likelihood of the offender absconding or fleeing away from justice. This would all depend upon the facts and circumstances of each case as in every case, full co-operation from a suspect would convert him to an accused and from an accused to a convict and to bring the investigation to its logical end. When on completion of investigation, the final report is tendered before the Court, the Court is duty bound to

⁹ 1994 SCC (4) 260

aid and assist the cause of the prosecution and the power and discretion to grant bail would always depend upon the claim and demand raised by the prosecution for custody of the offender lest police or magisterial for having the profound investigation, deep probe and arrival of the conclusion, indicating total involvement of the accused.

15. In the instant case, it is apparent that all the Applicants are alleged to have indulged in commission of offences, which have resulted in serious dent to the financial health of the State as well as defrauding the public at large. Such offences are occurring in plenty and have resulted in stultifying overall growth of the nation and also have caused tremendous impairment to the economy of the nation. These crimes are more heinous in nature as they intend to destroy the economic fabric and financial edifice of the State. Such crimes have the tendency to degrade and defy the faith of the public in law and order situation as it tantamount to a serious blow to its economic/financial condition.

In view of the above, it is incumbent upon the Court, who deals with the application for grant of bail, to exercise its power and discretion on the basis of the material put forth by

the prosecution and would also be subject to the necessity shown by the prosecution for seeking custody as per the culpability and complicity of the particular accused for proving the deep involvement of each accused and unfold and unearth the *modus operandi* in the embezzlement in order to drive a conclusion about the involvement of each of the accused person. On the application for bail being filed, the CBI has opposed the release of the Applicants on the ground that the Applicants are influential and affluent persons and the probable witnesses are the employees and grave apprehension is expressed that if the Applicants are released on bail, they may influence the witnesses and tamper the evidence. It was urged before the Court that keeping in mind the grave offence, discretionary power to grant bail shall not be exercised. In *State v. Jaspal Singh Gill*¹⁰, the Hon'ble Apex Court expressed the view that the court before granting bail in cases involving non-bailable offences, particularly where the trial has not yet commenced should take into consideration various factors such as the nature and seriousness of the offence, character of the evidence, circumstances peculiar to the accused, a reasonable possibility of the accused not presenting himself during trial and reasonable apprehension of witnesses being

¹⁰ (1984) 3 SCC 555; AIR 1984 SC 1503

tampered with and the larger interest of the society or the State.

16. In any case, considering the three anterior stages, before converting a suspect to a convict, which involves a stage of actual interrogation when an accused is taken in police custody, followed by the stage of judicial custody, which ensure completion of investigation and collection of the material in form of the final report to be placed before the Magistrate/Competent Court, which is duty bound to ensure a fair trial. It is only upon the presentation of the charge-sheet, where the full material is compiled together, the gravity of the offence could be judged and, the possibility of conviction of an accused being surfaced on the basis of the material coming before the Court in a crystallized form, prompted the learned Special Judge to reject the application for bail. Dispensation of arrest at the stage of investigation need not continue throughout and in particular, when the offence made out against the Applicants has now clearly emerged in the charge-sheet as a grave economic offence and, the witnesses who will participate in the trial apparently surfacing, the Applicants do not deserve their release on bail.

All the applications, therefore, deserve a rejection and are accordingly rejected.

[SMT. BHARATI DANGRE, J.]