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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1343 OF 2022

Chetan Vallabhdas Pabari ... Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. ... Respondents

WITH
BAIL APPLICATION NO. 1300 OF 2022

Premal Kiran Goragandhi ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1018 of 2022

Naresh Keshrimal Mehta ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 932 of 2022

Rajesh Krishnan Jindal ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 958 OF 2022

Kamlesh Manohar Kanungo ... Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. ... Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 960 OF 2022

Kirti Vishwanath Kedia Applicant
Vs.
Central Bureau of Investigation (EOB) & Anr. Respondents

(All applications in CBI Special Case no.1643/2021)

Mr. M.K. Kocharekar with Mr. Rahul Gaikwad i/b. Gravitas Legal for the applicant in BA/1343/22.
Mr. Ish Jain with Shikhar Khandelwal i/b. Kiran Jain & Co. for the applicant in BA/1300/22.
Mr. Aabad Ponda, Senior Advocate i/b. Mr. Siddharth Jagushte for the applicant in ABA/1018/2022.
Sebin Michael Joseph i/b. SMJ Legal for the applicant in ABA/932/2022.
Mitul Shah, Raj Raut i/b. Mr. Harsh Gangurde for the applicants in ABA/958/2022.
Mr. Aabad Ponda, Senior Advocate i/b. Mr. Anukul Seth for the applicant in ABA/960/2022.
Mr. Anil C. Singh, ASG a/w. Kuldip Patil, Savita G., Amita Kuttikrishnan, Aditya Thakkar, Smita Thakur, Pranav Thakkar for CBI, EOB.

...

CORAM : BHARATI DANGRE, J
RESERVED ON : 14th October, 2022.
PRONOUNCED ON : 21st DECEMBER 2022

P.C.

1] Two Applicants in the group of Applications being Applicant in BA No.1343/2022 and BA No.1300/2022, seek their release on bail in CBI special Case No.1643 of 2021 which arise out of FIR No.; RC0682019E003 whereas, remaining Applicants seek pre-arrest bail in the very same case registered by CBI.

2] The Applicants are charged by the CBI for the offences punishable under Section 420, 468, 471 read with 120(B) of the Indian Penal code and under Section 13(2) read with of the 13(1) (d) of the

Prevention of Corruption Act,1988. The date of FIR being 16.04.2019, whereas charge-sheet came to be filed on 22.11.2021.

3] All the Applicants seek their release either on bail or in anticipation of their arrest, based on the latest view expressed by the Hon'ble Apex Court in the case of **Satender Antil vs. CBI**[1], which was preceded by the decision in the case of **Siddharth vs. State of U.P.**[2]

4] On behalf of the Applicants, their respective counsel have projected the verdict flowing from the Hon'ble Apex Court to the effect that if the CBI had not arrested them during the course of investigation, then their arrest at the time of presentation of the charge-sheet or thereafter, is unnecessary. The submission advanced on behalf of the Applicants is that, they have always rendered their co-operation during the course of investigation which lasted for three years, but as far as the two Applicants who are seeking release on bail, when appeared personally before the Court on 04.04.2022 and offered bail bonds, post cognizance stage, they were arrested and sent to judicial custody in utter ignorance of the fact that the CBI had never arrested them during the course of investigation.

As far as the other Applicants who are apprehending their arrest are concerned, the submission is that, they received summons from CBI Special Court to appear before it on 04.04.2022, since the charge-sheet was filed in the matter, and when they appeared before the Court, the Special Court rejected the Bail Application.

The submission on behalf of the Applicants cumulatively is, if during the course of investigation of offence, there has been no cause to arrest them, merely because charge-sheet is filed, would not be *ipso*

1 2022 SCC OnLine 825
2 (2021)1 SCC 676

facto cause to arrest.

5] In BA No.1343/2022 as well as in BA No.1300/2022, ad interim protection order was granted by recording as under :

> "3. It is not in dispute that the Applicants were not arrested in the course of the investigation. It is also not in dispute that they were interrogated and have co-operated with the investigation. They have not evaded the arrest. These Applicants have been taken in custody after they had appeared before the Special Court in response to the summons. It is to be noted that the co-accused Kantilal Achalji Shah and Jitendra Kantilal Shah, the co-accused in the same case have been released on interim bail by order of this court dated 11/04/20022 in Bail Application No.1232 of 2022 and 1234 of 2022.
>
> 4. In view of the reasons stated in the said order dated 11/04/2022, these Applicants are also entitled for interim bail. Hence, the following order :
>
> "(i) The Applicants, who are facing trial in respective Special Case Nos.1638 of 2021 and 1643 of 2021 on the file of learned Special Judge (CBI), Greater Bombay, the Applicants are ordered to be released on interim cash bail in the sum of Rs.50,000/- each for a period of two weeks.
>
> (ii) The applicants shall within the said period of two weeks furnish PR Bonds in the sum of Rs.50,000/- each with one or two sureties each to the like amount;
>
> (iii) The Applicants shall keep the Investigating Officer informed of their current addresses and mobile contract numbers and/or change of residence or mobile details, if any, from time to time."

Similarly in case of other Applicants, they were released on bail apprehending their arrest by recording as under :

> 3. Mr. Kuldeep Patil, learned counsel for the Applicant seeks time to take necessary instructions. Nevertheless, he does not dispute the fact that the Applicants were not arrested during investigation and that they have been duly interrogated in the course of the investigation. It is also not in dispute that the Applicants have not disobeyed the process

and did not attempt to thwart the course of justice.

4. In view of the above facts and circumstances and also considering the fact that other co-accused, who are similarly placed have been taken into custody and their bail applicants are rejected, in my considered view the apprehension of arrest cannot be said to be baseless. Hence, the Applicants need to be protected till the next date of hearing. Hence, the following order :-

(i) In the event of arrest of the Applicants in respective Special Case Nos. 1638 of 2021 and 1643 of 2021 on the file of learned Special Judge (CBI), Greater Bombay, the Applicants are ordered to be released on interim cash bail in the sum of Rs. 50,000/- each for a period of two weeks;

(ii) The Applicants shall within the said period of two weeks furnish PR bonds in the sum of Rs.50,000/- each with one or two sureties each to the like amount;

(iii) The Applicants shall keep the Investigating Officer informed of their current addresses and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

6] It is not in dispute that the protection granted in favour of the Applicants is continued from time to time and is in operation till date.

7] Though the arguments advanced on behalf of the learned counsel of the Applicants is based on proposition formulated by the Hon'ble Apex Court in the case of ***Satender Antil*** (supra), I must give a brief reference to the facts of the case which could be surfaced through the charge-sheet.

8] This case was registered on 16.4.2021 by CBI ,EOB, Mumbai, on the basis of written complaint lodged by Shri Nitin Pandya S/o

Pushottam Bhai Pandya, service, Branch Head(AGM) Punjab National Bank (PNB), Large Corporate branch, Mumbai against M/s. Parekh Aluminex Ltd.(M/s.PAL) (A-1), Late Amitabh Arun Parekh, CMD(A-2) and other unknown persons/and unknown public servants for the offences punishable under section 120-B read with section 420 of Indian Penal Code and 13(2) r/w 13(1) (d) of Prevention of Corruption Act 1988, the accused persons entered into criminal conspiracy with each other to cheat PNB Bank. In this process, M/s Parekh Aluminex Ltd (M/s PAL) had availed various credit facilities from Punjab National Bank under the consortium arrangements led by Indian Overseas Bank from 2006 to 2012, on the strength of false of fabricated financial data and divided the loan proceeds without its end utilization. Due to default in repayment, the account was classified into NPA and caused wrongful loss to PNB to the tune of Rs.145.29/- Crores and corresponding wrongful gain to themselves.

9] As per the allegations of the FIR, the account of M/s PAL has been classified as Non Performing Assets (NPA) on 30.09.2015 w.e.f. 29.03.2013 due to failure of CDR Lead bank ie IOB conducted due-diligence through M/s Deloitee Touche Tohmastu India Pvt. Ltd to verify the affairs of the borrower company and submit a report . M/s Deloitte submitted its report on 28.06.2013 in which there are many adverse features reported.

10] During the course of investigation,Chetan Vallabhadas Pabri (Prop. of M/s C.V. Pabari & Co.), Sh. Kamlesh Manohar Kaungo (Director Of M/s. Sikkim Ferro Alloys Ltd and M/s. Gorlas Infrastructure Pvt Ltd & Prop. M/s Trison Implex), Sh. Naresh K. Mehta (Prop. of M/s. Nocil Steels), Sh. Kirti Vishwnathan Kediya

(Director of M/s. Jai Bhagwati Implex Pvt. Ltd), Sh. Premal Kiran Goragandhi (M/s. Suryakiran Ferro Alloys Private & M/s. Bhagyoday Ferro Alloys Private Limited) and Sh. Rajesh Krishnamurari Jindal, the then DGM, PNB, LCB, Mumbai were arraigned as an accused persons in this cases .

Investigation reveal that Shri Chetan Pabari, a Chartered Accountant (A-2) Prop.of M/s C.V.Pabari & Co. was functioning as a Chartered Accountant for M/s PAL. In the capacity of statutory auditor, he has audited Books of account of M/s. PAL since financial year 1994-95 to 2011-12. Sh. Kamlesh Manohar Kanugo (A-4) had actively participated in diversion of funds from the proceeds of the crime . The said funds was of different facilities availed by M/s PAL from the complainant bank. He was one of the accomplice in defrauding the proceeds of the crime.

11] The charge sheet reveal that the business model designed by Shri Amitabh Arun Parekh and Shri Chetan Pabari which was implemented by employees of M/s.PAL as to that funds will be transferred from M/s.PAL to M/s. Phoenix Aluminum & Allied Products, on the pretext of purchasing goods by the M/s.PAL. Sh.Devkrishna Gandhi was transferring the money from M/s.Phoenix Aluminum & Allied Products to M/s. Arrow Foils as if M/s.Phoenix Aluminum & Allied Produces was purchasing from M/s.Arrow Foils. Then, Shri Devkrishna Gandhi was transferring the money from M/s.Arrow Foils to M/s.PAL, as if M/s.Arrow Foils was purchasing goods from M/s.PAL. By this circular flow of funds, it was shown as sale purchase transaction with the turnover for M/s.PAL. To support the fraud connecting sales & purchase invoice were raised by two firms and M/s. PAL, according to the amount transferred in this circulation. It was made to appear as genuine transactions which were supported by invoices and bank payments.

12] The Charge-sheet highlight the false and fraudulent transactions and the material collected during the course of investigation. The charge-sheet has succinctly summarised the charges as under :

> " The above said criminal acts committed by M/s.Parekh Aluminex Ltd. (A-1), Shri Chetan Vallabhdas Pabari (A-2) (Prop. of M/s.C.V. Pabari & Co.), Shri Kamlesh Manohar Kanungo (A-4) (Director of M/s. Sikkim Ferro Alloys Ltd. and M/s.Gorlas Infrastructure Pvt Ltd. & Prop. M/s.Trison Impex), Shri Naresh K. Mehta (A-5) (Prop. Of M/s. Nocil Steels), Kirti Vishwanath Kedia (A-7) (Director of M/s.Jai Bhagwati Impex Pvt Ltd.) Sh.Premal Kiran Goragandhi (A-10) (M/s.Suryakiran Ferro Allooys Private & M/s. Bhagyoday Ferro Alloys Private Limited) Sh.Devkrishna Gordhandas Gandhi (A-13) Director of M/s.Bhumika Foils Pvt Ltd. & M/s. Bhushan Foils Pvt Ltd., and Sh.Rajesh Krishnamurari Jindal (A-12), the then DGM, PNB, LCB, Mumbai, were committed the offences and hereby cheated complainant bank, which constitutes the offences punishable u/s. 120-B, r/w 420, 468 & 471 IPC and r/w 13(2) 13(1)(d) of PC Act, 1988. Therefore, caused wrongful loss to the complainant bank to the tune of Rs.145.29/- Crores and corresponding wrongful gain to themselves."

The Applicants before me are arraigned as Accused nos.2, 4, 5, 7, 10, 12. It is admitted position that they were never arrested during the course of investigation and on 04.04.2022 they appeared before the Special CBI Court and in some cases exemption was granted to appear before the Court on the next date, whereas, in some cases, on the application being moved for being released on bail, it was rejected, by passing the impugned order dated 05.04.2022.

13] The learned counsel appearing for the Applicants would vehemently submit that the impugned order passed by the Special

Judge is in utter violation of the directives issued by the Hon'ble Apex Court in case of **Siddharth vs. State of U.P** (*supra*) as well as latest decision of the Hon'ble Apex court in the case of **Satender Antil vs. CBI** (*supra*).

The submission is, the gravity and seriousness of the offence, no doubt, may be a criteria in determining the entitlement of an accused to be released on bail, either under Section 438 or 439 of the Code of Criminal Procedure, but when the Apex court has specifically laid down law to the effect that if the Investigating Officer did not deem it necessary to arrest the accused during the course of investigation, there is no need to arrest him now, when the investigation is complete and the charge sheet is filed, particularly when all Applicants have deep roots in the society and there is no likelihood of them fleeing the course of justice. It is submitted that this aspect has been clearly ignored and that the learned CBI Judge was impressed by a loss of huge public money in all Rs.2200 Crores including a sum of Rs.750 Crores of Consortium Bank, valuation being estimated in the year 2012.

Without discussing need for the detention of the Applicants, when they had co-operated during investigation, it is submitted that the learned Judge, has not even focused on the merits of the matter, and was only impressed by the terminology "Economic Offence".

14] Per contra, the learned counsel Mr.Patil has invited my attention to the gravity and seriousness of the offence, though they do not dispute that the Applicants were never arrested when they were interrogated during the course of investigation and they have not disobeyed the process issued to them and they appeared before the Court as directed. However, Mr.Singh would argue that careful reading of the Supreme Court decision in no manner is indicative of a principle that if the accused is not arrested during the course of investigation, he can never be arrested on filing of charge sheet as the case would vary on the basis of facts and the accusations.

15] In case of **Satender Antil v/s. CBI** (*supra*), the Hon'ble Apex Court once again took a review of the provisions of 'Bail' in the background of the fact that, Jails in India are flooded with under-trial prisoners and of this, majority of them have been charged with offences punishable for less than 7 years. In the backdrop of the mindset, the vestige of colonial India, on part of investigating Agency, notwithstanding the fact that arrest is draconian measure resulting in curtailment of liberty and it to be applied sparingly, is far from reality. Reiterating the principle "Bail is the rule and Jail is an exception", the Apex Court emphasized the presumption of innocence of a person, accused of an offence, through a legal fiction, placing onus on the prosecution to prove the guilt before the court.

On analysing the provisions pertaining to arrest, contemplated in the Code of Criminal Procedure, their Lordships of the Apex Court deliberated on Section 170 of the Code which provided procedure to be followed when cases are forwarded to the Magistrate, where evidence is found to be sufficient and which contemplate that, the Officer shall forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon the police report and try the accused or commit him for trial.

16] By making reference to its earlier decision, in the case of **Siddharth vs. State of U.P** (*supra),* it was held that this power is to be exercised after completion of the investigation by the Agency concerned. It is construed as procedural compliance from the point of view of the Court alone, where the investigating Agency has got a limited role to play. The observations to the following effect is the thrust of the decision and is found to be contained in Para 36, which read thus :-

> "36. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2022) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application."

17] The observations in **Siddharth vs. State of U.P** (*supra)* are extensively quoted with specific reference to the decision of the Delhi High Court in case of High Court of Delhi vs. CBI[3], which has received an imprimatur.

The pertinent observations in case of **Siddharth vs. State of U.P**

3 2004 SCC OnLine Del 53

(*supra)* also deserve a mention here and I deem it fit to reproduce the same :-

> "9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.
>
> 10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172]. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.
>
> 11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case [Joginder Kumar v.State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] how

> a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 CrPC. We consider such a course misplaced and contrary to the very intent of Section 170 CrPC."

18] In the earlier decision in case of **Satender Antil vs. CBI, 2021 (10) SCC 773,** the offences were classified into four distinct categories, with the economic offences punishable under Special Act containing provisions of bail like NDPS, PMLA, UAPA and Companies Act, being categorized as 'C', whereas, economic offenes not covered by special Acts being categorized as Category 'D'.

While focusing its attention on the economic offenes the following observations of the Apex Court are of great significance :-

> "7. The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs.CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:
>
> (a) seriousness of the charge, and
>
> (b) severity of punishment.
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> Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

19] The above observations, were further deliberated in the subsequent Judgment in the case of **Satender Antil vs. CBI, (2022)10 SCC 51,** where after making reference to the earlier decision in case of

P. Chidambaram v. Directorate of Enforcement[4], the Court focused upon the issue whether economic offences should be treated as a class of its own or otherwise.

20] While determining the said issue, the Apex Court make reference to another decision in case of **Arnab Manoranjan Goswami v. State of Maharashtra**[5], where it was specifically held that the Court must be alive to the need to safeguard the public interest, in ensuring that due enforcement of criminal law is not obstructed and at the same time the duty of the courts across the spectrum is to ensure that criminal law does not become a weapon for the selective harassment of citizens.

While suggesting the Parliament to bring a Special Law in form of Bail Act, distinct directions came to be issued and the important and relevant one are reproduced as under :

> "e] There need not be any insistence of a bail application while considering the application under Section 88,170, 204 and 209 of the Code.
>
> f] There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra)."

21] The respective counsel for the Applicants have, therefore, asserted that though three things determine grant of bail, whether under Section 438 or 439 of Cr.P.C., being gravity of the accusation, likelihood of tampering the case of prosecution and the flight risk, in the present case, the CBI Court has chosen to emphasis on only one of them, being the gravity of offence.

22] The learned counsel for the Applicants heavily fall upon the decision, in the case of **Siddharth vs. State of U.P** (*supra)* which has

4 2020(13)SCC 791
5 (2021)2 SCC 427

clarified the provision contained in Section 170 Cr.P.C., which contemplate a term “Custody” and it has been interpreted to mean neither police or judicial custody, but presentation of the accused by the Investigating Officer before the Court, while filing the charge-sheet or thereafter.

23] Admittedly, the Applicants, in furtherance of the summons received pursuant to the cognizance being taken by the Additional Sessions Judge, recording prima-facie involvement, responded to the summons and appeared before the concerned Court. The Court recorded that they are taken in judicial custody and remanded some of the accused till a particular date. The others, who appeared before the Court, filed application for exemption, whereas some moved application seeking their release on bail. The accused were directed to remain present on the next date and the Bail Applications were heard on merits.

24] On the next date, i.e. on 05.04.2022, the learned Judge rejected the Applications and while dealing with the decision of the Apex court in case of **Satender Antil v.s SBI, (***supra***)** which was pressed into service by the respective counsel, the learned Judge has made the following observations :

> “7. After going through the said judgment, the guidelines enumerated therein for grant of bail, when accused is not arrested during investigation, is not applicable to offences involving economic offences. The present case is relating to the economic offence, wherein loss caused to the bank, which is a public money. Prima facie there is constitution of offence punishable under Section 467 of IPC, which is punishable upto imprisonment for life. It is clarified that the investigating officer has not leveled offence under Section 467 of IPC but this Court has minutely perused the

record, more particularly, documents viz. audited balance sheet, bills, invoices, which are forged one and those documents come within the purview of forgery of valuable security. So, applicants/accused are not entitled for bail on the sole ground that they are not arrested during the investigation and co-operated throughout in the investigation. So applications are to be decided on merits."

.. He drew distinction on the basis of the facts deducible from the case of **Satender Kumar Antil vs. SBI, (supra),** in the following words :

"9. Further, with reference to the case of Siddharth (supra) in the case of Satender Kumar Antil (supra) by order dated 16.12.2021, it is clarified that "if during the course of investigation, there has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto to arrest the petitioner, an aspect in general clarified by us in Criminal Appeal No.838/2021 in **Siddharth Vs. State of Uttar Pradesh and Anr. dated 16.08.2021**." It is to be noted that the said clarification is applicable to the cases, where accused persons are taken in custody at the time of filing chargesheet. In the present case, summons were issued to the applicants/accused. Pursuant to it, they appeared and their bail applications are decided on merit.

.. At the end his decision, he focused on the gravity of the offence by recording as under :

"Thus, prima facie evidence on record indicates that applicants/accused involved in grave offence affecting the economy of country and are continued to reap the benefits of crime committed by them, as huge amount, which runs in crores of rupees. The offence is graver in the sense that it does not affect just one individual, but the victim is the national economy. So on the basis of gravity of offence and enormity of it, bail can be rejected. The reference is made to the case of **CBI, Hyderabad vs. B. Ramaraju, 2011 Cri.L.J. 301**, wherein Hon'ble Supreme Court cancelled the bail of accused Ramaraju purely on the basis of enormity and gravity

> of the offence. So, the gravity of offence and nature of evidence against the accused, this can be a ground for the rejection of bail."

.. Brushing aside the argument, that there are no chances of tampering with the evidence or fleeing from justice, by recording that "these factors do not play significant role in the present case, as prima-facie accused/Applicants are involved in grave and serious economic offence and which causes loss of crores of rupees and that money belong to the public at large".

25] With the aforesaid reasoning applications are rejected. The Apex Court in case of Satender Antil (*supra*) has slso highlighted upon the other provisions contained in the code of Criminal Procedure and clarified that Section 170 do not impose an obligation on the Officer in charge to arrest each and every accused at the time of filing of the charge sheet, particularly in the cases where the accused had cooperated with the investigation throughout.

It is noted by me that there is no denial by the CBI that the Applicants were never arrested during investigation, but on the charge sheet being filed the CBI Court has detained them by refusing to release them, when they produced themselves before the Court. There is no apprehension expressed by CBI that the Applicants will abscond. Personal liberty of an individual is enshrined in our constitution and has been held to be an integral part of Article 21. The occasion to arrest an accused during investigation arises, since custodial interrogation becomes necessary or it is a heinous crime or where there is possibility of influencing the witness or accused may abscond. A distinction has been drawn between existence of the power to arrest and the justification for its exercise in the case of **Joginder Kumar v.s**

State of UP[6].

26] When the charge sheet is carefully perused, it becomes apparent that the investigation is largely premised on the documentary evidence. The accusation of criminal conspiracy levelled in the charge sheet will ultimately have to be established by the prosecution during trial. The transactions referred to in the charge sheet is in form of a chain and the prosecution is duty bound to establish the connect between different transactions. Ultimately it was Mr.Amitabh Parekh, the CMD of M/s. PAL, who is alleged to be a key conspirator, who is no more alive. The charge sheet specifically reflect that he was in charge of the affairs of the Company and conducted its day to day business. The financial year for which the turnover/sales are alleged to be inflated is the year 2008-2009 to the year 2012-2013 when Amitabh Parekh was very much alive. The accounts of M/s. PAL were classifed as NPA with effect from 29.03.2013 during his life time.

Thus, the charge sheet has clearly discerned the role of each accused person and precisely that is the reason why their custody was not sought during the course of investigation by the CBI. In these circumstances, merely because huge amount is involved in the subject CR do not justify their custody since the CR is registered in the year 2019 and the incidents of cheating, forgery and fraudulent and dishonest use of the documents is for the year prior to 2013.

27] In the wake of the material in the charge sheet, I do not think that the applicants should be kept behind bar, though they may take the consequences of the accusation levelled against them in the charge sheet. In any case, they are protected by interim orders passed by this Court which deserve to be confirmed with the additional conditions

6 (1994)4SCC 260

being imposed upon them to the following effect, which shall be read in addition to the conditions, subject to which they were released on bail by this court.

Needless to state that the Applicants shall continue to abide by the other conditions imposed upon them while releasing them on bail by the interim order.

Hence the following order :

ORDER IN BAIL APPLICATIONS

(a) Bail Application Nos.1343/2022 and 1300/2022 are allowed.

(b) The orders dated 20.04.2022 is made absolute.

(c) The Applicants shall surrender their passports, if any, before Investigating Officer within a period of one week of their release.

(d) Applicants shall not leave the Country without prior permission of the Special CBI Court.

ORDER IN ANTICIPATORY BAIL APPLICATIONS

(a) Anticipatory Bail Application Nos.1018/2022, 932/2022, 958/2022 and 960/2022 are allowed.

(b) The orders dated 06.04.2022, 08.04.2022 and 13.04.2022 are made absolute.

(c) The Applicants shall surrender their passports, if any, before Investigating Officer within a period of one week of their release.

(d) Applicants shall not leave the Country without prior permission of the Special CBI Court.

All concerned to act on an authenticated copy of this order.

[BHARATI DANGRE, J]