BAIL SLIP

The Petitioner/Accused Viz., K.Babu, S/o.Krishnamurthy was released on bail in Crl.MP.No.1/2015 in Crl.A.No.339/2015, dated 19/06/2015 on the file of the High Court of Judicature at Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.02.2022

PRONOUNCED ON: 05.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.A.No.339 of 2015

K.Babu ... Appellant

Vs.

State,
By The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Salem.
Cr.No.06/AC/2004. ... Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the order of conviction passed by the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem in Spl.C.C.No.41 of 2014, in Crime No.06/AC/2004 dated 26.05.2015 in the interest of equity and justice.

For Appellant : Mr.V.Gopinath Senior Advocate
for Dr.S.R.Kalyani

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is filed challenging the judgment of the Special Judge, Special Court for cases under the Prevention of Corruption Act, Salem, in Spl.C.C.No.41 of 2014, in convicting and sentencing the appellant for the offences under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution, in brief, is as follows:

The defacto complainant is a weaver. He got three phase electric service connection for his weaving occupation. The service connection number is 1871. The meter got struck off in the year 2004 and stopped working. He met the appellant/accused with a written request to change the meter. He met him two or three times for changing the meter and was informed that the meter was not available. In 2004, when he met him in this connection, appellant demanded a sum of Rs.500/- to him and Rs.300/- to Foreman as bribe for changing the meter. He told him that he cannot pay the amount now and met him two days later. Again the appellant reiterated his demand. Therefore, as he was not wiling to give the bribe, gave complaint to the respondent. The complaint was registered and a trap was organized. On the date of the trap proceedings, PWs 2 and 3 went inside the office and met the appellant. The appellant demanded the bribe amount and PW2 gave the amount and that was accepted by the appellant. PW14, on verifying from PW2 that the appellant accepted the bribe amount demanded, entered the office, conducted the Sodium Carbonate - Phenolphthalein test and the test yielded positive result on the fingers and shirt pocket of the appellant. Therefore, the prosecution filed a final report against the appellant for demand and acceptance of Rs.500/- as a reward to replace the faulty meter in the house of the defacto complainant as gratification other than the legal remuneration and as a pecuniary advantage for himself by corrupt or illegal means by abusing his official position as a public servant and thus he is liable to be punished for the offences under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. On the basis of the final report, the trial Court framed the following charges:

(i) under Section 7 of the Prevention of Corruption Act, 1988 for illegally demanding Rs.500/- on 23.06.2004 and 25.06.2004 for changing the faulty meter.

(ii) under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 for accepting a sum of Rs.500/- at about 4.00 P.M. to 4.10 P.M. on 25.06.2004 as illegal gratification for the aforesaid purpose.

4. The prosecution has examined PWs 1 to 16 witnesses, produced Exs.P1 to P20 documents and MO1 to MO7, to prove the charges against the appellant. No evidence was produced on the side of the appellant.

5. The trial Court on going through the oral and documentary evidence found the appellant guilty under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988, convicted and sentenced the appellant to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for another six months for

the offence under Section 7 of the Prevention of Corruption Act, 1988; sentenced the appellant to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to pay the fine to undergo simple imprisonment for six months under Section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. Both substantive sentences are ordered to run concurrently.

6. Challenging and questioning the abovesaid judgment, this Criminal Appeal is filed.

7. The learned counsel for the appellant submitted that PW2 has a grudge against the appellant for the reason that the meter was not supplied immediately. Therefore, he wanted to foist a false case against the appellant. The evidence of PW2 is not specific with regard to the date/dates of alleged demand of bribe by the appellant. There is contradiction as to whether there was one or multiple demands, prior to the alleged demand on the date of the trap. There is also contradiction in the evidence of PWs 2 and 3 with regard to the place where the appellant was sitting at the time of the alleged trap as to whether he was sitting in the hall or in a separate room. They also contradict in their evidence as to the duration of the time taken for giving the bribe money. It is seen from PW3's evidence that he was very particular about succeeding in the trap proceedings. It implies that he badly wanted to fix the accused in this case. PWs 6 and 8 had given evidence with regard to the procedure taken for changing the meter. The meter was not immediately available/supplied and therefore, it resulted in delay. Ex.P11 register shows that PW2's meter was changed on a priority basis after the trap proceedings. It shows that to get the meter out of turn, the case was foisted against the appellant. The First Information Report and Mahazar had not been sent to the Court immediately and there was delay in sending these records to the Court. The case of the appellant is that PW2 had thrust the money into the pocket of the appellant and left the place, not expecting this, the appellant called PW2. PW2 had also admitted that he was called by the appellant. PW2 had framed the appellant and foisted this case against him to get the meter out of turn. The aforesaid contradictions, lapse in the case of prosecution and the explanation offered by the appellant were not considered by the trial Court and the appellant was wrongly convicted. Thence, the learned counsel for the appellant prayed for setting aside the conviction recorded and the sentence imposed against the appellant and for acquitting him.

8.In support of his submissions, the learned counsel for the appellant relied on the judgment reported in (2009) 15 SCC 200 in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede for the proposition that the demand of illegal gratification is sine qua non for proving the charge under Section 7 of the Prevention of Corruption Act, 1988. The relevant portion of the judgment in (2009) 15 SCC 200 in State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede (Supreme Court) is extracted hereunder:

> 16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.
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> 21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts.
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> 22. It is also well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail.

The judgment reported in (2011) 6 SCC 450 in State of Kerala & Anr. Vs. C.P.Rao (Supreme Court) is relied for the proposition that the mere recovery of money in the absence of any evidence to show that the money was received by the accused knowing it to be bribe, conviction cannot be sustained. The relevant portion of the judgment in (2011) 6 SCC 450 in State of Kerala & Anr. Vs. C.P.Rao (Supreme Court) is extracted hereunder:

> 7. In the background of these facts, especially the non- examination of CW 1, was

found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi Vs. State of Maharashtra 1979(4) SCC 526 wherein a Three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on. In the aforesaid circumstances, the Three-Judge Bench in Pannalal Damodar Rathi case(supra) held that there is grave suspicion about the appellant's complicity and the case has not been proved beyond reasonable doubt.

10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala reported in 2009(3)SCC 779, this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Admn.) reported in 1979(4) SCC 725 held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe conviction cannot be sustained.

The judgment reported in AIR 1979 SCC 1191 in Panalal Damodar Rathi Vs. State of Maharashtra was pressed into service for the proposition that the defacto complainant in trap cases is like an accomplice. In a criminal case, without corroboration in material particulars, the evidence of an accomplice cannot be relied. The relevant portion of the judgment in AIR 1979 SCC 1191 in Panalal Damodar Rathi Vs. State of Maharashtra is extracted hereunder:

8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in

material particulars connecting the accused with the crime has to be insisted upon.

He relied on the judgment reported in 1976 CRI. L.J. 346 in Maha Singh Vs. State (Delhi Administration) for the proposition that the statement given by the accused during the course of investigation is inadmissible and that cannot be used against the accused. The relevant portion of the judgment in 1976 CRI. L.J. 346 in Maha Singh Vs. State (Delhi Administration) is extracted hereunder:

> 37. A question arose whether the statement of the accused before the Inspector admitting to have received the bribe was admissible in evidence. It is apparent from the evidence of the Inspector that these cases are investigated by the Anti-Corruption Department which carries on its work on its own. On a complaint made to the Inspector he recorded the same and arranged the raid by noting each step taken thereafter in a regular manner. What has been done by the Inspector in this case in order to detect the accused while taking the bribe comes within the term 'investigation' under section 4(1) of the Code of Criminal Procedure, 1898. The moment the Inspector had recorded the complaint with a view to take action to track the offended whose name was not even known at that stage, and in this case proceeded to achieve the object, visited the locality, questioned the accused, searched his person, seized the note and other documents, turns the entire process into an investigation under the Code. Indeed the Inspector himself stated that he examined the witnesses under section 161 Cr.P.C. and completed the investigation. The fact that he had also later on forwarded the complaint for formal registration of the case at Lahori Gate Police Station does not do`away with the character of the investigation already commenced by the Inspector on recording the complainant's statement disclosing a cognizable offence.
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> 38. Therefore, any statement made by the accused in answer to questions put by the Inspector is inadmissible under section 162 Cr. P.C. and neither the prosecution nor the accused can take advantage of these answers. These are, therefore, excluded from consideration in this case by us.

9. Per contra, the learned Additional Public Prosecutor submitted that PW2 is a rustic villager and an uneducated person.

He gave a complaint written in his own hand writing. In the complaint and in his evidence, he had clearly stated about the demand of bribe by the appellant for changing the faulty meter. There was no reason why he should give a false complaint against the appellant. Reiteration of the demand on the date of the trap proceedings by the appellant was spoken by PW2 and that was ably corroborated by PW3. PW3 is an official witness, he has no personal enmity against the appellant to give false evidence against him. From the evidence of PW2, the demand prior to the trap proceedings, from the evidence of PWs 2 and 3, the demand made on the date of trap, from the evidence of PW3 and PW14, successful conduct of the trap proceedings has been clearly proved by the prosecution. If the bribe amount was thrust into the pocket of the appellant as projected by the appellant, there was no reason for his hands getting tainted during the Sodium Carbonate - Phenolphthalein test. The prosecution has proved beyond any reasonable doubt that the appellant demanded bribe of Rs.500/- for him for changing the faulty meter, accepted it and it was recovered during the trap proceedings. The learned trial judge has rightly appreciated the evidence, convicted and sentenced the appellant. Thus, he prayed for the dismissal of this appeal.

10.Points for consideration:

> Whether the judgment of the Special Judge for cases under the Prevention of Corruption Act, Salem, in Spl.C.C.No.41 of 2014, is liable to be set aside in the light of the grounds raised by the appellant challenging the judgment?

11. From the facts set out, it is the case of the prosecution that PW2 was using three phase electric service connection no.1871 and the meter relating to this service connection got struck off. When he approached the appellant for changing the meter, the appellant said to have been demanded illegal gratification. Not willing to pay the bribe, PW2 gave the complaint and in the trap proceedings, the bribe amount was recovered from the appellant. PW4 was the owner of the property, now owned by PW2's wife Saraswathi. This house had three phase electric service connection. In 2002, the electric service connection stood in PW4's name and that was not changed by Saraswathi after her purchase. PW11 Sub Registrar confirms the sale in favour of Saraswathi through document No.1560/2002 and he furnished the copy of the sale deed along with Ex.P15 letter to the Vigilance Police. Ex.P5 EB card shows that the electric service connection stands in the name of PW4 K.P.Sundaram. It also shows that PW2 had signed this document as consumer. Ex.P4 is the application in the name of PW4 to the Assistant Engineer, Electricity Department, informing that the meter in SC No.1871 is not working, with a request to make a personal inspection and

change the faulty meter. This application, though addressed in the name of PW4 was signed by PW2 in his capacity as the present consumer.

12. It is submitted during the course of arguments by the learned counsel for the appellant that the application prepared in the name of PW4 K.P.Sundaram and signed by PW2 Subramani itself is illegal and on the basis of this application, PW2 cannot ask for changing the meter and the claim that on the basis of this application, he approached the appellant for changing of meter and the appellant demanded bribe from him cannot be accepted. From the evidence of PW4, PW11 and Ex.P5, it is established that the house property owned by PW4 K.P.Sundaram was sold to PW2's wife Saraswathi in 2002. However, Saraswathi had not taken any steps to change the electric service connection in her name and electric service connection continued to remain in the name of PW4 K.P.Sundaram. The fact remains that after purchase, PW2's wife was occupying and enjoying the house property with the service connection no.1871. Therefore, the application preferred in the name of PW4 K.P.Sundaram, signed by PW2 as present consumer may be a procedural violation, but it is not an illegality. Because of these procedural lapses, we cannot doubt the case of the prosecution.

13. Ex.P4 shows that PW2 gave an application for changing the faulty meter. PW5, the Assistant Executive Engineer stated that there is an entry in Ex.P5 EB card that meter got struck off. This entry was made on 23.04.2004 by the meter reader. He also stated in his evidence that after receiving Ex.P4 application, the appellant endorsed in the application, directing the foreman to inspect the meter and report. PW7 was the one who found the meter got struck off on 23.04.2004 when he visited to take meter reading. From the aforesaid evidences, it is made clear that the electric service connection no.1871 was enjoyed and in the use of PW2 and it got struck off on 23.04.2004. PW2 gave Ex.P4 application for changing the faulty meter. The appellant had entrusted the work to the foreman to inspect the meter and report. Then comes the issue of alleged demand of bribe by the appellant and subsequent events.

14. PW2 had given evidence with regard to the demand of Rs.500/- as bribe by the appellant for himself and Rs.300/- to foreman when he met him in 2004 and then on another time and on the date of trap. As rightly pointed out by the learned counsel for the appellant, the defacto complainant has not given the exact date/dates of demand. He just said that one day in 2004 and two days thereafter the appellant demanded bribe. The charge is that there was only one pre-trap demand on 26.03.2004. Not only that there are other material contradictions in the evidence of PW2 and other witnesses, especially PW3 with regard to the fact that where was the appellant seated at the time of receiving

the bribe and how much time he took for receiving the money. When PW2 stated that the appellant was sitting in the hall, PW3 stated that the appellant was sitting inside the room. PW2 stated that meeting the appellant, giving bribe money ended within two or three minutes, but PW3 stated that it took ten minutes for completing this transaction. The evidence of the T.L.O and rough sketch shows that the appellant was sitting inside the room. T.L.O. also said that PW2 and PW3 met him ten minutes after they entered into the office. Thus, it is clear that PW2 materially contradict the evidence of PW3 and PW14 with regard to the place where the appellant was sitting, the duration taken for meeting the appellant and giving the bribe amount. These material contradictions according to the learned counsel for the appellant, create serious doubt in the very basis of the prosecution case.

15.It is true that PW2 has not given the specific date/dates on which the appellant demanded bribe from him. In Ex.P2 complaint, he stated that the previous week i.e., on 25.06.2004, Friday, he met the appellant in connection with changing the faulty meter and on that occasion, the appellant said to have demanded Rs.500/- to him and Rs.300/- to foreman as bribe. Then he met him on the succeeding Wednesday for changing the faulty meter. The appellant said to have reiterated his earlier demand and then, he gave the complaint. It is evident from his complaint that the appellant had, on two occasions, said to have demanded bribe from PW2 prior to the trap proceedings for changing the faulty meter. May be there is a defect in framing charges, but whether this defect has caused any prejudice to the appellant is the question. We have to bear in mind that the defacto complainant is not an educated person, he is an uneducated villager. It appears that he knows writing a bit. The way in which he had written his complaint shows that he was not able to recollect the dates of demand and his only concern was that he was not ready to give the bribe amount demanded by the appellant and gave complaint against the appellant and for demanding bribe. Merely because the defacto complainant was not able to say the specific dates on which the appellant demanded bribe prior to trap proceedings, we cannot totally discard his evidence. Even the educated witnesses may, some times, not able to remember the dates and events. Therefore, the failure on the part of PW2 to recount the exact dates on which the appellant demanded bribe prior to trap proceedings would not affect his evidence, if his evidence is otherwise reliable.

16. The evidence of PW2 seems to be a natural evidence associated with a rustic villager. He had stated about the pre-trap demand made by the appellant and the demand of bribe on the date of trap and its acceptance by the appellant. PW3 is a Government Official and he was a witness to the trap proceedings.

He has clearly given evidence with regard to the demonstration of Sodium Carbonate - Phenolphthalein test conducted at the office of the Vigilance department, preparation of entrustment Mahazar, entry with PW2 to the office of the appellant, appellant demanding the bribe money, PW2 giving the bribe amount and the appellant receiving and keeping the bribe amount in his left shirt pocket. PW2 and PW3 had clearly given evidence with regard to the reiteration of demand of bribe amount by the appellant on the date of the trap proceedings and its acceptance. After giving the bribe money, PW2 and PW3 came out of office and PW2 signaled to PW10 with the pre-arranged signal. Then PW2 and PW3 informed PW10 about the events that had happened inside the EB office.

17.Ofcourse there are contradictions in the evidence of PW2 and PW3 with regard to the place where the appellant was sitting and the time duration taken for giving the bribe amount. Here and again, it is PW2 who contradicts the evidence of PW3 with regard to the place of sitting of the appellant and the time taken for giving the bribe amount. As stated earlier, PW2 is an uneducated village person. It is not the case of the appellant that he was sitting in the hall. The trap proceedings was conducted inside the room of the appellant. It is seen from the evidence of PW3 and PW14 that it took nearly ten minutes for PW2 and PW3 to meet the appellant and give the bribe amount to the appellant. Therefore, PW2 giving contradictory evidence with regard to the place of sitting of the appellant and the time duration taken for giving the bribe amount, in the considered view of the Court, would not cut at the root of the prosecution case. It is only a minor contradiction, it is natural in the course of giving evidence, especially by an illiterate witness.

18.PW3 and PW14 had clearly spoken about the Sodium Carbonate - Phenolphthalein test conducted at the hands of the appellant and on the shirt wore by him. The appellant's both hands fingers and left side front shirt pocket tested positive for the Sodium Carbonate - Phenolphthalein test, both Phenolphthalein and Sodium Carbonate were detected implying that he received the bribe money from PW2 and kept in his left front shirt pocket. The bribe money of Rs.500/- was recovered from the appellant. It is the prosecution case that after receiving the money, he kept it in his left shirt pocket and when the shirt was subjected to the Sodium Carbonate - Phenolphthalein test, it also tested for its presence positive. Thus, the evidence of PW3 and PW14 conclusively proves that the bribe amount recorded in the entrustment Mahazar, given by PW2 to the appellant was recovered from appellant.

19.The explanation offered by the appellant for the recovery of money from him is that PW2 had thrust the money into his shirt pocket. This claim of the appellant cannot be accepted for the reason that if the bribe money was thrust into the pocket of the appellant, there was no possibility of the appellant's both hands coming into contact with the bribe money and testing positive during the Sodium Carbonate - Phenolphthalein test. The fact that both hands and shirt of the appellant tested positive for Sodium Carbonate - Phenolphthalein test clearly proves that the appellant received the bribe money in his hands and then kept in his shirt pocket. Thus, this Court is of the considered view that the prosecution has positively proved the demand and acceptance of bribe by the appellant as illegal gratification other than the legal remuneration for doing his public duty as a public servant and thus, committed the offences punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

20. The statement made by the learned counsel for the appellant that the defacto complainant got his meter changed as a special case on 28.06.2004 shows that, only to get the meter changed out of turn, the appellant was framed, cannot be accepted in the light of the evidence available and discussed above. With regard to delay in sending the records to Court, FIR was registered on 25.06.2004 at 10 a.m. It reached the Court at 4.30 P.M. on the same date. Thus there is no delay in sending the FIR to Court. Entrustment Mahazar was prepared on 25.06.2004 and sent to Court on 28.06.2004. Though there is a delay of 3 days in sending the Entrustment Mahazar to Court, nothing is made out to create suspicion in the preparation of Entrustment Mahazar. The delay, if any, would not vitiate the prosecution's case unless fabrication of these documents is made out and the prejudice caused to the accused. That is not made out in this case. Therefore, the delay in sending the Entrustment Mahazar to Court, in the considered view of this Court would not affect the case of the prosecution.

21. PW2 was forced to give the bribe money to the appellant not to the liking of PW2, therefore, he gave the complaint. He supported his allegation against the appellant, during the course of his evidence strongly supported by the evidence of PW3 and PW14. The demand of bribe amount, its acceptance by the appellant and the recovery of the same from the appellant had been proved beyond any reasonable doubt by the prosecution. In this view of the matter, this Court finds that the judgments relied by the learned counsel for the appellant are not applicable to the facts and circumstances of this case. The learned trial Judge also rightly held that the charges against the appellant had been proved, convicted the appellant for the offences under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and sentenced him as

aforestated.

22. This Court, for the reasons stated above, finds no reason to interfere with the well considered judgment of the trial Court and confirms the judgment of the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem in Spl.C.C.No.41 of 2014 and the trial Court is directed to take steps to arrest the accused and remand him in prison to undergo the remaining sentence.

23. In the result, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petitions, if any, is also closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Salem.

2.The Special Judge, Special Court for Trial of Cases
under the prevention of Corruption Act,
Salem.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Salem.

4.The Public Prosecutor,
High Court, Madras.

+2ccs to Dr.S.R.Kalyanni, Advocate, Sr.No.23135 [10/06/2022]

CRL.A.No.339 of 2015

BP(CO)
CB(21/04/2022)