IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

CRM-M-49643-2023(O&M)
Date of decision : 13.10.2023

Om Parkash Soni

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S.Rai, Senior Advocate with
Ms. Isha Goyal, Advocate,
Mr. R.P. Saini, Advocate,
Ms. Shivani Saini, Advocate,
Mr. Faraz Kohli, Advocate, and
Mr. Anurag Arora, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.20 dated 09.07.2023 registered under Sections 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Range Amritsar, District Amritsar.

FACTUAL BACKGROUND:-

2. Brief facts of the case are that FIR No.20 dated 09.07.2023 (Annexure P-1) was registered on the complaint of Varender Singh Sandhu, PPS under Section 13 (1)(b) read with Section 13 (2) of the Prevention of Corruption Act 1988 as amended by the Prevention of Corruption (Amendment) Act 2018, against the present petitioner on the allegations that upon investigation of Vigilance Enquiry no. 8 dated 10.10.2022 against

the petitioner, who was the former Deputy Chief Minister of Punjab, it was found that the income of the petitioner, his wife-Suman Soni and son-Raghav Soni for the check period starting from 01.04.2016 to 31.03.2022 was assessed as Rs. 4,52,18,771/- and the expenditure of the petitioner during the said period was assessed as Rs.12,48,42,692/- and thus, the present petitioner had spent an amount of Rs. 7,96,23,921/- more than his known sources of income and the same was found to be 176.8% of his income. The case was registered against the petitioner and it was stated in the said FIR that the role of the wife of the petitioner and his son would be considered during the course of investigation. The petitioner was arrested on 09.07.2023. The challan/ final report under Section 173(2) Cr.P.C. had been prepared on 29.08.2023 and presented in the Court on 31.08.2023. As per the challan/report under Section 173 Cr.P.C, which has been annexed as Annexure P-3 along with the present petition, the details of the income of the petitioner, his wife and son for the check period from 01.04.2016 to 31.03.2022, under the heading "income chart" and the total amount of income of the petitioner, his wife and his son has been stated to be Rs.4,82,87,517/- The total expenditure incurred by the petitioner, his wife and his son for the said check period has also been detailed in the "expenditure chart" given in the report under Section 173 Cr.P.C. and as per the said "expenditure chart", the total amount of expenditure comes to Rs.14,91,86,253/- and thus, as per the report under Section 173 Cr.P.C., the petitioner had spent an amount of Rs.10,08,98,735.78/- more than his income (208.95% more than the income). The petitioner had applied for the concession of regular bail before the Court of Additional Session Judge, Fast Track Court, Amritsar on 12.09.2023 and the same was dismissed by the said Court vide order dated 21.09.2023 and thereafter the present petition has been filed.

ARGUMENTS OF LEARNED SENIOR COUNSEL FOR THE PETITIONER:-

3. Learned senior counsel for the petitioner has submitted that the petitioner was arrested by the Vigilance Bureau on 09.07.2023 and the investigation in the present case is over and the challan/final report under Section 173(2) of Cr.P.C. was prepared on 29.08.2023 and has been presented in the Court on 31.08.2023. It is further submitted that the entire case is based on documentary evidence and the said documents are already in the custody of the Investigating Agency and that the witnesses sought to be produced in the present case are primarily Government officials/bank officials/Chartered Accountant. It is contended that there are 49 prosecution witnesses and since, the charges have not been framed as yet thus, the conclusion of trial is likely to take time.

4. Learned senior counsel for the petitioner has further pointed out that in the present case, a preliminary inquiry by the Vigilance Bureau was initiated against the petitioner vide Vigilance Enquiry No.8 dated 10.10.2022 and in the said vigilance inquiry, the petitioner had duly cooperated continuously for a period of eight months and the petitioner had appeared before the Investigating Officer as and when he was called and had provided the documents which were sought from him and had thus, fully cooperated with the Investigating Agency. It is stated that the petitioner is 66 years of age (wrongly mentioned as 64 in para 10 of the petition) and has several medical ailments and a pace maker was implanted in his body in the year 2019 as he was diagnosed with Cerebrovascular accident (CVA) (Stroke/paralysis) and thereafter, even in the year 2021, another pace maker was implanted in the body of the petitioner and all the

surgeries of the petitioner were performed at Lilawati Hospital, Mumbai. It is also argued that the petitioner is also suffering from Diabetes Mellitus, Hypothyroidism and Hypertension on account of which he is required to take 25 tablets every day. It is argued that the ill health of the petitioner is further apparent from the fact that on 10.07.2023, when the petitioner was produced before the Chief Judicial Magistrate, Amritsar and was remanded to custody, the Chief Judicial Magistrate, Amritsar was pleased to direct the Superintendent, Central Jail, Amritsar to provide medical assistance as per the Jail Rules and thereafter, as per the direction of the Jail Superintendent, the petitioner was kept in Jail Hospital under medical supervision and was subsequently, shifted to Guru Nanak Dev Hospital, Amritsar on account of his deteriorating health and that recently, a Medical Board was constituted on 14.09.2023 and the said Medical Board was of the view that the petitioner needs placement of a third pacemaker in the left ventricle with CTVS backup. On the basis of the said report, the Guru Nanak Dev Hospital, Amritsar had referred the petitioner to PGI Chandigarh for further management and in support of the same, reference has been made to the documents annexed as Annexure P-7 (at Page 171 of the paper book). It is argued that while being taken to PGI Chandigarh, the health of the petitioner deteriorated and thus he was taken back to Guru Nanak Dev Hospital, Amritsar where he is presently admitted. Reference has also been made to the documents (Annexure P-6 and P-7) with respect to the medical condition of the petitioner. It is submitted that the petitioner is not involved in any other case and reference has been made to page 60 of the report under Section 173(2) Cr.P.C. to show that even as per the said report, the petitioner has deep roots in society as he was Mayor of Municipal Corporation, Amritsar from the year 1991 to 1996 and thereafter, remained as MLA from the Vidhan Sabha, Halqa Amritsar (West) for the period commencing from 1997 to 2002, 2002 to 2007, 2007 to 2012 and MLA from Vidhan Sabha, Halqa Amritsar (Central) for the period 2012 to 2017, 2017 to 2022 and further remained as Cabinet Minister, Punjab from April 2018 to September 2021 and from September 2021 to March 2022 served as Deputy Chief Minister, Punjab and thus, the question of the petitioner fleeing from the country would not arise.

5. Learned senior counsel for the petitioner has submitted that several items of expenditure which have neither been incurred by the petitioner nor by his son or his wife, have been wrongly included in the expenditure incurred by the petitioner, his wife and his son and on the said account, an amount of Rs.6,19,83,751/- has been wrongly added under the heading of expenditure and reference in this regard has been made to a detailed chart which has been reproduced in para 17 (page 18) of the petition and by making reference to the said detailed chart, it has been argued that the expenditure which has been wrongly included by the Investigating Agency is proved from the documents which have been annexed along with the present petition and specific reference of the same has been made in the said chart which contains 13 points highlighting the expenditure which has been wrongly included by the Investigating Agency. It is pointed out that in the expenditure chart, which has been reproduced in paragraph 17, 4 mistakes have occurred inasmuch as under point No.3, the amount under the heading "Amount of Variation" has been wrongly mentioned as Rs.3,98,317/- whereas the same should have been Rs.2,98,737/- and under point No.8, in the fourth column, instead of an amount of Rs.30,00,000/-, same is required to be mentioned as Rs.1,16,04,268/- although the amount which is sought to be deducted has

been correctly mentioned and the benefit of Rs.41,852/- being claimed under point No.10 is not being claimed. It is also submitted that on account of the above, total amount has been wrongly stated to be Rs.6,21,25,183/- whereas the same should be Rs.6,19,83,751/- The corrected chart is handed over to the Court and the same is taken on record as Mark "B" and a copy of the same has been given to the learned State counsel. It has also been pointed out by learned Senior Counsel for the petitioner that point Nos.15 to 19 have not been properly stated in the income chart and the same have been stated properly in the Chart Mark 'B' and for the purposes of arguments on behalf of the petitioner, point Nos.15 to 19 be taken into consideration from Mark 'B' and the amount of benefit claimed under point No.1 in the income chart be read as Rs.63,81,925/- (Mark 'B') and not Rs.65,31,925/- (as in para 16 of the petition) and the total income received be taken as Rs.4,57,28,135/- (Mark 'B') instead of Rs.4,59,88,135/- (as per para 16 of the petition).

6. With respect to point No.1 of the above expenditure chart, it is argued that in the column of the amount deposited on completion of the check period by the petitioner in the Punjab National Bank, Amritsar, has been shown to be Rs.1,90,711/-, as per the challan whereas the said figure is Rs.1,26,744/- and in support of the same, bank statement has been annexed as Annexure P-54 and thus, an amount of Rs.63,967/- deserves to be deducted from the total expenditure. With respect to point No.2 of the expenditure chart, it has been argued that regarding the sale deed dated 12.06.2019 for buying plot measuring 11 kanals 11 marlas and 3 sarsai at village Sichander, District Amritsar, no amount has been paid by the petitioner and the payment has been made by Shyam Soni and Vikas Soni and yet, as per the challan, the payments of Rs.53,61,100/- and

Rs.80,41,650/- have been shown to be the expenditure incurred by the petitioner. It is stated that the fact that Shyam Soni and Vikas Soni had paid the entire amount is apparent from a conjoint reading of Annexures P-55 to P-58 in which reference has been made to the cheques/bank statements and property documents.

7. With respect to point No.3, it is submitted that an amount of Rs.2,98,737/- has been included in the expenditure of the petitioner and his son although, the entire sum was paid by the nephew of the petitioner from his known sources of income and for proving the same, reference has been made to bank statements (Annexure P-59)

8. With respect to point No.4 it is submitted that the amount of Rs.4,29,18,213/- has been taken to be the expenses incurred by the petitioner and his son for the construction of the bungalow situated at D.R. Enclave, Village Heir Ajnala Road, Amritsar. It is argued that as is apparent from Annexure P-61 (at page 524 of the paper book) and also the documents (Annexures P-60 and P-62), the entire expenditure up to 31.03.2022 which is the last date of the check period, on the construction of the said house was Rs.2,24,67,896/- and the rest of the amount has been spent after the said check period and thus, the rest of the amount stated to be expenditure on the construction has been wrongly included in the expenditure for the check period. It is argued that another mistake has been committed by the Investigating Agency in arriving at the figure of Rs.4,29,18,213/- inasmuch as the petitioner and his son have incurred an expense of only Rs.1,02,53,163/- during the check period as expense for the construction of the said house and the remaining expenses have been incurred by Vikas Soni and Shyam Soni and Ashok Soni and reference in this regard is made to Annexures P-60 to P-62. It is further submitted that

the said argument stands fortified from the fact that even the valuation which has been relied upon by the State in the present case is dated 01.02.2023 which is after a period of more than 10 months after the last date of the check period i.e., 31.03.2022 and thus, excessive amount of Rs.3,26,65,050/- has been shown as expense of the petitioner and his son which deserves to be excluded. Under points 7, 8 & 9, it is argued that an amount of Rs.15,37,568/-, Rs.58,02,134/- and Rs.38,52,737/- respectively have been wrongly shown to be the expenditure incurred by Raghav Soni, son of the petitioner on CLU, construction of Hotel and buying furniture for the said hotel situated at 368-A, Tung Bala, Urban Green Avenue, Amritsar as the said premises have been leased out to M/s Golden Alliance Hospitality Private Limited vide registered lease deed dated 01.02.2021 (Annexure P-63) and as per the terms of the said lease deed, the entire expenditure of CLU, Map Approval, costs of construction etc. was to be incurred by the said lessee company and thus, the amounts under the three points deserve to be excluded.

9. Under point No.11, it is submitted that the amount deposited as tax by Suman Soni wife of the petitioner has been wrongly calculated and an amount of Rs.1,71,000/- has been counted in excess and for the said purpose, reliance has been placed upon Annexure P-71. It is further argued that under points 12 & 13, it is stated that excess expenditure of an amount of Rs.18,51,918/- and Rs.23,37,890/- respectively, has been calculated by the Investigating Agency with respect to Vidhan Sabha Elections, 2017 and 2022 respectively as in the same, the amount of donation received by the petitioner, which fact has been duly verified and approved by the Election Commission of India, has not been taken into consideration and for the said purpose, reference has been made to Annexures P-72 to P-77. It is

submitted that the said amount also deserves to be excluded.

10. Learned senior counsel for the petitioner has further highlighted that there are several items of income which were duly earned by the petitioner, his son and his wife which have been illegally excluded or have not been taken into consideration by the Investigating Agency and the detailed chart (Mark 'B') showing that an income of Rs.4,57,28,135/- which should have been taken into consideration by the Investigating Agency, has not been taken into account by the Investigating Agency. In the said chart, 20 points have been highlighted showing various amounts of income stated to have been earned by the petitioner, his son and his wife during the 'check period' which have not been taken into consideration by the Investigating Agency and in support of the same, documents including bank statement, Income Tax Returns, copy of ledger account, Form-26AS, GST Registration Certificate etc. have been annexed to prove the said points.

11. Learned senior counsel for the petitioner has submitted that with respect to point No.1 of the Income Chart, total amount which has been credited to the account of the petitioner on account of salary and allowance received from the Punjab Government Treasury for the 'check period' which includes taxable as well as tax free allowances is Rs.1,24,46,718/- whereas the Investigating Agency has only taken into consideration two amounts of Rs.20,62,053/- and Rs.40,02,740/- being salary received as MLA and Minister respectively and thus, an amount of Rs.63,81,925/- has been wrongly excluded, as Investigating Agency has only taken into consideration the salary figure without matching the same with the statements reflected in the bank accounts which were made available by the petitioner and the respective banks to the Investigating Agency. Reliance has been placed upon Annexures P-8 to P-14 in support

of the said arguments.

12. With respect to point No.3, it is argued that an amount of Rs.16,29,080/- has wrongly not been taken into consideration with respect to the amount received back from Dream Technical Company by Raghav Soni son of the petitioner inasmuch as only an amount of Rs.99,66,755/- have been credited into the said account instead of total amount of Rs.1,15,95,835/- (Rs.77,95,835/- + Rs.38,00,000/-) which facts are apparent from Annexures P-15 to P-22.

13. Under Point No.4, it is argued that an amount of Rs.9,00,000/- has wrongly not been taken into consideration although, the said amount was duly received by the petitioner as advance from M/s Soni Brothers Agricultural Commission Agents, during the check period through proper banking channel and was duly accounted for in the books of accounts and in support of the said entry, bank statement (Annexure P-23) and a copy of the ledger account (Annexure P-24) has been referred to by the learned senior counsel for the petitioner. It is submitted that under points No.5 and 6, an amount of Rs.43,66,000/- and Rs.14,50,000/- have wrongly not been taken into consideration by the Investigating Agency as the said amounts were received as gifts/friendly unsecured loans by the petitioner and the same were given through proper banking channels and were duly paid out of the declared sources of income of the persons who had given the gifts and with respect to the same, reference has been made to documents (Annexures P-25 to P-27).

14. Under Point No.7, it has been highlighted that an amount of Rs.11,34,000/- received by the wife of the petitioner from M/s Sai Logistical Parts as Rent has not been taken into consideration in spite of the fact that the same is duly reflected in the bank statements and regarding the

same, GST Registration Certificate has also been produced in addition to the ledger account of M/s Sai Logistical Parts and reference in the said regard is made to Annexures P-28 to P-30. It is argued that as per the stand of the State, same has not been included on account of the fact that Suman Soni, wife of the petitioner is not owner of the premises in question whereas the present petitioner is the owner and the non-inclusion of the said income on the said ground is absolutely illegal inasmuch as the income and expenditure of the petitioner, his wife Suman Soni and of his son Raghav Soni have been taken into consideration by the Investigating Agency during the "check period" and since, at any rate, the petitioner is the owner of the premise in question thus, to exclude the said income is absolutely illegal and against law.

15. Similarly, with respect to point Nos.8 to 14 and 20, specific reference has been made to the detailed income chart highlighting the fact that amount mentioned in the column under the heading "Amount of variation", has not been taken into consideration in spite of the said transactions being duly supported by the bank statements, ledger accounts etc., which have been duly been annexed with the present petition.

16. With respect to point Nos.15 to 19 of the income chart, it has been submitted that the account statement of the account of Raghav Soni in Axis Bank, which has already been produced on record and marked as Mark "A" and a copy of which had been handed over to the learned State counsel on 12.10.2023, would show that an amount of Rs.1,41,40,000/- has been received by Raghav Soni from Sabrina Soni through bank transactions during the "check period" and specific reference in this regard has been made to the entries dated 18.05.2016, 17.06.2016, 26.10.2016, 21.01.2017, 25.01.2017, 17.11.2017, 22.08.2019, 16.01.2020, 05.03.2020, 15.07.2020,

24.11.2020, 16.12.2021, 25.12.2021 and 02.01.2022. It is submitted that Sabrina Soni has her own sources of income and she is a Director in two companies. It is submitted that as per the challan, the difference in the expenditure and the income, was Rs.10,08,98,735.78 which was alleged to be unexplained whereas the petitioner has, as per the chart Mark 'B', proved that an amount of Rs.10,77,11,886/- has been wrongly included in the expenditure/wrongly not included in the income and thus, it cannot be said that the petitioner has disproportionate income/assets.

17. Learned senior counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court dated 31.05.2022 passed in ***Special Leave to Appeal no.5273/2022*** titled as ***"State of Chhattisgarh vs. Gurjinder Pal Singh"*** in which the State had filed SLP against the grant of regular bail by the High Court in a case of disproportion assets registered under the Prevention of Corruption Act, 1988. The High Court while granting bail had observed that the said petition was nothing but an unwarranted exercise on behalf of the petitioner-State (therein) and that in a case of disproportionate assets, most of the evidence is based on documents and therefore, there is no question of tampering such evidence in spite of the accused therein being a senior police official and accordingly, the said petition filed by the State was dismissed.

18. Learned senior counsel for the petitioner has submitted that it is a matter of settled law that in case the difference between the known source of income and the expenditure is upto 10%, then the person cannot be held guilty for having disproportionate income and for the said proposition, reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Krishnanand Agnihotri vs. The State of Madhya Pradesh*** reported as ***(1977)1 SCC 816.*** Relevant portion of ***Krishnanand***

Agnihotri's case (supra) which has been highlighted by the learned senior counsel for the petitioner is reproduced hereinbelow:-

> *"33. It will, therefore, be seen that as against an aggregate surplus income of Rs. 44,383.59 which was available to the appellant during the period in question, the appellant possessed total assets worth Rs. 55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him.* ***but since the excess is comparatively small - it is less than ten per cent of the total income of Rs. 1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under Sub-section (3) of Section 5****. We are of the view that, on the facts of the present case the High Court as well as the Special Judge were in error in raising the presumption contained in Sub-section (3) of Section 5 and convicting the appellant on the basis of such presumption."*

19. On the basis of the said submissions, learned senior counsel for the petitioner has submitted that the present petition for grant of regular bail be allowed and has prayed that the petitioner be released on regular bail.

<u>ARGUMENTS OF LEARNED STATE COUNSEL:-</u>

20. Learned State counsel has opposed the present petition for regular bail and has submitted that with respect to the medical condition of the petitioner, the petitioner has been admitted in Guru Nanak Dev Hospital, Amritsar while in judicial custody and has been provided with all the required medical facilities in accordance with the rules and procedure, and thus, there is no justification for grant of regular bail to the petitioner on account of his medical condition. It is further submitted that the investigating agency has carried out thorough investigation and after thorough investigation, a detailed challan under Section 173(2) Cr.P.C. has been presented and as per the said challan, the expenditure incurred by the petitioner, his wife and his son during the check period from 01.04.2016 to 31.03.2022 was Rs.14,91,86,253/- whereas the income of the said three persons during the check period from their known sources was

Rs.4,82,87,517/- and thus, their expenditure was in excess of their known sources of income to the extent of Rs.10,08,98,735.78/-.

21. With respect to point no.1 of the income chart (Mark 'B'), it has been stated that a total amount of Rs.1,24,46,718/- cannot be considered as salary amount of the petitioner as the amount which has been received by the petitioner as salary in the capacity of MLA was Rs.20,62,053/- and Rs.40,02,740/- being a cabinet minister/Deputy Chief Minister during his tenure and as per the information provided by the Joint Secretary, Accounts Branch, payment of the travel allowances, petrol expenses and medical reimbursement are made to the concerned member on the presentation of the original bills of expenditure and clarification with respect to all the expenses/allowances has been sought from the Account Branch, Civil Secretariat, Punjab from where the petitioner was withdrawing salary during his tenure of Cabinet Minister. It is stated that since the allowances are in fact reimbursement of the actual amount spent, thus, the said amount cannot be included in the total salary. With respect to point no.2, it is argued that the amount of Rs.8,75,000/- cannot be added in the income of the petitioner as the installment of Rs.35,00,000/- was disbursed in the check period for the construction of the house and since the loan was taken jointly by the petitioner, his son and his nephew Vikas Soni, thus, the share of Vikas Soni to the extent of 1/4th in the aforesaid installment cannot be included as he is not a family member.

22. With respect to point No.2 of the expenditure chart (Mark 'B'), it has been stated that the investigating agency has taken into consideration the amount of Rs.53,61,100/- and Rs.80,41,650/- with respect to the purchase of land measuring 11 kanal 11 marla and 3 sarsayian at village Sichander, District Amritsar as 20% share of the said property belongs to

the petitioner and 30% share belongs to his wife Suman Soni and thus, 50% of the value of the said sale deed has been taken into consideration by the investigating agency while calculating the expenditure of the petitioner and his wife and his son, which has been done in accordance with law. It is, however, not disputed that the total amount of the sale consideration with respect to the purchase has been paid from the bank accounts of Shyam Soni and Vikas Soni (Annexures P/55-P/58). With respect to point nos.5 and 6 of the expenditure chart, it is submitted by learned State counsel that the amounts of Rs.15,46,539/- and Rs.30,02,055/-, being 3/4th share of the salary of the petitioner, have been rightly calculated as personal expenditure of the petitioner as per settled norms and it is a matter of common knowledge that a person would spend 3/4th of his income on his personal expenses.

23. On a pointed query raised by this Court with respect to the other points, learned State counsel has fairly submitted that although, certain objections have been raised in the reply dated 11.10.2023 but on the basis of the chart and the documents submitted along with the petition which have been verified, point nos.3, 4, 7, 8, 9, 10, 11 and 20 of the income chart and point nos.1, 4, 7, 8, 9, 11, 12 and 13 of the expenditure chart cannot be disputed and with respect to point nos.5, 6, 12, 13, 14, 15, 16, 17, 18, 19 of the income chart and point Nos.2 and 3 of the expenditure chart, it is submitted that although the bank transactions and other documents in support of the said entries have been produced and the same are not being disputed but the bonafide of the said transactions is disputed inasmuch as under certain points, gifts have been received by the petitioner from relatives and friends, which are questionable transactions.

<u>ARGUMENTS OF LEARNED SENIOR COUNSEL FOR THE</u>

PETITIONER IN REBUTTAL:-

24. Learned senior counsel for the petitioner, in rebuttal, has submitted that with respect to point no.1 of the income chart and point nos.5 and 6 of the expenditure chart, the investigating agency on one hand has excluded the amount received by the petitioner on account of allowances etc. on the ground that they are actual expenses but on the other hand, have sought to deduct 3/4th share as spent on personal expenditure. It is submitted that in case the investigating agency wishes to proceed on the premise that travel allowances etc. have been utilized by the petitioner for the purpose for which they were given, then in that situation substantial expenses of the petitioner had already been met and thus, the question of deducting 3/4th share on account of personal expenditure is not called for. It is stated that the facilities which are available to an MLA/Minister would not require them to entail high personal expenditure from their own pocket and thus, the principle which is propounded by the State Counsel might be applicable to a person carrying on private business but would not be applicable to the petitioner. With respect to point no.2 of the expenditure chart, it is reiterated that the sale consideration had been actually paid by Shyam Soni and Vikas Soni regarding which, there are bank transactions and even in the sale deed, there is a reference to the cheque amount which has been debited from the account of Shyam Soni and Vikas Soni and thus, the amounts of Rs. 53,61,100/- and Rs.80,41,650/-, cannot be stated to be expenditure incurred by the petitioner or his wife or his son. In rebuttal to the plea of learned State counsel to the effect that there are certain transactions which are although proved from the bank statements etc. but the question as to whether the said transactions are bonafide or not, is an issue, it is submitted that once during the "check period", it is proved by virtue of bank

transactions or other genuine documents that the petitioner had received certain sums from a third party or even from a relative, then the said amounts have to be taken into consideration in favour of the petitioner and the petitioner cannot be criminally prosecuted on a plea that the transaction although prima facie proved from the said document, is, as per the stand of the investigating agency, not bonafide, moreso when there is no other evidence as per the report under Section 173 (2) Cr.P.C. to show that the transaction had actually not taken place or was not bona fide. It is stated that even in case point no.2 of the income chart is excluded from the total income and some part of the income as shown in point no.1 is also excluded, then also, the income which has not been taken into consideration and the expenditure which has wrongly been taken into consideration, would still cover the difference which is sought to be projected in the report under Section 173(2) Cr.P.C.

FINDING:-

25. This Court has learned counsel for the parties and has perused the paper book.

26. It is not in dispute that the petitioner was arrested on 09.07.2023 and the investigation is complete and the report under Section 173(2) Cr.P.C. which was prepared on 29.08.2023 has been presented in the Court on 31.08.2023 and there are 49 prosecution witnesses and since charges have not been framed, thus, the trial is likely to take time and the petitioner is not involved in any other case. It is the case of the petitioner that the Vigilance Enquiry was initiated on 10.10.2022 and the petitioner had duly cooperated in the same for a period of 8 months and had also provided the record which was sought from him. It is also the case of the petitioner that he is not keeping good health inasmuch as a pace maker was

implanted in his body in the year 2019, as he was diagnosed with a Cerebrovascular accident (CVA) and in the year 2021, another pace maker was implanted in the body of the petitioner and the surgeries for the same were performed at Lilawati Hospital, Mumbai and that the petitioner, apart from the above, is also suffering from Diabetes Mellitus, Hypothyroidism, Hypertension. On 14.09.2023, a medical board was constituted to look into the upgradation of the petitioner's already implanted pacemaker from a renowned institute such as PGIMER and the said medical board had recommended that the petitioner needs placement of third pacemaker in the left ventricle with CTVS backup. Guru Nanak Dev Hospital, Amritsar, where the petitioner is presently being treated, had prepared a discharge summary on 22.09.2022 (Annexure P-7), the relevant portion of which is reproduced herienbelow:-

> *"Medical board was constituted in GMDH/GMC Amritsar on 14/9/23 for assessment of patient medical condition. As per the assessment and recommendation of above board, patient needs placement of 3rd xxx pacemaker in the left ventricle with CTVS backup. Hence patient is discharged and referred to PGI Chandigarh for further management."*

A perusal of the above would show that Guru Nanak Dev Hospital had referred the petitioner to PGI for further management. It is further the case of the petitioner that while being taken to PGI from Amritsar, his health deteriorated on the way and thus, he was taken back to Guru Nanak Dev Hospital, Amritsar where he is presently admitted. The factum of admission of the petitioner in Guru Nanak Dev Hospital, Amritsar on account of ill health, is not disputed. The document and the reports of the doctors/medical opinion annexed as Annexures P-6 and P-7 also prima facie show that the petitioner is not keeping good health. The said aspect is also substantiated by the fact that on 19.07.2023, when the petitioner was produced before the CJM, Amritsar, the CJM, Amritsar while remanding the petitioner to custody had directed the Superintendent, Central Jail, Amritsar to provide medical assistance to the petitioner as per Jail Rules and the Jail Superintendent had kept the petitioner in the jail hospital under medical supervision and thereafter shifted the petitioner to Guru Nanak Dev Hospital, Amritsar on account of his deteriorating health. Although, it is the case of the State that proper medical facilities are being provided, it is the plea of the petitioner that his previous operation was conducted at Lilawati Hospital, Mumbai and even for the present medical condition of the petitioner, the petitioner would want further medical treatment from Lilawati Hospital, Mumbai or any other such reputed institute. It is not in dispute that the entire case is based on documents, which form a part of the report under Section 173(2) Cr.P.C..

27. As per the allegations in the report under Section 173 (2) Cr.P.C., the total expenditure incurred by the petitioner, his son Raghav Soni and his wife Suman Soni for the check period from 01.04.2016 to 31.03.2022 was Rs. 14,91,86,253/- and the income of the said person for the said period was Rs.4,82,87,517/- and thus, an amount of Rs.10,08,98,735.78/- was found to be unexplained by the investigating agency. Learned senior counsel for the petitioner had referred to the detailed chart Mark 'B' to highlight the fact that several items of expenditure have been wrongly included as expenditure of the petitioner, his wife and his son. The chart Mark 'B', also refers to the details of the income which although, have been earned by the petitioner, his wife and his son during the "check period" but have not been taken into consideration by the Investigating Agency. Relevant part of the chart Mark 'B' showing the details of the expenditure is reproduced hereinbelow:-

EXPENDITURE CHART XXX XXX XXX

SR. NO.	DESCRIPTION	AMOUNT AS PER THE CHALLAN	AMOUNT AS PER APPLICANT	REMARKS	AMOUNT OF VARIATION	ANNEXURES
1.	Amount Deposited on Completion of Check Period by Om Parkash Soni (Ex. Dy. Chief Minister, PB.) in Punjab National Bank (Queens Road) Amritsar Account No.01302010013440.	1,90,711/-	1,26,744/-	As per certified Bank Statement	63,967/-	Copy of Bank Statement is annexed as **ANNEXURE P-54**.
1.	Amount Deposited by Om Parkash Soni (Ex. Dy. Chief Minister) and with his family members on Dated 12.06.2019 for buying plot measuring 11 Kanal 11 Marle and 3 sarsayian situated at Village Sichander Distt. Amritsar amounting to Rs. 2,50,00,000/-, for Stamp Paper, Rs. 13,50,000/- and Rs. 5,00,000/- including Registration Amount. In total Rs. 2,68,50,000/- (20% share belongs to Om Parkash Soni, 30% Share belongs to Suman Soni) including all the expenses of Registration and Stamp papers.	53,61,100/- 80,41,650/-	NIL	The entire sum has been paid by my nephews from their declared sources of Income as per detail below- Shyam Soni Rs. 50,00,000/- Vikas Soni Rs. 2,18,05,800/- The entire record of Bank Statements, Income Tax Returns of the above named Shyam Soni & Vikas Soni, were filed with the Investigating Agency during the course of the enquiry proceedings prior to registration of FIR.	53,61,100/- 80,41,650/-	Excel Chart of the cheques paid by Shyam Soni & Vikas Soni is annexed as **ANNEXURE P-55**. Copy of Bank Statement of Shyam Soni with abovementioned cheque entries duly highlighted is annexed as **ANNEXURE P-56**. Copy of Bank Statement of Vikas Soni with abovementioned cheque entries duly highlighted is annexed as **ANNEXURE P-57**. Copy of the Purchase Deed of the property in which the payments cheques duly mentioned is annexed as **ANNEXURE P-58.**
2.	Amount of Rs. 3,98,317/- Deposited by Om Parkash Soni Ex. Deputy Chief Minister, Raghav Soni (Son) and his Nephew for Sanction of Map from Development Authority for Bunglow situated at D.R Enclave Village Heir Ajnala Road, Amritsar. **3/4th share of the expense is done by**	2,98,737/-	NIL	The entire sum has been paid by my nephew from his declared sources of Income as per detail below- Vikas Soni 3,98,317/-	2,98,737/-	Copy of Bank Statement of Vikas Soni with cheque entries duly highlighted is annexed as **ANNEXURE P-59**.

	Om Parkash Soni and his son Raghav Soni.					
3.	Amount of Rs. 5,72,24,284/- according to technical team is Deposited by Om Parkash Soni (Ex. Dy. Chief Minister), Raghav Soni (Son) and his Nephew for construction of bunglow situated at D.R Enclave Village Heir Ajnala Road, Amritsar. ¾th share of the expense is done by Sh. Om Parkash Soni and his son Raghav Soni.	4,29,18,213/-	1,02,53,163/-	This is the amount that has been paid from the bank statements of the Petitioner and his immediate family members upto 31st March 2022. Pertinently, the Investigating Agency has also included the amount that has been spent after the completion of the Check Period. Clearly, the Investigating Agency has without any documentary evidence assumed and presumed that the entire amount was paid and 3/4th expenditure has been done by the Petitioner which is completely misplaced and incorrect as per the record.	3,26,65,050/-	Government Approved Valuer's certificate of Valuation of Cost of Construction as on 31st March 2022, is annexed as **ANNEXURE P-60.** Ledger Accounts of the Cost of Construction as on 31st March 2022, is annexed as **ANNEXURE P-61.** Agreement with the Main Construction Contractor for Civil Works is annexed as **ANNEXURE P-62.** The Bills of the Construction with the suppliers and contractors can be produced as and when required by this Hon'ble Court and the same have not been annexed to avoid the Petition from being voluminous.
4.	Amount received by Om Parkash Soni as MLA from Punjab Vidhan Sabha as Salary amounting Rs. 20,74,890/- from which he had spent 3/4th	15,46,539/-	Denied. Correct amount shall be proved during trial	Clearly, the Investigating Agency has without any documentary evidence assumed and presumed that 3/4th expenditure has been done by the Applicant which is completely misplaced and incorrect as per the record		
5.	Amount Received by Om Parkash Soni as Minister from Punjab Vidhan Sabha as Salary amounting Rs. 40,02,740/- from which he had spent 3/4th	30,02,055/-	Denied. Correct amount shall be proved during trial	Clearly, the Investigating Agency has without any documentary evidence assumed and presumed that 3/4th expenditure has been done by		

				the Applicant which is completely misplaced and incorrect as per the record		
6.	Amount of Rs. 30,00,000/- for CLU of House situated at 368-A, Tung Bala, Urban Green Avenue, Amritsar by Raghav Soni from which he had spent ½ share. This is wrong, the premises has been leased out to M/s Golden Alliance Hospitality Pvt Ltd. and the said charges have been paid by the said Company.	15,37,568/-	NIL	Vide the Lease Deed dated 01.02.2021, Raghav Soni had already leased the said Land to M/s Golden Alliance Hospitality Pvt Ltd. for the Construction of Hotel. The terms of the Lease Deed clearly state that the entire expense on CLU, Map Approval, Cost of Construction, etc. is to be incurred by the name Lessee company. The impugned payment of Rs. 30,00,000/- has been made from the Bank Account of the Lessee Company from its regular bank account duly accounted in that company's CA Audited books of accounts.	15,37,568/-	Copy of the Registered Lease Deed dated 01.02.2021 is annexed as **<u>ANNEXURE P-63</u>**. Copy of the CLU fee payment receipt is annexed as **<u>ANNEXURE P-64</u>**. Bank Statement of the Lessee Company from which the payment deposited, is annexed as **<u>ANNEXURE P-65</u>**. Ledger Account from the books of the Lessee Company in which the said CLU Expense duly accounted for, is annexed as **<u>ANNEXURE P-66.</u>**
7.	Amount of Rs. 1,16,04,268/- spent by Raghav Soni with his Partner for The Construction of Hotel situated at 368-A, Tung Bala, Urban Green Avenue, Amritsar. From which he had spent ½ according to technical team. This is wrong, the premises has been leased out to M/s Golden Alliance Hospitality Pvt Ltd. and the said construction charges have been paid by the said Company.	58,02,134/-	NIL	Vide the Lease Deed dated 01.02.2021 Raghav Soni had already leased the said Land to M/s Golden Alliance Hospitality Pvt Ltd. for the Construction of Hotel. The terms of the Lease Deed clearly state that the entire expense on CLU, Map Approval, Cost of Construction, etc. is to be incurred by the name Lessee company. The impugned payment of Rs. 1,16,04,268/- has been made from the Bank Account of the Lessee	58,02,134/-	Ledger Account from the books of the Lessee Company in which the said Construction Cost duly accounted for, is annexed as **<u>ANNEXURE P-67.</u>** Copy of the Bills, Invoices of the Suppliers/ Contractor is annexed as **<u>ANNEXURE P-68</u>**.

				Company from its regular bank account duly accounted in that company's CA Audited books of accounts.		
8.	Amount of Rs. 1,54,10,948/- spent for buying furniture by Golden Alliance Hospitality, Green Avenue, Amritsar from Hotel Sarovar. From which Raghav Soni had spent 1/4th This is wrong, the premises has been leased out to M/s Golden Alliance Hospitality Pvt Ltd. and the said furniture has been paid by the said Company.	38,52,737/-	NIL	In terms of the Registered Lease Deed dt. 23.06.2015, the Hotel has been constructed and operated by M/s Golden Alliance Hospitalities Pvt Ltd. (Lessee). The entire cost of Construction, Electrical Fittings, Furniture and Fixtures, Other Fixed Assets has been duly paid and accounted for in the Books of Accounts of the said Lessee Company. The Audited Financial Statements of the Lessee Company show Cost of Fixed Assets at Rs. 17,30,92,600/- including the Cost of Furniture & Fixtures at Rs. 2,14,67,300/- The amount accounted for the Furniture in books of the Lessee Company is much more than the cost estimated by the Investigating Agency.	38,52,737/-	CA Attested Schedule of Fixed Assets of the Lessee Company as on 31st March 2022, is annexed as **ANNEXURE P-69.**
9.	Amount deposited as tax by Raghav Soni s/o Om Parkash Soni to Income Tax Department	32,34,800/-				
10.	Amount deposited as tax by Suman Soni w/o Om Parkash Soni to Income Tax Department.	2,78,500/-	1,07,500/-	The amount has been incorrectly computed by the Investigating Agency, as they have ignored the TDS refunds received in Account.	1,71,000/-	Reconciliation Table indicating the Tax Due and Tax Deposited actually, is annexed as **ANNEXURE P-71**.
11.	As candidate amount Spent by Om Parkash Soni as election expenses in Vidhan sabha Elections 2017 for Amritsar Central constituency, Amritsar.	18,76,918/-	25,000/-	The amount is the total expenditure as verified and approved by the Election Commission of India, whereas the Applicant has only deposited	18,51,918/-	Statement of the Bank A/c No. 91601001420 8530 is annexed as **ANNEXURE P-72.**

				Rs. 25,000/- in the Election Fund Account, which is duly opened and maintained as a separate Bank Account in a Scheduled Bank, as per the guidelines of ECI. The balance of the funds are received and collected from the Donors which record has been duly verified and approved by the ECI.		Details of the ECI mandated record of the expenses incurred is annexed as **ANNEXURE P-73** Details of the ECI mandated record of the funds & donations collected is annexed as **ANNEXURE P-74**.
12.	As candidate amount Spent by Om Parkash Soni as Election expenses in Vidhan sabha Elections 2022 for Amritsar Central constituency, Amritsar	23,53,890/-	16,000/-	The amount is the total expenditure as verified and approved by the Election Commission of India, whereas the Applicant has only deposited Rs 16,000/- in the Election Fund Account, which is duly opened and maintained as a separate Bank Account in a Scheduled Bank, as per the guidelines of ECI. The balance of the funds are received and collected from the Donors which record has been duly verified and approved by the ECI.	23,37,890/-	Statement of the Bank A/c No. 92101004343 2294, is annexed as **ANNEXURE P-75.** Details of the ECI mandated record of the expenses incurred is annexed as **ANNEXURE P-76**. Details of the ECI mandated record of the funds 7 donations collected is annexed as **ANNEXURE P-77**.
	TOTAL EXPENDITURE NOT DONE FROM THE ACCOUNTS OF OP SONI & FAMILY MEMBERS THAT HAS NOT BEEN CONSIDERED BY INVESTIGATING AGENCY				6,19,83,751/-	

INCOME CHART XXX XXX XXX XXX XXX

SR. NO.	DESCRIPTION	AMOUNT AS PER THE CHALLAN	AMOUNT AS PER APPLICANT	REMARKS	AMOUNT OF VARIATION	ANNEXURES
1.	Total salary received as M.L.A. by the Petitioner from 01.04.2016 to	20,62,053/-	1,24,46,718/- SALARY **1.4.2016 to 31.3.2017**: Rs.	The actual amount that has been received in the Bank Account of the Petitioner	63,81,925/-	Copy of the Bank Account in which the amounts have

	March 2018 Salary received by the Petitioner being minister from March 2018 to 31.03.2022	40,02,740/-	15,96,158/- **1.4.2017 to 31.3.2018**: Rs. 17,30,953/- **1.4.2018 to 31.3.2019**: 15,62,328/- **1.4.2019 to 31.3.2020**: Rs. 10,21,800/- **1.4.2020 to 31.3.2021**: Rs. 8,82,800/- **1.4.2021 to 31.3.2022**: Rs. 6,67,100/- ALLOWANCES: **1.4.2019 TO 31.3.2020**: Rs. 10,83,005/- **1.4.2020 to 31.3.2021**: Rs. 15,33,843/- **1.4.2021 to 31.3.2022**: Rs. 16,02,100/- TADA ALLOWANCE: **1.4.2021 to 31.3.2022**: Rs. 7,66,631/-	during the Check Period from the Punjab Govt. Treasury on account of the Salary and Allowances as MLA and later as Minister/ Deputy CM has been collated from the Bank Statement. This includes both the taxable as well as tax-free allowances received in the Bank. Whereas the Investigating Agency has only presented the Salary figure without matching the same with the Statement of Bank Accounts duly made available by the petitioner and the respective Bank. The allowances received by the Petitioner as a MLA and as a Minister are not taxable and hence, not shown in the Income Tax Returns, However, they are a clearly reflected in the Bank Account of the Petitioner.		been received from the Punjab Government treasury is annexed as **ANNEXURE P-8**. Copies of the Income Tax Returns of the Petitioner from 2016-2022 showing his taxable income as Salary is annexed as **ANNEXURE P-9** to **P-14** respectively.
1.	Loan of Rupees 2,45,00,000/- was got approved by the Petitioner jointly with his son Raghav Soni and nephew Vikas Soni for house construction from Punjab National Bank, Branch Cantt., Amritsar from 01.04.2016 to 31.03.2022 but during the check period, Rupees 35,00,000/- were found to have been	26,25,000/-	35,00,000/-	The construction expense has been met with by the entire family jointly and not specifically in the ratio of the land ownership shares.	8,75,000/-	

	withdrawn. Amount of ¾ share of Sh. Om Parkash Soni and his son Raghav Soni.					
2.	Amount received back from Dream Tech. Company by Raghav Soni from 01.04.2016 to 31.03.2022 The said Company was formed in the year 2012, wherein, Raghav Soni is a Director.	99,66,755/-	77,95,835/- (The said amount is the Salary received by Raghav Soni has a Director and has been reflected in his ITRs) 38,00,000/- (The said amount was given by Raghav Soni as a loan prior to the check period which was returned to Raghav Soni during the check period and since it was a loan, the same was not shown in the ITRs of Raghav Soni but is reflected in Ledger Accounts of the Company)	While the amount mentioned in the Challan is Rs. 99,66,755/- however, on the Page 10 of the Challan the details presented (though still incorrect) amount to Rs. 1,05,54,000/-. The correct figures duly tallied with the amounts received in the Bank Statement are as under- INTEREST RECIEVED: 46,92,000/- SALARY RECEIVED: 24,86,800/- TOTAL AMOUNT: 71,78,800/- TDS INCLUDED: 6,17,035/- **<u>GRAND TOTAL</u>**: <u>77,95,835/</u>- Further, a loan was returned from the said company amounting Rs. 38,00,000/-	16,29,080/-	Copy of Ledger Accounts of Salary Payable and Interest Payable indicating the cheques issued by the subject Company to Raghav Soni, is annexed as **<u>ANNEXURE P-15</u>**. Form 26AS of the period from 01.04.2016 to 31.03.2022 indicating the total TDS deducted by the said company, is annexed as **<u>ANNEXURE P-16</u>**. Ledger Accounts of the Unsecured Loans deposited with the said company out which the amount has been returned is annexed as **<u>ANNEXURE P-17</u>**. Copies of the ITRs of Raghav Soni are annexed as **<u>ANNEXURE P-18</u>** to **<u>P-22</u>** respectively.
3.	Amount received by the Petitioner as Advance from M/s Soni Bros., Agricultural Commission Agents	NOT INCLUDED BY THE INVESTIGATING AGENCY	9,00,000/- (The said amount was given as a loan by the Petitioner to the said Company	The subject amount is received during check period through proper banking channel and duly accounted for in the Books of Accounts. Since,	9,00,000/-	Bank Statement of the Petitioner duly highlighting the amount received as on 4-11-2019

			prior to the check period which was received back during the check period. Since it was a loan, the same was not shown in the ITRs of Petitioner but is reflected in Ledger Accounts of the Company)	the Petitioner has Agricultural Income, it is normal practice to collect advance from the Arhatiya		is annexed as **<u>ANNEXURE P-23</u>**. Copy of Ledger Account from M/s Soni Bros confirming the Advance given to the Petitioner is annexed as **<u>ANNEXURE P-24</u>**.
4.	Amount received by the Petitioner as Gifts from his real Brother Sh. Ashok Soni and real Sisters, viz. Smt. Sunita Chopra and Smt. Anu Puri	NOT INCLUDED BY THE INVESTIGATING AGENCY	43,66,000/- <u>Gift by Sunita Chopra (sister of Petitioner)</u>: **11.2.2021**: Rs. 11,50,000/- **22.2.2021**: Rs. 8,00,000/- **10.3.2021**: Rs. 2,16,600/- <u>Gift by Anu Puri (Sister of Petitioner)</u>: **2.9.2017**: Rs. 5,00,000/- <u>Gift by Ashok Soni (Brother of the Petitioner)</u>: **29.5.2019**: Rs. 3,00,000/- **1.11.2019**: Rs. 2,00,000/- **18.5.2020**: Rs. 3,00,000/- **20.4.2021**: Rs. 9,00,000/-	The subject amount was received during period from 01.04.2016 to 31.03.2022 through proper banking channel and duly paid out of the declared source of income of the relevant persons. They are not only the siblings of the Petitioner but also persons enjoying sufficient means of income and wealth	43,66,000/-	Bank Statement of the Petitioner duly highlighting the gift amounts received is annexed as **<u>ANNEXURE P-25</u>**. Copy of the Affidavits of the relevant donors is annexed as **<u>ANNEXURE P-26</u>**.
5.	Amount received by the Petitioner as friendly Unsecured Loans from his immediate Joint Family members, viz. Shyam Soni, Vikas Soni.	NOT INCLUDED BY THE INVESTIGATING AGENCY	14,50,000/- (During the check period, Loan of Rs. 34,50,000/- was taken by the Petitioner from his nephews Vikas Soni and Shyma Soni, however, an amount of Rs. 20 lakhs was returned by the Petitioner. Hence, the balance loan of Rs.	The subject amount is received during period from 01.04.2016 to 31.03.2022 through proper banking channel and duly paid out of the declared source of income of the relevant persons. They are not only the joint family members of the Petitioner but also persons enjoying sufficient means of income and wealth. The banking record and ITR's of these	14,50,000/-	Bank Statement of the Petitioner duly highlighting the Loan amounts received is annexed as **<u>ANNEXURE P-27</u>**.

			14,50,000/- has not been considered).	persons have been duly submitted to Investigating Agency during the course of the enquiry proceedings for their verification and satisfaction. The amount reported here is net figure after adjusting for any amounts returned back by the Petitioner		
6.	Amount received by Smt Suman Soni (wife of the Petitioner) from M/s Sai Logistical Parts as Rent	NOT INCLUDED BY THE INVESTIGATING AGENCY	11,34,000/-	Smt. Suman Soni has collected during period from 01.04.2016 to 31.03.2022 Rent from M/s Sai Logistical Parts on account of the Land & Building belonging to the Petitioner that had been rented out to the said firm for operating its business. The amount has been reported in the ITR filed by her and received in her bank account, both of which documents were made available to the Investigating Agency during the course of the enquiry proceedings.	11,34,000/-	Bank Statement of Smt. Suman Soni duly highlighting the rent amounts received is annexed as **ANNEXURE P-28**. Copy of the Ledger Account from M/s Sai Logistical Parts indicating the amounts paid to Smt Suman Soni is annexed as **ANNEXURE P-29**. GST Registration certificate of M/s Sai Logistical Parts indicating its operating business address from the subject property taken on rent, is annexed as **ANNEXURE P-30**.
7.	Amount received by Smt. Suman Soni as maturity of Life Insurance Policy	NOT INCLUDED BY THE INVESTIGATING AGENCY	2,22,413/-	The subject amount has been received during check period as maturity value in respect of the Life Insurance Policy held by her.	2,22,413/-	Bank Statement of Smt. Suman Soni duly highlighting the Life Insurance maturity amount from

						Kotak Mahindra received is annexed as **ANNEXURE P-31**.
8.	Amount received by Raghav Soni as Rent from M/s Golden Alliance Hospitality Pvt Ltd. The property was leased by Raghav Soni in the year 2015 i.e. before the Check period and after the Hotel was completed, the rent was received by Raghav Soni which is duly shown in his ITRs. (which are annexed above)	NOT INCLUDED BY THE INVESTIG ATING AGENCY	4,98,525/-	In terms of the Lease Deed dt. 23/06/2016, rent has been paid by Lessee Company to Raghav Soni which has been duly received in his bank account during check period. The amount had been reflected in the ITR filed by him and received in his bank account, both of which documents were made available to the Investigating Agency during the course of the enquiry proceedings.	4,98,525/-	Bank Statement of Raghav Soni duly highlighting the rent amounts received, is annexed as **ANNEXURE P-32**. Copy of the Ledger Account from M/s Golden Alliance Hospitalities indicating the rent amounts paid to Raghav Soni, is annexed as **ANNEXURE P-33**. Lease Deed dt. 23/06/2015, is annexed as **ANNEXURE P-34**.
9.	Amount received by Raghav Soni as return of Capital invested from M/s Olive International The said M/s Olive International was closed before the Check Period and was not operating during the said period.	NOT INCLUDED BY THE INVESTIG ATING AGENCY	7,00,000/-	During the check period Raghav Soni has received back the capital invested in the said firm prior to commencement of check period, i.e. 1st April 2016	7,00,000/-	Bank Statement of Raghav Soni duly highlighting the amounts received, is annexed as **ANNEXURE P-35**. Copy of the Ledger Account from M/s Olive International indicating the amounts paid to Raghav Soni, is annexed as **ANNEXURE P-36**.
10.	Amount received by Raghav Soni as maturity of Life Insurance Policies.	NOT INCLUDED BY THE INVESTIG ATING AGENCY	13,57,442/-	The subject amount has been received as maturity value during check period in respect of the Life Insurance Policies as per	13,57,442/-	Bank Statement of Raghav Soni duly highlighting the LIC maturity

				following details- HDFC: 78,750 as on 26-5-2017 HDFC: 6,64,300 as on 03-02-2020 RELIANCE: 6,14,391 AS ON 29-4-2016		amounts received is annexed as **ANNEXURE P-37**. Maturity Value payment certificate from the Insurance Company, is annexed as **ANNEXURE P-38**.
11.	Amount received by Raghav Soni as Gifts from Sh Ashok Soni (brother of Petitioner)	NOT INCLUDED BY THE INVESTIGATING AGENCY	39,20,000/-	The subject amount is received during check period through proper banking channel and duly paid out of the declared source of income of Sh Ashok Soni. He is not only real Uncle of Raghav Soni but also a person enjoying sufficient means of income and wealth.	39,20,000/-	Bank Statement of Raghav Soni duly highlighting the gift amounts received is annexed as **ANNEXURE P-39**. Copy of the Affidavit of Sh Ashok Soni is annexed as **ANNEXURE P-40**.
12.	Amount received by Raghav Soni as friendly Unsecured Loans from his immediate Joint Family members, viz. Shyam Soni, Vikas Soni, Neha Soni	NOT INCLUDED BY THE INVESTIGATING AGENCY	18,76,000/- (During the check period, Loan of Rs. 38,90,000/- was taken by Raghav Soni from his joint Family members Vikas Soni, Neha Soni and Shyma Soni, however, an amount of Rs. 20,14,000/- was returned by Raghav Soni. Hence, the balance loan of Rs. 18,76,000/- has not been considered).	The subject amount is received during check period through proper banking channel and duly paid out of the declared source of income of the relevant persons. They are not only the joint family members of Raghav Soni but also persons enjoying sufficient means of income and wealth. The banking record and ITR's of these persons have been duly submitted to the Investigating Agency during the course of the enquiry proceedings for their verification and satisfaction. The amount reported here is net figure after	18,76,000/-	Bank Statement of Raghav Soni duly highlighting the Loan amounts received, is annexed as **ANNEXURE P-41**. Copy of the Affidavits of the relevant persons is annexed as **ANNEXURE P-42.**

				adjusting for any amounts returned back by Raghav Soni.		
13.	Amount received by Raghav Soni as friendly Unsecured Loans from Ms Sukhbir Kaur, S. Arjinder Singh and S. Gurcharan Singh (Friends of Raghav Soni)	NOT INCLUDED BY THE INVESTIGATING AGENCY	53,00,000/- Loan from Sukhbir Kaur: Rs. 38,00,000/- Arjinder Singh: 5,00,000/- Gurcharan Singh: 10,00,000/-	The subject amount is received during check period through proper banking channel and duly paid out of the declared source of income of the relevant persons. They are friends of Raghav Soni and persons enjoying sufficient means of income and wealth. The Affidavits of these persons have been duly submitted to the Investigating Agency during the course of the enquiry proceedings for their verification and satisfaction. The amount reported here is net figure after adjusting for any amounts returned back by Raghav Soni.	53,00,000/-	Bank Statement of Raghav Soni duly highlighting the Loan amounts received is annexed as **ANNEXURE P-43**. Copy of the Affidavits of the relevant persons, is annexed as **ANNEXURE P-44.**
15-19	Amount held by Sabrina Soni (wife of Raghav Soni) in her account which were transferred to the account of Raghav Soni during the check period, the details of which have been handed over to the Hon'ble Court and have been taken on record as Mark A	NOT INCLUDED BY THE INVESTIGATING AGENCY	18.5.2016:- 1,00,000/- 17.6.2016:- 5,00,000/- 26.10.2016:- 4,50,000/- 21.1.2017:- 5,00,000/- 25.1.2017:- 5,00,000/- 17.11.2017:- 10,00,000/- 22.8.2019:- 10,00,000/- 16.1.2020:- 1,00,000/- 5.3.2020:- 1,50,000/- 15.7.2020:-	All the said amounts have been transferred by Sabrina Soni (wife of Raghav Soni) in her account which were transferred to the account of Raghav Soni during the check period through Bank transactions and the same are from her known sources of income.	1,41,40,000/-	Bank Statement of Raghav Soni wherein the said amounts have been received has been taken on record by the Hon'ble Court as Mark A.

			15,00,000/- 24.11.2020:- 34,00,000/- 10.12.2021:- 10,00,000/- 25.12.2021:- 20,00,000/- 2.1.2022:- 19,40,000/-			
20	Income Tax Refund received by Sh. Om Parkash Soni	NOT INCLUDED BY THE INVESTIGATING AGENCY	9,77,750/-	This amount is duly credited into the Bank Account of Mr. Om Parkash Soni during the check period. The said is refund of his earlier Income Tax which has been refunded in his account during the Check Period from official sources.	9,77,750/-	Bank Statement of the Petitioner is annexed as **ANNEXURE P-53**
	TOTAL INCOME RECEIVED IN ACCOUNTS OF OP SONI & FAMILY MEMBERS NOT CONSIDERED BY INVESTIGATING AGENCY				4,57,28,135/-	

A perusal of the above-reproduced chart would show that as per the case of the petitioner, total expenditure, which has not been incurred by the petitioner, his wife and his son, has been wrongly taken into consideration by the investigating agency amounts to Rs.6,19,83,751/- and similarly the total income, which has not been taken into consideration by the investigating agency of the said three persons during the check period amounts to Rs.4,57,28,135/- and the total of the said two entries add up to Rs.10,77,11,886/- which is more than the amount i.e., Rs.10,08,98,735.78 which was stated to be unexplained as per the report under Section 173 (2) Cr.P.C. It would be relevant to note that point nos. 1,4, 7, 8, 9, 11, 12 and 13 from the expenditure chart have not been disputed and the total of the said points amounts to Rs.4,82,82,264/-. Similarly, point nos.3, 4, 7, 8, 9, 10, 11 and 20 of the income chart are not disputed and total of said points comes to Rs.74,19,210/- and the total of the above said two figures amounts to Rs.5,57,01,474/-. The said points are not disputed as the petitioner along with the present petition has been able to produce documents including bank statement, details of cheques vide which payments were made, ledger accounts, registered lease deed dated 01.02.2021 etc. in support of the said points and as has been recorded in para 23 of the present order, the State Counsel has fairly stated that although, in the reply, certain objections were raised regarding the said points but after verifying the documents annexed with the petition, the said points are not disputed.

28. With respect to point nos.2 and 3 of the expenditure chart, amounting to Rs.1,37,01,487/- and point nos. 5,6,12,13,14,15,16,17, 18 and 19 of the income chart totaling to Rs.3,10,52,000/- and the total of the said points comes to Rs.4,47,53,487/-, the bank transaction etc. through which the transaction has taken place has not been disputed by the State counsel as has been recorded in para 23 of the present order but it is the argument of the learned State counsel that bonafide of the said transactions is disputed, inasmuch as, under certain points, gifts have been received by the petitioner from relatives and friends which modus operandi has been used to convert money illegally earned. In rebuttal to the plea of learned State counsel to the effect that there are certain transactions which are although proved from the bank statements etc. but the question as to whether the said transactions are bonafide or not, is an issue, it had been submitted on behalf of the petitioner that once during the “check period”, it is proved by virtue of bank transactions or other genuine documents that the petitioner had received certain sums from a third party or even from a relative, then the said amounts have to be taken into consideration in favour of the petitioner and

the petitioner cannot be criminally prosecuted on the plea that the transaction although prima facie proved from the said document, is, as per the stand of the investigating agency, not bonafide, moreso when there is no other evidence as per the report under Section 173 (2) Cr.P.C. to show that the transaction had actually not taken place or was not bona fide. The said argument on behalf of the petitioner and the State raises a debatable issue and the same would be finally adjudicated by the trial Court and this Court does not wish to give any affirmative opinion on the same lest the same may prejudice the case of either of the parties in the trial.

29. Points no.1 and 2 of the income chart and point nos.5 and 6 of the expenditure chart are the main entries with respect to which the entire transaction is disputed. It is the case of the State that the total amount of Rs.1,24,46,718/- cannot be taken to be salary, allowances of the petitioner as the petitioner has only received a salary of Rs.20,62,053/- as MLA and Rs.40,02,740/- as a Minister during the "check period" and thus, the benefit of Rs.63,81,925/- which is sought to be taken by the petitioner is not made out. It is further the case of the State that the petitioner has included the allowances in the said total income which would not be permissible inasmuch as the said allowances are in the form of reimbursement for the actual expenses incurred by the petitioner and for which original bills are presented and with respect to point nos.5 and 6 of the expenditure chart, it is the case of the State that the investigating agency had deducted 3/4th salary of the petitioner on account of personal expenditure as per settled practice as a substantial amount of salary of a person is spent on their personal expenditure. Contrary arguments on behalf of the petitioner, as have been noticed hereinabove, are to the effect that with respect to point no.1 of the income chart and point nos.5 and 6 of the expenditure chart, the

investigating agency on one hand has excluded the amount received by the petitioner on account of allowances etc. on the ground that these are actual expenses but on the other hand have sought to deduct 3/4th share of the salary of the petitioner as his personal expenditure. It is submitted that in case the investigating agency wishes to proceed on the premise that the travel allowances etc. have been utilized by the petitioner for the purpose for which they were given, then in that situation substantial expenses of the petitioner had already been met and thus, the question of deducting 3/4th on account of personal expenditure is not called for. It is stated that the facilities which are available to an MLA/Minister would not require them to entail high personal expenditure from their own pocket and thus, the principle which is sought to be propounded by the State Counsel might be applicable to a person carrying on private business but would not be applicable to the petitioner. The said argument also raises a debatable issue and with respect to which, this Court does not wish to give any final opinion and the same would be considered during the course of trial.

30. With respect to point No.2 of the income chart, the arguments of learned State Counsel to the effect that the benefit of Rs.8,75,000/- cannot be given to the petitioner, as the said amount is 1/4th share of Vikas Soni from the total installment of Rs.35,00,000/- and since, the said Vikas Soni is the nephew of the petitioner and neither his income nor his expenditure have been taken into consideration, carries weight.

31. From the abovesaid discussion, it comes about that in case the petitioner is able to prove all the points mentioned in Chart 'B' during the course of trial then the petitioner would be able to justify the difference between the income earned and the expenditure incurred by the petitioner, his wife and his son as alleged in the report under Section 173(2) Cr.P.C.

and even in case point nos.1 and 2 of the income chart amounting to Rs.63,81,925/- and Rs.8,75,000/- respectively (total Rs.72,56,925/-) are not taken into consideration then also the petitioner would be able to substantially justify the said difference.

32. The Hon'ble Supreme Court in ***State of Chhattisgarh's*** case (supra) has observed as under:-

> *"Mr. Mukul Rohtgi, learned senior counsel submitted that the respondent is a very high ranking police officer being Additional Director General of Police and has indulged in tampering of evidence. He submits that all these aspects have been ignored by the High Court while granting bail to the respondent.*
>
> ***We find that the present petition is nothing but a totally unwarranted exercise on behalf of the petitioner- State. While considering the application for bail, the status of the applicant is not to be considered. As an ordinary citizen is entitled to his rights under the Constitution, equally a high ranking officer cannot be denied the right under the Constitution. In a case of disproportionate assets, most of the evidence is documentary evidence and therefore, there is no question of tampering such an evidence.*** *Moreover, in any case the High Court has imposed stringent conditions to ensure the interest of the prosecution.*
>
> *The present Special Leave Petition is without any merit and is accordingly dismissed.*
>
> *Pending applications also stand disposed of."*

33. The present case is based on documentary evidence and the said documents are with the prosecution and the investigation qua the petitioner is complete and the report under Section 173 (2) Cr.P.C. has already been submitted and thus, no useful purpose would be served by keeping the petitioner in further incarceration.

34. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case and subject to the condition that the petitioner would surrender

his passport before the trial Court.

35. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

36. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present order which are only for the purpose of adjudicating the present bail petition. All questions with respect to the admissibility, relevance and genuineness of the documents submitted by both the parties are kept open, to be finally considered and adjudicated upon during the course of trial.

37. Pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

October 13, 2023
Pawan/Davinder Kumar

Whether speaking / reasoned Yes/No
Whether reportable Yes/No