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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**RESERVED ON -11.05.2023
PRONOUNCED ON -30.05.2023**

+ **BAIL APPLN. 1097/2023, CRL.M.(BAIL) 630/2023, CRL.M.A. 10429/2023, CRL.M.A. 12470/2023**

MANISH SISODIA

..... Petitioner

Through: Mr.Mohit Mathur, Sr. Advocate, Mr. Dayan Krishnan, Sr. Adv. with Mr. Vivek Jain, Mr. Mohd. Irshad, Mr. Mohit Siwach, Mr. Karan Sharma, Mr. Mohit Bhardwaj, Mr. Harsh Gautam, Ms. Sheenu, Mr. Rishikesh Kumar, Mr. Rohit Kaliyar, Mr. Mohit Bharadwaj, Mr. Sumit Mishra, Mr. Rishabh Sharma, Mr. Deepak Goyal, Mr. Rajat Jain and Mr. Aditya Raj, Advocates.

versus

CENTRAL BUERAUEU OF INVESTIGATION Respondent

Through: Mr. S. V. Raju, ASG with Mr. Anupam S Sharma, SPP, Mr. Zoheb Hossain, Mr. Ankit Bhatia, Mr. Prakarsh Airan, Mr. Vivek Gurnani, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

DINESH KUMAR SHARMA,J:

A. CASE OF C.B.I

1. In pursuance to the communication dated 20.07.2022 by Hon'ble Lt. Governor, Govt. of NCT of Delhi to the Union Home Secretary, a FIR bearing No. RC0032022A0053 dated 17.08.2022, PS CBI, ACB, New Delhi under section 120-B read with 477A IPC & substantive offences thereof against petitioner Sh.Manish Sisodia and others. In the FIR bearing No. RC0032022A0053 dated 17.08.2022, PS CBI, ACB, New Delhi under section 120-B read with 477A IPC & substantive offences, it was alleged that Sh. Vijay Nair, Former CEO of M/S Only Much Louder, an entertainment and event management company, Shri Manoj Rai, Ex-Employee of M/S Pernod Ricard, Sh. Amandeep Dhal, Owner of M/S Brindco Spirits and Sh. Sameer Mahendru, Owner Of M/S, Indo Spirit was



actively involved in irregularities in framing and implementation of excise policy of GNCTD of Delhi for the Year 2021-22.

2. It was further alleged that some L-1 license holders were issuing credit notes to retail vendors with an ab-initio intention to divert the funds as undue pecuniary advantage to public servants. In furtherance to this, they were showing false entries in their books of accounts to keep their record straight.

3. In the FIR it was also alleged that Sh. Amit Arora, Director of M/s Buddy Retail Pvt Limited, Shri Dinesh Arora, Shri Arjun Pandey were close associates of Sh. Manish Sisoda and were actively involved in managing and diverting the undue peculiar advantage collected from Liquor Licensees to accused public servants. It was also revealed that Sh. Sameer Mahendru, MD. M/s Indospirits had transferred an amount of one crore to account no. 10220210004647 of M/s Radha Industries maintained with UCO Bank, Rajendra Place, New Delhi. M/s Radha Industries is being managed by Shri. Dinesh Arora.

4. It was further alleged that Sh. Arun Ramchandra Pillai used to collect undue pecuniary advantage from Sh Sameer Mahendru, MD. M/s Indospirit for onward transmission to accused public servant through Sh. Vijay Nair. A person named Arjun Pandey has once collected a huge cash amount of about Rs 2-4 crores from Shri Sameer Mahendru on behalf of Shri Vijay Nair.

5. It was further alleged that M/s Mahadev Liquors, a proprietorship firm was granted L-1 License. Sh. Sunny Marwah was the authorized signatory of the firm Sh. Sunny Marwah was also a director in companies/firms being managed by the family of Late Sh. Ponty Chadha. Sources have informed that Sh. Sunny Marwah was in close contact with



accused public servants and has been regularly giving undue pecuniary advantage to them.

6. The role set up by the CBI against the Applicant is as under:
 - a. The Applicant, until recently, was the Deputy Chief Minister of Delhi and held 18 most important portfolios of the Government as a minister, including finance and excise.
 - b. The Applicant at the relevant time was also heading the GoM constituted for formulating the Excise Policy. There is ample evidence on record to show that Applicant is the chief architect of the conspiracy of tweaking and manipulating the formulation and implementation of the Excise Policy for causing pecuniary advantage and continues to yield unparalleled influence in the government.
 - c. Under the guise of bringing revolutionary changes to the Excise Policy, the Applicant misused his powers and introduced favourable provisions in the new policy. This was done to facilitate the monopolization of wholesale and retail liquor trade in Delhi for the accused persons of the South Group for siphoning off 6% out of 12% windfall profit margin for wholesalers provided in the policy in lieu of upfront money/kickbacks of INR 90-100 Crores paid by the South Group. Out of the said amount, INR 30 crores was paid through Hawala channels using Dinesh Arora. Further, cash payments through Hawala channels were made by Vijay Nair, close associate of the Applicant, to vendors engaged by Aam Aadmi Party for Goa Assembly Election 2022 through Chariot Media of Rajesh Joshi.
 - d. The Applicant misused his official position and dishonestly introduced changes to the Excise Policy under the influence of the South Group, through his close associate Vijay Nair. The changes introduced by the Applicant in the Excise Policy not only facilitated the cartelization of the liquor trade in Delhi by the South Group but also enabled the South Group to recover the kickbacks paid by them upfront. As a part of the said conspiracy, the Applicant increased the wholesale profit margin



from 5% to 12% without any cogent reason or justification. Investigation has revealed that the South Group was to recoup the money by way of such increased profit margin (6% commission was to be paid to the South Group from the 12% profit margin).

- e. The changes in the Excise Policy were made by the Applicant with malafide intention in utter disregard to the recommendations by an Expert Committee headed by then Excise Commissioner Sh. Ravi Dhawan, as well as opinions received from legal experts (when these recommendations were put in public domain) since the same did not favour the South Group. To further such conspiracy, no minutes of actual discussions in the GoM meetings were recorded and prepared. The file containing the Cabinet Note containing reference to such opinion of the Legal Experts, last handed over to the Petitioner, is missing till date.
- f. The Applicant also threatened and pressurised various officials including the Excise Commissioners, when they did not accede to his directions.
- g. To facilitate the monopolization of the liquor trade in Delhi, the Applicant also pressurised excise officials to grant wholesale license to one manufacturer namely, *M/s Indospirits*, despite pendency of complaints of cartelization / blacklisting against the said firm. Part of the upfront payment of kickbacks has been recouped by the accused persons of South Group through partnership in this firm.
- h. With the accused having captured the wholesale market of the two biggest players, the third largest wholesaler i.e., *M/s Mahadev Liquor* was coerced through excise officials of Punjab Government, then headed by Party of the Petitioner, to surrender its distribution license when it refused to participate in the conspiracy of facilitating the 6% commission out of 12% profit to South Group. After surrender of license(s), the major manufacturers previously attached with *M/s Mahadev Liquor* were pressurized and made to appoint wholesalers linked to South Group, which aspect is under further investigation. This was done to ensure an 85% control over the market share by the



South Group.

7. CBI has alleged that the petitioner is the kingpin and architect of the conspiracy as stated above.

B. BAIL APPLICATION BEFORE THE LD. SPECIAL JUDGE

8. The bail application moved by the petitioner before the learned Special Judge, CBI was dismissed vide order dated 31.03.2023 wherein the Special Judge inter alia held that the major recommendations made by the Expert Committee are stated to have been for a Govt. corporation owned wholesale model and allotment of maximum two shops per person through lottery system, however, such recommendations were not as per liking of the present petitioner and his colleagues, who were bent upon to frame a particular kind of excise policy leaving entire liquor trade in hands of private players for some monetary benefits and political reasons. Learned trial court also rejected the bail inter-alia on the following grounds:

“44. Thus, it is clear from the above discussion that the applicant had played the most important and vital role in the above criminal conspiracy and he had been deeply involved in formulation as well as implementation of the said policy to ensure achievement of objectives of the said conspiracy. The payment of advance kickbacks of around Rs. 90-100 crores was meant for him and his other colleagues in the GNCTD and Rs. 20-30 crores out of the above are found to have been routed through the co-accused Vijay Nair, Abhishek Boinpally and approver Dinesh Arora and in turn, certain provisions of the excise policy were permitted to be tweaked and manipulated by the applicant to protect and preserve the interests of South liquor lobby and to ensure repayment of the kickbacks to the said lobby. The evidence collected so far clearly shows that the applicant through the co-accused Vijay Nair was in contact with the South lobby and formulation of a



favourable policy for them was being ensured at every cost and a cartel was permitted to be formed to achieve monopoly in sale of certain liquor brands of favoured manufacturers and it was permitted to be done against very objectives of the policy. Thus, as per allegations made by prosecution and the evidence collected in support thereof so far, the applicant can prima facie be held to be architect of the said criminal conspiracy.

*45. Hence, in opinion of this court, the allegations made against the applicant are serious in nature and at this stage of the case, he does not deserve to be released on bail as he has been arrested in this case only on 26.02.2023 and investigation even qua his role has still not been completed, what to say about some other co-accused involved in the case whose roles are also yet being investigated. Mere filing of a chargesheet against seven other co-accused does not matter much in a case like this where deep rooted conspiracy for commission of some economic offences effecting the people at large is alleged to have been committed. Though, Ld. Senior Counsels for applicant have referred to certain observations made in the cases of **P. Chidambaram (Supra)** and **Satender Kumar Antil (Supra)** with regard to grant of bail in economic offences cases, but as already discussed, though bail can be granted even in such a case, but it does not mean that the same has to be granted necessarily and this may be one of the considerations, which coupled with certain considerations, can even be made a ground to deny bail to an accused. The observations about economic offences as made in the cases of **Y.S. Jagan Mohan Reddy (Supra)** and **Nimmagadda Prasad (Supra)** being relied upon by Ld. SPPs for CBI are rather found more suitable for disposal of the present application, which warrant for dismissal of the application because as held in these cases, the economic offences constitute a class apart and need to be visited with a different approach in the matter of grant of bail. It is so because in such matters deep rooted conspiracies are there and such cases even involved huge losses to the public funds and are, thus, required to be viewed seriously considering their grave nature effecting the economy*



*of the country as a whole and thereby posing a serious threat to the financial health of the country. Again, the observations in the case of **Satender Kumar Antil (Supra)** being referred to by Ld. Senior Counsel for applicant are found to have been made only with reference to cases falling under different categories of the accused persons who were not arrested by the investigating agencies and not with regard to cases of accused who have been arrested and are sought to be released on bail.*

46. Further, the applicant does not even satisfy the triple test as discussed above because though, admittedly, he cannot be considered to be a flight risk, but keeping in view his conduct as reflected from destruction or non-production of his previous mobile phones of the relevant period and also the apparent role played by him in not producing or missing of the file of one Cabinet Note put up through the then Excise Commissioner Sh. Rahul Singh, there may be serious apprehensions of destruction or tampering of some further evidence and even of influencing some prime witnesses of this case by him or at his instance, in case he is released on bail by the court.”

9. Learned trial court has rejected the bail on the ground of parity that the role played by Applicant cannot be equated with or put at par with the roles of other three accused who have been granted regular bail by the court earlier.

C. AVERMENTS MADE IN PRESENT BAIL APPLICATION

10. Aggrieved of this, the Applicant has filed the present bail application seeking bail on the ground that the petitioner is innocent and highly respected citizen and is victim of witch-hunt to malign the reputation of the Applicant. It has been stated that the petitioner is a person of high standing and was handling vital portfolios in the Govt. of NCT of Delhi. It has been further stated that the Applicant has always cooperated with the investigation and has never received or ever gained any undue advantage in



relation to any of the offences as alleged in the FIR. The Applicant has stated that there was no demand whatsoever of any alleged pecuniary advantage or any benefit in the present case and there is no material in this regard. It has been submitted that in the absence of demand and mens rea, the offence under PC Act is not made out. The petitioner has stated that there is no material on record to indicate his involvement in any of the alleged offence. The petitioner has stated that the new excise policy was duly approved by the Group of Ministers and the Cabinet. It was also approved by the Hon'ble Lt. Governor. The Applicant has stated that it is not necessary for the government to accept the recommendation of Ravi Dhawan committee. The petitioner has stated that statements made by the public servants under Section 161 Cr.P.C. cannot be relied upon at this stage. The petitioner has stated that the said alleged 3 legal opinions were taken by private retailers who for their own commercial interests were interested in the status quo in the existing excise policy being continued. The Applicant has stated that there is no material or evidence that Vijay Nair was acting on the instructions or as a representative of the Applicant. It has been stated that the learned Special Judge has misinterpreted the evidence. The Applicant has stated that qua the GoM report a massive hue and cry is made about change of profit percentage between 15.03.2021-19.03.2021. However, the same is of no relevance in the present case as no final decision or GoM report was made on 15.03.2021 which got amended/changed after 3 days by another GoM on 18/19.03.2021. That neither the alleged document dated 15.03.2021 nor the document 18/19.03.2021 were final reports of GoM. The final decision and recommendation of GoM was taken on 22.03.2022 by way of a detailed report. That in the said final GoM report



dated 22.03.2021 itself the said profit margin of 12% was justified for following reasons:

- a. That the L1 licensee is required to pay a fees of Rs. 5 crores as compared to Rs. 5 lakhs which was paid in the earlier policy. This was an increase of 10000% in the license fees which was supposed to be paid by the licensee.
- b. That to ensure strict standards and full proof quality control, under the new policy an L1 licensee was mandatory to setup a Govt. approved laboratory at their warehouse to check for spurious liquor in each batch of liquor received from the manufacturer. It was the responsibility of the L1 distributor to systematically check the product for spurious liquor and to inform the excise department in case of any spurious liquor being found. Therefore there was an increase of expense on account of higher standards prescribed to check spurious liquor.
- c. That in the new policy a higher level of investment was required in terms of global distribution standards and setting up of quality checking systems.
- d. That the freight charges which were earlier Rs. 11/km for 600 cases has been revised to Rs. 30/km for 600 cases.
- e. The local transportation cost which was factored separately in earlier policy is now subsumed in the said profit margin.
- f. That these were the reasons provided in the GoM report itself for fixing the profit margin at 12%. That despite the said facts which are available and apparent on the face of the report itself,



the investigating agency are alleging that the said fees was increased from 5% to 12% without any reasons or grounds. The said allegation on the face of it is false and contrary to the contemporaneous records maintained at the relevant point of time.

11. The Applicant has stated that there is no material on record to show the petitioner has influenced any officer to grant license to Indospirits in violation of any provision or rule nor there is any material to show that the petitioner was in any manner had extended threats to M/s Mahadev Liquor.

12. In respect of the issue of the related party, the Applicant has stated GoM was only tasked with giving its report and suggestion to the cabinet and the policy had to be ultimately accepted by Cabinet, various departments of Govt. of NCT of Delhi. That the said policy with the definition of related party was accepted by Cabinet, Finance Department, the Planning Department, the Law department and ultimately by the Hon'ble LG of NCT of Delhi.

13. The Applicant has stated that there is no material on record to show that the petitioner has destroyed the evidence in any manner. The Applicant has submitted that he is entitled to be released on bail and has placed reliance upon *P. Chidambaram v. Directorate of Enforcement* (2020) 13 SCC 791, *Gurcharan Singh v. State (Delhi Administration)* (1978) 1 SCC 118, *Sunder Bhati v. State*, (2022 SCC Online Del 134), *Sanjay Chandra v. CBI* (2012) 1 SCC 40, *Ashok Sagar v State*, 2018 SCC OnLine Del 9548, *Satender Kumar Antil v. Central Bureau of Investigation and Another*, 2022 SCC OnLine SC 825, *H.B. Chaturvedi v. CBI*, 2010 SCC Online Del 2155.



Arguments on behalf of Petitioner

14. Mr. Mohit Mathur and Mr. Dayan Krishnan, Learned Senior Counsels assisted by Mr. Vivek Jain, learned counsel, have submitted that the Applicant is entitled to be admitted to bail. Learned counsels have submitted that the petitioner was arrested on 26.02.2023 and has been in custody since then. It has been submitted by the Learned Senior Counsels that the CBI's understanding of old policy is flawed and contradicted by their own documents. It has been submitted that the understanding of the CBI that in the old policy there was no concept of private wholesalers and the assumption that in the old policy there were no leakages and the wholesalers were earning a margin of 5% only was totally flawed. It has been submitted that there existed a concept of a private retailer under the old policy. Learned Senior Counsels submitted that there were only private wholesalers in the old policy and the wholesalers were the manufacturers. It has been submitted that even the Ravi Dhawan Committee Report states that such wholesalers/Manufacturers were also holding retail vends in certain cases. It has been submitted that therefore in the Old Policy there was a complete cartelization wherein the the Manufacturers and Wholesalers were the same parties with even instances of such also these Wholesaler/Manufacturer holding retail vends. It has been submitted that in the earlier policy there was a huge incentive to cheat and sell Non-duty paid liquor and due to the said scheme of the said policy wholesaler/manufacturer were earning profits to the extent of 65-70%.

15. Learned Senior Counsels have submitted that the plea taken by the CBI that profit margin under the old policy was only 5% is erroneous. It has been submitted that in fact that profit margin under the old policy was not



capped at 5%. It was submitted that the illegal activity of cartelisation, sale of Non-duty paid liquor and huge profit margins was plugged in the new policy by firstly, delinking wholesaler, manufactures and retailers and secondly, by capping the profit margins at 12%. Learned Senior Counsels have submitted that in fact in the new policy the government restricted the scope to make unreasonably high profits, and capped these profits at 12%. Learned Senior Counsels have further submitted that the new policy also eliminated the concept of brand pushing by delinking wholesalers, manufacturers and retailers. It has further been submitted that the major leakages in the old policy observed by the Ravi Dhawan Committee report were also kept in the new policy. Learned senior counsels have submitted that the auction mechanism is legally recognised and relevant and is prevalent in many states like Haryana, Rajasthan, Uttar Pradesh and Himachal Pradesh.

16. Learned Senior Counsels have submitted that the plea of the CBI that the recommendations of Ravi Dhawan Committee have been ignored during the formation of the excise policy is without any basis. It has been submitted that the state is not bound to accept the expert committee report in its entirety. The reliance has been placed upon ***Kerala Bar Hotels Association and Anr. vs. State of Kerala and Ors.*** (2015) 16 SCC 421. Reliance has also been placed on ***M/s Prag Ice and Oil Mills and Anr. vs. Union of India*** (1978) 3 SCC 459. Learned Senior Counsels have submitted that the Supreme Court in ***Small Scale Industrial Manufacturers Association vs. Union of India and Others*** (2021) 8 SCC 511 inter alia held that the correctness of the reasons which prompted the government in decision taking one course of action instead of another is not a matter of concern in



judicial review and the court is not the appropriate forum for such investigation. Learned Senior Counsels have submitted that several recommendations of the Ravi Dhawan Committee were in fact accepted and included in the new Excise Policy 2020-2021. Learned Senior Counsels have submitted that in the new Excise Policy a conscious decision was taken to keep the government outside of liquor trade being in tune with contemporary economic standards of disinvestment. It has further been submitted that the profit margin was increased from 5% to 12% on the basis of valid policy considerations. It has further been submitted that under the old policy license fee for the wholesaler was only Rs. 5 lakhs whereas under the new policy this was set to be increased to Rs. 5 crores. It has been submitted that under the old policy the wholesaler would be allowed to recover the charges incurred for local transport separately. However, this recovery was done away with under the new policy. It has further been submitted that under the new policy wholesalers were required to maintain testing laboratories built to adhere to the global best standards of testing. Learned Senior Counsels have submitted that provision was also made for zone-wise auctions and limitation of number of manufacturers.

17. In regard to the discrepancy in the alleged document dated 15.03.2021 and 19.03.2021, Learned Senior Counsels have submitted that there is no authenticity of veracity of these documents alleged to be recovered from the computer system in the office and conference room of the Applicant. Learned Senior Counsels have submitted that while seizing an electronic document including creating and providing its hash value and mirror copy at the relevant point of time, the procedure of seizing has not been followed. It has further been submitted that even in the document dated 16.03.2021, no



cap of 5% of profit margin has been imposed and clause 6 showed that 5% is only the minimum percentage with a further stipulation that there will be no cap on the distributor margin. Therefore, even as per document dated 15.03.2021, distributors could have made a profit of 12% or even more. Learned Senior Counsels have submitted that rather the document dated 19.03.2021 limits the profit margin to 12%. Learned Senior Counsels have submitted that thus the alleged tainted document dated 19.03.2021 in fact curtailed the profit margin of distributors, contrary to the windfall alleged. Learned Senior Counsels have submitted that allegations of manipulation of public opinion are baseless and without foundation as there was no proof that the petitioner gave a note to 'Mr. Zakir' nor there is any evidence that the said 'Mr. Zakir' met the Applicant. It has further been submitted that the CBI has relied upon 6 mails out of the total of 14,671 mails.

18. In respect of the legal opinion of Hon'ble Justice K. G. Balakrishnan, former Chief Justice of India, Hon'ble Justice Ranjan Gogoi, former Chief Justice of India and Mr. Mukul Rohatgi, Learned Senior Advocate, former Attorney General, it has been submitted that these opinions were obtained by the persons having a direct monetary interest in the framing of policy and therefore ignoring these opinions cannot be faulted at all.

19. Learned Senior Counsel has further submitted that the CBI has heavily relied on the chats found in the phone of G. Butchi Babu. However, the same cannot be relied upon at all. It has been submitted that even it does not show that the petitioner was in any way involved with the members of the South Group. Learned Senior Counsels have submitted that the CBI has relied upon the testimony of C. Arvind Kumar. The attention of the court has been invited to the contradiction in the testimony of these witnesses.



Learned Senior Counsels have further argued that there is no material to show that the petitioner has committed any wrongdoing with regard to grant of license to M/s Indo Spirits. It has been submitted that rather C. Arava Gopi Krishna, has stated that the instructions of the petitioner was only to process the file as per rules. It has been submitted that there is no material on record to connect the Applicant with events concerning licence of M/s Mahadev Liquor. It has been submitted that Ms. Jasdeep Kaur Chadha was not the owner of Mahadev Liquor and thus there is no connection between M/s Mahadev Liquor and Ms. Jasdeep Kaur Chadha.

20. In respect of the destruction or tampering of the evidence, Learned Senior Counsels have submitted that the office or the residence of the Applicant was raided on 19.08.2022. The CBI in addition to the material collected in these operations, only issued Section 91 notices seeking his mobile devices which were duly responded to. It was stated that the CBI did not seek any further documents from the Applicant. Learned Senior Counsels have submitted that CBI has made bald assertions regarding the tampering of the evidence and the same cannot be believed in absence of any substantive material. In regard to the destruction of mobile phones, Learned Senior Counsels have submitted that this allegation is vague, speculative and ought to be dismissed outrightly. Learned Senior Counsels have submitted that the petitioner was occupying a high government position and therefore he cannot store his old mobile phones and nor he can afford to leave it abandoned therefore, as an abundant precaution the same were destroyed as and when the same were ceased to be used.

21. In respect to the destruction of the cabinet file, it has been submitted that there is no independent evidence relating to the existence of such a file,



such as, official records in the nature of file numbers, movement registers, etc. Learned Senior Counsels have submitted that co-accused persons have already been admitted to bail. It has been submitted that the two persons against whom there are allegations of receipt of bribes/kickbacks have also been admitted to bail. Learned counsels have placed reliance upon ***Ramchand Karunakaran vs. Directorate of Enforcement*** order dated 23.09.2022 in CrI.A.1650/2022, ***Bonoy Jacob vs. CBI*** 1993 SCC OnLine Del.53 and ***Bindu Rana vs. SFIO*** 2023 SCC OnLine Del 276. Learned Senior Counsels have submitted that the petitioner has cooperated with the investigation right from the beginning and has responded to the notice under Section 41 A and Section 91 Cr.P.C.

22. It has been submitted that the petitioner also fulfills the triple test as he is having roots in the society and is not a flight risk. It has further been submitted that the CBI has made a bald allegation regarding influencing the witness without any material on record. Learned Senior Counsels have submitted that the petitioner had always followed the process and had no knowledge of the alleged kickbacks nor there is any material to show that the petitioner was involved in or had any knowledge of the alleged kickbacks received from the “South Group” and his role has been restricted to the framing of the Excise Policy. Learned Senior Counsels have submitted that there is absolutely no material on record to justify the allegation that the Applicant was the mastermind of any alleged conspiracy or that he was in any way involved in or even had any knowledge of the alleged wrongful activities of the so-called 'South Group'. It has been submitted that there is no material on record to support the allegation that ‘Mr.Vijay Nair’ who was allegedly collecting the bribe amount of Rs.100



crore was doing so at the instance of the Applicant. Learned Senior Counsels have submitted that the excise policy was framed in accordance with the rules and it was checked and tested at all the levels including Group of Ministers, Cabinet and by the Lt. Governor. Learned Senior Counsels have further submitted that the assertion of the CBI that no discussion was held in the Group of Ministers is patently incorrect and untenable. Learned Senior Counsels have submitted that Hon'ble Lt. Governor was duly apprised and recommendations made by him were duly followed. It has been submitted that the new Excise Policy led to a substantial increase in the revenue and therefore, no fault can be found with the same. It has been submitted that the arrest was effected only for the purpose of extracting a confession from the Applicant. Reliance has been placed upon *Santosh vs. State of Maharashtra* (2017) 9 SCC 714, *Chanda Deepak Kocchar vs. CBI*, 2023 SCC OnLine Bom 72. Reliance has also been placed upon Rule 5, Part B, Vol.III Chapter 11, Delhi High Court Rules. It has been submitted that the present case is based on circumstantial evidence. It has further been submitted that the case of the CBI is based on the assumptions and conjectures and the applicant cannot be kept in custody as the trial may take a long time. It has been submitted that the offence is punishable only upto seven years and furthermore there is no likelihood of the trial commencing/concluding soon. Reliance has been placed upon *H.B.Chaturvedi vs. CBI*, 2010 SCC OnLine Del 2155 and *Sanjay Chandra vs. CBI* (2012) 1 SCC 40.

Arguments on behalf of C.B.I

23. Mr. S.V. Raju, Learned Additional Solicitor General along with Mr. Anupam S. Sharma, SPP for CBI, Mr. Zoheb Hossain, Learned Counsel has



submitted that the party in power in Delhi in which the Applicant had an important role being the Minister of Excise entered into a conspiracy to amend the Excise Policy to extract money through kickbacks as under the old policy there was no such possibility. It has been submitted that purportedly the policy was changed in the name of bringing transparency. Learned ASG has submitted that the main features of the old policy were as under:

- a. No concept of a private wholesaler
- b. No concept of zones
- c. Retail - 4 corporations of Delhi government ran the retail trade-DTDC Delhi Tourism & Transportation Development corp.), Delhi State Civil Supplies Corp (DSIIC), Delhi State Industrial & Infrastructure Development Corp.(DSIIC) Delhi Consumers Cooperative Wholesale Stores (DSCS) 5% distribution/ profit margin to be given to distributor (Clause 7.5 (a) of Old Policy ; Pg.11)

24. It has been submitted that the old policy was sought to be revised on the following objectives:

- a. Augmenting State Excise Duty Revenue simplifying Liquor policy pricing mechanism
- b. Checking malpractices and evasion of duty in liquor taxes
- c. Transform nature of liquor trade commensurate to the changing structure in national capital

25. Learned ASG has further submitted that the Expert Committee headed by Ravi Dhawan (the then Excise Commissioner) made the following recommendations:

- a. The Excise Department must secure adequate Government control/ regulation of liquor trade.



- b. Gradual withdrawal of Government presence.
- c. Entire wholesale operation to come under one Government entity.
- d. The Committee also examined three models for proposed retail licenses including the existing model containing government and private players; License to individuals by lottery system; and license to limited entities. It opined that retail license to individuals through lottery system is a preferred model and added that license by auction to limited entities could lead to proxy ownership and cartelization.

26. Learned ASG has submitted that this report was not taken kindly by the Applicant as it did not recommend the option of retail trade through auctioning of zones and further the committee did not recommend private wholesale model. Reliance has been placed upon the statement of Ravi Dhawan recorded under Section 161 Cr.P.C. Learned ASG has submitted that Ravi Dhawan in his statement under Section 161 Cr.P.C. deposed that before submitting the report he met the Applicant Sh. Manish Sisodia informed him of the recommendations he was going to make. However, the petitioner asked to explore the other models of retail trade through auction/tender for particular area/zone and Delhi could be divided into zones.

27. Learned ASG has also placed reliance on the Statements of C. Arvind, Secretary of the Applicant and Sh. Rahul Singh, successor of Ravi Dhawan who also told that the Chief Minister and Deputy Chief Minister were not happy with his report. They asked him to include the option of Retail Trade through auctioning of zones. Sh. Rahul Singh also stated that when he



expressed his reservation on modifying the Expert Committee Report on such a large scale, the petitioner commented that there is nothing to worry about as the direction shall be given by the Group of Ministers to the department in this regard.

28. Learned ASG has submitted that in the new policy following main changes were introduced:

- a. Privatization of wholesale model.
- b. Increase in wholesale profit margin from 5% to 12%. There was no calculation, working, rationale or discussions in this regard.
- c. Zone-wise auctioning of Retail license. Delhi was divided into 32 zones. In one zone there were 27 vends. One retailer could only get a maximum of 2 zones. (South group captures 9 zones)
- d. One Manufacturer could only operate through one wholesaler exclusively.

29. Learned ASG has submitted that in the entire scheme of things, the main players were the petitioner, Sh. Vijay Nair, and other unknown AAP persons. Learned ASG has submitted that the framing of policy was motivated by criminal conspiracy. It has been submitted that by framing the new policy, the then excise commissioner was not consulted. In respect of the margin, Learned ASG has submitted that even otherwise, assuming that the minimum cap was 5% and there was no maximum cap in the earlier draft note, there was no guaranteed profit margin above 5% to the wholesaler, which was last modified on 15.03.2021. It has been submitted that however, in the changed draft note there was fixed 12 % return. Learned ASG has submitted that if the manufacturer gave only 5% margin which he could



legitimately do, there was no way to recover the kickback already given. It has been submitted that with the change to 12% margin there was a guaranteed return of kickback and the same was done by overriding the expert committee report. Learned ASG has submitted that the conspiracy was executed by the petitioner along with the other accused persons by manipulating and concealing unfavorable opinions received from the public, stakeholders and legal experts after putting Ravi Dhawan Expert Committee report in public. It has been submitted that the petitioner influenced opinions received from the public and planted emails for the purpose of tweaking to show fake public approval for deviating from the Expert Committee report. Reliance has been placed upon the statement under Section 161 Cr.P.C. of Mr. Zakir Khan, Chairperson, Delhi Minority Commission. The attention of the court has also been invited to emails of interns of Delhi Minority Commission regarding re-suggestions on Expert Committee.

30. Learned ASG has further submitted that the petitioner Rahul Singh, Excise Commissioner, was directed to prepare a cabinet note containing comments/suggestions of Public and Stakeholders by Sh. Rahul Singh and he gave Rahul Singh a draft template for making such a cabinet note. Reliance has been made on the statement of Sh. Rahul Singh and Whatsapp chat regarding preparation of cabinet note. Learned ASG has also invited the attention of the court to the legal opinions of Justice K.G. Balakrishnan, former Hon'ble CJI, Justice Ranjan Gogoi, former Hon'ble CJI and Mr. Mukul Rohatgi, Learned Senior Advocate, former attorney general. Learned ASG has invited the attention of the court to the statement of Sh. Rahul Singh and C. Arvind, the secretary of the Applicant to show that the petitioner had an angry outburst when Sh. Rahul Singh included opinions of



above legal experts, who had recommended maintaining status quo.

31. Sh. S.V. Raju, Learned ASG, has further submitted that the excise file containing the cabinet note dated 28.01.2021 surprisingly went missing and has never seen the light of the day and seems to have been destroyed by the petitioner. It has further been submitted that vide note dated 02.02.2021, which was issued by the petitioner to the Excise Commissioner, fresh directions were issued to Sh. Sanjay Goel to prepare a note without legal opinions. This was done in a manner to cover up a note that was missing since 28.01.2021, which was prepared on this subject matter.

32. Learned ASG has further submitted that there is a direct interference of South Group in influencing the policy directly under the leadership of the present Applicant.

33. Learned ASG has submitted that Sh. Vijay Nair met members of South Group in Hyderabad between 06.03.2021 and 08.03.2021. In this regard attention has been drawn to the email dump containing flight tickets. Attention has also been invited to the whatsapp chat of G. Butchi Babu (CA, South Group) to show the involvement of the South Group. Learned ASG also took the court to various documents to show that the members of South Group i.e. Arun Pillai, Abhishek Boinpall, Sarath Reddy and G. Butchi Babu were staying at Oberoi, New Delhi during the time when the note concerning GoM was made by the petitioner on 15.03.2021. Learned ASG has invited the attention of the court to the statement of C. Arvind recorded under Section 164 Cr.P.C. wherein he has stated the petitioner has handed over him a draft GoM report in presence of the Chief Minister and Mr. Satyender Jain. This draft GoM report was an amended copy of the 'Data Needed' recovered from hard disk seized from office of Manish Sisodia,



created on 15.03.2023 wherein profit margin for wholesaler was enhanced from 5% to 12% and also INR 500 Cr was stated as the eligibility criteria. Learned ASG has further submitted that in the statement Sh. C. Arvind has stated that the petitioner asked him to type and format the draft and this draft GoM report was completed by 19.03.2021 and is of 38 pages.

34. Learned ASG has submitted between 15.03.2021 and 19.03.2021, there were no GoM meetings and this was confirmed by Sh. Arava Gopi Krishna, Excise Commissioner that he has not attended any meeting during this period., which he would have attended as the excise commissioner.

35. Learned ASG has submitted that on 19.03.2021, the WhatsApp chat of Butchi babu (CA, South Group) revealed a recommendation of a new post of Director, Wholesale of Operations and Elite Stores, which was later verbatim included in the GoM report recovered from the office computer.

36. Learned ASG submitted that there was no deliberation, discussion for change of margin profit from 5% to 12%. It has been submitted that no proper Minutes of Meetings were ever prepared. Reference has been made to the statements of Sh. Arava Gopi Krishna, Excise Commissioner and Sh. Sanjay Goel, Excise Commissioner.

37. Learned ASG has submitted that the Applicant used influence for grant of L1 license illegally to M/s Indospirit Ltd. Learned ASG has submitted that M/s Indospiris Marketing Ltd. had applied to the Excise department for a wholesale license. The Applicant pressurised the excise officials to expedite the grant of this license. The excise officials conveyed to the petitioner that such application could not be processed owing to existing complaints of cartelization and blacklisting against partners i.e. Sh. Sameer Mahendru and his wife, of M/s Indospirits Marketing Ltd. Learned



ASG has submitted that the investigation revealed that the concerned individuals were threatened by the accused to take back the complaint against blacklisting. The reference was made to the statement of Sh. Jasbeer Sidhu under Section 161 Cr.P.C. dated 08.11.2022. It has been submitted that a fresh application for grant of license was submitted in the name of M/s Indospirits Ltd. to wriggle out of the existing complaints and the petitioner used his political clout and influence and pressurized the excise officials to grant the wholesale license to the said M/s Indospirits Ltd. The reference has been made to the statement of Arva Gopi Krishna, Excise Commissioner under Section 164 Cr.P.C. recorded on 16.02.2023, statement of approver Dinesh Arora recorded on 30.09.2022 and Statement of C. Arvind under Section 164 Cr.P.C. recorded on 16.02.2023. Learned ASG submitted that it was done in pursuance of the conspiracy wherein the Applicant introduced favourable provisions to facilitate the monopolization of the liquor trade in Delhi by the South Group under the new policy for siphoning off 6% out of 12% windfall profit margin for wholesalers. Learned ASG has submitted that South Group was to recoup the money by way of increased profit margin (6% from the 12%) from entities controlling the supply of the 3 biggest manufacturers who held 85% of the market. The wholesalers for facilitating the recoupment were M/s Indospirits, M/s Brindco Sales Private Ltd and M/s Mahadev Liquors. It has also been submitted that the definition of 'Related entities' was tweaked in the Excise Policy vide Second recommendation of GoM on 05.04.2021 at the time when the changes were being made in directorship of M/s Indospirits. Learned ASG has submitted that M/s Mahadev Liquor was forced to surrender its license so as to ensure that there is absolute control of South



Group over the wholesale liquor market in Delhi. Learned ASG submitted that the Applicant if released on bail is likely to influence the witnesses in Punjab where M/s Mahadev Liquor is its running distilleries. Learned ASG has submitted that there was a payment of INR 100 Crores and the persons who gave Rs. 100 crores were to be benefitted in the following manner.

- (i) INR 90-100 crores were paid by South Group to Vijay Nair, Media & Communication Incharge, AAP in order to get favourable policy and post tender benefits. Out of the same, INR 30 Crores were transferred through Hawala channels by Abhishek Boinpally to Vijay Nair through Dinesh Arora. The said money was collected from Hawala operators by members of Vijay Nair Team, namely Rajesh Joshi and Sudhir.
- (ii) South group member Arun Pillai was given 32.5% share for investment of INR 3.6.crores in M/s Indospints.
- (iii) The L-1 License was issued to M/s Indospirits under the influence of Manish Sisodia, despite pendency of complaint of cartelization and blacklisting. (Statement of AravaGopikrishnan and C. Avind u/s 164 Cr.PC.
- (iv) Vijay Nair also used his political clout and pressurized M/s Pernod Ricard India Private Limited to appoint Indospirits as its wholesale distributor in Delhi. (Statement of Benoy Babu u/s 164 CrPC @453 of convenience compilation filed by CB1).
- (v) 65% profit after tax (Rs. 29.29 crores) against 32.5% share was transferred to South Group through Arun Pillai. The money from M/s M/s Indospirits was also transferred to companies in which Abhishek Boinpally had interest.



- (vi) Further, one Amandeep Singh Dhall, MD of M/s Brindco was in close contact with Vijay Nair since March 2021. He attended the meeting held at Gauri Apartment, near Claridges Hotel, Delhi on 21.05.2021 with the accused Vijay Nair, along with accused persons of South Group and the accused Arjun Pandey. In this meeting, modalities were worked for paying of pecuniary advantage. (CDR tower locations of Amandeep, Vijay Nair; Dinesh Arora, Abhishek Boinpally.
- (vii) Amandeep gave additional Credit Notes worth INR 4.97 crores through M/s Brindco to certain retailers on his own. Out of the same, additional Credit Notes worth Rs.2.58 crores were given to four companies of South Group. Additional credit notes worth Rs.34,55,912/- have been given by M/s Brindco of Amandeep Dhall to L-72 licensee M/s ACE Finance Company, who was controlling 2 retail zones under New Excise Policy, under directions of Amandeep Singh Dhall, against which equivalent cash was transferred from M/s ACE Finance to accused Abhishek Boinpally through approver Dinesh Arora.
- (vii) Further, during the searches conducted at the office premises of Amandeep Singh, certain incriminating documents were seized, i.e., copy of the tender document dated 07.06.2021; copy of confidential note dated 20.05.2021 of Sisodia; confidential Note for the Council of Ministers; unsigned copy of GoM Report dated 22.03.2021, etc.

38. Learned ASG submitted that the petitioner does not fulfill the criteria for grant of bail as he enjoys the position of power and also having political



clout. It has further been submitted that the Applicant had willfully destroyed the evidence including his mobile phone and the file of the excise department containing the cabinet note dated 28.01.2021 as it still remains missing. It has been submitted that the witnesses in the present case are mostly public servants and they are likely to be influenced. It has further been submitted that the Applicant is not entitled to parity as he is the main accused and kingpin of the alleged conspiracy. Learned ASG has submitted that it is a huge scam for which the further investigation is underway.

D. FINDINGS AND ANALYSIS

39. The case set-up by the prosecution is that the Applicant is a prominent leader of the Aam Aadmi Party, besides being Excise Minister and Dy. Chief Minister, having 18 portfolios, allegedly entered into the conspiracy with several other persons to amend the Excise Policy with a motive to derive illegal gains. The change was announced to be undertaken purportedly to bring transparency. To begin with Mr. Ravi Dhawan the then Exercise Commissioner was appointed as the Chairman of the expert committee known as "Ravi Dhawan Committee". The committee gave its report on 13.10.2020 which *inter alia* recommended that the entire wholesale operation be brought under the government and for retail allotment of license be done through lottery.

40. The case of the CBI is that it was not liked by the Applicant and his party. In order to overcome the recommendation the expert report was made public and suggestions were invited from the public. It has been alleged by the CBI that the responses were manipulated and E-mails were procured to suit the illegal purpose of the Applicant and for this purpose, the services of Mr. Zakir Khan the then chairperson of Delhi Minority Commission was



utilised.

41. In the meanwhile, Mr. Ravi Dhawan was transferred and Mr. Rahul Singh joined as Excise Commissioner. Allegedly Mr. Rahul Singh was instructed to prepare a cabinet note on the basis of suggestions received from the public and the stakeholders. It has also been alleged that Mr. Rahul Singh was given guidelines/template for preparing such draft note. However, Mr. Rahul Singh did not stick to such templates/guidelines. Mr. Rahul Singh also placed the legal opinions received from 3 prominent persons including two former Chief Justices of India and one former Attorney General who had recommended maintenance of status quo in relation to the exercise policy. This did not suit the petitioner and his dispensation and therefore, the said file never saw the light of the day. Thereafter, Mr. Rahul Singh was also transferred from the Excise Department and was replaced by Mr. Sanjay Goyal. The Applicant directed the new Excise Commissioner to prepare a cabinet note without referring to the aforesaid legal opinions with an object to cover-up the earlier cabinet note. The CBI has alleged that in fact changes in the exercise policy were made at the instance of the "South Group" and in this regard they have placed on record certain documents to suggest that Mr. Vijay Nair visited Hyderabad during this period and members of the "South Group" also came to Delhi and camped here. Allegedly only during this period the changes were made. CBI has also placed on record the documents to suggest that changes in particular increase of profit margin from 5% to 12% was made at the instance of the "South Group". However, CBI has alleged that though the Group of Ministers was formed just as a show of but actually no minutes of meeting were prepared and there is no material on the record on the basis



of which the profit margin was increased from 5% to 12%.

42. CBI has also alleged that the petitioner influenced the exercise department to grant license to M/s Indo Spirits Limited despite the pendency of complaints of cartelisation and black marketing. The license was granted to M/s Indo Spirits Limited in violation of all the existing rules. CBI has also alleged that 2 of the 3 shareholders in M/s Indo Spirits Limited are from the South Group holding 65% share. CBI has also alleged that the Applicant, to execute the conspiracy, introduced favourable provisions to facilitate the monopolisation of liquor trade in Delhi by the “South Group”. The case of CBI is that “South Group” manipulated the policy in a manner so as to monopolise the liquor trade in Delhi by the “South Group”. The case of the CBI is that against the increase in margin from 5% to 12% the “South Group” was to recoup the money already paid to the petitioner and his party as a kickback. The wholesalers M/s Indo Spirits Limited, M/s Brindco Sales Pvt. Ltd. and M/s Mahadev Liquors controlled 85% of the market. It is also the case of the CBI that the definition of related entities was also tinkered with in the excise policy.

43. The CBI has also alleged that M/s Mahadev Liquors was forced to surrender the license in order to ensure complete control over the wholesale liquor market in Delhi by the “South Group”. It has been alleged that the political party of the petitioner came into power in the Punjab and canceled the license of distilleries and the same were restored only after M/s Mahadev Liquors succumbed to the pressure of the petitioner and his political party. The case of the CBI further is that the petitioner and his political party was dealing through Mr. Vijay Nair who was purportedly Media and Communication incharge of Aam Aadmi Party.



44. Mr. Vijay Nair was in communication with various people including representatives of International Spirits and Wines Association Of India (ISWAI) for demanding illegal gratification and kickbacks. CBI has alleged that Mr. Vijay Nair was paid by “South Group” a huge amount in the sum of Rs. 90 to 100 Crore out of which 30 crore was transferred through Hawala Channel by Mr. Abhishek Bonapali to Mr. Vijay Nair through Mr. Dinesh Arora. In order to recoup this Mr. Arun Pillai was given 32.5% share for an investment equivalent to Rs. 3.6 Crore. The political pressure was exerted on M/s PernoRecard India Pvt. Ltd. to appoint M/s Indo Spirits Limited as its wholesale dealer. It has also been alleged that the plea of the CBI that the Applicant is not entitled to bail as he does not fulfill the triple test having the position of power and political cloud and has the potential of influencing the witnesses.

45. The case of the respondent *per contra* can be summarized as the petitioner had no role to play in the conspiracy as alleged by the CBI. It is stated that there is no material on record to suggest that at any point of time he interfered in the formulation of excise policy or demanded any illegal gratification or got any undue advantage. The plea of the petitioner is that the government was not bound to accept the Expert Committee Report. It has been stated that the transparency was maintained throughout, and the report was placed into the public domain and the opinion of the public was called. It is also the case of the petitioner that the legal opinions of 3 prominent persons were in fact procured by the interested party and therefore the government was not bound to consider the same. The case of the petitioner is also that though the government was not bound to accept the Expert Committee Report but still they followed the recommendations



which were found to be good. The case of the Applicant is also that the government has no business to be in the trade of liquor and therefore, it was a conscious decision on part of the government to be out of the liquor trade. The petitioner has also stated that there is no material on record to suggest that he intimidated or threatened any of the officers nor he had interfered in the grant of license to M/s Indo Spirits Limited. The petitioner has also stated that even the statement of the excise commissioner Mr. Arava Gopi Krishna is that the instruction was on his part was to grant the license in accordance with the rules.

46. The plea of the petitioner is also that no fault can be found in the increase of margin from 5% to 12%. It has been submitted that earlier there was no capping of the margin and by doing such an amendment the petitioner kept the margin which even as per the Expert Committee Report was sometimes to the tune of 65% to 70%. The Applicants case is that the excise policy was formed by the elected government in discharge of their duties and was duly approved by the Group of Ministers, the cabinet and the then Lieutenant Governor.

47. The petitioner has also stated that the entire case of the CBI is based on circumstantial evidence which requires it to be proved by way of evidence. The bail cannot be denied and the rule is being the bail and not the jail and merely on the assumptions and presumptions, conjectures and surmises of the CBI.

48. The petitioner has also based his case on the legal proposition that the State is not bound to accept the report in its entirety. Reliance has been placed upon *Kerala Bar Hotel Association (supra)* wherein it has been held as under:



“18..The Division Bench opined that though the Government was bound to consider the recommendations of the One-Man Commission, it was not bound to accept the Report in its entirety.

The Report was simply a piece of evidence which the Government would have to take note of. It was for the State to evolve a policy taking into account the welfare of the people, and the courts have a very narrow and limited scope to intervene in such policy decisions. It is also not for the courts to find whether a more feasible view is possible or whether a better policy could be evolved, which intrinsically remains a subjective exercise.

.It was found that the One-Man Commission Report was considered by the Government, as evidenced by various terms in the Policy, and it was not necessary for the Government to accept the recommendations in their entirety.

37....It is trite that since the obligation on the State was to consider the Report, not to incorporate it in its entirety, no legal requirement has been transgressed. We agree with these submissions. The policy cannot therefore be written off as arbitrary or procedurally unsound ,”

49. The case of the petitioner is also that the matter of the economic policy must necessarily be left to the government to decide and the court should be very slow in interfering in this Reliance has been placed upon **Prag Ice & Oil Mills** (supra), wherein it has inter alia been held as under:

“ 28..... We can take judicial notice of these facts which illustrate the extreme inadvisability of any interference by any court with measures of economic control and planning directed at maximising general welfare. It is not the function of the Courts to obstruct or defeat such beneficial measures devised by the Government of the day Courts cannot pass judgments on the wisdom of such actions, unless actions taken are so completely



unreasonable that no law can be cited to sanction them.

32.As already stated above, that order has been withdrawn because the purpose has been achieved. Even if that purpose had not been achieved, the order could be withdrawn if it became evident to the Government that such control would not achieve the desired object. It is extremely hazardous for courts to enter the sphere of experimentation in matters of economic policy which must be left to the Government of the day.

71."It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of the Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.

Parliament having entrusted the fixation of prices to the expert judgment of the Government, it would be wrong for this Court, as was done by common consent in Premier Automobiles [20 L Ed 2d 3121 to examine each and every minute detail pertaining to the Governmental decision. ... The interest of the producer and the investor is only one of the variables in the "constitutional calculus of reasonableness" and courts ought not to interfere so long as the exercise of Governmental power to fix fair prices is broadly within a "zone of reasonableness". If we were to embark upon an examination of the disparate contentions raised before us on behalf of the contending parties, we have no doubt that we shall have exceeded our narrow and circumscribed authority."

50. Learned senior counsel submitted that there is no material on record to suggest that the action taken by the petitioner was totally and completely unreasonable. It has further been submitted that it is also not on record that the new Excise Policy was not capable of achieving the desired object. It has been submitted that even if there is an error in taking an administrative



decision that is not subject to judicial review unless and until the same is totally perverse. The petitioner has also taken a plea that the correctness of the reason which prompted the government in taking the decision should not be a matter for the court to examine. Reference has been made to ***Small Scale Industrial Manufacturer Association (Registered) v. Union of India &Ors., 8 SCC 511***, wherein it has *inter alia* been held as under:

"71 The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate."

51. Learned counsel has submitted that the Applicant's case is that the rule is that bail should not normally be withheld as a punishment if after taking into consideration the other factors, the accused is entitled to grant of bail. Reliance has been place upon ***Runu Ghosh v. State(CBI), 1996 (39) DRJ 221***, wherein it has *inter alia* been held as under:

"5....Bail should normally not be withheld. as a punishment if, after taking into consideration other factors, the accused is entitled to the grant of bail. Bail and not jail is the normal rule. The two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution



evidence relate to ensuring fair trial of a case in the course of justice. Due and proper weight should be bestowed on these two factors apart from others. There cannot be a set formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling the bail.”

52. Similarly, Reliance has been placed upon ***Gurucharan Singh v. State***(1978) 1 SC 118 wherein it was inter alia held that unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

53. Learned counsel has further placed reliance upon ***Sukh Ram v. State (CBI)*** 1996 SCC Online Del 733 wherein it was inter alia held that unless there are exceptional circumstances brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to the person who is not accused of an offence punishable with death or imprisonment for life.

54. The law regarding grant of bail is very well settled. The liberty of an individual is sacrosanct and is relatable to Article 21 of the Constitution of India. It is no more *res integra* that the rule is bail and not jail. It is also a settled proposition that at the stage of bail, the court is not required to enter into the meticulous examination of facts nor it can examine the probative value of the witnesses. The court has merely to see the prima facie case. The Apex Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*** (2004 (7) SCC 528), has iterated the criteria for grant of bail. The court *inter alia* held as under:



"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge."*

55. In the economic offences' cases, the courts have time and again stated that economic offences constitute a separate class and required to be handled with a different approach. The supreme Court in ***Y.S.Jaganmohan Reddy vs. CBI*** (2013) 7 SC 439 has inter alia held as under:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of



the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

56. Similarly in ***Nimmagadda Prasad vs. CBI*** (2013) 7 SCC 466, it was inter alia held as under

23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat v. Mohanlal Jitmalji Porwal [(1987) 2 SCC 364 : 1987 SCC (Cri) 364] this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable



grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

57. Thus, on the basis of law as has crystallised is that at time of considering an application for bail, the courts is required to take into account certain factors such as existence of prima facie case against the accused, the gravity of the allegations, the position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the court in administration of justice as well as the criminal antecedents of the accused. It is also well settled that the court ought not to go deep into the merits of the matter while considering an application for bail. However, all that needs to be established from the record is the existence of the prima facie case against the accused. Reliance can be placed upon the *State of Orissa vs. Mahimanand Mishra*, 2018 pen SCC 516 and *Anil Kumar Yadav vs. State* (NCT of Delhi) 2018 12 SCC 129.

58. The present case revolves around the formation of a New Excise Policy replacing the Old Excise Policy. The purported reason for changing the policy was to bring transparency and to enhance the state excise duty revenue. Besides this, the object was to simplify liquor policy pricing



mechanism and checking malpractices. The purpose was also to transform the nature of liquor trade commensurating with the changing structure in the national capital. The applicant was admittedly holding a very high influential position of Deputy Chief Minister having 18 portfolios including the Excise department. The applicant was also undisputedly a prominent leader of Aam Aadmi Party which is having the present government in Government of NCT of Delhi. Thus, the role of the applicant in any policy decision including a formation of new excise policy replacing the old one has to be extremely relevant. The case of the CBI is that a new excise policy was made in order to ensure deriving of illegal gains and kickbacks and for this purpose Mr. Vijay Nair who was apparently the media in charge of the party, was instructed to interact with the South Group. Allegedly at the instance of the South Group the new excise policy was formed in such a manner so as to derive illegal and undue advantage. In support of this the CBI has placed material on record. The case of the CBI is that the applicant was the pivot of the entire conspiracy and everything was being done under his instructions and supervision. The margin of profit from 5% to 12% was increased in order to recoup the kickbacks which had already been received through Vijay Nair. In this regard reliance has been placed upon the statement of approver Mr. Dinesh Arora. The parameter for grant of the bail has already been stated hereinabove and therefore need not to be repeated again. The court at this stage has only to see the prima facie case. The CBI has brought the material on record in the form of the document and the statements of the witnesses to show that initially Ravi Dhawan Expert Committee Report was presented which was later on not followed by the Government in material aspects and certain provisions were inserted which



indicate towards malafide.

59. This court has no doubt in its mind that it is for the executive /elected government to decide the policies. There is also no doubt that the Government is not bound to accept the recommendation of any expert committee report. The government is answerable to the public at large and they are duty bound to frame the policies which to their understanding is best for the welfare of the public. The economic policies framed by the government also fall within their domain and the courts have to be very slow in interfering into the same. However, the court cannot interfere into the same, only if such policy decisions have been taken bonafidely and in the interest of the public. But if such policy decisions or schemes are alleged to have been taken malafidely or have the taint of any corrupt practice then certainly such decisions are required to be enquired into by concerned investigating agencies and examined by the court.

60. In the present case, the allegation is that the New Excise Policy has been brought in and certain provisions have been added to render undue advantage to a particular group against the illegal gratification having been received from them. The allegations if found to be correct are very serious in nature and goes to the very foundation of the case. The court at this stage is not to meticulously examine the material and evidence on the record nor should it make any comment beyond the same as it may prejudice the parties during the trial.

61. The grant of the bail is a discretionary jurisdiction. However, such discretion has to be exercised judicially and within the four corners of the law. Such discretion cannot be allowed to be influenced by any arbitrariness. There are statements under Section 161 Cr.P.C. of the



successive commissioners of excise including Sh. Ravi Dhawan, Mr. Rahul Singh, Mr. Sanjay Goel and Mr. C. R. Gopikrishnan who have indicated towards the role of the applicant. The applicant was one of the most important functionaries in the government at the relevant time. The applicant at this stage, cannot be seen saying that he had no role to play. He being the deputy Chief minister and Minister of Excise, was at the helm of affairs. The witnesses in the present case are mostly public servants. Presently also, the party of the applicant is in power. Therefore, it cannot be disputed that the applicant is a high profile person and has potential to influence the witnesses. Therefore, the apprehension of the CBI that the applicant might tamper with or otherwise adversely influence the witnesses cannot be ignored. The applicant is also not entitled to parity in view of his unparalleled position.

E. CONCLUSION

62. In view of the discussion made hereinabove, the allegations are very serious in nature that excise policy was formed at the instance of the “South Group” with malafide intention to give undue advantage to them. Such an act points towards the misconduct of the applicant, who was admittedly a public servant and holding highest position. The statement of the concerned excise officers has been relied upon by the CBI. This court is restraining itself to make any comments and minute examination of the material on record so as to no prejudice is caused to the applicant or the prosecution during the trial. The gravity and the allegations do not entitle the accused to be admitted to bail. This court, as has discussed above, is clear of the fact that the excise policy has not been examined in the present proceedings nor the powers of the government regarding framing of the economic policies.



However, since there are serious allegations of the misconduct against the petitioner, the petitioner being an influential person and having held the position of Deputy Chief Minister having 18 portfolios and the witnesses are mostly public servants, there is a possibility of the witnesses being influenced cannot be ruled out. Thus, the petitioner fails the triple test in the view of the seriousness of the allegations and his position. Though the petitioner has resigned from the post of Minister, but still his position is influential qua the witnesses.

63. In the facts and circumstances, the petitioner is not entitled to bail.

64. Accordingly, the present petition along with the pending applications is disposed of.

DINESH KUMAR SHARMA, J

MAY 30, 2023

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