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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Reserved on: May 19, 2023**
Decided on: September 04, 2023

\+ **W.P.(CRL) 3609/2018& CRL.M.A. 48200/2018**

K.V. BRAHMAJI RAO .... Petitioner

Through: Mr. Sacchin Puri, Senior Advocate with Mr. Rajul Jain, Ms. Rhea Verma and Ms. Nidhi Rana, Advocates

V

UNION OF INDIA AND OTHERS ..... Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for UOI

Mr. Anupam S Sharrma, SPP with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates for CBI along with Mr. Arvind More and Mr. Shyam Prakash, DSP, CBI

\+ **W.P.(CRL) 43/2019 CRL.M.A. 297/2019**

K.V. BRAHMAJI RAO .... Petitioner

Through: Mr. SacchinPuri, Senior Advocate with Mr. Rajul

Jain, Ms. Rhea Verma and Ms. Nidhi Rana, Advocates

V

UNION OF INDIA AND OTHERS ..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Ms. Vidhi Jain, Advocate for UOI
Mr. Anupam S Sharrma, SPP with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates for CBI along with Mr. Arvind More and Mr. Shyam Prakash, DSP, CBI

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HON'BLE DR. JUSTICE SUDHIR HUMAR JAIN

J U D G M E N T

1. The petitioner filed present petitions bearing no W.P. (Crl.) 3609/2018 and W.P. (Crl.) 43/2019 for issuance of writ of certiorari and/or any other appropriate writ against the respondents to produce the entire records pertaining to Sanction Orders dated 12.10.2018 bearing no F.No.5/1/2018-Vig by which sanctions were accorded to prosecute the petitioner in the CBI Cases bearing no. RC. 1(E)/2018-CBI/BS&FC/MUMBAI arising out of FIR No. RC BSM 2018 E

0001Year 2018 and RC.2(E)/2018-CBI/BS&FC/MUMBAI arising out of FIR No. RC BSM 2018 E 0002 Year 2018 respectively and to quash Sanction Orders dated 12.10.2018 being illegal, unwarranted and based on non-application of mind.

2. The petitioner in writ petitions bearing no W.P. (Crl.) 3609/2018 and W.P. (Crl.) 43/2019 pleaded that he was appointed Executive Director in Punjab National Bank (herein after referred to as **"PNB"**) vide notification dated 22.01.2014 bearing no F.N0.4/5/2OI2-BO-1 issued by Department of Financial Services, Ministry of Finance, Government of India and was given additional charge as domain Executive Director of International Banking Division (IBD) with effect from 01.04.2016 vide letter 28.03.2016. A RBI circular dated 03.08.2016 was received with recommendation to get the SWIFT infrastructure comprehensively audited for malicious software script/activities and to take appropriate steps to rectify malicious activity and to patch vulnerabilities, if any, in the SWIFT IT infrastructure. It was further directed to take steps to ensure strict vigil on the transactions made through SWIFT infrastructure besides other directions. The petitioner promptly acted on circular dated

03.08.2016 and convened necessary meeting urgently which was attended by top officials from different departments including Information Technology Division (ITD), International Business Division (IBD), and Treasury Division to effectively implement the measures suggested by the Reserve Bank of India (RBI). Thereafter, various measures were initiated to effectively implement the recommendations of the RBI circular dated03.08.2016 and one of the key measures was to integrate SWIFT with CBS to mitigate the risk which was foreseen in manual message creation. The Information Technology (IT) Division was directed to implement the integration immediately and Information technology (IT) Division was headed by another Executive Director (ED) and Information Technology (IT) Division has never been under the domain of the petitioner during his entire tenure in PNB. The Information Technology Department (ITD) took the decision unilaterally without concurrence or information to IBD division to integrate SWIFT with CBS along with upgradation of software, namely, 'Finacle' to Version 10 X. The Information Technology Department placed a note dated 23.08.2017 to MD & CEO through their domain ED wherein it was proposed and agreed upon by MD & CEO to integrate SWIFT system with CBS during upgradation of Finacle to version 10 X. Therefore, the decision to delay implementation of suggestion of RBI was approved at the highest level in the bank which was beyond the jurisdiction of the petitioner and work profile. However, any tampering therewith could have serious ramifications including complete cessation of international banking transaction of the bank. The petitioner came to know at a very later stage about the decision to defer the implementation taken by Information Technology Department (ITD) and by then IBD was not under the domain of the petitioner with effect from 18.09.2016.The petitioner held the portfolio only for a period of 42 days after issuance of RBI's recommendations dated 03.08.2018. RBI on 27.10.2016 issued an urgent questionnaire to PNB seeking information on SWIFT system being implemented by it and about implementation of various recommendations made by RBI in its earlier circulars. Nehal Ahad, then (General Manager, IBD) sent compliance letter to RBI on 31.10.2016 but the petitioner was already discharged from responsibilities of IBD on 18.09.2016 and as such, the compliance was not issued with his concurrence/approval. RBI on

25.11.2016 issued yet another circular pertaining to SWIFT System being operated by banks. Gokulnath Shetty, Deputy Manager, PNB, Mid Corporate Branch, Brady House, Mumbai superannuated on 31.05.2017 after having served in the branch since April, 2010 being in-charge of FOREX (Foreign Exchange) i.e. work related to Import/Export, Buyers Credit, Foreign Letters of Credit, Transmission of SWIFT messages etc.

2.1 The petitioner in writ petition bearing no W.P. (Crl.) 3609/2018 pleaded that the payment due date of the LoUs issued by Gokulnath Shetty for Stellar Diamond, Solar Exports, Diamonds 'R' US was 25.01.2018. The representatives of these firms on 16.01.2018 approached Brady House Branch seeking further issuance of LoUs to raise buyer's credit which was declined by official of the Bank as there was no such facility granted to the said three firms. The branch refused to accede to their request and refused to issue LoUs unless they provide 100% cash margin which is required from customers of the bank who are not having sanctioned limit for issuance of LoUs. The representatives raised issue that the bank had been issuing LoUs in the past without insisting upon such conditions. Thereafter, suspicion was aroused and past records were checked by the incumbent officers.

2.2 The petitioner in writ petitions bearing no W.P. (Crl.) 3609/2018 and W.P. (Crl.) 43/2019 further pleaded that PNB in month of January, 2018, detected a fraud which had taken place in Brady Branch, Mumbai of PNB using LoU and reported to RBI. The respondent no. 3/Central Bureau of Investigation (hereinafter referred to as **"CBI"**), Bank Securities and Fraud Cell, Mumbai on 31.01.2018 registered RC.BSM 2018 E0001 (subject matter of writ petition bearing no W.P.(Cl.) 3609/2018) and RC.BSM 2018 E0002(subject matter of writ petition bearing no W.P.(Cl.) 43/2018) in CBI/BS &FC/Mumbai on the basis of the written complaints of AvneeshNepalia, Dy. General Manager, PNB, Circle Office, Mumbai under section 120-B read with sections420 and 409 of Indian Penal Code,1860 (hereinafter referred to as **"IPC"**) and section 13(2) read with 13(l)(d) of Prevention of Corruption Act (hereinafter referred to as the **"PC Act"**) against those associated with the private companies who benefitted from the fraud and unknown officers of PNB. The petitioner was questioned by CBI. CBI filed charge-sheets in

RC.1(E)/2018-CBI/BS&FC/MUMBAI and RC.2(E)/2018-CBI/BS&FC/MUMBAI as CBI Special Case no. 37/2018 before the Special Judge, CBI, Mumbai arraying the petitioner as accused besides other accused persons.

2.3 RBI in May, 2018 also conducted an enquiry regarding the fraud committed by certain private entities through international banking department at PNB, Brady House, Mumbai and after such investigation, the *modus operandi* and other lapses at the end of the Bank were identified and the role and involvement of certain officers was duly mentioned but nothing was found against the petitioner. It was imperative for the respondent no.1 to not grant any sanction for prosecution of the petitioner. The respondent no 1 has accorded sanction to prosecute UshaAnanthasubramanian and SanjivSharan but RBI has not sought sanction for prosecution of the petitioner. The respondent no 1 sought advice of the respondent no 2/Central Vigilance Commission to decide regarding the sanction for prosecution against the officers identified in the RBI report and also decided to consult the respondent no.2/Central Vigilance Commission regarding the petitioner also only because CBI had included his name in the charge-sheet though his role was not comparable to the other officers who might have been involved or engaged in the subject matter of the investigation and despite no cogent material was surfaced against the petitioner in the course of the investigation made by the RBI on the same subject matter involving PNB officers. The respondent no 1 was required to consult with the respondent no 2/Central Vigilance Commission as per the DOPT OM No. 399/33/2006-AVDIII dated 06.11.2006. If CBI has included the name of the petitioner in the charge-sheet then this would not become a ground for the respondent no.2/Central Vigilance Commission to advise the respondent no 1 to accord sanction to prosecute him. The respondent no.2/Central Vigilance Commission has to carefully study the report of RBI before giving any advice in this regard.

2.4 The respondents no. l and 2 without application of mind and in mechanical manner and on the ground that the petitioner was named by CBI in the charge-sheet grouped the petitioner along with other persons against whom cogent material was found by the RBI granted sanction vide Sanction Order bearing no F. No.5/1/2018-Vig dated

12th October, 2018 issued by the Department of Financial Services, Ministry of Finance, Government of India to prosecute the petitioner under section 120-Bread with sections420 and 409 IPC and section 13(2) read with sections 13(l)(c) and (d) of the PC Act in case registered by CBI, BS & FC, Mumbai. The sanction for prosecution for other two accused from the top management was given much prior in time but sanction against the petitioner came much later in disregard of the findings of RBI and on account of non-application of mind.

2.5 The petitioner was summoned by the Court of Special Judge, Mumbai and was granted bail. The petitioner on 30.10.2018 filed RTI application seeking the sanction order, communications between the respondents no.1 and 2 regarding the processing of sanction order and copies of all documents considered by the Sanctioning Authority. The respondent no 1 responded to RTI on 06.11.2018 and informed that the decision for issue of sanction of prosecution was taken by the Competent Authority on the basis of CBI Report and RTI Act, 2005 is not applicable to seek information from CBI. The petitioner on 12.11.2018 filed an appeal with the First Appellate Authority challenging the view taken by the CPIO in rejecting the RTI application on misplaced and flawed reasoning but to no avail. The petitioner on 15.11.2018 filed an RTI application with the respondent no.2 seeking the communication/consultations took place between the respondents no.l and 2 which was denied to the petitioner on 20.11.2018.

2.6 The respondents no.l and 2 gave undue weightage to the irrelevant fact that CBI has included name of the petitioner in complete disregard of the report of RBI which could have been relevant and cogent material for the respondents no 1 and 2 to take a decision with regard to grant or non-grant of sanction. The respondents no. 1 and 2 should have considered other factors such as the petitioner's short tenure in the concerned division, absence of any direct act or role in alleged non-compliance of the norms/RBI instructions, his promptitude in taking note of RBI instructions, arranging meeting and in taking other steps to disseminate the information in respect thereof followed by concrete steps of implementation having being taken by him which if considered, were unlikely to result in grant of sanction. The respondents no 1 and 2 should have given specific reasons if they wanted to differ from the RBI report. The respondents no.1 and 2 treated CBI as the final authority to decide as to whether the petitioner ought or ought not to be prosecuted which was fundamentally wrong as grant of sanction is an exercise to be undertaken by the respondents on the independent assessment of the role of the petitioner uninfluenced by the fact that the charge-sheet has so been filed. The sanction granted by the respondent no.l is irregular, unconstitutional and capricious exercise of discretion. The petitioner being aggrieved filed present petitions.

2.7 The petitioner challenged Sanction Orders 12.10.2018 on grounds that it is a result of total non-application of mind, uninformed, arbitrary and capricious exercise of power by the respondents. Sanction Order is vitiated for non-application of mind by the Sanctioning Authority as it has to conduct a completely independent evaluation and conscious scrutiny of the material/record placed before it to arrive at an independent decision regarding grant of sanction for prosecution. The bare perusal of the Sanction Orders reflects that there was no assessment of the material placed before the Sanctioning Authority which was swayed by filing of charge-sheet by the respondent no 3/CBI. The Sanctioning Authority has not considered that the petitioner was domain ED of International Banking Division only for a short period from March-September, 2016 and as such the alleged non-compliance of RBI circulars/communications dated27.10.2016 and 25.11.2016 by the personnel dealing with the issuance of LoU at a time when the petitioner was not heading International Banking Division (IBD), cannot be attributed to the petitioner. The grant of sanction is not a mere formality and has to be exercised with complete strictness, seriousness, thoroughness and sensitivity and cannot be undertaken in a casual, lethargic or impulsive manner. The Sanctioning Authority has grossly abdicated its sacrosanct duty of independently evaluating the material and to arrive at an impartial decision regarding grant of sanction. The sanction order mechanically reproduces contents of the charge-sheet. The sanctioning authority ought to have considered that there was no lapse, laxity or ill-intent on the part of the petitioner in acting as per the RBI circulars. LoU transactions were not directly under his charge or scope of work and as such he had no occasion to notice, observe, smell or infer any wrong doing which surfaced later after the main player Mr. Shetty retired and it was completely ignored by the Sanctioning Authority. There was no sufficient material before the Sanctioning Authority to implicate the petitioner which also ought to have considered that in the vertical hierarchy of the organization as Mr. Shetty was not reporting to the petitioner. It is preposterous to presume or infer that the persons working in the position of Executive Directors would have, in the ordinary course of their day-to-day discharge of duties, direct knowledge as regards the transactions which are conducted through SWIFT messages at a level several steps lower to their placement in the vertical hierarchy and this aspect of organizational structure was completely within the knowledge of the sanctioning authority. The Sanction Order is fundamentally vitiated as it erroneously proceeds on a misconceived notion that the CBI charge-sheet is akin to a report which can be placed at par with the RBI report.

2.8 It is also stated that the petitioner has approached this Court since the respondents are within the jurisdiction of this Court and the cause of action has arisen i.e. the Sanction Orders have been passed by the administrative authority within the jurisdiction of this Hon'ble

Court. It is prayed that Sanction Order dated 12.10.2018 being F.No.5/1/2018—Vig be quashed.

3. The respondent no 1 filed counter affidavit in writ petitions bearing no W.P. (Crl.) 3609/2018 and W.P. (Crl.) 43/2019 wherein in preliminary submissions it is stated that order for sanction for prosecution of the petitioner was granted after careful examination of facts, records, CBI Report and in consultation with the respondent no 2/Central Vigilance Commission. The Competent Authority has considered all material such as, FIR, the complaints, relied upon documents, copies of statements of witnesses recorded by the CBI, the advice of the CentralVigilance Commission and other materials. The Sanction Orders do not suffer from the vice of non-application of mind. The prescribed procedure as per applicable guidelines of Department of Personnel and Training (DoPT) and as laid down in the Vigilance Manual 2017 issued by the Central Vigilance Commission (CVC) has been followed at time of issuing of sanction for prosecution in respect of the petitioner the and the same was conveyed to the respondent no 3/CBI with the approval of the Competent Authority. The sanction for prosecution is a standard requirement in terms of provisions of the PC Act and the Code. The present petitions are premature as the case is pending before the Special Court, CBI.The respondent no.1 in counter affidavits also mentioned factual background of the case.

3.1 The respondent no.1 in counter affidavit filed in writ petition bearing no.3609/2018stated that CBI through its Bank Securities and Fraud Cell, Mumbai had registered a case bearing RC BSM 2018 E 0001-CBI/BS&FC/Mumbai dated 31/01/2018 on the basis of a written complaint dated 29.01.2018 submitted by Sh. AvneeshNepalia, Dy. General Manager(DGM), Punjab National Bank(PNB), Circle Office, Mumbai for commission of offences punishable under section 120-B read with section 420 IPC and section 13 (2) read with section 13 (1) (d) of the PC Act, 1988 and substantive offences thereof against Nirav Modi, Neeshal Modi, Ami Nirav Modi, MehulChoksi, partners of M/s. Diamond R US, M/s. Stellar Diamond and M/s. Solar Exports, Gokulnath Shetty, Dy. Manager and ManojKharat, Single Window Operator(SWO), Punjab National Bank, Mid Corporate Branch, Brady House, Mumbai and other unknown persons for cheating the bank to the tune of Rs.280

crores approx. through fraudulently issued LoUs. Avaneesh Nepalia, Dy. General Manager, PNB vide letter dated 13.02.2018 had intimated the respondent no.3/CBI that these accused persons had cheated the PNB to the tune of Rs.6498.20 crores through 150 LoUs, which were fraudulently got issued from PNB, MCB, Brady House Branch, Mumbai. It was further revealed during the investigation conducted by the respondent no.3/CBI that the petitioner, while working as Executive Director, Punjab National Bank, Head Office, New Delhi from January, 2014 onwards became party to the criminal conspiracy along with other accused persons and committed criminal misconduct and cheated the PNB through fraudulent issue and encashment of LoUs, which were got issued from PNB, MCB, Brady House, Mumbai on behalf of M/s Diamond R US, M/s. Solar Exports and M/s Stellar Diamond without any sanctioned limit and without 100% cash margin.

3.1.1 The respondent no 1 in counter affidavit filed in writ petition bearing no.43/2019 stated that Bank Securities and Fraud Cell, Mumbai of CBI had registered a case being RC BSM 2018 E 0002-CBI/BS&FC/Mumbai dated 15.02.2018 on the basis of a written complaint dated 13.02.2018 submitted by AvneeshNepalia, Dy. General Manager(DGM),PNB, Circle Office, Mumbai for commission of offences punishable under section 120-Bread with section 420 IPC and section 13 (2) read with section 3 (1) (d) of the PC Act and substantive offences thereof against Gokulnath Shetty, Dy. Manager, Forex Department, ManojHanumantKharat, SWO of PNB, Mid Corporate Branch (MCB), Brady House, Mumbai, three companies viz. M/s. Gitanjali Gems Ltd., M/s GiliIndia Ltd. &M/s Nakshatra Brands Ltd., MehulChoksi and 10 Directors of said three companies and unknown others for cheating PNB to the tune of Rs.4886.72 crores approx. through fraudulently issued LoUsand fraudulently made unauthorized amendments in Foreign Letters of Credit (FLCs)without recording the same in the CBS System from PNB, Mid Corporate Branch, Brady House, Mumbai. AvaneeshNepalia, Dy. General Manager, PNB vide letter dated 22.02.2018 had intimated CBI that fraud in respect of FLCs have increased by another Rs.1251.56 crores and vide letter dated 04.03.2018, PNB has sent another complaint alleging fraud of about Rs.942.18 crores in the sanctioned limit of the Gitanjali Group of the companies due to which the total amount of fraud risen to Rs.7080.86 crores. It was further revealed during the investigation that the petitioner, while working as Executive Director, PNB, Head Office, New Delhi during the period from January 2014 onwards became party to the criminal conspiracy along with other accused persons committed Criminal Misconduct and cheated the PNB for an amount of Rs.512.28 Crores (on account of fraudulently and dishonestly issued 6 LoUs and fraudulently and dishonestly enhanced 6 FLCs) through fraudulent issue and encashment of LoUswithout any sanctioned limit and without 100% cash margin and fraudulently made unauthorized enhancement of Foreign Letter of Credits (FLCs) without any sanction of the Competent Authority and without there being any sanctioned limit, which were got issued from PNB, MCB, Brady House, Mumbai on behalf of M/s Gitanjali Gems Ltd., M/s Gili India Ltd. and M/s Nakshatra Brands Ltd.

3.2 The respondent no.1 further stated that the CBI has conducted investigation into the allegations and during the investigation has collected documentary evidence and has examined and recorded statements of the witnesses and after such investigation, came to the conclusion that the petitioner, Executive Director, Punjab National Bank, Head Office, New Delhi has been found to be involved in commission of cognizable offences punishable under sections 120-B IPC read with sections 409 & 420 IPC and section 13(2) read with sections 13(l)(c) & (d) of the PC Act, 1988 in conspiracy with other accused persons. CBI requested Government to accord sanction for prosecution of the petitioner being a public servant, as required under section 19 (1) (a) of the PC Act and under section 197 of the Code since he was appointed by the Central Government.

3.3 It was further revealed during the investigation conducted by CBI that the RBI had issued Circular dated 03.08.2016, Caution Advice dated10.08.2016 and Circular dated 25.11.2016 regarding SWIFT operations in banks. Circular dated 03.08.2016 dealt with Cyber Security Controls and SWIFT operations of the banks wherein RBI advised the banks to get the SWIFT infrastructure audited comprehensively and to ensure strict vigil on the transactions made through SWIFT. RBI in the Caution Advice dated 10.08.2016 had mentioned about a similar instance of issuance of fraudulent Letters of Comfort and had cautioned the banks to ensure that their staff abide by the internal instructions relating to SWIFT messages. The Circular dated 25.11.2016 dealt with Cyber Security Controls and Fraud related to trade finance transactions. It was further revealed that the petitioner had been functioning as Executive Director of PNB from 22.01.2014 and had dealt with the relevant RBI circulars, caution notice and urgent questionnaire issued by RBI relating to SWIFT fraud, SWIFT CBS reconciliation etc., but did not protect the interest of the Bank by not taking timely corrective steps and follow up action. The petitioner being Executive Director was also responsible for supervising Mumbai Zone and Mumbai City Circle under which PNB Brady House Branch, Fort, Mumbai falls. The petitioner was also responsible for supervising the Fraud Risk Management, Treasury through NOSTRO reconciliation, audit and inspection of branches. It was further revealed that there was no basis to support the misleading reply and undertaking given by PNB to the RBI vide letter dated 31.10.2016 as no specific instructions were issued by the senior officers of PNB to Authorised Dealer branches until December,2016 except conveying RBI instructions downwards. The action taken reports were not obtained from field units and no visit was conducted to Punjab National Bank, MCB, Brady House, Mumbai in this regard till December 2017 by the petitioner, Executive Director.Asimilar LoU fraud involving Punjab National Bank, DIFC, Dubai, and Indian Overseas Bank, Chandigarh, were detected in 2016 in respect of SWIFT transaction. PNB Management including the petitioner was aware of similar fraud involving Punjab National Bank, DIFC, Dubai and Indian Overseas Bank, Chandigarh but they did not take any corrective action and thereby allowed continuance of the crime by other accused persons in Punjab National Bank, Mid Corporate Branch, Brady House, Mumbai. It was further revealed that the petitioner, while working as Executive Director of Punjab National Bank became a party to the said criminal conspiracy despite having knowledge about a similar LoU fraud involving Punjab National Bank, DIFC, Dubai, and Indian Overseas Bank, Chandigarh, and despite Circular dated 03.08.2016, Caution Notice dated 10.08.2016, Circular dated 25.11.2016 and Letter/Questionnaire dated 27.10.2016 issued by Reserve Bank of India relating to SWIFT fraud, SWIFT CBS reconciliation etc. did not ensure implementation of connective measures, except issuing downward circulars and instead misrepresented the factual position to the Reserve Bank of India in reply to the Letter/Questionnaire dated 27.10.2016 of the Reserve Bank of India through NehalAhad and as such facilitated continuance of the fraud in connivance with other accused persons and thereby committed criminal misconduct and criminal breach of trust resulting in wrongful loss to Punjab National Bank. The Petitioner, Executive Director, Punjab National Bank, HO, New Delhi being a Public Servant in conspiracy with other accused persons caused huge undue pecuniary loss to Punjab National Bank and corresponding wrongful gain to M/s. Diamond RUS, M/s. Stellar Diamond and M/s Solar Exports and other accused persons and themselves without any public interest and constitute offences punishable under section 120B read with sections 409 & 420 IPC and section 13(2) read with sections 13(l)(c) & (d) of the PC Act and substantive offences thereof.

3.4 The report of CBI was examined in the light of section 19(l)(a) of the PC Act and section 197 of the Code. It was noted that under Clause 8(1-A) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme 1970, the power of removal of the

Managing Director and Whole Time Directors of Nationalised Banks is vested with the Central Government. The Whole Time Directors of PNB are happened to be public servants for the purpose of section 19(l)(a) of the PC Act and section 197 of the Code then previous sanction of Central Government is required for their prosecution. CBI in terms of instructions contained in Department of Personnel and Training's Office Memorandum No, 399/33/2006-AVD-III dated06.11.2006, in cases investigated by CBI against any public servant who is not removable from his office except with the sanction of the President forwarded its final report to the respondent no 2/Central Vigilance Commission (CVC) and also simultaneously endorsed a copy of the report to the concerned administrative Ministry/Department. The report was placed before the Competent Authority and it was decided to seek the advice of the respondent no.2/CVC. The respondent no 2/CVC has observed that the report of the respondent no 3/CBI clearly brings out the grave misconduct of UshaAnanthasubramanian, the then MD and CEO, the petitioner and Sanjeev Saran, ED for their failure in implementing the circulars of RBI dated 03.8.2016, 10.08.2016 and 25.11.2016 relating to the potential frauds in banks in issue of LOUs, which are not incorporated in CBS. RBI has issued these circulars consequent to a detection of fraud on IOB Chandigarh. RBI has also referred in its Caution Advice No. 494 regarding issue of fraudulent letters of comfort to the extent of $64.08 Million (Rs.429.33 crores) through swift messages. The above mentioned three officers who constituted the top management of the bank were concerned with these issues and have not only implemented the content of the circular in letter and spirit but were also instrumental in sending false confirmation report to the RBI. Neerav Modi and his Group of Companies were involved in several illegal and fraudulent transactions. The report of the respondent no 3/CBI pointed out that 8 LoUs referred to in the complaint were issued on 9th, 10th and 14thFebruary, 2017 fraudulently and could have been certainly prevented had three officers not acted in the manner in which they did. The report of the RBI also confirmed the misconducts of these persons as per section 13(l)(d) of the PC Act. The commissions and omissions of public servants have clearly caused pecuniary advantage of USD 44.22 million equivalent to Rs.280.70 crores to the entities of Neerav Modi

Group and no public interest was involved in such actions. The respondent no 2/CVC opined that provisions of section 13(l)(d) of the PC Act are attracted and advised that this is a fit case for sanction of prosecution under section 19. The respondent no 2/CVC has accordingly advised for grant of sanction for prosecution under section 19 against UshaAnanthasubramanian, the then MD and CEO, the petitioner and Sanjeev Saran, ED.

3.5 The matter was examined again in the light of the respondent no 2/CVC advice and certain clarifications were sought from CVC with the approval of the Competent Authority. The case was examined once again in the light of the CBI Report, CVC's advice and subsequent clarification and was noted that the respondent no 3/CBI has mentioned in its report that the petitioner was functioning as ED of PNB from 22.01.2014 and has dealt with the relevant RBI circulars, caution notice and urgent questionnaire issued by RBI relating to SWIFT fraud, SWIFT CBS reconciliation etc. but did not protect the interest of the bank by not taking timely corrective steps and follow up action. The petitioner being ED was responsible for supervising Mumbai Zone and Mumbai City Circle under which

PNB Brady House Branch, Fort Mumbai falls and supervising the Fraud Risk Management, Treasury through NOSTRO reconciliation, audit and inspection of branches. The Competent Authority after careful consideration has decided to grant sanction for prosecution in respect of the petitioner.

3.6 The respondent no. 1 on merit denied allegations. It is submitted that the sanction for prosecution in respect of the petitioner has been issued on receipt of a request of CBI based on their investigation report which is subjected to judicial scrutiny. The sanction for prosecution of the petitioner was granted after careful examination of facts, records, CBI Report and in consultation with the respondent no 2/Central Vigilance Commission. It is prayed that writ petition be dismissed.

4. CBI filed Status Report under signature of S.P.Singh, Superintendent of Police, CBI:BS&FC:Mumbai in writ petition bearing W.P. (Crl.) no 3609/2018 wherein stated that a Regular Case bearing no RC BSM/2018/E/0001 was registered on 31.01.2018 by the respondent no 3/ CBI, BS&FC, Mumbai, on the basis of written complaint dated 29.01.2018 lodged by Shri. AvneeshNepalia, Deputy

General Manager, Punjab National Bank (PNB), Zonal Office, Mumbai, against the accused i) Nirav Modi, Partner of M/s Diamonds R US, 1110, Prasad Chambers, Mumbai and Partner of M/s Solar Exports and M/s Stellar Diamond, Mumbai., ii) Neeshal Deepak Modi, Partner of M/s Diamonds R US, M/s Solar Exports and M/s Stellar Diamond, Mumbai, iii) Ami Nirav Modi, Partner, M/s Diamonds R US, M/s. Solar Exports and M/s. Stellar Diamond, Mumbai, iv) Sh. MehulChinubhaiChoksi, Partner M/s Diamonds R US, M/s Solar Exports and M/s Stellar Diamond, Mumbai, v) Sh. Gokulnath Shetty, Dy. House, Mumbai, vi) ManojHanumantKharat, SWO, PNB,MCB, Brady House, Mumbai and other unknown persons forcheating Punjab National Bank to the tune of Rs.280.70 crores through 8 unauthorised issued LOU during the period 09.02.2017 to 14.02.2017 which were got issued by the accused persons in conspiracy with public servants from PNB, MCB, Brady House, Mumbai on behalf of M/s Diamond R US, M/s Solar Exports and M/s Stellar Diamond without having any sanctioned limit and without providing the required 100% cash margin.

4.1 AvneeshNepalia, DGM,PNB, Zonal Office Mumbai submitted additional complaint dated 13.02.2018 against Nirav Modi and his group of firms for cheating the said bank to the tune of USD 1015.35 million (equivalent to INR 6498.20 crores) wherein it was mentioned that Nirav Modi in conspiracy with Gokulnath Shetty, ManojHanumantKharat and other accused persons had fraudulently got issued total 150 LOUs during the period 09.02.2017 to 23.05.2017 including the 8 LOUs which were referred in the complaint dated 29.01.2018 and the these LOUs were issued without having any sanction limit to M/s Diamond R US, M/s Solar Exports and M/s Stellar Diamond and without providing 100% cash margin and despite RBI guidelines for not allowing credit for import for semi-precious and precious stones including pearls for more than 90 days, the accused public servants had allowed credit up to 360 days. The said three firms of Nirav Modi had not repaid the funds and thereby Punjab National Bank hadbeen cheated to the tune of Rs.6498.20 crores approx.

4.2 The respondent no 3 during the investigation arrested 15 accused persons and after investigation in respect of 8 fraudulently issued letters of undertaking amounting to Rs.280.70 crores as mentioned in the complaint dated 29.01.2018 Final Report (Charge-Sheet) under section 173 of the Code was filed before the Special Judge, CBI, Greater Mumbai on 14.05.2018 vide Special Case No 37/2018 against accused Nirav Modi (A-1), Neeshal Modi (A-2), Gokulnath Shetty (A-3), ManojKharat (A-4), Hemant Bhatt (A-5), Bechu Tiwari (A-6), YashwantJoshi (A-7), PraffulSawant (A-8), VipulAmbani (A-9), Arjun Patil (A-10), KavitaMankikar (A-11), Rajesh Jindal (A-12), Mohinder Kumar Sharma (A-13), Bishnubrata Mishra (A-14), Miten Pandya (A-15), Manish Bosamiya (A-16), Sanjay Kumar Rambhia (A-17), Subhash S. Parab (A-18), UshaAnanthasubramanian (A-19), K V Brahmaji Rao (A- 20) i.e. the petitioner, SanjivSharan (A-21) and NehalAhad (A-22) for the offences punishable u/s 120-B IPC r/w 420 and 409 IPC and under section 13(2) read with section 13(1)(c)and (d) of the PC Act, 1988 and substantive offences thereof and against M/s Diamonds R US (A-23), M/s Solar Exports (A-24) and M/s Stellar Diamond (A-25) represented by Nirav Deepak Modi (A-1) for the offence punishable u/s 420 IPC.

5. The respondent no.3 in petition bearing no W.P. (Crl.) 43/2019 also filed Status Report under the signature of Jai Kumar, Superintendent of Police, CBI: BS&FC:MUMBAI wherein stated that CBI, BS&FC, Mumbai on 15.02.2018 registered RC.2/E/2018 against 16 accused persons including Gokulnath Shetty, Dy. Manager (Retired) PNB, MOB, Brady House, Mumbai, MehulChinubbhaiChoksi, MD, M/s GitanjaliGenns Ltd., his group companies viz. M/s Gitanjali Gems Ltd., M/s Gili India Ltd., M/s Nakshatra Brands Ltd. and others for commission of offences punishable under section 120-B IPC read with 409, 420 IPC and section 13 (2) r/w 13(1)(c) & (d) of PC Act and substantive offences thereof. The case was registered on a written complaint dated 13.02.2018 made by AvneeshNepalia, Dy.GM, PNB, Zonal Office Mumbai wherein it was mentioned that these accused persons in connivance with each other defrauded PNB, Mid Corporate Branch (MCB), Brady House, Mumbai to the tune of Rs. 4886.72 Crores in the matter of i) unauthorised and fraudulent issuance of 142 LoUs and ii) unauthorised and fraudulent amendments made in 58 Foreign Letters of Credit (FLCs) comprising of 311 bills, for enhancing its value manifold. PNB during investigation had given two more complaints dated 22.02.2018 and 04.03.2018. It was mentioned in the complaint dated 22.02.2018 that the total amount defrauded by way of issuance of unauthorised and fraudulent LoUs was Rs.3106.56 crores as against the amount of Rs.1854.60 crores (i.e. an increase of Rs.1251.96 crores) reported in the initial complaint dated 13.02.2018. PNB mentioned in the complaint dated 04.03.2018fraud to the extent of Rs.942.18 crores in the credit facilities extended to the said three companies as well as to M/s AsmiJewellery India Ltd. promoted by Sh. MehulChinubhaiChoksi and as such aggregate amount defrauded had risen to Rs.7080.86 crores.

5.1 It was further stated that the report under section 173 of the Code was filed after completion of investigation in respect of 6 LoU transactions and 6 FLC transactions before the Court of Special Judge, CBI, City Civil &Sessions Court, Mumbai on 16.05.2018 vide SC. No.38/2018, against the 18 accused persons including i) Gokulnath Shetty, Dy. Manager (Retired), PNB., ii) ManojHanumantKharat, SWO, PNB, iii) M/s Gitanjali Gems Ltd. represented by its Managing Director MehulChoksi, iv) M/s Gili

India Ltd. represented by its Managing Director DhaneshVrajlalSheth, v) M/s Nakshatra Brands Ltd.represented by its Director DhaneshVrajlalSheth, vi) Shri MehulChoksi, MD, M/s Gitanjali Gems Ltd., vii) AniyathShivraman Nair, Director, M/s Gili India Ltd., viii) Nitin PremShahi, Asst. Finance Officer, M/s Gitanjali Gems Ltd., ix) KapilKhandelwal, Joint President, M/s Gitanjali Gems Ltd., x) VipulChitalia, Vice President (Banking Operation), M/s Gitanjali Gems Ltd., xi) BechuBansi Tiwari, Chief Manager, PNB, xii) Shri YashwantTrimbak Joshi, Manager, PNB, xiii) Prafful Prakash Sawant, Officer, PNB, xiv) Mohinder Kumar Sharma, Chief Internal Auditor, PNB, xv) UshaAnanthasubramanian, the then MD, PNB, xvi) K. V. Bramhaji Rao, ED, PNB, (present Petitioner), xvii) Shri SanjivSharan, ED, PNB, xviii) NehalAhad, GM, PNB for commission of offences punishable under section 120-B IPC read with sections 409 & 420 IRC and section 13(2) read with section 13(1)(c) &(d) of the PC Act and substantive offences. The Special Court has already taken cognizance vide SC no 38/2018.

6. CBI in both reports also stated that the petitioner was not named in FIR but his complicity was revealed during the investigation along with some other accused persons who were occupying senior positions in Punjab National Bank during the relevant period. The investigation revealed that the petitioner joined Punjab National Bank as Executive Director on 22.01.2014 and was continuing on the said post. The petitioner was allocated Treasury Division (including strategic investments), Financial Inclusions, Integrated Risk Management Division and FRMD, SMEAD, Finance & Share Department, Inspection & Audit & Management Audit & Review, Resource Mobilization, Retail Assets, Industrial Rehabilitation Division, Credit (Operation, Monitoring & CARD), Recovery, Borrowal Frauds, MARD and for business parameters of all the Circles and LCBs of Mumbai, Lucknow, Meerut, Agra and Shimla Zones vide office order no 19/2016 issued by Managing Director and CEO, Punjab National Bank.

6.1 The petitioner was assigned Treasury Division (including strategic investments), Integrated Risk Management Division and FRMD, SMEAD, Operations Division and New Initiatives Division, Finance &Share Department, Retail Banking Division, Credit (Operations), monitoring of accounts with exposure of above Rs.50

crores including stock audit & RMS, industrial rehabilitation of zones mentioned below, recovery and related aspects of zones mentioned below, borrowed frauds of zones mentioned below, management audit reports of domain divisions and for business parameters of all the Circles and LCBs of Mumbai, Lucknow, Meerut, Agra and Shimla Zones vide office order no. 12/2017 dated 17.08.2017 issued by the Managing Director and CEO of PNB and therefore, the Mid Corporate Branch of PNB situated at Brady House, Fort, Mumbai was under the jurisdiction of the petitioner.

6.2 During investigation, it was revealed that the Department of Banking Supervision, Central Office, Reserve Bank of India (RBI) had issued the Secret Confidential Circulars bearing no DBS.CO/CSITE/BC.4/33(01.001/2016-17 dated 03.08.2016 and DBS.CO/CSITE/BC.422C;/31.01.015/2016-17 dated 25.11.2016 on Cyber Security Controls-Fraud related to Trade Finance Transactions and misuse of SWIFT which were addressed to the MD/CEO of all Scheduled Commercial Banks.

6.3 The Circulars no. DBS.CO/CSITE/BC.4/33/01.001/2016-17 dated 03.08.2016 issued under the signature by Ravi Kumar, Chief

General Manager, RBI was received in the secretariat of MD and CEO, PNB namely UshaAnanthasubramanian on 06.08.2016 and was also seen by the petitioner (A-20) and were aware of its contents but they did not take any steps to stop the unauthorised issuance of LOUs by the accused public servants of PNB.MCB, Brady House Mumbai which prima facie reflected their connivance in the crime.

6.4 The Department of Banking Supervision, Central Office, Central Fraud Monitoring Cell, RBI had issued another Circular on 10-08-2016 to MD/CEOs of all Scheduled Commercial Banks in the form of Caution Advice vide No.4094 drawing the attention of all the MD/CEOs regarding a fraud involving issuance of 20 LoCs (Letters of Credit) amounting to USD 64.08 Million (equivalent to Rs.429.33 crores) that occurred in a Public Sector Bank wherein there were no underlying trade transactions and without any formal application from the Customer. RBI had mentioned that said LoCs were fraudulently conveyed through SWIFT Message where involvement of Staff Members was suspected and that the User ID/Password of the Maker/Checker for the SWIFT System was compromised. RBI had instructed all MDs/CEOs that while acknowledging the Caution

Advice, they should report occurrence of any such similar incidents in their bank and that ifno such incident was observed, a NIL Statement should be furnished. The investigation revealed that PNB had not responded to said caution advice till the crime came to light in January, 2018.The aforesaid Circulars and Caution notice issued by RBI were brought to the notice of MD & CEO namely UshaAnanthsubramanian, the petitioner, SanjivSharan, ED, NehalAhad, General Manager, IBD, and the same weremarked downward without taking any meaningful corrective measures, follow up for reconciliation of SWIFT-CBS system and the said non-reconciliation resulted in huge wrongful loss to Punjab National Bank amounting to Rs.6498.20 crores.

6.5 RBI also issued urgent questionnaire dated27.10.2016 seeking specific response from PNB related to SWIFT and operational procedures/measures in place for issuing Letters of Undertaking/Letters of Comfort/Letters of Credit and as to how PNB undertakes reconciliation of SWIFT and CBS which was dealt with by UshaAnanthsubramanian, MD & CEO, PNB, the petitioner, SanjivSharan, ED, NehalAhad, GM (IBD). However, in furtherance of the criminal conspiracy instead of replying to the queries of RBI in its true letter and spirit, NehalAhad, GM IBD, PNB HO had prepared a misleading reply dated 31.10.2016 which was approved by SanjivSharan wherein he had misrepresented the facts and informed RBI accordingly.

6.6 No specific instructions were issued to Authorized Dealer branches until December, 2016 except conveying RBI instructions downwards. Similarly, no action taken reports were obtained from field units nor any visit was conducted to PNB, MCB, Brady House, Mumbai in this regard till December 2017. It was also come to light during investigation that a similar fraud was detected in 2016 in respect of SWIFT transaction. The sanctity of the SWIFT message which was used to transmit the fraudulent LoU was in question. PNB officials MD& CEO UshaAnanthasubramanian, the petitioner, SanjivSharan, ED, NehalAhad, GM (IBD) were aware of this fraud involving PNB, DIFC, Dubai and Indian Overseas Bank, Chandigarh and yet they did not take any corrective action and remained silent spectator and thereby facilitated continuance of the fraud by other accused public servants in PNB, MCB, Brady House, Mumbai resulting in wrongful loss to Punjab National Bank.

6.7 Thereafter on the basis of the investigation conducted in respect of 8 LoUs, an Investigation Report (CBI Report) was sent to Punjab National Bank seeking sanction orders for prosecution of accused public servants of the rank of General Manager and below under section 19 (1) (c) of the PC Act, 1988. The Investigation Report (CBI Report) was sent to the Ministry of Finance, Government of India, NewDelhi vide letter dated 12.5.2018 along with copies of relevant documents and copies of statements of witnesses seeking sanction order for prosecution of UshaAnanthasubramanian, Former MD & CEO, PNB, the petitioner, SanjivSharan, Executive Director, PNB under section 197 of the Code and under section 19 (1) (a) of the PC Act 1988. The Sanction Order No 5/1/2018-Vig dated 12.10.2018 issued by order and in the name of Hon'ble President of India was received by the CBI vide which the Hon'ble President of India had accorded sanction as required under section 19 (1) (a) of the PC Act, 1988 and under section 197 of the Code for prosecution of the petitioner, Executive

Director, Punjab National Bank for the offences punishable under section 120-B read with section 409 & 420 IPC and section 13(2) r/w 13(1) (c)&(d) of the PC Act, 1988 and substantive offences thereof and for any other offence or offences made out from the above facts and circumstances and punishable under any other provision of law and for taking cognizance of the said offences by the court of competent jurisdiction. The Special Judge, CBI, Greater Mumbai has taken cognizance of the offences against the petitioner and other accused persons. The further investigation is in progress as the period of offence extends from 2011 to 2017 and some of the accused had escaped from the country before registration of the case.

6.8 The perusal of the sanction would show that there is application of mind by the Competent Authority to grant sanction to prosecute the applicant/ accused. The application of mind of the Competent Authority is a matter of appreciation of evidence which is within the domain of the trial court. The petitioner by filling the Writ Petition under Article 226 of the Constitution of India, before this Court at Delhi has wrongly attracted the Writ Jurisdiction of this Court. The sanction issued by the Competent Authority to prosecute the petitioner has been filed in a case pending trial before Special Court for CBI at Mumbai. The petitioner has wrongly invoked the Writ Jurisdiction of this Court, instead of the High Court of Bombay. The petition is liable to be dismissed.

7. The respondent no 3/CBI also filed reply to both writ petitions.

8. It is apparent that CBI through its Bank Securities and Fraud Cell, Mumbai had registered cases bearing RC BSM 2018 E 0001-CBI/BS&FC/Mumbai dated 31.01.2018 and RC BSM 2018 E 0002-CBI/BS&FC/Mumbai dated 15.02.2018 on the basis of written complaints dated 29.01.2018 and 13.02.2018 respectively submitted by Avneesh Nepalia, Dy. General Manager(DGM), Punjab National Bank(PNB), Circle Office, Mumbai for commission of offences punishable under section 120-B read with 420 IPC and section 13 (2) read with section 13 (1) (d) of PC Act, 1988 and substantive offences thereof against accused named therein for cheating PNB through fraudulently issued LoUs and fraudulently made unauthorized amendments in Foreign Letters of Credit (FLCs) without recording the same in the CBS System from PNB, Mid Corporate Branch, Brady House, Mumbai. The petitioner was not named in FIR but his complicity was surfaced during investigation. The charge sheets have already been filed in respect of both cases registered at Mumbai in the court of Special Judge, CBI, Mumbai and the concerned court has already taken cognizance against named accused persons including the petitioner for the offences as complained of. The respondent no 1 through Department of Financial Services, Ministry of Finance, Government of India also accorded sanction as per section 197 of the Code and under section 19(1)(a) of the PC Act 1988 in relation to both FIR and the Sanction Orders No 05/01/2018-Vig dated 12.10.2018 were issued by order and in the name of Hon'ble President of India in Delhi qua the public servants including the petitioner. The Sanctions Orders dated 12.10.2018 were issued in Delhi. The petitioner was posted in Delhi at relevant time.

9. During the course of arguments on merits, the Special Counsel for CBI raised legal issue by stating that the present petitions are not maintainable in this court for want of territorial jurisdiction as the CBI has registered cases bearing RC no. RC BSM 2018 E 0001-CBI/BS&FC/Mumbai dated 31.01.2018 and RC BSM 2018 E 0002-CBI/BS&FC/Mumbai dated 15.02.2018 in Mumbai. The charge sheets were filed before the Special Judge, CBI, Mumbai and the said court has taken the cognizance against the accused including the petitioner at Mumbai. The trial arising out of these cases are pending in Mumbai. It is further argued that the petitioner was required to file the present petitions in Mumbai.

9.1 The Special Counsel for the CBI further argued that the offences subject matter of the present cases were committed in Mumbai and all the firms involved in the commission of offences are operative in Mumbai. The Office of PNB i.e. Mid Corporate Branch (MCB),Brady House, where the offences as complaint of are committed is also situated at Mumbai. CBI has conducted the investigation at Mumbai and relating proceedings such as search, seizures, issuance of non-bailable warrants were also conducted after obtaining warrants/permission from the court situated within the territorial jurisdiction of Mumbai.The accused were remanded back to police/judicial custody by the concerned court situated at Mumbai. The petitioner also sought bail from the court situated at Mumbai. The Mumbai Branch of CBI also sought sanction for the prosecution of the public servants including the petitioner and the Sanction

Orders dated 12.10.2018 were delivered at Mumbai. The final report under section 173 of the Code was also filed before the court of competent jurisdiction at Mumbai as per the provision of section 4(2) of PC Act. The petitioner has already submitted to the jurisdiction of the court situated within the territorial jurisdiction of Mumbai. The appropriate court for seeking the relief as claimed by the petitioner is the Court of Special Judge, CBI, Mumbai or the Bombay High Court. It was argued that the present petitions be dismissed for want of territorial jurisdiction. The Special Counsel for CBI has primarily relied upon **Sachin Hindurao Waze V Union of India and others,** AIROnLine 2022 Del 160 decided by the Division Bench of this Court in W.P.(Crl) 88/2022 on 07.10.2022 and **Girish Sagar V Union of India & others** decided by this Court in W.P. (Crl) 3420/2019 on 31.08.2022. The Special Counsel also referred other judgments delivered by the Superior Court.

10. The learned Senior Counsel for the petitioner advanced oral arguments as well as submitted written submissions. It was argued that the petitioner was appointed as Executive Director, PNB vide Notification dated 22.01.2014 issued by the Department of Financial

Services, Ministry of Finance at Delhi and remained posted at Head Office of the PNB situated at New Delhi till his removal from the post of Executive Director. The circulars issued by RBI were brought to the notice of the petitioner at Delhi and the meeting dated 09.08.2016 held for the implementation of RBI Circulars and the note of Information Technology Department to defer the implementation was also held at Delhi.The Sanctioning Authority i.e. the Department of Financial Services, Ministry of Finance has passed the Sanction Orders dated 12.10.2018 at Delhi which were served to the petitioners at Delhi. It was further argued that the substantial and meaningful cause of action had arisen within the territorial jurisdiction of this Court. The Sanctioning Authority is situated at Delhi and requisite file which was perused are also lying within the physical limits of this Court. The learned Senior Counsel in light of these submissions argued that this Court has the territorial jurisdiction to entertain the present petitions and also to exercise the writ jurisdiction to prevent the grave miscarriage of justice caused by the Sanction Orders to the petitioner. The learned Senior Counsel for the petitioner relied upon **Rajendran Chingaravelu V R.K. Mishra,**

Additional Commissioner of Income Tax and others, (2010) 1 SCC 457 and **State of UP V Mohd. Noor,** 1958 SCR 595.

10.1 The learned Senior Counsel for the petitioner further relied upon decision delivered by Special Bench comprising 5 Judges of this Court in **Sterling Agro Industries Ltd V Union of India and others**, 2011 SCC OnLine Del 3162 wherein it was observed that even if a miniscule part of cause of action arises within the jurisdiction of this Court, writ petition would be maintainable before this Court.

11. The Standing Counsel for the respondent no 1/Union of India also argued that the present petitions are not maintainable for want of territorial jurisdiction merely and fact that the Sanctioning Authority is located at Delhi does not give territorial jurisdiction to entertain the present petitions. He argued that the cause of action cannot be based on fact that the place where the Sanctioning Authority is situated.

12. This Court in **Girish Sagar V Union of India and others** had occasion to deal with the issue of territorial jurisdiction in a petition which was filed to challenge the Look Out Circular (LOC) issued by the Ministry of Home Affairs having its registered office at Delhi at the instance of Enforcement of Directorate which had registered ECIR at Mumbai and filed the prosecution complaint at Mumbai qua which the cognizance was taken by the Special Judge, PMLA. It was held that court at Delhi is lacking territorial jurisdiction to entertain such petition and mere issuance of LOC from Delhi does not create or vest territorial jurisdiction in courts at Delhi. It was observed as under:-

> **13. The CGSC argued that the present petition is not maintainable due to lack of territorial jurisdiction as the prosecution Complaints bearing no. 01/2011 and 24/2013 were also filed in Mumbai and the Special Court, PMLA, Mumbai took cognizance of these Complaints and issued the process. The petitioner was required to file present petition in Mumbai.**
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> **The counsels for the petitioner argued that this court is having territorial jurisdiction to entertain and decide the present petition and stated that this court has jurisdiction to entertain and adjudicate the present petition as Look Out Circular was issued by the respondent no. 2 which is having its registered office at Delhi and trial in pursuance of FIR bearing RC No. 13/E/2016 is pending adjudication before the CBI Court, New Delhi.**
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> **13.1 Whenever a suit/writ is instituted before the court, the initial issue is to be decided whether the court has jurisdiction to deal with the matter. If the court does not have jurisdiction then it will be recognized as lack of jurisdiction and irregular exercise of jurisdiction. If the court does not have jurisdiction to decide the case then such decision would be regarded as void or voidable depending upon the circumstances. Jurisdiction is not defined and explained in Code of Civil Procedure, 1908. Jurisdiction is**

power and competence of the court to adjudicate case. Jurisdiction is boundary of court in exercise its judicial authority. In Hriday Nath Roy V Ram Chandra, AIR 1921 Cal 34, Calcutta High Court explained Jurisdiction and observed as under:-

> **An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact;' 'the authority by which judicial officers take cognizance of and decide cause;' 'the authority to hear and decide a legal controversy;' 'the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them;' 'the power to hear, determine and pronounce judgment on the issues before the Court;' 'the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect;' 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.**

The question of what is jurisdiction came for consideration before the Supreme Court in Official Trustees West Bengal V Sachindra Nath Chatterjee, AIR 1969 SC 823. The Supreme Court after relying on the Full Bench judgment in Hriday Nath Roy V Ramchandra held as under:-

> **13. What is meant by jurisdiction? This question is answered by Mukherjee Acting C.J., speaking for the full bench of the Calcutta High Court in Hirday Nath Roy v. Ramchandra BarnaSarma, AIR 1921 Cal 34 explained what exactly is meant by jurisdiction. We can do not better than to quote his words:**
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> **In the order of Reference to a Full Bench in the case of Sukhlal v. Tara Chand, (1905) ILR 33 Cal 68 (FB), it**

was stated that jurisdiction may be defined to be the power of a Court to 'hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:' in other words, by jurisdiction is meant 'the authority which a "Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.' An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact' "the authority by which the judicial officers take cognizance of and decide causes"; 'the authority to hear and decide a legal controversy' "the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them"; "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution".

Proceeding further the learned Judge observed: "This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is obviously of a fundamental character.

13.2 It is reflecting from record and not in dispute that the respondent no. 3 registered a ECIR vide ECIR/02/MZO/2007 dated 08.01.2007 under PMLA wherein Hassan Ali Khan and others at Mumbai and filed the Prosecution Complaints bearing no. 01/2011 dated 06.05.2011 titled as Samir Bajaj V Hassan Ali Khan & another and 24/2018 dated 17.07.2018 titled as Directorate of Enforcement V Hassan Ali Khan & Others before the Special Court (PMLA), Mumbai. The Special Court (PMLA), Mumbai after taking cognizance issued process against Hassan Ali Khan and others in these prosecution complaints for the offence under section 3 of the PMLA. The respondent no. 3 conducted search at the residence of the petitioner situated at Mumbai on 09.02.2016. The co-accused namely Vishwanathan Venugopal along with Hassan Ali Khan in ECIR dated08.01.2007 had filed a Writ Petition (Civil) No. 11771 of 2018 titled as Vishwanathan Venugopal V. Bureau of Immigration and Others before this court which was disposed of vide order dated 11.03.2019 after observing that permission to travel can be granted to him by the Special Judge (PMLA), Mumbai which is competent to allow him to travel depending upon the facts and circumstances of the case as Prosecution Complaints bearing no. 01/2011 and 24/2018 are pending before the Special Court (PMLA), Mumbai.

13.3 The respondent no. 4/CBI, EOW, Mumbai registered FIR bearing no. RCD682016E0013 dated 19.09.2016 under section 120-B read with section 420 of the Indian Penal Code, 1860 read with Section 13(1) (d) of Prevention of Corruption Act, 1988 and thereafter the respondent no. 2 considering nature of scheduled offences and involvement of proceeds of crime of Rs. 36000 crores initiated investigation under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 at Delhi. The petitioner was directed to appear in the headquarter office of ED, Delhi on 30.06.2018 but the petitioner himself on 02.07.2018 requested to change venue/place of enquiry to Mumbai which was not accepted.

Thereafter, the petitioner was further directed to join investigation in ED headquarter office at Delhi vide summons dated 10.08.2018, 14.08.2018, 11.01.2019 and 01.02.2019 under Section 50 of PMLA, 2002. The petitioner on 03.02.2022 was summoned and in pursuance of order dated 24.01.2022 passed by this court was directed to join investigation at the Mumbai Zonal Office on11.02.2022 and was asked to furnish details/documents. The petitioner appeared before the Mumbai Zonal Office on 11.02.2022 and his statement was recorded on 11.02.2022 under section 50 of PMLA.

13.4 The special court, PMLA at Mumbai has already seized with criminal cases as detailed hereinabove initiated by the respondent no. 3. The petitioner himself subjected him to jurisdiction of courts situated at Mumbai by filing writ petition bearing no. 2332 of 2016 and Crl. Misc. Application No. 677/2018 for supplying the certified copy of the FIR registered on 19.09.2016 by the CBI. The respondent no. 4/CBI, EOW, Mumbai also registered FIR bearing no. RCD682016E0013 dated 19.09.2016. Although in pursuance of said FIR, the respondent no. 2 initiated investigations under PMLA vide ECIR/HQ/02/2017 dated 24.01.2017 at Delhi but the petitioner was permitted to join investigation at Mumbai in pursuance of said ECIR. Moreover, FIR bearing no. RCD682016E0013 dated 19.09.2016 which is genesis of registration of ECIR/HQ/02/2017 dated 24.01.2017 at Delhi was registered after issuance of LOC dated 10.02.2016.

13.5 Mere fact that the respondent no. 2 through the respondent no. 6 on the request of the respondent no. 3 issued LOC dared 10.02.2016 at Delhi does not create or vest territorial jurisdiction in courts at Delhi. No cause of action either wholly or in part has ever been arisen in Delhi for filing the present petition. This court is lacking territorial jurisdiction to entertain the present petition.

13. The Division Bench of this Court in **Sachin Hindurao Waze V Union of India and others** dealt with issue of territorial jurisdiction in invoking writ jurisdiction in Delhi. The petition was filed in Delhi to challenge the order granting sanction for prosecution being made in Delhi qua the offences which took place in Mumbai, the charge-sheet had been filed in Mumbai and the trial had also been conducted in Mumbai. It was observed as under:-

> **12. On a broad holistic assessment of decisions cited by the petitioner would show that there are practically two elements which have to be considered by any court while accepting jurisdiction to decide a writ petition under Article 226 of the Indian Constitution – firstly, if any part of the cause of action arises within its territorial jurisdiction; and secondly if the said court is the forum conveniens. Only a mere shred or an iota of a cause of action potentially clothing a particular High Court with jurisdiction [per Article 226(2) of the Constitution of India] to adjudicate a writ petition, ought not to encourage a court to accept such jurisdiction completely divorced and dehors an assessment of forum conveniens. This has been categorically articulated in decisions of this Court. A Special Bench comprising 5 judges of this Court [Chief Justice DipakMisra, Vikramajit Sen, J. A.K. Sikri, J. Sanjiv Khanna, J. and Manmohan, J.] in Sterling Agro (supra) after traversing the law relating to territorial jurisdiction in context of Article 226 of the Constitution of India emphasized that the High Court must not only advert to the existence of a cause of action but also remind themselves about the doctrine of** ***forum conveniens*** **also. In this regard the following paragraphs of the judgment of the Special**

Bench are instructive which are reproduced as under for easy reference:

> **"30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black's Law Dictionary, forum conveniens has been defined as follows: "The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."**
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> **31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.**
>
> **32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.**

(emphasis added)

Accordingly, in para 33 of the reported judgement in Sterling Agro Industries (supra) this Court concluded that a cause of action cannot be totally based on the situs of the tribunal /appellate authority/ revisional 2022:DHC:4070-DB W.P. (CRL.) 88/2022 Page 12 of 15 authority while completely ignoring the concept of forum conveniens and that the High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens"

13.1 The Division Bench in **Sachin Hindurao Waze V Union of India and others** also referred decision of another Division Bench of this court in **Sonu Sardar V Union of India,** (2016) SCC OnLine Del 6206. It was held as under:-

13. Reference was also made to a decision of the Division Bench of this Court in Sonu Sardar Vs. Union of India (2016) SCC Online Del 6206 where this Court while noting the decision in Sterling Agro (supra) examined issue of jurisdiction of this Court in a matter where the petitioner had impugned the orders of the President of India and the Governor of Chhattisgarh rejecting the mercy petition of the petitioner who had been sentenced to death. In Sonu Sardar (supra), this Court while adverting to the concept of cause of action drew a distinction between a situation where criminal investigation was pending and where criminal proceedings had attained finality and the challenge was merely to an executive action, as in the case of a mercy petition. Para 21 of the judgment of this Court in Sonu Sardar (upra) is extracted under for ease of reference:

"The concept of cause of action in respect of criminal proceedings cannot apply sensu stricto to the present proceedings as the same are not a continuation of the judicial proceedings but premised upon executive orders. Accordingly, the judgments of the Supreme

> **Court in Navinchandra N. Majitha (Supra) and Manoj Kumar Sharma (Supra) do not come to the aid of the applicant as in both the cases the criminal investigation was pending; while the present proceedings have arisen as a consequence of executive actions and by no means can be said to be an extension of the criminal proceedings, which have attained finality."**

Thereafter, this Court noted the decision in Kusum Ingots (supra) and Sterling Agro (supra) on the application of principle of forum conveniens and stated as under:

> **"27. In view of the aforegoing, it is clear that the courts should generally decide disputes upon which they have jurisdiction. They may decline to exercise such jurisdiction only if there are compelling reasons for not doing so. In doing so, the courts must apply a balancing test and reject to exercise jurisdiction only if there are compelling reasons keeping the Latin maxim Judex tenetur impertiri judicium suum in mind."**

14. In present petitions FIRs were registered at Mumbai. The charge sheets after conclusion of investigation were filed in court of Special Judge, CBI, Mumbai and cognizance was also taken by the Special Court, CBI at Mumbai. The petitioner has already submitted to the jurisdiction before the court situated at Mumbai. The branch of PNB stated to be place where offences are complained of was situated within territorial jurisdiction of Mumbai. The proceedings arising out of FIR were conducted in Mumbai. The investigation was primarily was conducted in Mumbai. The jurisdiction on the court situated at

Delhi cannot be conferred merely because the petitioner was posted in Delhi and the Sanction Orders dated 12.10.2018 were passed in Delhi. The actual cause of action as mentioned hereinabove was arisen in Mumbai so this Court does not have any territorial jurisdiction to entertain the present petitions. The arguments advanced by the learned Senior Counsel for the petitioner as referred hereinabove are without any legal basis and the judgments cited by the learned Senior Counsel for the petitioner also do not provide much help in view of the above discussion.

15. Hence, the present petitions along with pending applications, if any, stand dismissed. However the petitioner shall be at liberty to initiate appropriate legal proceedings with regard to subject matter of present writ petitions before court of competent jurisdiction.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 04, 2023
N/SD