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Crl.O.P.No.8425 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.8425 of 2023

The State Represented by
The Additional Superintendent of Police,
Economic Offences Wing-II,
Ashok Nagar,
Chennai – 83.

... Petitioner / Respondent

Vs.

Rooso

... Respondent A-20 / Petitioner

PRAYER: Criminal Original Petition filed under Section 439(2) of Cr.P.C.,
prayed to cancel the bail order passed by the learned Special Judge, TNPID
Court, Chennai in Crl.M.P.No.82 of 2023 dated 12.01.2023.

For Petitioner : Mr. R. Muniyapparaj,
Additional Public Prosecutor,
Assisted by Mr.Sylvester John

For Respondent : Mr. V. Raghavachari,
Senior Counsel,
For Mr.K.G. Senthilkumar



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ORDER

This petition has been filed taking advantage of Section 439(2) Cr.P.C., by the Investigating officer questioning an order dated 12.01.2023 passed in Crl.M.P.No.82 of 2023 by the learned Special Judge, TNPID Court, Chennai. By the said order dated 12.01.2023, the learned Special Judge had granted bail to the respondent herein, who was an accused in Crime No.7 of 2022 registered under Sections 34, 109, 409, 120(B) and 420 IPC and Sections 3, 5, 21(1), 21(2), 21(3), 23 and 25 of BUDS Act, 2019 and Section 5 of TNPID Act, 1997.

2.Even before proceeding to examine the reasons stated for cancellation of bail, a few background facts will have to be stated particularly, about the respondent herein. The entire issue surrounds the functioning of eight separate companies with common nomenclature M/s.Aarudhra. They were directly involved in collecting money from numerous gullible investors promising higher returns and finally, walked away with the entire amount collected. As on date, it is stated and placed on record that there were 1,09,255 depositors who had deposited a total sum of Rs.2,522/- Crores. Out of this, the prosecution during the course of their



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investigation had searched 81 premises and had recovered a sum of Rs.6,47,00,000/- in cash and 4.022 Kgs of Gold apart from some silver articles. They had also seized about 34 cars and few laptops. The Investigating Agency had also frozen 128 bank accounts and the balance in the these banks accounts was around Rs.102/- Crores. It is thus seen that when compared with the amount deposited by the depositors, the amount available for distribution or which had been seized is very negligible and extremely disproportionate. A sizable portion of the amount deposited by the innocent people had been screened away from the grasp of the Investigating Officer and had been parked at various unknown places.

3.The respondent herein / A20 is also one such individual, who had deposited amount and it is on record that through various transactions, he had deposited about Rs.6/- Crores in M/s.Aarudhra Gold Trading Private Limited. When an application seeking anticipatory bail / bail of the Directors of the company / those who had been initially shown as accused came up for consideration, he had filed an application seeking to intervene as one of the victims and had opposed grant of any relief. At that particular point of time, it is stated that he had been paid back Rs.1.96/- Crores. This fact is not in



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dispute.

4. But what has subsequently transpired is the metamorphosis of this respondent from the guise of an innocent depositor to one who can manoeuvre and proclaim himself to be an agent of the other accused. He had held out a promise that he would be able to adjust the pending cases and simultaneously also approached the depositors that they need not approach a Court of law and that he would ensure that the amounts would be recovered from the main accused, who can be termed as the Directors of the company. This transformation from an innocent depositor to an active agent of the accused had made the Investigating Agency to subsequently array him as a further accused. He was originally termed as A20 and now, when the charge sheet has been filed, he had been termed as A39.

5. It must also be mentioned that there are 40 accused in this case. It must also be stated that at various points of time, applications seeking bail had come up before the Court filed by the other accused and this Court had been consistent in dismissing all those applications.



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accused and the depositors and the investigating agency. It is also seen from the records that out of the Rs.15/- Crores which he had received, he had also parted with a sum of Rs.12.5/- Crores to yet another accused and quite interestingly that accused, one R.K.Suresh who is said to be a film producer is now under the process of producing a film, and the respondent is acting as the hero of the film.

8.I really wonder at the turn of events. All this was certainly not predicted when the investigation commenced. The respondent, like a chameleon had turned himself from being an innocent depositor to one who opposed grant of any relief to the other accused, and later to acting as an agent of the accused and is now acting in a film as a hero produced by another accused.

9.There is one further fact which has troubled the mind of this Court so far as this application seeking cancellation of bail is concerned.



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10.As stated, the present respondent after being arrested had been taken into custody. An application seeking bail was pending before the learned Special Judge, TNPID Court, Chennai. On 05.01.2023, the learned Special Judge had thought there were no grounds to grant of bail and had dismissed the bail application. On the very next day, 06.01.2023, this respondent, who had held out that he would be able to act as a mediator to ensure that the cases are taken care of, had filed a second bail application. After the normal delay of getting a counter and hearing the parties, on 12.01.2023, the very same Judge had granted bail to this petitioner. The learned Special Judge, should have, for a moment thought about the sanctity and consequence of entertaining a second bail application on the very next day, after dismissing the first bail application. There cannot be any change in circumstances in the intervening night between 05.01.2023 and 06.01.2023, unless as stated by this respondent “he can take care of the cases”.

11.It is with much dismay that I have recorded the above statement.

12.A few further points are required to be stated to point out the gravity of the nature of offences. As stated there are 40 accused in Crime



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No.7 of 2022. The first eight accused were the various companies but with the common nomenclature of M/s.Aarudhra. Thereafter, a string of directors came to be added as accused and later those who were in-charge of various places and the regional heads who acted on behalf of the company and who had participated in the collection of substantial amounts were also added as accused. The respondent herein is now termed as A39 out of 40 accused.

13.During the course of investigation the fact that a sum of Rs.15/- Crores had flowed over to him on the assurance that he would be able to settle the cases as against the other accused had surfaced. There can be nothing more shocking than that reason for which the amount was transferred by the main accused in Dubai to this respondent here at Chennai. The very first usage of that money, and I regret for the particular words used, is to file a second bail application for himself on the very next day after the 1st bail application has been dismissed and seeking bail and actually obtaining bail from the very same Judge, who had dismissed his earlier bail application. This fact will necessarily have to be pointed out.

14.It is insisted on behalf of the petitioner herein / Investigating



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Agency on behalf of whom the learned Additional Public Prosecutor had argued, that out of the Rs.15/- Crores, a sum of Rs.12.5/- Crores was transferred in the presence of witnesses to a film producer, who is also an accused and in his film, the petitioner is acting as a hero.

15.The call details at the time of transfer of Rs.12.5/- Crores matched and had emanated from the very same tower. Naturally, further investigation will have to be done on that particular aspect. It is stated that therefore there is every possibility of this petitioner, if not threatening the witnesses, cajoling them to speak in a particular manner while deposing evidence in Court, thereby ensuring that the interest of the other accused are protected. It is alleged that this accused could also settle the cases and also interfere directly with administration of Justice.

16.These are very serious allegations and are the grounds on which the bail granted to the respondent is sought to be cancelled.

17.They may not be grounds, which are normally canvassed, namely, hampering of investigation or threatening witnesses or violating any



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of the conditions of the order granting bail. But certainly, the respondent had gone too far in holding out that he would be in a position to manage and settle cases. If he is let out free and permitted to remain free, there would be total collapse of the judicial system insofar as this investigation is concerned. The primary concern of this Court and in fact the duty of this Court is to ensure that such a situation does not happen in the near future and forever.

18.These are the grounds which the learned Additional Public Prosecutor pointed out and insisted that this Court should ensure that the bail granted to the respondent is cancelled.

19.In this connection, the learned Additional Public Prosecutor further pointed a few further facts, which stare on the face of the respondent. The first one is about receipt of Rs.1.96/- Crores as commission. This amount cannot be either denied or disputed by the respondent. They have been received through bank transactions. The second aspect is transfer of money of Rs.1/- Crore from the said accused, who is the producer of the film back to the account of the respondent, as stated by the wife of this respondent during the course of investigation.



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20. These two transactions are evident on the basis of records.

These can be established by the prosecution. Even if it is stated that a sum of Rs.1.96/- Crores was payment of the amount invested by the respondent, there cannot be any explanation for a further transfer of Rs.1/- Crore by the said accused, R.K.Suresh to the respondent. These facts will have to be necessarily considered by this Court, while determining whether the bail already granted should be interfered or set aside.

21. Section 439(2) of Cr.P.C., provides various circumstances when a Court can interfere with an order granting bail and set aside the same. I must point out that the grounds therein were restricted to the vision which the legislature had at that particular point of time. They could never have imagined a situation where money could be re-transferred to a probable witness for the purpose of managing and settling cases and thereby, he turning into an accused and receiving money and obtaining bail which itself is a proof of managing the case. I hold that such circumstance is a substantial ground for cancellation of bail.

22. Under Section 439(2) of Cr.P.C., the High Court or the Court of



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Sessions may direct that any person who has been released on bail under that Chapter to be arrested and committed to custody. The ground which is today urged, namely, supervening circumstance is also a ground, if at all made out, for cancellation of bail.

23.The learned Senior Counsel for the respondent, argued that the fact of receipt of Rs.15/- Crores was available with the prosecution, when both the first bail application and the second bail application were filed and objections were not raised on that particular aspect.

24.This argument would not take the respondent anywhere since if it is to be taken on record then, in the first place, it has got to be an admission of receipt of Rs.15/- Crores. When there is an admission of Rs.15/- Crores it cannot be stated that possession of Rs.15/- Crores by the respondent cannot be a ground for cancellation of bail since he had not used it for the particular purpose as held out by the prosecution.

25.The argument of the learned Senior Counsel that the ground



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urged namely, manipulation or managing of cases was even earlier available, can be sustained only if there is admission of receipt of Rs.15/- Crores. The learned Senior Counsel however further pointed out that though this particular statement was available in the first instance, they had not been put before the learned Sessions Judge ,while considering the second bail application.

26.I wonder to myself, as to the logic behind that particular argument. If it is stated that this statement of receipt of Rs.15/- Crore is correct and that it was not put before the learned Special Judge when he considered the second bail application, then it must also logically follow that Rs.15/- Crores was actually received, but not for the particular purpose, as stated by the prosecution, but for some other purpose. The purpose alone could be questioned by the respondent but not the receipt of Rs.15/- Crores or the subsequent transfer of Rs.12.5/- Crores to the film producer / other accused.

27.It is further pointed out by the learned Senior Counsel that there



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has been a specific change in circumstances from the date on which the first bail application has been dismissed to the date of the order granting bail namely, that further documents were produced, that the respondent had been in police custody and had been released from police custody and his statement recorded and the statement was available on record. But the crucial aspect is the nature of the statement made and not just that a statement had been recorded. The Court should examine the purpose for which the said sum of Rs.15/- Crores was alleged to have received by the respondent. I am hope the learned Special Judge had erred on the side of caution before granting the bail second time.

28. One shocking fact is the consideration of the bail application, which was filed, and I must state quite audaciously, on the very next day after the first bail application was dismissed. There could not have been any change in circumstance in the intervening night. The fact that the application was filed itself shows an underlying confidence about the nature of the order that would be passed on a subsequent date. These are circumstances which call for interference by this Court to the order granting bail. There had been undercurrents, which will have to be viewed very seriously. They may not be evident on the face of record, but the Court will necessarily have to give its



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due attention to allegations made and in order to determine, the correctness of those allegations, further interrogation of the respondent is certainly required. That interrogation would be possible only when the respondent is physically taken into custody. That physical custody would be possible, only when the order granting bail is cancelled by this Court.

29. The learned Additional Public Prosecutor relied on the judgment of the Hon'ble Supreme Court reported in **(2022) LiveLaw (SC) 103, Centrum Financial Services Limited Vs. State of NCT of Delhi and Anr.** In that particular case, the Hon'ble Supreme Court, was concerned with an appeal by the defacto complainant against the order of the Delhi High Court granting bail to the accused for the offences under Sections 409, 420, 467, 468, 472 and 120 B IPC. While examining the parameters on which the order granting bail, or cancellation of bail could be interfered with by a Court of larger jurisdiction, the Hon'ble Supreme Court had entered into a discussion, which is extremely relevant to determine the nature of order to be passed in the present application.

“12.1 What is observed and held is that the rejection of bail in a non-bailable case at an initial stage and cancellation of bail so granted has to be dealt with and considered on different



*basis and that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Therefore, on very cogent and overwhelming circumstances the bail can be cancelled. At this stage, the decision of this Court in **Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558]** is required to be referred to. In the said decision, it is observed and held by this Court that though this Court does not ordinarily interfere with the order of the High Court granting bail, however, where the discretion of the High Court to grant bail has been exercised without due application of mind and in contravention of the directions of this Court, such an order of granting bail is liable to be set aside. Thereafter after drawing the distinction between the power of an appellate court in assessing the correctness of an order granting bail and an application for the cancellation of the bail, in para 16 it is observed and held as under : (SCC pp. 125-26)*

*“16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. **On the other hand, an application for cancellation of bail is generally examined on***



the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031]. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held : (Neeru Yadav case [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , SCC p. 513, para 12)

‘12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm.



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While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

12.2.Thus, as per the law laid down by this Court where a court while considering an application for bail fails to consider the relevant factors, an appellate court may justifiably set aside the order granting bail. The appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or a prima facie view from the evidence available on record. ”

(Emphasis Supplied)

30.The ratio laid down in the aforementioned judgment of the Hon'ble Supreme Court is that an order granting bail could be cancelled if, after the grant of bail, either the accused had misconducted himself or if there is some supervening circumstance warranting cancellation of such bail.

31.In the instant case, the learned Additional Public Prosecutor placed emphasis on the second aspect namely, the supervening circumstance. That is the material which had emanated, whether available earlier or later,



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but still, when analysed very deeply, that the respondent had received a sum of Rs.15/- Crores for the ostensible purpose of managing and settling cases and of taking care of the depositors. He had also handed over in cash, a sum of Rs.12.5/- Crores to another accused / R.K.Suresh who in turn had re-transferred through bank transaction a sum of Rs.1/- Crore when called upon to do so by the wife of the respondent.

32.These are very important supervening circumstances.

33.The learned Additional Public Prosecutor then placed reliance on a judgment reported in **(2014) 16 SCC 508, Neeru Yadav Vs. State of Uttar Pradesh and Another**, which in fact was referred to in the earlier judgment. This was an appeal by the accused questioning, an order passed under Section 439(2) of Cr.P.C., by the High Court of Allahabad cancelling the order granting bail. Paragraph No.12 of the judgment is relevant. It is as follows:

*“12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. **It is well settled in law that cancellation of bail***



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after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court. ”

(Emphasis Supplied)

34.The learned Additional Public Prosecutor placed further reliance on the judgment of the Hon'ble Supreme Court reported in **(2012) 12 SCC 180, Kanwar Singh Meena Vs. State of Rajasthan and Another**, wherein again the Hon'ble Supreme Court had examined the principles under both Sections 439(2) and 437(5) of Cr.P.C., and the contrasting scope of both the provisions. Paragraph No.10 of the said judgment is as follows:



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*“10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. **If the court***



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granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail. ”

(Emphasis Supplied)

35.The Hon'ble Supreme Court had stated that if there is absence of supervening circumstance such as propensity of the accused to tamper with



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the evidence, then the bail should not be granted. In the instant case, there is existence of a supervening circumstance which has given rise to reasonable apprehension in the mind of the Investigating Agency that the respondent would in fact interfere with the administration of justice directly and consequently, will interfere with the freedom of expression of the depositors and also affect the statement already recorded from the witnesses by the Investigating Agency.

36.These are very strong grounds for cancellation of bail granted.

37.Let me once again go back to one salient fact, which I had expressed earlier, namely, entertaining the bail application on the very next day of dismissing the bail application by the learned Special Judge. It was only on the previous day that he had dismissed the application seeking bail. To a large extent, applications seeking bail in the District Court are filed before the learned Special Judge and if not, in the filing section and brought to the notice of the Special Judge on the very same day. Therefore, when he had perused the second bail application on 06.01.2023 or at the latest on 07.01.2023, he should have been aware that he had dismissed the first bail



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application just a day or two days prior on 05.01.2023. There could never be any change in circumstance in the intervening night or day.

38.The very fact that he had permitted the bail application to be taken on record and had proceeded to grant bail, calls for explanation from the learned Special Judge, TNPID Court, Chennai. The Registry is directed to call for necessary explanation from the learned Special Judge, who presided over the Special Court for TNPID Act Cases at Chennai on 05.01.2023, 06.01.2023 and 12.01.2023, about the circumstances which prevailed upon him to entertain the bail application and grant bail after dismissing the first bail application just a day earlier. I am conscious that granting bail is a discretion vested in the Sessions Judge, but discretion should be exercised judiciously.

39.For all these reasons, I am convinced that the bail granted should be interfered with by this Court. It may not lie in the mouth of the respondent to state that the statement had been recorded in the year 2022 and had been pressed in service in the year 2023 and contend that it had been done so since politically different views are held by the accused and by the



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prosecuting agency.

40.The Investigating Agency is an independent agency, which acts primarily for the cause of the public. The political views of the accused are neither here nor there. He had changed himself like a chameleon from being a witness to being an agent for the accused to manage and settle cases. He may also in course of time, change his political views as the wind blows. Therefore, I would reject such argument. I would condemn such argument placed before this Court. They are totally unwarranted and not called upon.

41.Observing as above, **this Criminal Original Petition stands allowed.** The bail granted to the respondent in Crl.M.P.No.82 of 2023 by order dated 12.01.2023 is cancelled.

42.The The respondent is directed to surrender before the Special Court for Exclusive Trial of Cases under the TNPID Act, Chennai, within a period of three working days from the date of receipt of a copy of this order, failing which, the petitioner is directed to take the respondent into custody without awaiting for any further direction from this Court.



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Index : Yes / No
Neutral Citation : Yes / No
Speaking order : Yes / No

To

1.The Special Judge, TNPID Court, Chennai – 600 104.



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2. The Additional Superintendent of Police,
Economic Offences Wing-II,
Ashok Nagar,
Chennai – 83.

3. The Public Prosecutor,
High Court of Madras.

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