



\$~

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

+ **BAIL APPLN. 353/2023**

AJAY RAMESH CHANDRA NAWANDAR Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate
with Mr. Hemant Shah, Mr. Akshay Rana,
Mr. Saurabh Pal and Ms. Nancy, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Anupam S. Sharma, SPP, CBI
with Mr. Prakarsh Airan, Ms. Harpreet Kalsi,
Mr. Abhishek Gupta, Mr. Ripudaman Sharma,
Advocates along with ASP Alok Kumar Singh,
CBI and SI Shekhar Reddy, CBI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

31.05.2024

%

1. Present application has been filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in FIR No. RC 2242022A0001/CBI/AC-VI(SIT)/New Delhi, dated 20.06.2022 under Section 120-B/409/420/477-A IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 ('PC Act'). Charge Sheet was filed by CBI on 15.10.2022 upon which cognizance has been taken against 75 accused persons/companies including the present applicant.

2. Case of CBI as per the Charge Sheet is as follows:

(a) A written complaint was received from DGM and Branch Head, Union Bank of India on 20.06.2022, which is the lead Bank of a consortium of 17 banks against M/s Dewan Housing Finance



Corporation Ltd. ('DHFL'), Kapil Wadhawan, Dheeraj Wadhawan and others. Accused Kapil Wadhawan was the Chairman and Managing Director of DHFL and accused Dheeraj Wadhawan was the Director, actively involved in the day-to-day affairs of the company with full financial control including on the loan amounts borrowed from various banks and other public deposits. DHFL through these two main accused and others, induced the consortium banks to sanction loans aggregating to approximately Rs.42,000 crores and siphoned off and misappropriated significant portion of funds by falsifying the books of accounts of DHFL. Wadhawan Brothers formed 87 shell companies for diverting the funds and deliberately defaulted on repayment of legitimate dues of the consortium banks, causing a wrongful loss of Rs.34,926.77 crores to the consortium lenders between the period January, 2010 to December, 2019 and also reflected some payments in favour of fictitious persons without any documentation through a fictitious portfolio with a code name 'Bandra Books'.

(b) DHFL was incorporated as a company with limited liability on 11.04.1984 with ROC, Maharashtra by the name of M/s Dewan Housing Finance and Leasing Company Limited. Subsequently, its name changed to Dewan Housing Development Finance Limited on 26.09.1984. Main object of the company was to advance money to individuals, companies, corporations, co-operative societies and other entities to enable borrowers to erect or purchase houses or buildings etc. On 27.05.1999, DHFL was registered with the National Housing Bank as a Housing Finance Company. Kapil Wadhawan and Dheeraj Wadhawan, while functioning as CMD and



Director respectively, had dominion over the funds/loans availed from consortium banks and were accepting substantial public deposits in the company. In these capacities, they were holding offices as public servants and were essentially engaged in public duty. The consortium of banks sanctioned various credit facilities to DHFL under the consortium arrangement and the quantum of different credit facilities sanctioned was Rs.57,242.05 crores, out of which default was upto the extent of Rs.34,926.77 crores by DHFL and therefore, its accounts were classified as Non-Performing Assets ('NPA') on different dates and declared 'fraud' by each of the consortium leaders.

(c) Apart from the credit facilities, sanctioned and disbursed by Union Bank of India, e-Andhra Bank and e-Corporation Bank to DHFL, banks also subscribed to Non-Convertible Debentures ('NCD') of DHFL between 2016 to 2018, relying on the representations by the borrower company and its Directors/Officers that the requirement of funds, purposes and utilisation thereof was genuine. M/s KPMG was assigned the work of conducting special review of DHFL for the period 01.04.2015 to 31.03.2019 by the consortium of banks to find out *inter alia* whether a fraud or diversion/siphoning of funds had occurred and whether any wrong practices were followed or offences committed. Account of DHFL was classified as NPA by Union Bank of India on 31.10.2019 with a total outstanding amount of Rs.3,679.42 crores, including NCDs amounting to Rs.261.91 Crores.

(d) Wadhawan Brothers incorporated 87 shell companies, in pursuance of criminal conspiracy hatched with other accused persons



and these companies were used for disbursement of money from DHFL, which was taken as loan from various banks. DHFL disbursed Rs.11,765.11 crores to these 87 shell companies between 2007 and 2017, details whereof are furnished in the Charge Sheet and Wadhawan brothers appointed many of their employees, associates and relatives as vehicles to divert the funds. Loans to the shell entities were disbursed with no formal process of loan appraisal and assessment, security, etc. The funds were diverted for personal expenses such as chartered plane rent, foreign trips, credit cards payments, purchase of jewellery, expensive watches. To camouflage the funds advanced to the shell companies and to account for them in the books of accounts of DHFL, a branch with the name of Bandra Branch and code 001 was created in the Synergy system, which did not exist physically. In pursuance of the criminal conspiracy, funds of DHFL sanctioned and disbursed by consortium banks were fraudulently and dishonestly diverted and misappropriated.

(e) Investigations revealed that amounts taken through the shell companies were utilized for repaying the other market borrowings of promoters, for personal expenses of Wadhawan brothers and real estate projects undertaken by M/s RKW Developers Private Limited and its associate companies. Wadhawan Brothers also acquired artworks including costly paintings from the funds sanctioned by the banks. Paintings/artwork was purchased from AstaGuru Auction House Pvt. Ltd. and Gallery Art & Soul between 2014-2019. Twenty-four paintings and one sculpture were purchased at an approximate cost of Rs.63 crores in the name of 4 different companies of Wadhawan Group incorporated in British Virgin



Islands in the name of Kapil Wadhawan, from the misappropriated money. Two of the 24 paintings (one of Manjeet Bawa and the other of Tyeb Mehta), were handed over to the applicant by Wadhawan Brothers. Deepak Kapoor was directed by the applicant and Dheeraj Wadhawan to enter into an agreement for assignment of the paintings in the name of Deepak Kapoor so that the paintings could be sold in the market. The sale proceeds were to be distributed amongst Deepak Kapoor (towards his outstanding dues from Wadhawan Brothers), applicant (towards commission for selling the paintings) and Wadhawan Brothers (for their personal use). An agreement/MoU showing date of 20.11.2018 was executed between M/s JVPD One Builders LLP and Deepak Kapoor for assignment of the two paintings to Deepak Kapoor towards full and final compensation for the services rendered by him in respect of Slum Rehabilitation at Pareirawadi. The MoU though purportedly shown to be executed on 20.11.2018, was in fact executed and signed in November, 2021. The antedated MoU was prepared in pursuance of a criminal conspiracy between Wadhawan brothers, applicant and the notary advocate.

(f) Applicant was well aware of the fact that paintings had been purchased from the funds borrowed from the consortium and misappropriated by Wadhawan Brothers and yet he dishonestly received and retained them in his possession. Paintings were removed from the possession of Wadhawan Brothers to prevent their seizure by lawful agencies in furtherance of the criminal conspiracy. During search of the residence of the applicant on 8th and 9th July, 2022, the two paintings worth over Rs.30 crores were recovered in addition to cash of Rs.45 lakhs, 25 costly wrist watches and 3 mobile



phones, which were docketed in the search memo. This raises a strong suspicion that even the watches were purchased from the misappropriated funds and applicant is a co-conspirator in committing the offence of criminal breach of trust by aiding and abetting Wadhawan Brothers in alienating/concealing their assets and receiving the proceeds of crime. Wadhawan Brothers were held to be 'public servants' and embezzlement of the loan amount by them attracts Section 409 IPC, punishable with life and the applicant being a conspirator is liable for committing an offence under Section 120-B IPC and can be sentenced to imprisonment for life, if convicted.

3. Applicant was arrested on 13.07.2022 and his first regular bail application was dismissed on 20.08.2022. As per judicial record, interim bail was granted to the applicant on 31.08.2022 for two weeks on medical grounds, which was extended from time to time. CBI filed an application on 28.10.2022 for cancellation of the interim bail on the ground that applicant was medically fit and stable as he could be seen enjoying parties at different places while on medical bail. Application was dismissed on 05.09.2022 and interim bail was extended. In the meantime, applicant preferred a second bail application on 07.10.2022 and an application under Section 167(2) Cr.P.C. on 12.10.2022. On 15.10.2022, final report was filed by CBI in terms of Section 173(2) Cr.P.C. On 06.12.2022, while applicant was on medical bail, learned Special Judge passed a direction for constituting a Medical Board at AIIMS for medical examination of the applicant, seeking response to five specific queries. By a detailed order dated 01.02.2023, Trial Court decided all the three applications i.e. second regular bail application dated 07.10.2022; application dated 12.10.2022



under Section 167(2) Cr.P.C., both filed by the applicant; and application dated 28.10.2022 filed by the CBI seeking cancellation of interim bail. Regular bail application bearing No.239/2022 was dismissed on merits and interim bail granted vide order dated 31.08.2022 and extended from time to time, was cancelled. Applicant was directed to surrender on 04.02.2023 by 3:00 PM, failing which IO was authorized to arrest him and produce him in Court for sending him to judicial custody.

4. approached this Court by way of the present application seeking regular bail and vide order dated 03.02.2023, Court extended the interim bail till the next date on medical grounds, subject to the condition that the moment applicant got discharged from Leelawati hospital, Mumbai, he shall inform the IO of the discharge. Interim bail was extended on various dates till 27.02.2024, on which date, Court directed the applicant to surrender, based on the updated medical report and as per the Jail surrender report, applicant surrendered on 02.03.2024 before the concerned Jail authorities. Subsequent thereto, present regular bail application was taken up for hearing.

5. Status report was filed by CBI reiterating the allegations against the applicant based on the Charge Sheet and highlighting the statements of some crucial witnesses given under Section 161 Cr.P.C. Contextualizing the allegations in respect of the applicant, case of CBI is that in furtherance of criminal conspiracy, he aided Wadhawan brothers to alienate/conceal their assets to avoid their seizure/forfeiture by law enforcement agencies. Applicant met Dheeraj Wadhawan while he was admitted at Kokilaben Hospital in judicial custody in another case, without seeking permission of the Court or Investigating Agency and it is here that the conspiracy was hatched between the applicant and the Wadhawan Brothers. Dheeraj



Wadhawan asked the applicant to help him in his legal matters related to cases registered by CBI and ED. As a backdrop, it was revealed during investigation that co-accused Kapil Wadhawan participated in an auction in August, 2017, where he bought a sculpture for Rs.19,20,047/- and costly paintings. Two costly paintings worth over Rs.30 Crores, purchased by Wadhawan Brothers from funds received by DHFL from consortium of banks were handed over to the applicant and were later recovered from his house during search. Back-dated MoU was executed in the hospital in November, 2021 by Wadhawan brothers with Deepak Kapoor for the purpose of sale of the paintings and the sale proceeds were to be distributed between Wadhawan brothers, Deepak Kapoor and the applicant. This was confirmed by Deepak Kapoor PW-137 in his statement and execution of the MoU and its back-dating was corroborated by PW-138 and PW-139. PW-124 Siddharth Ladhe, nephew of the applicant stated that the two paintings were at the residence of the applicant and he also brought forth that applicant had received Rs.1.5 crores from Dheeraj Wadhawan. Investigations revealed that applicant was into liasoning work with different entities and departments in Mumbai and is very influential. He is closely associated with the Wadhawan Brothers.

6. It is further stated in the status report that applicant has played a significant and active role in siphoning off assets created by the Wadhawan Brothers from the funds received by DHFL from the consortium of banks. Trial Court has, by two separate detailed orders, dismissed the regular bail applications of the applicant, noting the crucial role played by the applicant as a conspirator and the possibility of his tampering with evidence and threatening and intimidating witnesses, being an influential person and having a considerable clout in Mumbai. Historically, applicant has misused



the interim bail granted to him on medical grounds for partying and leisure trips, which is fortified by photographs and videos in public domain, which also proves that he has no serious health issue and medical ailments were being used to seek and extend interim bail. Applicant is a flight risk and being a conspirator in commission of a serious economic offence, which constitutes a class apart and needs to be visited with a different approach, he does not deserve to be enlarged on bail.

7. Learned Senior counsel for the applicant submits that the applicant is innocent and has been falsely implicated. The main role ascribed to the applicant is that he was facilitating sale of two paintings worth approximately Rs.30 crores, allegedly bought by Wadhawan Brothers from the funds borrowed from the consortium of 17 banks. This is wholly incorrect and false. Applicant had no association/connection with DHFL or its promoters/Directors and/or their borrowings from the Banks. Even going by the Charge Sheet, allegations of cheating, forgery, misappropriation, breach of trust, diversion of funds etc. levelled against the Wadhawan brothers pertain to the period 2010 to 2019. Applicant came in contact with Wadhawan Brothers for the first time only in November, 2021 and thus cannot be party to the alleged conspiracy. At the highest, applicant can be held culpable for commission of offence under Section 411 IPC for keeping the two paintings in his house and the offence is punishable with imprisonment upto a maximum period of 3 years. The other offence allegedly committed is under Section 206 IPC, which is bailable with maximum imprisonment of 2 years. Assuming for the sake of argument, offence under Section 465 IPC is made out for preparing back-dated MoU, the same is bailable. Charging the applicant under Section 120-B read with Sections 206/409/411/420/424/465/468/477-A



IPC and Section 13(2) read with Section 13(1)(d) of PC Act and substantive offences thereof, will not withstand judicial scrutiny.

8. Next contention on behalf of the applicant, without prejudice to the above, was that the alleged offence under Section 411 IPC is not made out against the applicant in the absence of dishonest intention to appropriate the paintings and/or the sale proceeds. Applicant had, in fact, asked Deepak Kapoor not to sell the paintings and return the same back to Wadhawan Brothers and wait for him to come out of custody to recover his dues. It was urged that applicant had no knowledge that the two paintings were purchased by Wadhawan Brothers from the funds pertaining to loan transactions with the Banks' consortium and thus in the absence of *mens rea* and wrongful loss or gain to anyone, no culpability can be fastened on the applicant. Applicant was merely a custodian of the paintings and had no role in their proposed alienation. Deepak Kapoor in his statement under Section 161 Cr.P.C. categorically stated that the paintings were intended to be delivered to him against his recoverable dues from the Wadhawan Brothers and were given to the applicant to keep them safely as the dimensions of the paintings were too big for his house. Even otherwise, the paintings were purchased by Wadhawan Brothers on 26.03.2018 as per the prosecution case and loan facilities were further reviewed on 11.09.2018, i.e. after purchase of the paintings.

9. Applicant had no role to play in the execution of the alleged MoU between Dheeraj Wadhawan and Deepak Kapoor pertaining to the sale of the paintings, was the next submission of the learned Senior Counsel. He was neither a party to the agreement nor a beneficiary and cannot be blamed for the alleged ante-dating of the document. In the case of co-accused Sunny Bathija, while granting regular bail, Co-ordinate Bench of



this Court has observed that admittedly there was no forgery in the agreement. Even otherwise, ante-dating a document is not an offence under Section 464 IPC, contrary to the flawed understanding of CBI on this aspect.

10. It was further contended that CBI has adopted a pick and choose policy in arresting the applicant whereas against several persons Charge Sheet was been filed without arrest, despite serious allegations. In *State of Madhya Pradesh v. Sheetla Sahai and Others, (2009) 8 SCC 617*, the Supreme Court has condemned the discriminatory approach of the Investigating Agency in applying different yardsticks to different people accused under the same FIR. Co-accused Sunny Bathija has been granted bail by this Court vide order dated 12.04.2023 in BAIL APPLN. 271/2023 and there is no reason to continue the applicant in custody, when he has no role and is innocent.

11. Applicant satisfies all three parameters which the Court is required to consider for grant of bail viz: (a) flight risk; (b) tampering with evidence; and (c) influencing witnesses. There is no allegation by the CBI that applicant is a flight risk inasmuch as he was summoned as a witness under Section 160 Cr.P.C. on 09.07.2022 *albeit* he was unable to appear due to ill-health and had sought time, but had thereafter made himself available for investigation on 13.07.2022, when he was arrested. Applicant has fully participated in the investigation to vindicate his stand. Applicant has been on interim bail on medical grounds and has never misused the liberty granted. He has clean antecedents and is a person with deep roots in the society. Applicant is a permanent resident of Mumbai where he lives with his wife. There is no allegation that applicant made any attempt to tamper with evidence or intimidate any witness since the commencement of



investigation in the present case. Even otherwise, all relevant documents have been seized by the CBI and are in its possession. Statements of the witnesses have been recorded and there is no possibility of influencing or intimidating the witnesses.

12. It was argued that applicant is suffering from multiple ailments such as diabetes mellitus, hypertension, chronic kidney disease and potts spine, for which he has undergone surgeries. Applicant has been admitted and treated in different hospitals from time to time for the serious ailments, such as Escorts Fortis Hospital, Kokilaben Hospital, etc. Health condition of the applicant is deteriorating because of prolonged incarceration and lack of proper medical facilities in jail. Right to health is a fundamental right recognized and enshrined in the Constitution of India and thus on medical grounds alone, applicant is entitled to bail.

13. Learned Senior counsel, to buttress his arguments, relied upon judgements on general principles of grant of bail, discrimination in arrest, long incarceration, grant of bail if charge sheet has been filed and are: *Sheetla Sahai (supra)*; *Satender Kumar Antil v. Central Bureau of Investigation and Another*, 2022 SCC Online SC 825; *Arnab Manoranjan Goswami v. State of Maharashtra and Others*, (2021) 2 SCC 427; *P Chidambaram v. Central Bureau of Investigation*, 2019 SCC OnLine SC 1380; *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791; *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40; *Anil Mahajan v. Commissioner of Customs & Anr.*, (2000) 53 DRJ 501; *Raman Bhuraria v. Directorate of Enforcement*, 2023 SCC OnLine Del 657; *Directorate of Enforcement v. Raman Bhuraria*, 2023 SCC OnLine SC 1917; *Gurbaksh Singh Sibbia and Others v. State of Punjab*, (1980) 2 SCC 565; *Jainam Rathod v. State of Haryana and*



Another, 2022 SCC Online SC 1506; Sujay U. Desai v. Serious Fraud Investigation Office, 2022 SCC OnLine SC 1507; Zahur Haider Zaidi v. Central Bureau of Investigation, (2019) 20 SCC 404; Radhye Shyam v. State, 2021 SCC OnLine Del 4997; R. Vasudevan v. CBI, New Delhi, 2010 SCC OnLine Del 130; K.R. Purushothaman v. State of Kerala, (2005) 12 SCC 631; V.C. Shukla v. State (Delhi Administration), (1980) 2 SCC 665; Mohan v. State of Madhya Pradesh, Criminal Appeal No. 630 of 2020 (arising out of SLP (Crl.) No. 10460/2019), decided on 24.09.2020; Mohan Lal v. State of Maharashtra, (1979) 4 SCC 751; and Sharad Mahadev More v. State of Maharashtra at the instance of V.P. Police Station, 2018 SCC OnLine Bom 1471.

14. Mr. Sharrma, learned SPP appearing for the CBI submits that the allegations against the applicant are grave and serious and he not innocent. It was stressed that there is no false implication. Relying on the status report, it was urged that present case RC 2242022A0001/CBI/AC-VI(SIT)/New Delhi was registered by CBI on 20.06.2022 for commission of offences punishable under Section 120-B/409/420/477-A IPC and Section 13(2) read with Section 13(1)(d) of PC Act, against DHFL, Wadhawan Brothers and others for entering into criminal conspiracy to cheat a consortium of 17 banks led by UBI inducing them to sanction huge loans aggregating to Rs.42,000 crores approximately and siphoning off and misappropriating significant portion of the said funds by falsifying the books of accounts. Wadhawan Brothers siphoned off public funds by way of sanctioning loans to different shell companies owned or controlled by them either directly or indirectly, through DHFL. The loans were disguised as retail loans in the books of accounts and they deliberately and dishonestly defaulted on repayment of legitimate dues of the consortium



banks causing a wrongful loss of Rs.34,926.77 crores to the consortium lenders between January, 2010 to December, 2010 and are involved in several other cases, which are under investigation by the CBI and other agencies.

15. Applicant was arrested on 13.07.2022 while Wadhawan Brothers were arrested on 19.07.2022 and co-accused Sunny Bathija was arrested on 12.10.2022. On 15.10.2022 final report was filed under Section 173 Cr.P.C. against several persons including the applicant. Learned Special Judge took cognizance of the offence against all charge-sheeted 75 accused persons/entities including the applicant vide order dated 26.11.2022.

16. Investigations revealed that the applicant was a co-conspirator for aiding and abetting Wadhawan Brothers to alienate/conceal their assets to avoid their seizure/forfeiture by law enforcement agencies. Applicant may not have a direct role in the procurement of loan by Wadhawan Brothers from the banks or misappropriation/embezzlement of the amounts taken as loan, however, he has a clear role in entering into conspiracy with them for the purpose of disposal of embezzled money and if the commission of offence is established, applicant can be sentenced to imprisonment for life. Applicant dishonestly kept the valuable assets i.e. the paintings bought from the embezzled/misappropriated amount with the object of concealing them and saving them from attachment and seizure. Recovery of the two paintings, worth over Rs.30 crores is not disputed by the applicant and in fact, in the bail application before the Trial Court, he claimed that he was a custodian of the paintings.

17. It was further submitted that from one of the three mobiles recovered from the residence of the applicant during search, analysis of data revealed that applicant took Rs.1.30 crores from Dheeraj Wadhawan. During search



of his residence, besides the two costly paintings, 25 wrist watches and cash worth Rs.45 lacs were recovered and there is a strong suspicion that these items are bought from the money misappropriated by Wadhawan brothers, in whole or in part and this recovery is also undisputed. Forensic analysis of the mobile phone is yet to be conducted and further incriminating facts may come to light. Trial Court while dismissing the first and second bail applications, has rendered a finding that role of the applicant is not restricted to recovery of paintings and there is material to show his involvement in dealing with and diverting the loan amounts, siphoned off by the Wadhawan brothers.

18. Applicant was regularly meeting co-accused Dheeraj Wadhawan when he was admitted at Kokilaben Hospital in judicial custody in another case, without seeking permission from the Court or the investigating agency. Applicant took possession of the paintings and induced PW-137 Deepak Kapoor, to whom Dheeraj Wadhawan allegedly owed some money, to enter into an agreement with Dheeraj Wadhawan so that Deepak Kapoor could realize his outstanding dues and applicant could earn his commission from the sale proceeds of the paintings. In this regard, a back-dated MoU was executed in November, 2021 in the hospital itself. Applicant was aware that proceedings for attachment of assets/properties of Wadhawan Brothers was ongoing by the enforcement agencies and the banks and despite this, he helped them in concealing the paintings and facilitating their sale. These facts clearly emerge from the statement of Deepak Kapoor.

19. PW-124 Siddharth Ladhe, nephew of the applicant in his statement stated that applicant had received Rs.1.5 crores from Dheeraj Wadhawan and the two paintings were at his residence. Applicant was closely



associated with the Wadhawan Brothers. PW-138 Hamza Shehnaz stated that he was asked by the applicant to accompany Deepak Kapoor for execution of some documents and in this connection the witness met Dheeraj Wadhawan at Kokilaben Hospital, where the MoU was notarized. Thereafter, he accompanied Deepak Kapoor to KEML Hospital where they met Kapil Wadhawan and the documents were signed. PW-139 Suraj Jagtiani stated that the applicant had asked him to arrange for old stamp papers, required for execution of the MoU in favour of Deepak Kapoor for transfer of paintings and he had contacted a stamp vendor, who delivered the stamp papers at applicant's residence. Few days later, he was informed that MoU had been executed and paintings were at applicant's residence and he should look for prospective buyers. CBI has also charge-sheeted the Notary Public for false attestation of the MoU.

20. The allegation of discriminatory treatment by CBI was vehemently denied by the learned SPP and it was urged that the applicant is a part of the criminal conspiracy and involved in not only concealing and attempting to alienate the proceeds of crime but also fabricating, falsifying and back-dating agreements to facilitate disposal of assets bought from the misappropriated funds. Had the applicant not been arrested, it was a certainty that he would have tampered with evidence and disposed of the property of crime, which was subject matter of investigation. Questioning the applicability of the judgment in *Sheetla Sahai (supra)*, it was argued that there was no discrimination in the present case and moreover, it is for CBI to charter the course of investigation and action with respect to who is required to be arrested, depending on the material on record, role of an individual, need for custodial investigation etc. Reliance was placed on the judgement in *A.R. Antulay v. R.S. Nayak and Another, (1988) 2 SCC 602*,



wherein the Supreme Court held that it is the right of the prosecution to decide whom to prosecute and it can decline to array a person as a co-accused and examine a person as a witness for the prosecution.

21. It was argued that mere completion of investigation and filing of Charge Sheet cannot be a reason enough to grant bail to an accused. In ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439***, bail was denied to the accused where further investigation was pending. Investigation is on-going in the present case and many aspects and links are yet to be unearthed. Wadhawan Brothers were granted statutory bail under Section 167(2) Cr.P.C. by the Special Judge, which was affirmed by this Court but the order was set-aside by the Supreme Court vide judgment dated 24.01.2024 in case titled ***Central Bureau of Investigation v. Kapil Wadhawan and Another, (2024) 3 SCC 734***.

22. It was further argued that mere length of incarceration cannot by itself be a reason to grant bail to the applicant considering the seriousness of the offences committed, conduct of the applicant during the period he was on interim medical bail and the high possibility of the applicant influencing, threatening and pressurising the witnesses. On a factual note, applicant has been in actual physical custody only for approximately five months as he was arrested on 13.07.2022, released on interim bail on 31.08.2022, which was extended till his surrender on 02.03.2024. Interim bail was sought on exaggerated medical grounds, as observed by the Trial Court while rejecting his regular bail application and while on interim bail, applicant misused the concession granted by the Court to the hilt. The judgments relied upon by the applicant on the proposition that an accused cannot be detained indefinitely, awaiting completion of investigation or trial will be inapplicable in the present case involving massive fraud



concerning public money and in light of substantial incriminating material evidencing that applicant has played an active role in conspiring with the main accused persons in disposing/concealing the siphoning off and misappropriated funds received from the consortium of 17 Banks.

23. It was urged that merely because Charge Sheet has been filed against the applicant, cannot be the sole basis to grant bail. This Court in ***Mukesh Jain (supra)***, held that considering huge amount of public funds was involved in the matter, the mere fact that charge sheet has been filed, will not entitle the accused to bail. In the present case, investigation is ongoing and even otherwise looking at the nature of offence committed and considering that the matter is at a nascent stage, applicant is not entitled to be enlarged on bail.

24. It was further argued that applicant has placed heavy reliance on the bail order in the case of Sunny Bathija to contend that ante-dating a document is not an offence under Section 464 IPC as there is an observation in the order that there is no forgery in the MoU. This reliance is misplaced as the order was challenged before the Supreme Court in SLP(Crl.) 9005/2023 and after notice matter is pending consideration. Even assuming for the sake of argument that back-dating the MoU does not strictly come within the purview of forgery or preparation of false document under Section 464 IPC, the document was prepared to facilitate the sale of paintings, in conspiracy with the Wadhawan Brothers, with an intent to appropriate the sale proceeds, thereby causing wrongful gain to the Wadhawan Brothers and to himself.

25. It was strenuously contended that the conduct of the applicant disentitles him to the concession of regular bail by this Court. Impugned order of the Trial Court details the medical ailments of the applicant and



basis the medical reports including the opinion of the Medical Board of AIIMS, Trial Court has rendered a finding that the medical problems as projected were not of such nature which require the applicant to be kept outside the jail. Trial Court observed that the applicant with the help of doctors and private hospitals concerned, apparently manipulated the medical records to exaggerate the seriousness of the ailments. It was highlighted that applicant misused the liberty granted by the Court as being on medical bail he was found partying, enjoying luxury holidays at Goa and other places as well as gambling at Mumbai in respect of which an FIR No.175/2024 was registered by PS: Santa Cruz. Efforts were made to misguide the prosecution by sending messages from a different mobile number which did not belong to him so that his location could not be traced. Looking at the gravity of the offence and the conduct of the applicant, Trial Court dismissed the bail applications on two occasions. Thus, the applicant is not deserving of bail on medical grounds. The medical issues can certainly be addressed and treated in the jail hospital or the Referral hospitals, if required.

26. It was argued that applicant is a flight risk and there are every chances of his fleeing from justice. He holds a considerable clout in Mumbai and other parts of Maharashtra, where majority of the witnesses in this case reside and there is great possibility that he would tamper with evidence and influence witnesses.

27. Reliance was placed on behalf of CBI on the judgement in *Nimmagadda Prasad v. CBI, AIR 2013 SC 2821*, wherein the Supreme Court held that unfortunately in the last few years, country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of country's economic structure. Incontrovertibly, economic offences have



serious repercussions on the development of the country as a whole. Other judgments relied upon were: *State of Gujarat v. Mohanlal Jitamalji Porwal and Another*, (1987) 2 SCC 364; *Mukesh Jain v. CBI, Bail Appln. No. 2179 of 2009*, decided on 21.12.2009; *Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another*, (2012) 9 SCC 446; *Surya Kirti Thapar v. State of NCT of Delhi*, 2014 SCC OnLine Del 6601; *Vinod Bhandari v. State of Madhya Pradesh*, (2015) 11 SCC 502; *Sunil Dahiya v. State (Govt. of NCT of Delhi)*, 2016 SCC OnLine Del 5566; *State of Bihar and Anr. v Amit Kumar alias Bacha Rai*, AIR 2017 SC 2487, *Anil Kumar Yadav v. State (NCT of Delhi)*, AIR 2017 SC 5398; *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24; *Md. Arif v. Govt. of India*, AIR Online 2020 Ori 281; *Vishwanath Biradar v. Deepika and Others*, 2021 SCC OnLine SC 3615; and *Jaibunisha v. Meharban and Another*, (2022) 5 SCC 465.

28. I have heard Mr. Vikas Pahwa, learned Senior Counsel and Mr. Anupam S. Sharma, SPP, CBI and examined their rival contentions.

29. Before proceeding further, it would be expedient to encapsulate the settled position of law on grant of bail. In *Ram Govind Upadhyay v. Sudarshan Singh and Others*, (2002) 3 SCC 598, the Supreme Court elucidated certain factors which must be borne in mind by the Court considering an application for grant of bail and I quote:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.



(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

30. Relying on the aforesaid judgment and the judgment in ***State of UP through CBI v. Amarmani Tripathi, (2005) 8 SCC 21*** and other judicial precedents, the Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another, (2010) 14 SCC 496***, re-stated the following factors, which must be kept in mind when adjudicating a bail application:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674], and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].]”



31. In the celebrated judgment in ***Sanjay Chandra (supra)***, relied upon by the learned Senior counsel, the Supreme Court re-emphasized the fundamental principle of bail jurisprudence laid down from the earliest times that object of bail is neither punitive nor preventive but is to secure appearance of the accused person at the trial and deprivation of liberty must be considered as a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. It was also observed that it is not in the interest of justice that accused should be in jail for an indefinite period and though the offence is serious in terms of alleged huge loss to the State Exchequer but that by itself should not deter the Court from enlarging the accused on bail. This proposition is too well-settled and to this extent, reliance by learned Senior counsel for the applicant on the judgments in ***Satender Kumar Antil (supra)***; and ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, etc. is correct.

32. At this stage, it must however be penned down that relevant parameters for grant of bail in cases involving economic offences have been delineated by the Supreme Court separately in several cases. In ***Mohanlal Jitamalji Porwal (supra)***, the Supreme Court observed as under:

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

33. In ***Y.S. Jagan Mohan Reddy (supra)***, the Supreme Court observed as under:



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

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

36. Taking note of all these facts and the huge magnitude of the case and also the request of CBI asking for further time for completion of the investigation in filing the charge-sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct CBI to complete the investigation and file the charge-sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 5-10-2012 [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 450. For text of the order see also para 17, below.], the appellant is free to renew his prayer for bail before the trial court and if any such petition is filed, the trial court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.”

34. In ***P. Chidambaram v. Directorate of Enforcement***, (2019) 9 SCC 24, the Supreme Court observed as under:

“74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039], the Supreme Court held as under: (SCC p. 189, para 6)

“6. We find force in the submission of CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed.



Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* [(2005) 4 SCC 303 : 2005 SCC (Cri) 933] , it was held as under: (SCC p. 313, para 19)

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in *State of Gujarat v. Mohanlal Jitmalji Porwal* [(1987) 2 SCC 364 : 1987 SCC (Cri) 364] , it was held as under: (SCC p. 371, para 5)

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and



deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

81. *Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI [(2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] , the Supreme Court held as under: (SCC p. 449, paras 34-35)*

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

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

(emphasis supplied)”

35. Coming to the present case, CBI asseverates that Wadhawan Brothers and others entered into criminal conspiracy to cheat a consortium of 17 Banks led by UBI inducing the consortium banks to sanction huge loans aggregating to Rs.42,000 crores approximately and allegedly siphoned off and misappropriated significant portion of the said funds by falsifying account books of DHFL. The loans were disguised as retail loans in the books of accounts and records were falsified and false projections were made about repayments etc. for inducing the banks to sanction and disburse loans. Pursuant to the conspiracy, deliberate and dishonest defaults were made on repayment of legitimate dues of the banks causing wrongful



loss of Rs.34,926.77 crores to the consortium lenders during the period January, 2010 to December, 2019.

36. Insofar as the applicant is concerned, the role ascribed to him is that he is part of the criminal conspiracy and actively aided and abetted Wadhawan Brothers to conceal/alienate their assets to avoid seizure/forfeiture of the assets by law enforcement agencies. Investigations, according to CBI, revealed that co-accused Kapil Wadhawan participated in various auctions between 2017 and 2018 and bought costly paintings and a sculpture, the details of which have been furnished in the Status Report and are part of the charge sheet. Out of these paintings, two paintings, costing Rs.30.16 crores were handed over to the applicant by co-accused Sunny Bathija, brother-in-law of Dheeraj Wadhawan. Applicant was in regular touch with Dheeraj Wadhawan while he was in Kokilaben Hospital in Judicial Custody, without permission of the Court or the investigating agency. Significantly and admittedly, both the paintings were recovered from the residence of the applicant and this fact is undisputed. During investigation, CBI examined several persons and recorded their statements under Section 161 Cr.P.C. PW-137 Deepak Kapoor stated that he was a real estate agent and in that connection, he had come in contact with Dheeraj Wadhawan in the year 2008 in connection with development of a plot. After negotiations with the seller, Dheeraj Wadhawan agreed to purchase the plot and the relationship grew and in respect of one of the transactions money was recoverable from Dheeraj Wadhawan, which he was refusing to pay. Deepak Kapoor stated that when Dheeraj Wadhawan was hospitalised during judicial custody, he met him and the applicant asked him to enter into an agreement for assignment of the paintings in his name, whereafter they could be sold in the market. The understanding was



that proceeds of sale would be distributed amongst Deepak Kapoor, for clearing his outstanding dues; applicant, towards his commission for selling the paintings; and Wadhawan Brothers for their personal use. In this regard back-dated MoU was executed by Wadhawan Brothers on behalf of JVPD One Builders LLP with Deepak Kapoor, who identified the signatures of Dheeraj Wadhawan, Kapil Wadhawan as well as his own signatures on the document. Deepak Kapoor also stated that though the MoU was dated 20.11.2018, it was signed around end of November, 2021. Paintings were not fetching the expected price and applicant advised him not to sell them and that he could settle his dues once Dheeraj Wadhawan was out of jail. Paintings were kept at the residence of the applicant but could not be sold.

37. PW-138 Hamza Shehnaz corroborated the version of PW-137 and added that in November, 2021 he was asked by the applicant to accompany Deepak Kapoor for execution of some documents. Deepak Kapoor first went to Kokilaben Hospital and there some documents were signed by Dheeraj Wadhawan and Deepak Kapoor, which were then notarised in the hospital itself. Thereafter they went to KEML Hospital where the document was signed by Kapil Wadhawan. During this process, he learnt that the MoU was executed for assignment of two paintings in favour of Deepak Kapoor in lieu of some work done by him. Later, applicant told the witness that the paintings were being sold and he will get money as commission. PW-138 also stated that he was aware that the agreement was back-dated and after the agreement was signed the paintings arrived at the residence of the applicant, who thereafter asked Hamza Shehnaz to find a buyer. MoU was back-dated by purchasing old stamp papers in which they were assisted by PW-139 Suraj Jagtiani, who admitted this fact in his statement. The notary has also been charge-sheeted by the CBI.



38. As per the CBI, applicant entered into a conspiracy with the Wadhawan Brothers to dispose of the embezzled/misappropriated money borrowed from the consortium of 17 banks led by UBI and his role is not limited or restricted to merely receiving the paintings. Applicant was well aware that proceedings for attachment of the assets/properties of Wadhawan Brothers were going on by the law enforcement agencies/banks. Applicant was closely associated with the Wadhawan Brothers and offered to help them in the pending cases of CBI and ED. He is doing liasoning work with different entities and departments and is very influential in Mumbai. Several valuable articles and cash of Rs.45 lakhs were recovered from the residence of the applicant and PW-124 Siddharth Ladhe, who is the nephew of the applicant, stated that applicant had received Rs.1.5 crores from Dheeraj Wadhawan. During investigation, 3 mobile phones are stated to have been recovered from the applicant's residence during search and analysis of the data revealed that he had taken Rs.1.30 crores from Dheeraj Wadhawan. Forensic analysis report of the mobile phones is yet to be received but joining the dots, as per the CBI, there is a strong suspicion that these are linked to the borrowed and misappropriated funds by Wadhawan Brothers.

39. Thus, the allegations are serious and the gravity cannot be overlooked. In both the orders, while rejecting the regular bail, Trial Court has observed that applicant was facilitating the Wadhawan Brothers to dispose of and alienate the assets bought from the misappropriated amounts and therefore, he may be liable to be convicted and punished under Section 120-B IPC. It is significant to note that the order granting default bail to the co-accused Kapil Wadhawan and Dheeraj Wadhawan by the learned Special Judge and upheld by this Court, was set aside by the Supreme



Court with a direction to arrest the accused. Sunny Bathija was granted bail by a Co-ordinate Bench of this Court but the order was challenged by CBI and notice was issued by the Supreme Court and the matter is pending. In ***Virupakshappa Gouda and Another v. State of Karnataka and Another, (2017) 5 SCC 406***, the Supreme Court has held as under:

“15. The court has to keep in mind what has been stated in Chaman Lal v. State of U.P. [(2004) 7 SCC 525 : 2004 SCC (Cri) 1974] The requisite factors are : (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In Prasanta Kumar Sarkar v. Ashis Chatterjee [(2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765], it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage : (SCC p. 499, para 9)

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

16. *In CBI v. V. Vijay Sai Reddy [(2013) 7 SCC 452 : (2013) 3 SCC (Cri) 563] , the Court had reiterated the principle by observing thus : (SCC p. 465, para 34)*

“34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the



larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

(emphasis in original)

17. *From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from Neeru Yadav v. State of U.P. [(2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , wherein the Court setting aside an order granting bail observed : (SCC pp. 514-15, para 16)*

“16. The issue that is presented before us is whether this Court can annul the order passed [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. [The] society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”



40. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another, (2004) 7 SCC 528***, the Supreme Court has held as under:

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

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124].)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See Ram Govind Upadhyay [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].)

xxx

xxx

xxx

14. We have already noticed from the arguments of learned counsel for the appellant that the present accused had earlier made seven applications for grant of bail which were rejected by the High Court and some such rejections have been affirmed by this Court also. It is seen from the records that when the fifth application for grant of bail was allowed by the High Court, the same was challenged before this Court and this Court accepted the said challenge by allowing the appeal filed by the Union of India and another and cancelled the bail granted by the High Court as per the order of this Court made in Criminal Appeal No. 745 of 2001 dated 25-7-2001 [Rajesh Ranjan v. State of Bihar, (2000) 9 SCC 222] . While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court



had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(i) of the Code. This Court also in specific terms held that the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

xxx

xxx

xxx

20. *Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character."*

41. In *Satish Jaggi v. State of Chhattisgarh and Others*, (2007) 11 SCC 195, the Supreme Court observed as under:

"5. *It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. In the present case Respondent 3 is accused of murdering a rival political leader while campaigning in the election.*

xxx

xxx

xxx



12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the *prima facie* case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

42. It is emphasized by the Courts time and again that economic offences are a class apart and must be dealt differently even for considering an application for grant of bail. With regard to gravity and seriousness of offences in a case of economic offences, careful scrutiny needs to be undertaken by the Courts. In *Sunil Dahiya (supra)*, this Court observed that even though the Court at the stage of granting bail has to take a *prima facie* conspectus of case, people would lose trust in the judicial system if an accused was released on bail. It was observed that loss of public funds has a far-reaching objective and therefore economic offences are serious offences. In *Neeru Yadav (supra)*, the Supreme Court observed that the Court was not oblivious of the fact that liberty is a priceless treasure for a human being founded on the bedrock of constitutional rights but the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty it has sanctioned to an individual when he becomes a danger to the collective and to the societal order.



43. Noticeably, applicant is chargesheeted under Section 120-B read with Sections 206/409/411/420/424/465/468/477-A IPC and Section 13(2) read with Section 13(1)(d) of PC Act and maximum punishment could be life for some offences, on conviction and thus in this case even the severity of the punishment is a glaring factor, which needs serious consideration. Mr. Pahwa repeatedly and consistently argued that at the highest the applicant can be charged for an offence under Section 411 IPC as he has nothing to do either with DHFL or the Wadhawan Brothers and/or the loan transactions with the consortium of 17 banks. The extent of involvement of the applicant and whether or not his role is restricted to being a mere custodian of paintings etc, would be a matter of trial and no final conclusion can be drawn at this stage, one way or the other. It is, however, settled that while considering the bail application Court can enter into *prima facie* examination to see if there is any material to support the allegations. Documentary evidence collected so far; statements of the witnesses under Section 161 Cr.P.C. available at this stage; the undisputed fact that the paintings were recovered from the residence of the applicant; his repeated interactions with the Wadhawan Brothers during their hospitalisation in judicial custody for sale of paintings; alleged execution of a back-dated MoU to receive a portion of the sale proceeds as commission and the more serious allegation of conspiring to conceal, divert and dispose of the funds of DHFL, generated from the borrowings of the consortium of banks led by UBI are factors which cannot be glossed over and in this light the mere fact that Charge Sheet has been filed against the applicant cannot be the only reason to enlarge him on bail. I am fortified in my view by the judgments of the Supreme Court as aforementioned and of this Court in ***Mukesh Jain (supra)***.



44. In the Status Report filed before this Court as well as before the Trial Court, CBI has taken a serious and consistent stand that the applicant is an influential person with a considerable clout in Mumbai and other parts of Maharashtra and there is every possibility that he will influence the witnesses, if released on bail as most of the witnesses are private witnesses. Trial Court has rendered a categorical finding on this aspect against the applicant after considering the facts and circumstances. In one of the earliest judgments in *Gurcharan Singh and Others v. State (Delhi Administration)*, (1978) 1 SCC 118, the Supreme Court highlighted two paramount considerations for grant of bail: (a) likelihood of the accused fleeing from justice and tampering with prosecution evidence. There is yet another aspect of the matter. Conduct of the applicant on interim bail reflects his tendency to misuse the concessions granted by the Courts and a propensity to manipulate. Trial Court has rendered a finding that the applicant was time and again seeking extension of medical bail by exaggerating his medical ailments by manipulating records with the help of doctors in the private hospitals. CBI has stated before this Court on an affidavit that while on interim medical bail, applicant was on luxury holidays and in and out of parties, including gambling, basis photographs and videos in public domain and misused the medical bail to the hilt. This not only speaks volumes of the conduct of the applicant but also shows that he suffers from no serious medical ailments for which he should be enlarged on regular bail. The apprehension of CBI that applicant can influence witnesses and tamper with evidence, considering his clout in Mumbai, where he met Wadhawan Brothers in judicial custody without permission, is not entirely unfounded. In my considered view, applicant does not qualify any parameter for grant of



regular bail seen holistically, at this stage.

45. Application is accordingly dismissed with the usual caveat that no observation made in this order shall be construed as an expression on the merits of the case.

JYOTI SINGH, J

MAY 31, 2024/B.S. Rohella