GAHC010196112021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./3291/2021

ROUNAK ALI HAZARIKA
S/O. LT. EUNUS ALI HAZARIKA, R/O. HOUSE NO. 28, RUPKONWAR PATH, WARD NO.05, HENGRABARI, P.S. DISPUR, GUWAHATI-36.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

P R E S E N T
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

For the petitioner	:	Mr.A.K. Bhuyan, Advocate
For the Respondent	:	Mr. M. Phukan, Public Prosecutor, Assam
Dates of hearing	:	17.12.2021; 4.1.2022; 06.01.2022; 07.01.2022 and 18.01.2022
Date of Order	:	31.01.2022

O R D E R

(CAV)

The Court proceedings were conducted partly through physical mode and partly through Video-Conference due to Covid-19 pandemic.

2. This is an application filed under section 439 Cr.P.C., seeking bail of the accused –petitioner, namely, Rounak Ali Hazarika, in connection with Vigilance PS Case No. 06/2021 under Sections 12, 13 (1)(a)(b)/13(2) of the PC Act (as amended) 1988, read with sections 3(c)/4(1)/5 of the Official Secrets Act, 1923, and Section 120 B IPC.

3. The fact of the case, as appears from the FIR, is that on receipt of a compliant by the C.M.'s Vigilance Cell regarding disproportionate assets amassed by the petitioner, an IPS Officer, working as Deputy Inspector General of Police (Border), Assam, a preliminary enquiry and, thereafter, a regular enquiry were held, vide Case RE. No.02/2021. During the aforesaid enquiry, it was found that the petitioner had amassed moveable and immovable properties to the tune of Rs.1,01,36,401/- during the period from 1992 to 2021. It was found during the enquiry that the income of the petitioner along with his wife from all legal sources is to the tune of Rs.1,74,65,529.00 approximately. It is also found during the enquiry that the petitioner had incurred expenditure to the tune of Rs.3,61,18,431.00 approximately under different heads including the educational expenditure of his children, for an amount of Rs.1,74,12,974/-. The FIR also discloses that after computation of his assets, income and expenditure, it is found that the income of the petitioner and his wife from all legal sources is approximately to the tune of Rs.1,74,65,529.00 and expenditure is approximately to the tune of Rs.3,61,18,431.00. Thus, his likely savings is approximately Rs.(-) 1,86,52,902.00. Against his likely saving of Rs.(-) 1,86,52.902 he possessed assets to the tune of Rs.1,01,36,401.00 approximately. Thus, he possessed disproportionate assets to the tune of

Rs.2,87,89,303.00 against his known sources of income. The FIR further contains an allegation that the vehicle used by the petitioner, bearing registration No.DL-8CCZ/5000 (Mercedes), is registered in the name of one Raman Kumar of Delhi, and the same is suspected to have been purchased by the petitioner under a secret agreement without changing the registration number. It has further been stated in the FIR that although the petitioner stated that his wife, being working as Financial Adviser of a Insurance Company, earns commissions, incentives, etc., but he could not provide the total amount of the income of his wife. His wife was appointed as such about 3/4 years back although the landed properties acquired by her are prior to such assignment, thereby implying that the properties in the name of the wife of the petitioner were, in-fact, purchased by the petitioner. It has also been specifically alleged in the FIR that during the period from 2019 to 2021, an amount of Rs.3,07,33,587.95 was credited in the account of the petitioner and out of this amount, there was a cash deposit of Rs.59,72,150/-, while he was posted at Bongaigaon. There is also findings recorded in the enquiry report, which have been stated in the FIR, that cash deposits were made in the account of the daughter of the petitioner several times by one Afroz Ahmed at the rate of Rs.2 – 3 lakhs each time, which he had received from one Farid Ali for depositing in the account of the daughter of the petitioner. There is also materials found during the enquiry to show that one Kamal Sonowal also deposited cash amount in the account of the daughter of the petitioner several times which, he stated during his examination, to be towards the repayment of the loan of Rs.10 lakhs, which he had taken from the petitioner.

The petitioner is also alleged to have visited 9(nine) foreign countries

without permission from the competent authority for which he was asked to submit detail travel history and expenses etc., which he had refused at the time of the enquiry. He has been suspected to have communicated official secrets with foreign agents as well as violation of the Passport Act.

4. As per the FIR, the properties amassed by the petitioner and his family is 164.80% more than his known sources of income. On the basis of the FIR, as indicated above, the case has been registered and investigated into.

5. Since charge sheet has already been laid in this case, scanned copy of the case diary, as called for, has been received and perused.

6. Heard Mr. A.K. Bhuyan, learned Counsel for the Petitioner and Mr. M. Phukan, learned Public Prosecutor for the Respondent State.

7. I have also perused the additional affidavit filed on behalf of the petitioner bringing on record the charge-sheet, certain documents as well as certain facts. Also perused the written objection to the prayer for bail as filed by the Superintendent of Police, CM's Vigilence Cell, Assam and the written reply thereto filed by the petitioner.

8. Learned counsel for the petitioner has submitted a chart showing the movable and immovable properties and value thereof as per the charge-sheet

and the vigilance enquiry report. This Court has taken into consideration the said chart. Referring to the chart, learned counsel for the petitioner has submitted that the value of properties have not been put in the enquiry report correctly and, rather, the value of different items are found to be different in the enquiry report and in the charge-sheet thus indicating that there is manipulation/exaggeration in respect of the valuation of the properties.

On perusal of the said chart, some discrepancies are found. However, in the written bail objection, referred to above, the check period is stated to be from 1.6.1992 to 30.09.2021 and the chart below, according to the investigating agency, would show the disproportionate assets amassed by the petitioner :

1) Assets during check period : Rs.1,88,44,060.00

2) Income during the check period : Rs.1,90,90,094.00

3) Expenditure during check period : Rs.4,03,45,631.00

4) Lively savings (income expenditure) : Rs.(-)2,12,55,537.00

5) Extent of Disproportionate
(Lively Savings-Assets)
(Rs.(-)2,12,55,537 (-) Rs.1,88,44,060) : Rs.4,00,99,597.00

9. Learned counsel for petitioner has submitted that in his reply to the bail objection, the petitioner has narrated the manner in which the alleged disproportionate properties were acquired by him and the value thereof. He has submitted that the properties were acquired by the petitioner and his wife from

genuine income which have been shown in the statement of Assets and Liabilities submitted to the Government as well as in the Income Tax Returns. He has further submitted that the entire allegation against the petitioner leading to the registration of the case is a part of a conspiracy to destroy his career as well as his family. He has submitted that the value of the assets and the period thereof are all hooked up without any basis and the income of the petitioner and his wife have been drastically minimized so as to make out a case of acquisition of properties by the petitioner disproportionate to his known sources of income. He has specifically referred to the statements made in the bail application detailing the acquisitions and the prices etc. of the properties in his name as well as in the name of his wife.

Learned counsel for the petitioner has also submitted that the petitioner was in judicial custody and, inspite of an order of the learned Court below to interrogate him while in custody, the same was not done and, therefore, his custodial interrogation was not considered necessary by the investigating agency at that relevant point of time. He has further submitted that the whole case is based on documentary evidence and, therefore, further custody of the petitioner is not essential for the purpose of trial of the case. It has also been submitted by the learned counsel for the petitioner that charge-sheet has already been laid and nothing is left for investigation. It has further been argued that the petitioner has been in custody with effect from 5.10.2021 and, as such, considering the length of detention, he be granted bail.

Mr. Bhuyan has also very categorically submitted as well as the petitioner has averred in this application that the petitioner has not committed any offence

under the Official Secrets Act, aforesaid, and under Section 12 of the Prevention of Corruption Act and under Section 120 B of the Indian Penal Code in view of absence of materials to that effect.

10. Mr. Bhuyan also placed reliance on a decision of the Hon'ble Delhi High Court in ***Sukh Ram -vs- State through CBI, reported in 1996 (39) DRJ 293 (Delhi High Court)*** and referred to ***Paras 8, 11, 12*** thereof to contend that at the stage of consideration the bail application, Court is not required to go into detailed examination of the evidence and prejudge the case. Considerations for bail include nature and seriousness of the offence, character of evidence, circumstances peculiar to the accused, presence of accused at trial, witnesses being tampered etc.

> "*8. At the stage of considering the application of the petitioner for the grant of bail, the Court is not required to go into the detailed examination of evidence and pre-judge the case and for that exhaustive exploitation of the merits of the case are not required in the order. The Court before granting bail in cases involving non-bailable offences, is to take into consideration matters such as the nature and seriousness of the offence, the character of evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations. Bail should normally not be withheld as a punishment if, after taking into consideration other factors, the accused is entitled to the grant of bail. Bail and not jail is the normal rule. The two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring fair trial of a case in the course of justice. Due and proper weight should be bestowed on these two factors apart from others. There cannot be a set formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling the bail.*
>
> *11. As held by the Supreme Court in Gurcharan Singh v. State (Supra), in,*

non-bailable cases other than ones where the person has been guilty of an offence punishable with death or imprisonment for life, the Court will exercise its discretion in favour of granting bail subject to sub-section 3 of Section 437 of the Code, if it deems necessary to deal under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to the person who is not accused of an offence punishable with death or imprisonment for life. The over-riding considerations in granting bail, as already mentioned above, are the nature and gravity of the circumstances in which the offence was committed, the position and status of the accused with reference to the victim and the witnesses, the likelihood of the accused fleeing from justice, of repeating the offence, of jeopardising his own life being faced with grim prospects of possible conviction in the case, of tampering with witnesses, the history of the case as well as of its investigation and other relevant grounds. A person who has committed a criminal misconduct under Section 13 of the Prevention of Corruption Act, is liable to be punished with imprisonment for a term which shall not be less than one year but which may extend upto seven years.

12. *Petitioner has been a former Minister in the Union Cabinet. He has roots in the society. He and his family members are residing in Delhi and Himachal Pradesh. He is a known case of diabetes mellitus and coronary artery disease for which he underwent coronary artery bypass surgery in August, 1995. I, therefore, do not see any reason as to why the petitioner should flee from justice. He has already been thoroughly interrogated. Even the Special Judge, while dealing with the application of Central Bureau of Investigation for police remand, had observed that investigating agency had been given sufficient time to interrogate the petitioner and he had not opened his mouth relating to the entries in the diary, there was no justification for extension of remand and if he is released on bail, investigating agency can still be permitted to interrogate him. Except for alleged decoding of diaries, no further interrogation of the petitioner appears to be necessary and in case he is released on bail, I do not feel that the petitioner can tamper with evidence.*

11. The learned Counsel for the Petitioner further placed reliance on a decision of the Hon'ble Delhi High Court in ***Runu Ghosh -vs- State (CBI) reported in 1996 (39) DRJ221 (Delhi High Court)*** and referred to ***para 5*** to contend that bail not Jail is the normal rule. The two paramount considerations are likelihood of fleeing and witness tampering. Proper weigh should be bestowed on these two factors apart from others. Para-5 of the above judgment is quoted below :

> ***5.*** *At this stage of considering the application of the petitioner for the grant of bail, the Court is not required to go into the detailed examination of evidence and pre-judge the case and for that exhaustive exploitation of the merits of the case are not required in the order. The Court before granting bail in cases involving non-bailable offences, is to take into consideration matters such as the nature and seriousness of the offence, the character of evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations. Bail should normally not be withheld as a punishment if, after taking into consideration other factors, the accused is entitled to the grant of bail. Bail and not jail is the normal rule. The two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring fair trial of a case in the course of justice. Due and proper weight should be bestowed on these two factors apart from others. There cannot be a set formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling the bail.*

12. Mr. Bhuyan also placed reliance on a decision of the Punjab and Haryana High Court reported in ***2001 SCC online P&H 1007 (Punjab and Haryana High Court)*** and referred to ***paras 8 and 9*** to contend that prosecution should have confidence not only in its witness but also in its capacity to safeguard the interest of the State and ensure that witnesses depose without fear. This decision does not appear to have application in the given facts of the instant case as in the case, referred to above, the fact is not similar with the present case and the decision there was rendered in the given facts of that case as that case did not reach the stage of framing of charge even after several years of the petitioner remaining in custody as well as the fact that in other four cases he was already granted bail.

13. The learned Counsel for the petitioner further placed reliance on a decision of the Apex Court in ***Laloo Prasad Alias Laloo Prasad Yadav reported in (2002) 9 SCC 372*** and has referred to ***paras 7 and 9*** to contend that detention as pre- trial prisoner may not be required. Bail can be granted with stringent conditions.

> ***7.*** *The most serious of the offences now pitted against the petitioner is Section 13 of the Prevention of Corruption Act punishable with a maximum sentence of imprisonment for seven years. Having considered the merits of the case including the fact that the petitioners were in jail for a period of more than six months by now (which partly includes the pre-trial detention in other connected cases also) we do not think that further detention of them as pre-trial prisoners would be of any necessity in this case.*

9. *In the result we order the appellants to be released on interim bail for six months on their executing a bond with two solvent sureties, each in a sum of rupees one lakh to the satisfaction of the trial court at Ranchi on the following conditions:*

(a) the appellant shall not directly or indirectly or through others make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority;

(b) he shall remain present before the court on the dates fixed for hearing of the case. If he wants to remain absent then he shall take prior permission of the court and in case of unavoidable circumstances for remaining absent he shall immediately give intimation to the appropriate court (AHD) and also to the Superintendent, CBI and request that he may be permitted to be present through his counsel;

(c) he will not dispute his identity as the accused in the case;

(d) he shall surrender his passport, if any (if not already surrendered), and in case he is not a holder of the same he shall swear to an affidavit. If he has already surrendered before the Designated Court, that fact should also be supported by an affidavit;

(e) he shall not give for publicity his comments or opinion on the merits of the case pending against him, except when he is required to state it in the court concerned;

(f) he shall desist from any euphoric demonstration for being bailed out in these cases.

14. The learned Counsel for the petitioner also placed reliance on a decision of the Apex Court in ***Nira Radia -vs- Dheeraj Singh and Anr reported in (2006) 9 SCC 760*** and para 3 thereof to contend that detailed and elaborate analysis of evidence a matter of trial.

3. *We find that while dealing with an application for bail, the learned Single Judge of the High Court has made elaborate and detailed analysis of the*

evidence/materials and has recorded findings which virtually amounts to acceptability or otherwise thereof. This is not the course to be adopted by the High Court while dealing with a bail application. Though, some reference to the materials would be necessary, that would not be a substitute for making a detailed and in-depth analysis of the materials and recording findings on their acceptability or otherwise. That essentially is a matter for trial. In this view of the matter, we set aside the order of the High Court, remit the matter to the High Court for a fresh consideration of the bail application. We request the High Court to take up the bail application afresh on 17-5-2006. Learned counsel for the parties have stated that they shall appear on that date before the High Court. The learned Acting Chief Justice of the High Court is requested to allot the matter to the appropriate Bench for hearing on the date indicated. The High Court is requested to dispose of the matter before the Court is closed for the summer vacation.

This decision does not appear to be applicable in the instant case as this Court is not going to make any elaborate analysis of the evidence/materials to record its finding on this application.

15. The learned Counsel for the petitioner Mr. Bhuyan, further placed reliance on a decision of the Apex Court in ***Sanjay Chandra -vs- CBI reported in (2012) 1 SCC 40*** and referred to ***paras 21, 23, 25, 36, 42, 43, 46 and 48*** to contended that criminal courts should exercise the discretion to grant bail with great care and caution balancing the right of liberty of an individual and the interest of the society. Bail is the rule and committal to jail an exception, right of bail not to be denied merely because of the sentiments of the community against the accused. Keeping an undertrial prisoner in jail custody to an indefinite period is in violation of the Article 21 of the Constitution.

21. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor*

preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*

25. *The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.*

36. *This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (See Babba v. State of Maharashtra [(2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118] , Vivek Kumar v. State of U.P. [(2000) 9 SCC 443 : 2001 SCC (Cri) 416] and Mahesh Kumar Bhawsinghka v. State of Delhi [(2000) 9 SCC 383 : 2001 SCC (Cri) 400] .*

42. *When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case.*

43. *There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if*

released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

46. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.*

48. *In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:*

(a) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) They shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court.

16. Mr. Bhuyan has also placed reliance on a decision of the Apex Court

in ***P. Chidambaram -vs- CBI reported in (2020) 13 SCC 337*** and referring to para 21 thereof contended that while exercising jurisdiction to grant of bail court has to take into consideration the nature of accusation and severity of punishment in case of conviction and nature of materials relied upon by the prosecution, reasonable apprehension of tampering with the witness and apprehension of threat to the complainant or witness, reasonable possibility of securing the possibility the presence of the accused at the time of trial or the likelihood of his abscondence, character behavior and standing of the accused and the circumstances which are peculiar to the accused and lastly larger interest of the public.

> "***21.*** *The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*
> *(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;*
> *(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
> *(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
> *(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
> *(v) larger interest of the public or the State and similar other considerations.*
> *[Vide Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674] .]*

17. Mr. Bhuyan has also placed reliance on a decision of the Telengana High Court in ***B. Sreenivasa Gandhi -vs- Inspector of Police passed in Crl. Petition No. 4032/2021*** (Pg 5 of the order) to contend that there is no material in the record to suggest that the petitioner has influenced or induced any of the witness or witnesses from disclosing the

facts leading to the case and, therefore, there is no reason for his further detention in custody after laying of the charge-sheet.

18. Learned counsel for the petitioner has also referred to the decision of ***K. T. Rajenthrabhalaji -vs- State through the inspector of Police*** in Petition (S) for special Leave to appeal (Crl.) No. (s) 10003/2021, rendered on 12.01.2022, by the Hon'ble Supreme Court of India. On perusal of the said decision of the Hon'ble Supreme Court, the same is not found to be applicable in the instant case on facts because that order was passed granting interim bail to the petitioner therein for four weeks and the order was passed on a different footing.

19. In view of the facts of the case as well the submissions made by the learned counsel for the petitioner, referring to the above decisions, he has submitted that the petitioner be granted bail.

20. I have also heard Mr. Phukan, the learned Public Prosecutor, who has submitted, referring to the materials in the case diary, that there are sufficient materials against the petitioner. He has submitted that during search of the residential premises of the Petitioner some incriminating documents were found. The information relating to acquisition of movable and immovable properties was also obtained from the Dept. of Home, Govt. of Assam. Format Statement I-VI was sought from the petitioner, in writing, but he declined to comply with the same. The learned Public Prosecutor has also submitted that during investigation it was found that the Petitioner possessed disproportionate assets to the tune of Rs.

4,00,99,597.00/- against his known sources of income and the Petitioner has failed to render any satisfactory explanation for acquisition of disproportionate assets to such a huge extent.

21. It has also been submitted by Mr. Phukan that it was found, during investigation, that the petitioner visited several foreign countries without prior permission from the Government. On scrutiny, it was found that during such visits, on few occasions, there are no monetary transactions found in his salary account for purchase of foreign tickets and it is suspected that his such foreign visits were sponsored by some foreign spies/ agents. It was also submitted that except on one occasion he did not take permission for his foreign visits from the Government. He has also submitted, referring further to the materials in the case diary as well as in the charge-sheet, that the petitioner might have communicated official secrets to agents of enemy country while touring abroad.

22. The learned Public Prosecutor further submits that the Petitioner did not cooperate in the investigation of the case. It has also been submitted that cash deposits amounting to several lakhs in one go, by self / other sources were found in his / his family member's bank account. It has also been submitted that apart from his salary account in State Bank, the Petitioner and his family members have several bank accounts in Axis Bank, Yes Bank etc. and huge amounts are found to be deposited in cash as well as cheques while he was posted in Bongaigaon (during the period from 2019-2021).

23. Mr. Phukan has further submitted that although petitioner's wife was appointed as Financial Adviser in Max Life Insurance since 2018, but the landed properties were acquired by her and registered in her name were acquired while she had no source of income since 2001. Such facts imply that all the properties were acquired by the wife of the petitioner with his ill gotten money. Apart from that the petitioner incurred an amount of Rs.1,74,12,974/- (one crore seventy four lakh twelve thousand Nine Hundred and Seventy Four only) towards educational expenditure of his children whereas his total net salary since 1992 till date is Rs. 1,97,20,014/- (One Crore Ninety Seven Lakhs Twenty Thousand and Fourteen Only).

24. Further submission of the learned Public Prosecutor is that from the period 01.04.2019 to 01.07.2021 a total amount of Rs. 3,15,77,641.95/- (Three Crore Fifteen Lakhs Seventy Thousand Six Hundred and Forty One Rupees) were deposited in Petitioner's as well as his family member's bank account, out of which Rs. 75,72,267/- (Seventy Five Lakh Seventy Two Thousand Two Hundred and Sixty Seven Rupees) were cash deposit. He has further submitted that the petitioner had submitted the Assets and Liability Statement to the Govt. of Assam with undervaluation of the properties. It has also been brought to the notice of the Court by the learned Public Prosecutor that during the search of his house, currencies of several foreign countries were recovered and seized. It has also been pointed out that the petitioner has criminal antecedents and was the prime accused in the Paltan Bazar Police Station Case No. 1412/2017 U/s 384 IPC which has already been charge-sheeted vide Charge Sheet No.

137/2021 dated 04.10.2021 under section 384 IPC.

25. It has further been submitted by the learned Public Prosecutor, with reference to the materials in the case diary, that the statements of the wife of the petitioner and some other witnesses recorded by the investigating agency so far payments of various amounts, in lakhs, to the petitioner for their children as well as the sources of deposit of Rs.1,34,96,035/- in the bank account of the wife of the petitioner as well as with regard to her immovable properties, are found to be completely inconsistent and not corroborated, thus, pointing to illegal acquisition of such properties.

26. So far purchase of land and building at Hengrabari, Guwahati, at an amount of Rs.2,68 lakhs is concerned, the same was paid as per the registered Sale Deed, although the materials in the case diary speaks that the amount paid to the vendor as consideration for sale of the said property is several times more than what was written in the Sale Deed.

27. Controverting the statements of the petitioner made in the bail application as well as the arguments advanced by his learned counsel, it has been submitted by learned Public Prosecutor that if the petitioner had to take loan for her daughter's education at Geneva from several persons and asked them to deposit money in his account/his family members bank accounts/daughter's account, then the fact that he had lent an amount of Rs.10 lakhs to one Kamal Sonowal, who has claimed to have

repaid the said amount in cash in the account of his children, appears to be, prima facie, self contradictory, as he would not be in a position to lend money to others while he himself had taken loan from his relatives, as claimed.

28. Learned Public Prosecutor has submitted further that cash deposits amounting to 2-3 lakh in one go, by two witnesses were found in the bank account of the petitioner's daughter. Referring to the materials in the case diary, it is submitted that one of the said witnesses is a menial worker who had received amounts from another alleged close friend of the petitioner for depositing in the account of the daughter of the petitioner. There is also material collected by the investigating agency that money was brought in cash from other sources to deposit in the account of petitioner's daughter.

29. The learned Public Prosecutor has further submitted that the petitioner had extorted the money from poor people while occupying a public office as DIG, Western Range, Bongaigaon and handed over to another arrested accused and laundered his ill – gotten money.

30. Learned Public Prosecutor has also submitted that Notification dated 05.12.2007 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, relied upon by the petitioner has subsequently been superseded by Office Memorandum dated 29.01.2013 and 27.07.2016.

31. The learned Public Prosecutor further submitted that the materials so far collected has also belied the assertion of the petitioner that his wife was ever paid any cash money in her marriage by her parents as her parents died before her marriage.

32. Mr. Phukan has further submitted that if the Petitioner is allowed to go on bail at this stage he may influence the witnesses of the case and there is also possibility that he may flee to any other foreign country to frustrate the trial. It has also been submitted that the case diary very clearly reveals that from the very inception of the enquiry the petitioner has not only not cooperated with the investigation but also made every effort to frustrate the investigation so that same cannot end with a logical conclusion.

33. The learned Public Prosecutor has submitted that the triple test as enumerated by the Apex Court in ***P. Chidambaram -vs- CBI reported in (2020)13SCC 337*** i.e. flight risk, tampering of evidence and influencing of witnesses are not in favor of the Petitioner. It is submitted that there is strong possibility of flight risk in case of the Petitioner since the Petitioner has visited several countries on various occasions without prior permission from the Government. Further no monetary transactions found in his salary account for purchase of tickets. It has also been submitted by the learned Public Prosecutor that if the Petitioner is released on bail there is every possibility that he may tamper with the evidence and influence the witnesses as he is an influential person. He

referred to para-6 of the said decision, quoted below :

> ***6.*** *The High Court by its impugned judgment dated 30-9-2019 [P. Chidambaram v. CBI, 2019 SCC OnLine Del 10313] refused to grant regular bail to the appellant and dismissed the bail application. Before the High Court, three contentions were raised by the respondent CBI:*
>
> *(i) flight risk;*
>
> *(ii) tampering with evidence; and*
>
> *(iii) influencing witnesses.*
>
> *The learned Single Judge did not accept the objection relating to "flight risk" and "tampering with evidence". Insofar as the objection of "flight risk" is concerned, the High Court held that the appellant was not a "flight risk" and it was observed that by issuing certain directions like "surrender of passport", "issuance of lookout notice" and such other directions, "flight risk" can be secured. So far as the objection of "tampering with evidence" is concerned, the High Court held that the documents relating to the present case are in the custody of the prosecuting agency, Government of India and the Court and therefore, there is no possibility of the appellant tampering with the evidence. But on the third count i.e. "influencing the witnesses", the High Court held that the investigation was in an advanced stage and the possibility of the appellant influencing the witnesses cannot be ruled out.*

34. The learned Public Prosecutor, Mr. Phukan, has submitted that the petitioner is an **influential person**. He has submitted that the Law Commission in its recent report said that "**influential persons are not merely those who are holding or who have held public office. Even their henchmen and close relatives, the rich and powerful, and men with muscle power having links with one political party**

or the other are quite influential in their own way in creating stumbling blocks for smooth investigation and effective trail." From the face of the record, it is clearly established that the petitioner is an influential person. He is an influential person with status, position, standing and means thereby always probability exists that he may influence witnesses and prosecution in various manner.

35. Learned Public Prosecutor, Assam, has also argued that the offences under the Prevention of Corruption Act is a **socio-economic offence** and has submitted that socio economic crimes have serious impact on the society at large and for social interests require that such crime must be tackled at any cost. Therefore, the offender of socio-economic crime, for the sake of protection of society and effective dispensing of criminal justice should not release on bail, remain in jail till completion of the trial and prosecution. He has further submitted that if the petitioner is granted bail, at this stage, the even handedness will not be reached as far as intention of the legislature for enactment of the Prevention of Corruption Act is concerned.

36. It is well established premise in law relating to bail that when case is **prima facie established, generally bail is not granted**. When a case is prima facie established, the accused also **gets impression that he may be convicted and sentenced**, therefore the accused persons become prone for interfering with course of criminal justice system like he may attempt to abscond, influence investigation, temper with evidences and terrorize witnesses. In that view of the matter also, the learned Public

Prosecutor has prayed to refuse bail to the petitioner.

37. Vehemently objecting to the argument for bail of petitioner also on the ground of length of detention, it is submitted that the offence involved in the instant case being socio economic offence having great impact on the society, the Petitioner cannot be released on bail on the ground of length of detention. He has submitted that there cannot be any straight jacket formula or hard and fast rule that one shall be entitled to bail, only because he has been in custody for long time. Every case deserves to be considered on its own facts and merits. In support of his contention the learned Public Prosecutor has placed reliance on the judgment of the Hon'ble Apex Court in ***State of Bihar -vs- Amit Kumar @ Bachcha Rai reported in (2017) 13 SCC 751; Jagan Mohan Reddy -vs- CBI reported in (2013) 7 SCC 439, para 34 & 35 and Nimmagadda Prasad -vs- CBI reported in (2013) 7 SCC 466 para 23, 24 &25; Subhaschandra Mehta -vs- CBI reported in AIR 2012 (SC) 949***.

38. In ***State of Bihar -vs- Amit Kumar @ Bachcha Rai reported in (2017) 13 SCC 751,*** in ***paras 8 and 12*** the Hon'ble Apex Court observed that when the offence is grave and serious, the mere fact that the accused was in jail for however long time should not be the concerned of the Court.

> ***8.*** *A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High*

Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however ***long time should not be the concern of the courts****. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.*

12. *We are of the considered opinion that* ***Sanjay Chandra [Sanjay Chandra v. CBI, (2012) 1 SCC 40 :****(2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] , as relied upon by the learned counsel for the respondent, is distinguishable from the case at hand as the charges in that case carried a maximum punishment for a term which may extend to seven years. In the present case, charge-sheet has been submitted, inter alia, for the offences under Sections 409 [Which carries punishment of imprisonment for life, or imprisonment of either description for a term which may extend up to ten years and shall also be liable for a fine.] , 465, 467 [Which carries punishment of imprisonment for life or with imprisonment of either description which may extend up to a term of ten years and shall also be liable to a fine.] , 468, 471, 188, 201, 212 and 120-B of the Penal Code, 1860 and Sections 8 [Which carries punishment of imprisonment for minimum of three years and may extend up to seven years with fine.] , 9 [Which carries punishment of imprisonment for minimum of three years and may extend up to seven years with fine.] , 13(1)(c)/(d) read with Section 13(2) [Which carries punishment of imprisonment for minimum of four years and may extend up to ten years with fine.] of the Prevention of Corruption Act, 1988 [It is to be noted that Prevention of Corruption Act, 1988 was amended by 'the Lokpal and Lokayuktas Act, 2013', Act 1 of 2014 (w.e.f. 16-1-2014).* ***This amendment has increased the minimum prescribed punishment under Sections 8, 9, 13(2) of the Prevention of Corruption Act.. Therefore, Sanjay Chandra [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] provides no assistance for the respondent herein.***

39. *In Jagan Mohan Reddy -vs- CBI reported in (2013) 7 SCC 439, para 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.*

40***. In Nimmagadda Prasad -vs- CBI reported in (2013) 7 SCC 466 paras 23, 24 & 25;***

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

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

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

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

41. In ***Subhaschandra Mehta -vs- CBI reported in AIR 2012 (SC) 949***, para 32.

***32.** 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 merits 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. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and 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; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.*

42. The socio economic offence, irrespective of the quantum of punishment are also offence of grave nature being 'a class apart' which arise out of deep-rooted conspiracy and affect the society as a whole and the courts are required to keep in view the social impact of such offence, while considering the bail.

43. Therefore, "such socio- economic offence, which is a class apart", cannot be equated with other usual offences while considering bail. The

Apex Court, in ***State of Bihar and Anr. -Vs- Amit Kumar (supra)***, dealing with the socio economic offence held that: it is well settled that the socio economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. Usually, socio-economic offence has deep rooted conspiracy affecting the moral fiber of the society and causing irreparable harm needs to be considered seriously." Therefore, social impact of granting or refusing bail in a case of present nature, cannot be overlooked.

44. Corruption is the greatest menace which destroys the will to progress in a society and crumbles economic growth of the country and destroys the governances. It erodes people's beliefs in honesty. It is also submitted that corruption cannot be judged by degree. Corruption is a threat to democracy and if it is not controlled at the earliest, it will destroy social-political- economic system in an organized society and to eradicate such menace parliament has introduce the Prevention of Corruption Act, 1988. To support such position, this Court relies upon judgment of the Hon'ble Apex Court in ***Niranjan Hemchandra Sashittal -vs- State of Maharastra reported in (2013) 4 SCC 642; Subramaniam Swamy -vs- CBI reported in (2014) 8 SCC 682 and State of M.P. -vs- Shambhu Dayal Nagar reported in (2006) 8 SCC 693; State of M.P. -vs- Ram Singh (2000) 5 SCC 88.***

45. In ***Niranjan Hemchandra Sashittal -vs- State of Maharastra*** reported ***in (2013) 4 SCC 642, in paras 25,26 and 29,*** the Hon'ble Apex Court observed that -

25. *In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario,* ***corruption*** *has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinising other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.*

26. *It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality.*

29.*In the present case, as has been stated earlier, the accused, as alleged,*

had acquired assets worth Rs 33.44 lakhs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people. We may hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate. This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the appellant-accused tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December 2013 positively.

46. In ***Subramaniam Swamy -vs- CBI reported in (2014) 8 SCC 682, in para 60, 70 to 75,*** the Hon'ble Apex Court observed that -

60. Corruption is an enemy of the nation *and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. In the words of Mathew, J. in Shri Ambica Mills Ltd. [State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] : (SCC p. 675, paras 53-54)*

"*53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. …*

54. A reasonable classification is one which includes all who are similarly situated and none who are not."

Mathew, J., while explaining the meaning of the words, "similarly situated" stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-

A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crime doer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants.

***75.** Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but is also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national interest and image of the country [J. Jayalalitha v. Union of India, (1999) 5 SCC 138 : 1999 SCC (Cri) 670] .*

***70.** Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14.*

47. In ***State of M.P. -vs- Shambhu Dayal Nagar reported in (2006) 8 SCC 693, in para 32,*** the Hon'ble Apex Court observed that -

***32.** It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The **corruption** by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count. As has been aptly observed in Swatantar Singh v. State of Haryana [(1997) 4 SCC 14 : 1997 SCC (L&S) 909] corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently,*

truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke.

48. ***In State of M.P. -vs- Ram Singh (2000) 5 SCC 88,*** in Paras 8, 9, 10 and 11, the Hon'ble Apex Court, observed :

> ***8. Corruption*** *in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.*
>
> ***9.*** *The menace of corruption was found to have enormously increased by the First and Second World War conditions. Corruption, at the initial stages, was considered confined to the bureaucracy which had the opportunities to deal with a variety of State largesse in the form of contracts, licences and grants. Even after the war the opportunities for corruption continued as large amounts of government surplus stores were required to be disposed of by the public servants. As a consequence of the wars the shortage of various goods necessitated the imposition of controls and extensive schemes of post-war reconstruction involving the disbursement of huge sums of money which lay in the control of the public servants giving them a wide discretion with the result of luring them to the glittering shine of wealth and property. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, the Prevention of Corruption Act, 1947 was enacted which was amended from time to time. In the year 1988 a new Act on the subject being Act 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of the 1947 Act. The law relating to prevention of corruption was essentially made to deal with the public servants, not as understood in common parlance but specifically defined in the Act.*

> ***10.*** *The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation intended to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in* ***R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183 : 1984 SCC (Cri) 172] held: (SCC p. 200, para 18)***
>
> "***18.*** *The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of* ***bribery and corruption.*** *Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and* ***corruption*** *and at any rate not defeat it."*
>
> ***11.*** *Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it.*

49. Technicalities of law and procedural delay should not be permitted to defeat the object sought to be achieved by the statute and public interest is to be borne in mind while deciding a case under the statute. (Reference: ***Niranjan HemchandraSashittal -vs- State of Maharastra reported in (2013) 4 SCC 642 (Supra)*** at para-44 above.

50. The courts are certainly obliged to follow the guidelines or criteria while considering the bail. But then, it is also accepted principle that each case has to be considered on its own peculiar situation and merits.

51. This Court is required to look into the social impact of granting or refusing bail in a case of the instant nature. The balance between the personal liberty and social interest is tilted against the petitioner in the instant case. In this regard this Court relies on the decision of the Hon'ble Apex Court in ***Ash Mohammad -vs- Shiv Raj Singh @ Lalla Babu and Another. (2012) 9 SCC 446, Paras 17 to 25.*** Said paras are quoted below for convenience of understanding.

> ***17.*** *We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The* ***individual liberty is restricted by larger social interest and its deprivation must have due sanction of law****. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".*
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> ***18. It is also to be kept in mind that individual liberty cannot be***

accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society*. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:*

"*Personal liberty is the right to act without interference within the limits of the law."*

19. *Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act.*

20. *Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury's Laws of England [4th Edn., Vol. 11, Para 166.] it has been stated thus:*

"*166. Effect of bail.—The effect of granting bail is not to set the defendant [(accused) at liberty], but to release him from the custody of the law and to entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law, and he will then be imprisoned…."*

21. *In Sunil Fulchand Shah v. Union of India [(2000) 3 SCC 409 : 2000 SCC (Cri) 659] Dr A.S. Anand, learned Chief Justice, in his concurring opinion, observed : (SCC pp. 429-30, para 24)*

"*24. … Bail is well understood in criminal jurisprudence and Chapter 33 of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still*

be exercised through the conditions of the bond secured from him. The literal meaning of the word 'bail' is surety."

22. *As grant of bail as a legal phenomenon arises when a crime is committed it is profitable to refer to certain authorities as to how this Court has understood the concept of crime in the context of society. In P.S.R. Sadhanantham v. Arunachalam [(1980) 3 SCC 141 : 1980 SCC (Cri) 649 : AIR 1980 SC 856] , R.S. Pathak, J. (as His Lordship then was), speaking for himself and A.D. Kaushal, J., referred to Mogul SS Co. Ltd. v. McGregor, Gow& Co. [(1889) 23 QBD 598 (CA)] and the definition given by Blackstone and opined thus : (SCC p. 150, para 24)*

"*24. … A crime, therefore, is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual."*

23. *In Harpreet Kaur v. State of Maharashtra [(1992) 2 SCC 177 : 1992 SCC (Cri) 370 : AIR 1992 SC 979] a two-Judge Bench, though in a different context, has observed : (SCC p. 186, para 24)*

"*24. Crime is a revolt against the whole society and an attack on the civilisation of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community."*

24. *In T.K. Gopal v. State of Karnataka [(2000) 6 SCC 168 : 2000 SCC (Cri) 1037 : AIR 2000 SC 1669] it has been held that : (SCC p. 176, para 11)*

"*11. … Crime can be defined as an act that subjects the doer to legal punishment. It may also be defined as the commission of an act specifically forbidden by law; it may be an offence against morality or social order."*

25. *Keeping in mind the aforesaid aspects, namely, the factors which are to be borne in mind while dealing with an application preferred under Section 439 of the Code of Criminal Procedure in respect of serious offences, the distinction between a perverse or illegal order and cancellation of order granting bail, the individual liberty and social security, the concept of bail, the definition of crime and the duty of the court, we may proceed to deal as to how in the case at hand the bail application has been dealt with by the High Court.*

52. While referring to the decision in ***Ash Mohammad (supra)*** and

the decision of the Hon'ble Supreme Court in the case of Sanjay Chandra (supra), as referred to by the learned counsel for the petitioner, this Court is persuaded by the observation made in paragraphs 18 and 19 of ***Ash Mohammad (supra),*** as quoted in paragraph-51 of this order.

53. This Court has considered the entire materials in the case diary and it is found, prima facie, that an amount of Rs.3,61,18,431.00 got deposited in the account of the petitioner during the period 2019 to 2021 while he was working as Deputy Inspector General of Police, Western Range, Bongaigaon, which also includes huge cash deposits. It has further been noticed, from the materials in the case diary, that certain properties claimed to have been purchased for a specific consideration, as indicated in the sale deed, is not in-fact the actual consideration, rather the consideration is several times higher than the consideration reflected in the relevant Sale Deed. There is materials collected to indicate that the petitioner had paid several times more than the actual value reflected in the Sale Deeds. This Court has also taken note of the fact emerged from the materials in the case diary that the properties standing in the name of the wife of the petitioner are mostly found to have been acquired before she started to have earned and the sources claimed by the petitioner to have paid money to him for his children's education and for other purposes are found to have not been subscribed to his such claim. This Court has also taken note of the fact, based on the materials in the case diary, that while on one hand the accused petitioner has claimed to have taken loan, gifts etc. from his relative for his children's education abroad, he has claimed, at the same breath, to have lent huge amount of money

to some other witnesses.

54. Inspite of the fact that there are certain discrepancies, as regards the valuation of the properties, on the basis of the chart, prepared and placed before this Court by the petitioner, with that of the enquiry report and the charge sheet, yet the fact remains that huge money was deposited in the account of the petitioner and the members of his family, beyond the known sources of income and without there being, prima facie, satisfactory explanation. The materials in the case diary also clearly indicate that since the inception of the enquiry, the petitioner had not cooperated in the investigation inspite of the fact that he himself is a high ranking police officer. The petitioner is an influential person taking into account his official and financial position. There is also materials in the case diary to suggest that one of the vendors of his property was threatened by him while he repeatedly requested the petitioner for payment of the additional amount of consideration money left to be paid to him and even the vendor claimed that he was ousted by the petitioner from his house using the guards posted in his house. This Court has also taken note of the fact that the said person is a witness in this case. On the other hand, although the charge-sheet has been laid in the instant case yet the stage of consideration of charge is yet to be reached.

55. So far accusation in respect of violation of the provisions of the Official Secrets Act is concerned, this Court is of the view that the statements in the FIR itself clearly indicate that the petitioner is only suspected to have committed offences under the said Act as alleged and

no material is found to have been gathered to take a prima facie view on commission of such offences merely because he had visited foreign countries on several times, allegedly, without permission of the Government.

Learned counsel for the petitioner has raised the issue that for private visits abroad, permission of the Government is not required and he has referred to certain notifications, as indicated earlier in this order, and the same is countered by the learned Public Prosecutor stating that there is some other notification superseding the notification referred to by the petitioner. Since this case has not been registered for violation of any of the provisions of the Passport Act, 1967, the argument on this count appears to have no relevance. Visiting foreign countries, allegedly without permission, is not the concern of this Court, in this application. So far the argument of learned counsel for the petitioner as regards adding the provisions of Section 12 of the Prevention of Corruption Act is concerned, this Court would like to clarify, based on the materials in the case diary, that the provision is added in respect of co-accused and not in respect of present petitioner. So far adding of Section 120 of the Indian Penal Code is concerned, this Court is not supposed to make any comment at this stage and in this application.

56. In view of the specific discussions on the materials available in the case diary for the offences under the Prevention of Corruption Act, this Court is of the view that grant of bail to the petitioner, at this stage, would be against the larger social interest. There is also chance, as appears from

the conduct of the petitioner, as reflected during the course of discussion above, that he is likely to influence witnesses using his position. The ground for grant of bail on the ground of length of detention is also not considered by this Court at this stage in view of the decision rendered by the Hon'ble Supreme Court in the case of ***State of Bihar Vs. Amit Kumar @ Bachcha Rai (supra),*** referred to in paragraph 38 above.

57. In view of the above, the prayer for bail of the petitioner is rejected.

58. Any observation made in this order is limited to this bail application only.

59. The bail application stands disposed of accordingly.

JUDGE

Comparing Assistant