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

Reserved on: August 16, 2022

Decided on: September 28, 2022

+ **BAIL APPLN. 1698/2022**

ANAND SUBRAMANIAN

..... PETITIONER

Through: Mr. Vikas Pahwa, Senior Advocate with Mr. Subhash C.Gulati, Mr. Alok Tripathi, Ms. Namisha Jain and Mr.Kunal Narang, Advocates.

V

CENTRAL BUREAU OF INVESTIGATION

..... RESPONDENT

**Through: Mr. Anupam S. Sharrma, SPP-CBI with Mr. Anurag K.Andley, Mr. Prakarsh Airan and Ms. Harpreet Kalsi, Advocates.
Mr. Puspall Paul, DSP-CBI.**

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present bail application is filed under sections 439 and 167(2) of the Code Of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) for grant of regular bail in FIR bearing no RC/AC1/2018/A0011 dated 28.05.2018 registered at PS CBI/AC-I for

offences punishable under sections 120B/204 IPC and sections 7/12/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') and section 66 of the Information Technology Act, 2000. The petitioner prayed as under:

A. Release the Accused/ Applicant Anand Subramanian on bail in relation to the captioned case titled “CBI v. Chitra Ramakrishnan & Ors..” arising out of the First Information Report dated 28.05.2018 bearing no. RC AC1 2018 A0011, subject to such conditions or directions, as deemed fit by this Hon'ble Court; and

B. Pass any such other order(s) as it may deem fit and proper in the interest of justice.

2. The facts as alleged in FIR are that Sanjay Gupta who was owner and promoter of M/s OPG Securities Pvt. Ltd. during 2010 to 2014 abused the server architecture of National Stock Exchange (hereinafter referred to as “NSE”) in criminal conspiracy with unknown officials of NSE. Sanjay Gupta with the help of his brother in law namely Aman Kokrady and other unknown persons in furtherance of the criminal conspiracy managed data centre staff of NSE who passed the information regarding switching on time of NSE exchange servers. OPG Securities Pvt. Ltd. by unknown officials of NSE was given access to technologically latest and least crowded servers at that particular period which helped OPG Securities Pvt. Ltd. to be mostly

to login firstly on the Exchange Server of the NSE and this particular setup of server gives a 10:1 (Approx.) speed advantage in comparison to other brokers. The information was disseminated till 2014 by exchange server to the brokers attached with co-location facility through 'tick by tick' (TBT) based system architecture. The architecture data was disseminated in a sequential manner whereby the stock broker who connected first to the server of Stock Exchange received ticks i.e. market feed before the stock broker who connected later. Sanjay Gupta had enjoyed unfair access to co-location facility of NSE between 2010 to 2014 that enabled OPG Securities Pvt. Ltd. to login first to the secondary server and to get the data before everyone else which allowed a split second faster access to the data feed of NSE. A split-second faster access is considered to result in huge gains for any stock trader.

2.1 NSE did not have the system of starting TBT servers (tick by tick server) at a fixed time every day. Sanjay Gupta with the help of and from unknown persons managed the data centers staff of NSE who passed the information regarding switching on time of NSE exchange servers. NSE improved the system of imbalance load factor among

different TBT co-location server during October 2012 and introduced load balancer among the various TBT co-location servers. Load balancer ensured that the load is evenly distributed among the TBT servers. There were back up servers were also available in NSE for providing connection to the servers of the brokers only in case if primary servers had some technical glitch or failure. The servers of all other brokers were connected to the primary servers of NSE but Sanjay Gupta once again dishonestly and fraudulently managed the data centre staff of NSE who started to let OPG Securities Pvt. Ltd. connected to the backup servers which were with zero load and therefore had provided far better and fast access to the market feed to the OPG Security Pvt. Ltd. in comparison to other brokers. This had resulted in wrongful gain to OPG Securities Pvt. Ltd. and wrongful loss to other brokers/investors.

2.2 SEBI on receiving the complaints of exploitation of TBT architecture by OPG Securities Pvt. Ltd. conducted enquiry. According to Technical Advisory Committee (TAC) Report, OPG Securities gained materially by exploiting the TBT architecture of NSE which also revealed that OPG Securities had consistently logged

in first on selected TBT servers on most of the trading days during the period 2010 to 2014 and also had access to servers with better hardware. As per forensic review of the NSE's co-location facility conducted by Deloitte Touche Thmatsu, OPG Securities was the first in most cases during trading sessions.

2.3 Sanjay Gupta dishonestly and fraudulently influenced the officials of SEBI and bribe money was also exchanged between Sanjay Gupta and some unknown officials of SEBI to ensure the favorable report in the on-going enquiry being carried out by SEBI against the role of OPG Securities Pvt. Ltd in the misuse of TBT architecture of NSE. Sanjay Gupta deliberately directed his employees to delete some important mails, text messages, logs etc. related to co-location to destroy evidence.

2.4 Ajay Narottam Shah was found to be instrumental in exploitation of NSE TBT architecture as he had collected NSE trade data to carry out research and thereafter passed it to private persons who in turn developed an algo software named 'Chanakya' which was sold to selected brokers including OPG Securities and by using Chanakya exploited TBT architecture of NSE by using Chanakya Software.

2.5 Accordingly present FIR was got registered under sections 120-B /204 of the IPC and sections 7/12/13(2) read with 13(1) (d) of the PC Act and under section 66 of the Information Technology Act, 2000.

3. It was revealed during investigation that the Chitra Ramakrishna (hereinafter referred to as “**co-accused**”) worked as Joint MD, NSE from 2009 till 31st March, 2013 and exercised the powers of MD. She was appointed as MD and CEO of NSE on 1st April, 2013. The co-location was conceptualized and implemented during her tenure as Joint MD and was responsible for day to day operations of the exchange during the relevant period. Muralidharan Natarajan, CTO of NSETech (a subsidiary of NSE) was responsible for placing co-location architecture at NSE and was reporting to co-accused. It was also revealed that during the period 2010-15 when the co-accused was managing the affairs of NSE, OPG Securities Pvt. Ltd. had connected to the secondary POP server on 670 trading days in the Futures & Options segment. The investigation regarding allegations of preferential access granted to certain brokers by officials of NSE and undue gains made out of it during the tenure of co-accused and the

petitioner/Anand Subramanian (hereinafter referred to as “**the petitioner/accused**”) is underway.

3.1 It was surfaced during investigation that SEBI had passed an order dated 11.02.22 in the matters pertaining to illegal appointment of the petitioner/accused as ‘Chief Strategic Advisor’ (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and sharing of internal confidential information of NSE with unknown person by co-accused. The respondent/ CBI received a request from the Ministry of Finance, Govt. of India to investigate the issues arising out of SEBI Final Order dated 11.02.2022. The respondent/CBI took up investigation as it has a serious bearing on the integrity and functioning of NSE and in turn on the robustness/integrity of National Financial System and issue highlighted in the order of SEBI dated 11.02.2022 was linked with ongoing investigation by CBI.

4. The petitioner/accused during further investigation was found to be well connected with co-accused prior to his engagement as Chief Strategic Advisor at NSE in January, 2013. The co-accused entered into a criminal conspiracy with the petitioner/accused and illegally and arbitrarily appointed the petitioner/accused in NSE. It was further

surfaced that the petitioner/accused was offered to join NSE as Chief Strategic Advisor to MD with effect from 01.04.2013 vide NSE letter dated 18.01.2013 and his appointment was approved by co-accused, then Joint Managing Director (JMD) vide internal note dated 18.01.2013. The co-accused did not obtain approval for the appointment of the petitioner/accused from Sh. Ravi Narain., then MD.

4.1 It was also surfaced in investigation that then HR Head was not aware of any details for processing the recruitment of the petitioner/accused and also did not have any document related to him. The application form of Anand Subramanian was also filled up on a later date. The petitioner/accused had not mentioned against the column "Position applied for" and kept the same "Blank". The date of the interview was not mentioned. The co-accused by misusing her official position fixed an abnormally high initial compensation of the petitioner/accused and his previous experience was not relevant to the position for which he was appointed at NSE. The petitioner/accused prior to joining NSE was Vice President, Leasing & Repair Services of Transafe Services Limited, a subsidiary of M/s Balmer & Lawrie and his last drawn compensation was approximately Rs 14 lakhs per

annum. He was offered a disproportionately high annual remuneration of Rs. 1.68 crores for working 4 days in a week despite he was not having any relevant experience.

4.2 It was further surfaced in investigation that co-accused entered into criminal conspiracy with the petitioner/accused and arbitrarily enhanced his compensation at frequent intervals without any reasonable basis and by grossly abusing her official position and even without taking any inputs from HR department. No document was available in NSE regarding evaluation of performance of the petitioner/accused having been carried out by co-accused. The co-accused dictated the internal notes for enhancement of salary of the petitioner/accused who was paid compensation of approximately Rs 11.94 crores during the period with effect from 01.04.2013 to 21.10.2016.

4.3 The co-accused by misusing her official position re-designated the post of the petitioner/accused as Group Operating Officer (GOO) & Advisor to MD from 01.04.2015 without bringing the same to the notice of Nomination and Remuneration Committee (NRC) of NSE and the NSE Board.

4.4 The petitioner/accused who was holding a position higher in hierarchy to the Head of Departments was required to be designated as Key Managerial Person (KMP) as per regulation 2 (1) (i) of SECC Regulations 2012 and compensation given to him as GOO and Advisor to MD was required to be disclosed in the Annual Report of the NSE as per regulation 27 (5) of the said regulations. The petitioner/accused being GOO was part of senior management and his re-designation and remuneration was required to have approval of NRC as per section 178 of Companies Act 2013. He was not designated as KMP as required under SECC Regulations, 2012 and his remuneration /re-designation was not brought to the notice of NRC or the board as required under section 178 of Companies Act, 2013. The motive of the co-accused was to give the petitioner/accused huge monetary and status benefit by circumventing the established and laid down process.

4.5 It was also surfaced during investigation regarding leakage of data unauthorizedly from NSE that co-accused was communicating with an external e-mail ID "rigyajursama@outlook.com" through her e-mail IDs. A search was also conducted at the premises of the

petitioner/accused who in disclosure statement under section 27 of Indian Evidence Act admitted having operated the e-mail ID rigyajursama@outlook.com and incriminating e-mails were also recovered. MLAT request has been sent to USA for getting the complete details of this email-id.

4.6 It was established during investigation that the co-accused entered into criminal conspiracy and in pursuance of conspiracy and by abusing her official position as Joint MD as well as MD of NSE illegally and arbitrarily appointed the petitioner/accused as Chief Strategic Advisor to MD and disproportionately hiked his compensation and also re-designated him as Group Operating Officer without taking approval of NRC or Board.

4.7 The co-accused and the petitioner/accused have committed offences punishable under section 120-B IPC read with section 13 (1) (d) read with section 13 (2) of the PC Act and substantive offences thereof. The investigation qua these allegations has been completed and charge sheet under sections 13(1)(d) and 13(2) of the PC Act read with 120B IPC qua the co-accused and the petitioner/accused has already been filed on 21.04.22. The further investigation is pending in

FIR/RC forming part of other transactions and supplementary charge sheet would be filed after completion of the further investigation. The sanction for prosecution against the co-accused and the petitioner/accused has been received from the competent authority.

5. The applicant/accused filed first bail application under sections 437/439 of the Code for grant of regular bail titled as **Anand Subramanian V CBI** bearing Bail Matter No 58/2022 which was dismissed vide order dated 24.03.2022 by the court of Sh. Sanjeev Aggarwal, Special Judge (PC Act) (CBI)-02, Rouse Avenue District Courts, New Delhi.

6. The petitioner/accused also filed another application under section 437/439 of the Code for grant of bail bearing no 84/2022 titled as **Anand Subramanian V CBI** which was dismissed by the court of Sh. Sanjeev Aggarwal, Special Judge (PC Act) (CBI)-02, Rouse Avenue, District Courts, New Delhi vide order dated 12.05.2022.

7. The applicant/accused also filed an application under section 167 (2) of the Code on ground which was dismissed by the court of Sh. Rakesh Kumar-III, Special Judge (PC Act) (CBI)-02, Rouse Avenue, District Courts, New Delhi vide dated 28.05.2022.

8. The petitioner/accused in bail application under sections 439 and 167 (2) of the Code which is under consideration stated that the petitioner/accused is in custody since 24.02.2022 and charge sheet was filed on 21.04.2022 against the co-accused and the petitioner/accused for offences punishable under sections 120B read with section 13(1)(d) read with section 13(2) of the PC Act, 1988. The petitioner/accused is a permanent resident of Chennai and is having deep roots in the society with clean antecedents.

8.1 NSE in 2009-2010 introduced co-location set up using Tick by Tick (TBT) over Transmission Control Protocol/Internet Protocol (TCP/IP) for its Trading Members. The petitioner/accused joined NSE on 01.04.2013 on consultancy basis as the Chief Strategic Officer, and was re-designated as the Group Operating Officer on 01.04.2014. The petitioner/accused left NSE in October 2016. Multicast Protocol was introduced in April 2014 to replace TBT and later on both systems were provided to Trading Members in parallel.

8.2 The respondent/CBI on 28.05.2018 registered present FIR in respect of the alleged co-location scam at NSE) during 2010-2014 involving one broker, OPG Securities Pvt. Ltd. who allegedly abused

the server architecture of NSE (Tick by Tick based system architecture) in conspiracy with officials of NSE and as such was given an advantage over other brokers by way of faster access to information/market feed.

8.3 The petitioner/accused is neither mentioned as an accused nor is any allegation raised against the petitioner/accused in present FIR.

8.4 SEBI vide order dated 30.04.2019 while adjudicating Show Causes Notices issued in respect of setup/misuse of the co-location facility of NSE using Tick by Tick (TBT) over Transmission Control Protocol/Internet Protocol (TCP/IP) has exonerated the petitioner/accused after detailed consideration from any liability.

8.4.1 SEBI vide order dated 11.02.2022 while deciding the Show Cause Notices issued in respect of governance of NSE held that it cannot be concluded that the unknown person having email id rigyajursama@outlook.com was the petitioner/accused. SEBI had also imposed penalty of the Rs. 2,00,00,000 on the petitioner/accused and said order was stayed by the Securities Appellate Tribunal vide order dated 11.05.2022. The Ministry of Finance, Government of India subsequent to the order dated 11.02.2022 passed by SEBI a request to

the respondent/CBI to investigate issues highlighted in the order dated 11.02.2022 passed by SEBI.

8.5 The respondent after 4 years of registration of present FIR summoned the petitioner/accused for investigation on 19.02.2022-22.02.2022 and cooperated with the investigation. The petitioner/accused was informed by the CBI on 23.02.2022 to appear at New Delhi on 24.02.2022. The petitioner/accused on 24.02.2022 attended the Chennai office of the respondent/CBI and was arrested by the respondent/CBI in illegal and arbitrary manner. The respondent/CBI on 24/25.02.2022 conducted a search and seizure at the residence of the petitioner/accused and seized the electronic devices including laptop, I-pad and phone and other files. The petitioner/accused during police custody was confronted with the documents and co-accused. The police and judicial custody of the petitioner/accused were also extended.

8.5.1 The petitioner/accused filed a bail application bearing Bail Matter No. 58 of 2022 which was dismissed by the Trial Court vide order dated 24.03.2022 on the ground that the investigation is at the initial stage. The petitioner/accused on 11.04.2022 filed second

application bearing Bail Matter No 84 of 2022 seeking regular bail under sections 437/439 of the Code which was dismissed vide order dated 12.05.2022 after considering gravity of offence and the chances of tampering with evidence and influencing the witnesses cannot be ruled out. The respondent/CBI on 21.04.2022 filed charge sheet against the co-accused and the petitioner/accused only for offences punishable under sections 120B read with Section 13(1)(d) read with Section 13(2) of the PC Act., 1988.

8.5.2 The respondent/CBI filed incomplete charge sheet filed for the purposes default bail as the investigation is still going on in respect of involvement of the petitioner/accused regarding allegations made in present FIR.

8.5.3 The petitioner/applicant on 24.05.2022 filed an application under section 167(2) of the Code for default bail as the investigation as the investigation has not been completed by the respondent/CBI within the stipulated period of 60 days and said application was dismissed vide order dated 28.05.2022.

8.6 The petitioner/accused filed present bail application on **grounds** that the petitioner/accused is not mentioned as an accused and no

allegations have been raised against the petitioner/accused in present FIR. The charge sheet dated 21.04.2022 does not contain any material reflecting involvement of the petitioner/accused regarding allegations made in present FIR *qua* co-location set up using tick by tick server between 2010-2014.

8.6.1 The use of Tick by Tick (TBT) over Transmission Control Protocol/Internet Protocol (TCP/IP) for co-location set up at NSE was introduced in 2009 and the petitioner/accused joined NSE as Chief Strategic Officer (later Group Operating Officer) on consultancy basis only on 01.04.2013. The petitioner/accused does not have any involvement with use/setup of servers at NSE and/or any technology related aspects during his consultancy with NSE between 01.04.2013 to October 2016.

8.6.2 SEBI vide order dated 30.04.2019 concluded that the petitioner/accused has no liability in respect of the setup/misuse of the co-location facility of NSE using Tick by Tick (TBT) over Transmission Control Protocol/Internet Protocol (TCP/IP). SEBI has in order dated 11.02.2022 concluded that there is no evidence or

document to prove that the unknown person who used the email id 'rigyajursama@outlook.com' was the petitioner/accused.

8.7 The allegations made in charge sheet dated 21.04.2022 only in respect of terms of appointment/re-designation/salary of the petitioner/accused and alleged leakage of data of NSE by co-accused to email of unknown person (rigyajursama@outlook.com) allegedly operated by the petitioner/accused do not justify refusal of bail to the petitioner/accused. The allegations in the charge sheet dated 21.04.2022 qua email of unknown person rigyajursama@outlook.com allegedly being operated by the petitioner/accused are based on the alleged disclosure under section 27 of the Indian Evidence Act, 1872 which can only be proved during trial. The respondent/CBI could not show any money trail or undue gain made out of alleged preferential access granted to certain brokers by the officials of NSE. The accused as named in present FIR and / or any other person in charge of the co-location facility of the NSE using Tick by Tick (TBT) over Transmission Control Protocol/Internet Protocol (TCP/IP) has not been arrested as such there is no justification for continued incarceration of the petitioner/accused who has no role in respect of

the allegations in the subject FIR. The petitioner has not committed any offence.

8.8 The petitioner/accused is permanent resident of Chennai where he is living with family. The petitioner/accused is the sole earning member in his family. The petitioner/accused has cooperated and participated in the investigation. The petitioner/accused has left NSE in October 2016 i.e. approximately 6 years back and as such there is no possibility to influence witnesses or tamper with evidence and the respondent is already in possession of the documentary evidence from NSE as well as devices and files of the petitioner/accused.

8.9 The trial court has failed to appreciate that the mere allegations or apprehension of the likelihood of the accused tampering the evidence / influencing the witnesses without any material particulars does not justify refusal of grant of regular bail to the concerned accused. The trial court has failed to appreciate law laid down by the Supreme Court in **P. Chidambaram V CBI**, (2020) 13 SCC 337 and **Sushila Agarwal V State (NCT) of Delhi**, (2020) 5 SCC 1. The petitioner/accused undertakes to cooperate in investigation.

8.10 The investigation still has not been completed and the respondent/CBI has filed incomplete charge sheet to circumvent the provision of section 167(2) of the Code and non-completion of investigation within the stipulated period of 60 days and filing of incomplete charge sheet creates an indefeasible right in favour of the petitioner/applicant for grant of bail.

8.11 The petitioner/accused prayed that the petitioner/accused be released on bail in First Information Report dated 28.05.2018 bearing no. RC AC1 2018 A0011 subject to such conditions or directions as deemed fit by this court.

9. The respondent/CBI in Status Report submitted the facts as mentioned in present FIR and also facts which were surfaced during further investigation as detailed hereinabove. It is stated that the bail application be dismissed as the applicant/accused is highly influential and is capable of influencing the witnesses. The examination of other witnesses is being carried out to unearth the whole conspiracy related to co-location set up. The applicant/accused may destroy the e-mails/digital evidence. The investigation is also underway to identify trading members/entities who had also illegally benefitted from the colocation

and to collect evidences against them. The execution report of MLAT is awaited from USA.

10. The learned Senior Counsel for the petitioner/accused for grant of bail under section 439 of the Code argued that as per allegations in FIR that M/s OPG Securities Pvt. Ltd. during the period of 2010- 2014 abused the server architecture of NSE in criminal conspiracy with the unknown officials of NSE. Sanjay Gupta who was promoter and owner of M/s OPG Securities had unfair preferential access to co-location facility of NSE between 2010-2014 that enabled M/s OPG Security to login first to the main server and/or secondary server and get the data before everyone else.

10.1 SEBI had adjudicated said irregularity and vide order dated 30.04.2019 has completely exonerated the petitioner/accused. SEBI had examined and adjudicated the role and involvement of the NSE employees including the role of the petitioner/accused in the system of dissemination of information through co-location facility Tick by Tick System Architecture and vide order dated 30.04.2019 had given a finding that the petitioner/accused was not involved in co-location facility.

10.2 The petitioner/accused was neither named in present FIR nor was he arrested in the present FIR from 2018 till February 2022. The investigation qua the petitioner started after the SEBI conducted another enquiry regarding the irregularity in the appointment of the petitioner/accused. SEBI while deciding the Show Cause Notices issued by it in respect of governance of NSE vide order dated 11.02.2022 held that it cannot be concluded that the unknown person having email id rigyajursama@outlook.com was the petitioner/accused. The SEBI had imposed penalty of Rs. 2,00,00,000 (Two Crores) on the petitioner/accused which was stayed by the Securities Appellate Tribunal (SAT) vide order dated 11.05.2022.

10.3 The Ministry of Finance, Govt. of India sent a request to the respondent/CBI to investigate the issues highlighted in the order dated 11.02.2022 passed by SEBI. The petitioner was summoned for investigation during 19.02.2022 to 22.02.2022 at the CBI office, New Delhi and offered full co-operation during the investigation but despite joining investigation was arrested on 24.02.2022. The respondent/CBI did not arrest any named accused in the FIR. The respondent/CBI has

filed incomplete charge sheet on 21.04.2022 against the petitioner/accused and the co-accused.

10.4. The learned Senior Counsel for the petitioner/accused further argued that the investigation conducted by the respondent/CBI does not establish any connection of the petitioner/accused regarding allegations of preferential access granted to the brokers and undue gain made out of it. The allegations pertaining to the co-location facility pertains to period from 2010 -2014 but the petitioner/accused joined NSE in the month of April, 2013 and the Co-location setup existed in the NSE prior to his appointment. The petitioner was never a party to co-location and his role was confined to the regular operations of the exchange and it's regulatory.

10.5 SEBI had examined and adjudicated the role and involvement of the NSE employees including the role of the petitioner/accused in the system of dissemination of information through Co-location facility Tick by Tick System Architecture. SEBI after complete adjudication SEBI vide order dated 30.04.2019 had given a finding that the petitioner/accused was not involved in the co-location facility.

10.6 The petitioner/accused allegedly created an email id rigyajursama@outlook.com and used said email id to communicate with co-accused. However SEBI vide order dated 11.02.2022 concluded that there is no evidence or document to prove that the unknown person who used the email id rigyajursama@outlook.com was the petitioner/accused.

10.7 The learned Senior Counsel for the petitioner further argued that as per allegations in charge sheet the appointment of the petitioner/accused in NSE was illegal and arbitrary but this allegation does not have any relation with the co-location facility against which the FIR was registered. The petitioner/accused was appointed in NSE as Chief Strategic Officer vide appointment letter dated 18.01.2013 and at that time was having experience of around 23 years in the industry with a well-rounded exposure in areas of strategy/Business Development/people management and general administration. The appointment of the petitioner/accused was approved by the then JMD based on the delegation of powers made in her favour in the 74th Board meeting of NSE held on 02.02.2005. The appointment of the petitioner/accused with NSE was not arbitrary and illegal.

10.8 The petitioner/accused qualifies the 'Triple Test' laid down by the Supreme Court for the grant of bail. The petitioner/accused had already joined investigation and nothing has to be recovered from the petitioner/accused. The petitioner/accused has resigned from his employment in month of October, 2016 and as such he cannot influence the witnesses who are mainly public servants. The petitioner/accused is ready and willing to surrender his passport before the trial court to avoid apprehension of being a flight risk. The learned Senior Counsel stated that the applicant/accused be granted bail on such reasonable terms and conditions as imposed by this court.

11. The Special Public Prosecutor for the respondent/CBI argued at length and also submitted written arguments. The Senior Public Prosecutor argued that present RC was got registered for offences punishable under sections 120-B and 204 IPC; under section 7, 12 & 13(2) read with section 13(1)(d) of PC Act, 1988 and under section 66 of I.T. Act, 2000 on 28.05.2018 regarding co-location and passing of confidential information by officials of NSE to M/s OPG Securities leading to wrongful gain to M/s OPG Securities and was detrimental to the larger public interest. The respondent/CBI was investigating the

case relating to co-location architectural system of NSE which compromised the integrity of the trading system. A letter dated 05.03.2022 was received from Ministry of Finance mentioning therein that the enquiry by SEBI revealed sharing of confidential information by its CEO with some unknown persons thereby compromising the integrity of NSE which may have relevance to the co-location which was already being investigated by the respondent/CBI. SEBI had imposed heavy fines on the co-accused for causing wrongful gain to the petitioner/accused in course of her employment to the detriment to the corporate governance of the NSE as well as larger public interest.

11.1 The respondent/CBI was requested to investigate the issue raised in the order passed by SEBI. The respondent/CBI had already registered RC in co-location issue and passing of information so issues disclosed in the letter were also included in the investigation. It was surfaced during investigation that accused including the co-accused had adopted several ingenious ways to amass illegal wealth which resulted in public injury. The investigation in the present case relate to conspiracies which are independent to each other and are distinct conspiracies. The investigation has already been completed with

regards to one of the method adopted to amass wealth and cause wrongful gain to themselves by abuse of appointment of the petitioner/accused as Chief Strategic Advisor to MD at NSE and thereafter disproportionately increasing the salary of the petitioner/accused by the co-accused from time to time, besides re-designating the petitioner/accused in 2015 and thereafter delegating substantial powers to him without making him KMP (Key Management Person), without bringing it in notice and approval of the Nomination and Remuneration Committee(NRC) of NSE.

11.2 The co-accused and the petitioner/accused were known to each other since 1999. The co-accused in pursuance conspiracy with the petitioner/accused got appointed him in NSE illegally and arbitrarily. The application form dated 01.04.2013 of appointment of the petitioner/accused with NSE was submitted subsequent to contact agreement which is dated 18.01.2013. The pre-employment documents pertaining to the petitioner/accused were not handed over to HR of NSE or kept in his personal file. The co-accused also approved internal approval note dated January 18.01.2013 and also dictated draft contract agreement. HR Department of NSE did not

make any communication with the petitioner/accused. There was no interview, medical or advertisement for this post and the petitioner/accused was directly appointed by the co-accused without following the procedure. The co-accused did not obtain approval from then MD for designation of the post of the petitioner/accused as Chief Strategic Advisor to MD.

11.3 The petitioner/accused despite without relevant experience was offered an annual remuneration of Rs. 1.68 crores per annum for working 4 days in a week which was 1100% in comparison to his previous salary. The co-accused frequently enhanced compensation of the petitioner/accused without any reasonable basis and performance evaluation and by misusing her official position.

11.4 The co-accused re-designated the petitioner/accused as 'Group Operating Officer and Advisor to MD with effect from 01. 04. 2015 vide letter dated 01.04.2015. The petitioner/accused was working as a senior executive position and required approval from NRC and was required to be designated as KMP as per regulation 2 (1) (i) of SECC Regulations 2012. The compensation given to petitioner/accused as GOO and Advisor to MD was required to be disclosed in the Annual

Report of the NSE as per regulation 27 (5). SEBI in its order dated 11.02.2022 clearly stated the role played by the co-accused and the petitioner/accused in the matter of the illegal appointment of the petitioner/accused.

11.5 The co-accused granted more powers to the petitioner/accused with more financial benefits without following the due process. The substantial powers were given to the petitioner/accused. The Board was kept in the dark that the petitioner/accused was a consultant and Advisor to MD. The investigation with regards to the employment of the petitioner/accused appointed by the co-accused is complete and regarding this charge sheet has already been filed.

11.6 The co-accused and the petitioner/accused are responsible for co-location. The team which was responsible for setting up co-location was reporting to the co-accused and further the team of Ravi Apte and N. Muralidharan which was responsible for setting up the co-location was reporting to the petitioner/accused. The co-accused was communicating with an external e-mail ID “rigyajursama@outlook.com” through her e-mail IDs. The petitioner/accused also in disclosure statement under section 27 of

Indian Evidence Act admitted having operated said email ID “rigyajursama@outlook.com” and accessed the said e-mail ID.

11.7 The employment of the petitioner/accused established grave and serious economic offence which shakes the credibility of NSE and the entire financial securities system. Sanjay Gupta of M/s OBG Securities has been arrested and the investigation with regards to the co-location matter is at an advanced stage. The magnitude of the scam is still under investigation which is one of the biggest scams in the stock market and confidence of the investors needs to be restored. FIR being RC No. 221 2022 E 0019/EO-III and 221 2022 E 0030/EO-III implicating the co-accused have also been registered. The Special Public Prosecutor argued that the bail application be dismissed.

A. CONSIDERATION OF BAIL APPLICATION AS PER SECTION 439 OF THE CODE

12. The facts in brief which are reflecting from perusal of material placed on record that present RC was got registered for offences punishable under sections 120-B and 204 IPC; under section 7, 12 & 13(2) read with section 13(1)(d) of PC Act, 1988 and under section 66 of I.T. Act, 2000 dated on allegations of co-location and passing of

confidential information to M/s OPG Securities by officials of NSE which led to wrongful gain to M/s OPG Securities. Accordingly the respondent/CBI conducted investigation relating to co-location architectural system of NSE. The petitioner/accused and co-accused are not named as an accused in present FIR.

12.1 The co-accused worked as Joint MD in NSE from 2009 till 31.03.2013 and was appointed as MD and CEO of NSE on 1st April, 2013. It was surfaced during investigation that the co-accused and the petitioner/accused were known to each other since 1999 and co-accused got appointed the petitioner/accused in NSE. SEBI passed an order dated 11.02.22 pertaining to illegal appointment of the petitioner/accused as 'Chief Strategic Advisor' (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and sharing of internal confidential information of NSE with unknown person by the co-accused. The respondent/ CBI received a request from the Ministry of Finance, Govt. of India vide letter dated 05.03.2022 to investigate the issues arising out of SEBI Final Order dated 11.02.2022 which revealed sharing of confidential information by its CEO with unknown persons which compromised integrity of

NSE. The respondent/CBI was requested to conduct investigation. The respondent/CBI included issues disclosed in the letter of Ministry of Finance in the investigation already undertaken in respect of co-location issue and passing of information.

12.2 It was surfaced during investigation that the co-accused approved internal approval note dated January 18.01.2013. The petitioner/accused was offered annual remuneration of Rs. 1.68 crores per annum for working 4 days in a week and his compensation was enhanced frequently by the co-accused. The co-accused re-designated the petitioner/accused as 'Group Operating Officer (GOO) and Advisor to MD with effect from 01. 04. 2015 vide letter dated 01.04.2015. The petitioner/accused was required to be designated as KMP as per regulation 2 (1) (i) of SECC Regulations 2012 and the compensation given to the petitioner/accused as GOO and Advisor to MD was required to be disclosed in the Annual Report of the NSE as per regulation 27 (5).

12.3 The co-location was conceptualized and implemented during tenure of co-accused as Joint MD and Muralidharan Natarajan, CTO of NSETech (a subsidiary of NSE) was responsible for placing co-

location architecture at NSE. The co-accused was found to be communicating with an external e-mail ID “rigyajursama@outlook.com” through her e-mail IDs which was also admitted by the petitioner/accused in disclosure statement under section 27 of Indian Evidence Act and also admitted having operated said email ID “rigyajursama@outlook.com” and accessed the said e-mail ID.

13. The present FIR/RC pertains to financial irregularities committed in NSE by Sanjay Gupta in connivance with unknown officials of NSE and illegal appointment of the petitioner/accused by the co-accused. The Supreme Court in various judgments has taken note of financial irregularities and its serious impact on national finance and economy and held that these cases be looked and examined in sensitivity. It was also held that economic offence(s) are in itself a class of its own and they need to be viewed seriously and have to be considered as grave offences affecting the economy of the country as a whole, thereby posing serious threat to the financial health of the country.

13.1 It was held in **Rohit Tandon V ED**, AIR 2017SC5309 as under:-

21. The consistent view taken by this Court is that 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.

It was also held in **Y.S. Jagan Mohan Reddy V Central Bureau of Investigation, (2013) 7 SCC 439** as under:-

15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Then economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16. 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.

The Supreme Court in **Nimmagadda Prasad V CBI (2013) 7 SCC 466** after relying on **State of Gujrat V Mohanlal Jitamalji Porwal and another, (1987) 2 SCC 364** held as under:-

26) 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 vs. Mohanlal Jitamalii Porwal and Anr.* (1987) 2 sec 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

"5 The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of 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 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.... "

The Supreme Court in *P. Chidambaram V Directorate of Enforcement*, Criminal Appeal No.1831/2019 arising out of SLP (Criminal) No. 10493 of 2019 decided on 04.12.2019 held as under:-

21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on

the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

ABUSE OF SERVER ARCHITECTURE OF NSE

14. In regard to abuse of server architecture of SEBI, CBI has registered present FIR pertaining to co-location and passing of information to M/s OPG Securities Pvt. Ltd. by unknown officials of SEBI. The petitioner/accused is not named in FIR and no specific allegations are made in FIR against the petitioner/accused. The petitioner/accused has joined investigation during period with effect from 19.02.2022 to 22.02.2022 and during investigation, the

respondent/CBI seized laptop, mobile phones, I-pad, pen drives and documents.

14.1 SEBI conducted enquiry in pursuance of complaints made against NSE in respect of its co-location facilities on allegations that NSE and its employees had committed fraudulent and unfair trade practices and violated SECC Regulations which was culminating into institution of Case No. WTM/GM/EFD/03/2018-2019 and SEBI vide order dated 30.04.2019 which is exhaustive and detailed order directed that the co-accused in her capacity as former MD & CEO of NSE should disgorge 25% of her salary drawn for FY 2013-14 and was prohibited from associating with a listed company or market corporation for five years. The relevant portion of order dated 30.04.2019 is reproduced as under:-

iii) Chitra Ramkrishna, Noticee No. 3, (former MD & CEO of NSE):

a. shall disgorge 25% of the salary drawn for FY 2013-14, to the IPEF created by SEBI under Section 11 of the SEBI Act, through NSE, within a period of 45 days from the date of this order;

b. shall be prohibited from associating with a listed company or a Market Infrastructure Institution or any other market intermediary for a period of Five (5) years;

14.2 The learned senior counsel for the petitioner/accused argued that SEBI vide order dated 30.04.2019 has completely exonerated the petitioner/accused. There is factual force in this argument as perusal of order dated 30.04.2019 reflects that the petitioner/accused was exonerated. The relevant portion of order dated 30.04.2022 pertaining to the petitioner/accused is reproduced as under:-

8.4.7.7 I have considered the allegations against Anand Subramanian, Ravi Apte and Umesh Jain. Anand Subramanian has contended that he was not involved in COLO matters directly or indirectly and was only taking care of the regular operations of the exchange and the regulatory side of the exchange. His case is that he was a part time consultant and he demitted office in October 2016. I note that though Ravi Apte was designated as CTO during the relevant period, he was a consultant on contract, who was involved in providing guidance to the broad architecture needs for the Co-location. Similarly, I note from the records that Umesh Jain became the CTO only on April 10, 2013 and after becoming a CTO, his responsibility was focused on changing the unicast TBT dissemination architecture into Multi cast dissemination. In view of the aforesaid observations, I am not inclined to pass any direction against Anand Subramanian, Ravi Apte and Umesh Jain.

14.3 It is also apparent that a separate and independent case was also filed before SEBI on the basis of various allegations including sharing of internal confidential information of NSE by the co-accused with an unknown person in charge of email ID rigyajursama@outlook.com.

SEBI in its order dated 11.02.2022 passed in Case No WTM/AB/MRD/DSA/21/2021-22 also referred communication of the co-accused with an unknown person in charge of email ID rigyajursama@outlook.com. It is true that no such allegation against the applicant/accused were made in present FIR but these facts surfaced during further investigation conducted in pursuance of present FIR/RC. The learned Senior Counsel for the petitioner/accused in respect of the petitioner/accused argued that SEBI *vide* order dated 11.02.2022 has held that it cannot be concluded that the unknown person having email id rigyajursama@outlook.com was the petitioner/accused. The perusal of order dated 11.02.2022 reflects that there was no conclusive evidence or finding that the unknown person who used email id was the petitioner/accused. The relevant portion of the order dated 11.02.2022 is reads as under:-

31.2.14.....In view of the above, I find that there is no conclusive evidence or finding from the E&Y Report or the documents before me to prove that the unknown person who used the email id 'rigyajursama@outlook.com' was in fact Noticee no. 6.

14.4 However the petitioner/accused was restrained from associating with any Market Infrastructure Institution or any intermediary

registered with SEBI in any capacity for a period of three (03) years from the date of this order. SEBI had also imposed penalty of the Rs.2,00,00,000 (Two Crores) on the petitioner/accused. Securities Appellate Tribunal (SAT) had stayed operation of order dated 11.02.2022 *vide* order dated 11.05.2022.

14.5 It is submitted that a decision was taken to phase out TBT (tick-by-tick) technology which was the brainchild of Mr. Ravi Narain, predecessor of the co-accused who was MD till 2013 and the architecture was designed and implemented by Mr Ravi Apte and Mr. N. Murlidaran, during tenure of the co-accused as MD of NSE from 2013-2016 and as per allegations of the respondent/CBI that during 2010 to 2014, the accused as named in FIR had abused the server architecture (tick-by-tick) of NSE and as such enabled M/s. OPG Securities Pvt. Ltd. to log-in first to the server of the NSE resulted into unfair advantage was to M/s. OPG Securities Pvt. Ltd. but the co-accused and the petitioner/accused are not connected with these allegations and other allegations as made in present FIR. As mentioned hereinabove the co-accused during investigation was found communicating with an unknown person in charge of email ID

rigyajursama@outlook.com. The Senior Public Prosecutor for the respondent/CBI argued that the co-accused and the petitioner/accused are responsible for co-location and team of Ravi Apte and N. Muralidharan which was responsible for setting up the co-location was reporting to the petitioner/accused. The investigation regarding role of the petitioner/accused and co-accused regarding abuse of server architecture (tick-by-tick) of NSE is still underway and as such arguments advanced by the learned Senior Counsel that the petitioner was exonerated by SEBI vide order dated 30.04.2019 and no conclusive evidence or material was found to reflect that the petitioner/accused was using the email in question as mentioned in order dated 11.02.2022 passed by SEBI, do not provide much help to the petitioner/accused. At this stage participation of the petitioner/accused in abuse of server architecture of NSE by the applicant/accused cannot be ruled out and it requires comprehensive investigation by the respondent/CBI.

APPOINTMENT OF ANAND SUBRAMANIAN WITH NSE

15. The Special Public Prosecutor argued that the co-accused had illegally appointed the petitioner/accused without following due process.

15.1 The present FIR was got registered under sections 120-B /204 of the IPC and sections 7/12/13(2) read with 13(1) (d) of the PC Act and under section 66 of the Information Technology Act, 2000 relating to abuse of server architecture of NSE besides other allegations as mentioned in FIR. The co-accused worked as Joint MD, NSE from 2009 till 31st March, 2013 and exercised the powers of MD and was appointed as MD and CEO of NSE on 01st April, 2013. The petitioner/accused was offered to join NSE as Chief Strategic Advisor to MD with effect from 01.04.2013 vide NSE letter dated 18.01.2013 on approval of the co-accused, then Joint Managing Director (JMD) vide internal note dated 18.01 2013 with annual compensation of Rs. 1.68 crores for working 4 days in a week. The petitioner/accused was re-designated as ‘Group Operating Officer (GOO) and Advisor to MD with effect from 01. 04. 2015 vide letter dated 01.04.2015 issued by the co-accused.

15.2 It is apparent that the respondent/ CBI received a request from the Ministry of Finance, Govt. of India vide letter dated 05.03.2022 to investigate the issues arising out of SEBI order dated 11.02.2022 which was passed in the matters pertaining to illegal appointment of the petitioner/accused as 'Chief Strategic Advisor' (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and other issues. The respondent/CBI took up investigation and issue highlighted in the order dated 11.02.2022 was found to be linked with ongoing investigation by CBI in pursuance of present FIR.

15.3 The Senior Public Prosecutor for the respondent/CBI argued that the petitioner/accused was illegally and arbitrarily appointed by the co-accused by highlighting facts as surfaced during investigation that the petitioner/accused was known to the co-accused prior to his appointment as Chief Strategic Advisor at NSE in January, 2013; the co-accused did not obtain approval for the appointment of the petitioner/accused from Sh. Ravi Narain, then MD despite designation of the post was "Chief Strategic Advisor to MD"; the draft contract agreement was also dictated by the co-accused; HR Head was not aware of any details for processing the recruitment of the

petitioner/accused and also did not have any document related to him; the application form of the petitioner/accused was also filled up on a later date; abnormally high initial compensation was fixed and his previous experience was not relevant to the position for which he was appointed at NSE; the co-accused enhanced compensation paid to the petitioner/accused at frequent intervals without any reasonable basis and without taking any inputs from HR department; there was no evaluation of performance of the petitioner/accused to be carried out by the co-accused besides other facts.

15.4 The Senior Public Prosecutor for the respondent/CBI further highlighted that the co-accused by misusing her official position re-designated the post of the petitioner/accused as Group Operating Officer (GOO) & Advisor to MD from 01.04.2015 without bringing to the notice of Nomination and Remuneration Committee (NRC) of NSE and its approval as per section 178 of Companies Act 2013 and the NSE Board. The petitioner/accused was not designated as Key Managerial Person (KMP) as per regulation 2 (1) (i) of SECC Regulations 2012 as he was holding a position higher in hierarchy to the Head of Departments and compensation given to him as GOO and

Advisor to MD was required to be disclosed in the Annual Report of the NSE as per regulation 27 (5) of the said regulations.

15.5 The learned Senior Counsel for the co-accused during course of arguments in bail application filed on behalf of the co-accused laid emphasis that the co-accused in capacity of MD & CEO had the power to appoint and employ the petitioner/accused which was conferred by virtue of Board Resolution (BR) dated 23.02.2005 which authorised the co-accused to appoint advisors & consultants with such powers and duties and upon such terms as she thinks fit, for managing the business affairs of NSE; the appointment of the petitioner/accused was within the knowledge and acceptance of the Board Members of NSE as well as the HR department/head Mr. Chandrasekar Mukherjee; Board Resolution dated 11.08.2015 clearly detailed the roles & responsibilities of the petitioner/accused as well as his appointment on the determined salary was approved by the Board: The petitioner/accused was not appointed as a Key Managerial Personnel (KMP) as he was not handling any KMP functions and role did not require approval of Nomination and Remuneration Committee (NRC)

and the petitioner/accused was appointed as a consultant on a contractual basis and was advising on non-core business functions.

15.6 The learned Senior Counsel for the petitioner/accused argued that the petitioner/accused was appointed in the NSE as Chief Strategic Officer vide appointment letter dated 18.01.2013. The petitioner/accused was having experience of around 23 years in the industry with a well-rounded exposure in areas of strategy/Business Development/people management and general administration. The appointment of the petitioner/accused was approved by the co-accused on basis of delegation of powers made in her favour in the 74th Board meeting of NSE held on 02.02.2005. The appointment/employment of the petitioner/accused in NSE was not arbitrary and illegal but was made as per due process and was within the powers exercised by the appointing authority.

15.7 Board Resolution dated 23.02.2005 which is submitted along with bail application filed on behalf of co-accused is perused. Clause 9 of said resolution deals with **“Delegation of powers to Deputy Managing Director”** It reads as under:-

The Board considered the need for delegation of powers to Ms. Chitra Ramkrishna, Deputy Managing Director,

Besides the powers which are being delegated to her by the Managing Director from time to time, since several day to day decision are required in be taken by her. The Board discussed the matter and delegated the following general and financial power to Ms. Chitra Ramkrishna, Deputy Managing Director and while exercising such powers she should act subject to the superintendence control and direction of the Board of directors and the Managing Director of NSEIL and also ratified the decisions taken by the Deputy Managing Director pursuant to delegation of powers made by the Managing Director

15.8 The co-accused was also given power vide Board Resolution dated 23.02.2005 to appoint, employ, remove, dismiss, discharge, suspend, re-appoint, re-employ, or replace for the management of the business affairs of the company, officers, managers, secretaries and other employees, solicitors, advocates, accountants, advisers in the areas of systems and software , security, taxation, law accounts, etc technicians, medical practitioners of the company and with such powers and duties and upon such terms as the Deputy Managing Director may think fit. However this power was not absolute and was subject to the superintendence control and direction of the Board of directors and the Managing Director of NSEIL. The appointment of the petitioner/accused was required to be made by the co-accused as

per procedure and was not subjected to whims and fancies of the co-accused.

15.9 Minutes of the 125th Meeting of the Board of Directors of NSE held on 11.08.2015 as referred by the learned Senior Counsel for co-accused in bail application filed on her behalf are perused and in this meeting “Delegation of power to Group Operating Officer” was discussed. It was resolved as under:-

The Board noted that with the overall growth in the business activities and also due for various news initiative undertaken by the exchange. It is imperative that business decision and execution of certain powers to Mr. Subramanian Anand Group Operating Officer in order to further smoothen the day to day conduct of business operations of the Exchange subject to statutory restriction and conditions in any laid down by the Board or the Managing Director in this regard. The board discussed the matter and delegated the following powers to Mr. Subramanian Anand, Group operating Officer, subject to statutory restrictions and conditions if any laid down by the Board or the Managing Director in this regard.

Vide this Minutes certain powers were delegated to the petitioner/accused as Group Operating Officer but it does not reflect that his re-designation as Group Operating Officer was as per Rules and Regulations and after following mandatory statutory provisions.

15.10 The e-mail dated 10.05.2016 sent by Chandershekhar Mukherjee (HRD) to R. Jayakumar (SECRE) which is part of record of bail application filed by co-accused perused wherein it was mentioned and clarified that the petitioner/accused is a consultant and not on roles of NSE and is not handling any KMP function. It was further mentioned that he is advising non-core functions. It is also case of the respondent/CBI that the petitioner/accused was not designated as Key Managerial Person (KMP) as per regulation 2 (1) (i) of SECC Regulations 2012 although he was holding a position higher in hierarchy to the Head of Departments. SEBI in order dated 11.02.2022 made detailed examination regarding illegalities committed by the co-accused regarding initial appointment of the petitioner/accused and thereafter his re-designation. The arguments advanced by the learned Senior Counsel are without much factual and legal force.

15.11 The learned Senior Counsel for the petitioner/accused also argued that bail is rule and jail is the exception. The applicant/accused was arrested on 24.02.2022. The petitioner/accused is not named as an accused in FIR and is only accused who is arrested along with co-accused and other persons against whom the main allegations were

registered by the CBI and are believed to be the beneficiaries have not been arrested; the respondent/CBI did not allege that the petitioner/accused has ever received any amounts/benefits from the main accused persons/entities out of the alleged crime to show collusion or conspiracy and the petitioner/accused was never summoned by the respondent/CBI to assist in the investigation for a period of nearly 4 years; nature of allegations is primarily documentary and technical in nature and the relevant documents, electronic and physical have already been seized; the petitioner/accused has always co-operated with the respondent/CBI in investigation and custodial interrogation of the petitioner/accused has already been conducted. The petitioner/accused satisfies the triple-test for grant of bail that the petitioner/accused is not a flight risk, there is no possibility to tamper with evidence or influencing witnesses by the petitioner/accused.

15.12 It is true that the petitioner/accused was not named in FIR and was arrested about four years after registration of FIR. The role of the co-accused and the petitioner/accused was surfaced during investigation in pursuance of present FIR and in particular when the

investigation was conducted by the respondent/CBI after order dated 11.02.2022 passed by SEBI and letter written by the Ministry of Finance. Sanjay Gupta owner of the OPG Securities Pvt. Ltd. has already been arrested. The investigation is still pending. The allegations against the petitioner/accused are serious and grave and are directly related to national economy and financial interests. After considering gravity and seriousness of offence subject matter of present FIR and subsequent investigation, no ground for regular bail under section 439 of the Code is made out. It is pertinent to mention that every piece of legal and factual arguments advanced by the learned Senior Counsel for the petitioner/accused and the Senior Public Prosecutor is considered in right perspective.

BAIL UNDER SECTION 167(2) OF THE CODE

16. The learned Senior Counsel for the petitioner/accused with regard to entitlement of the petitioner/accused for default bail argued that the statutory right to bail U/s 167(2) of the Code is a fundamental right under Article 21 of the Constitution. The section 167 of the Code mandates to complete the entire investigation qua all offences within a specific period of 60/90days (60 days in the present case) and after completion of the investigation in respect of all offences to file the

charges sheet be filed under section 173 of the Code. In the present case the respondent/CBI has not filed charge sheet qua all offences and an incomplete charge sheet was filed merely to circumvent the provision of section 167 (2) of the Code.

16.1 The concerned court has not taken cognizance on basis of charge sheet and further remand of the petitioner/accused to judicial custody is neither under the provisions of section 167 of the Code nor under section 309 of the Code. The respondent/accused filed the charge sheet before the trial court against the petitioner/accused only under offences punishable under section 120B read with sections 13 (1)(d) read with section 13(2) PC Act only. The investigation with regard to other allegations as mentioned in FIR is still pending and going on. The trial court in order dated 28.05.2022 extensively quoted the charge sheet in order dated 28.05.2022 despite that no cognizance has not been taken on the said charge sheet and the petitioner/accused has illegally been further remanded to judicial custody.

16.2 The respondent/CBI in Status Report dated 05.07.2022 also stated that the charge sheet is not complete and further investigation in FIR/RC is pending and supplementary charge sheet would be filed

after completion of investigation. The learned Senior Counsel also relied on **Tunde Gbaja V Central Bureau of Investigation**.

17. The Special Public Prosecutor for the respondent/CBI argued that report under section 173 of the Code was filed within the mandatory period as prescribed under section 167(2) of the Code. The petitioner has pleaded that the petitioner is entitled for statutory bail as incomplete charge sheet was filed as further investigation on the other issues is still pending but the right of an accused under section 167(2) of the Code ceases once the charge sheet has been filed and right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section 8 of Section 173 of the Code. The Special Public Prosecutor for the respondent/CBI relied on **Dinesh Dalmia v CBI**, 2008 Cri.LJ.337 and **Abdul Azeez PV V NIA**, 2014 AIR SCW 6537.

17.1 The Special Public Prosecutor for the respondent/CBI further argued that the purpose of police report with details as mentioned under section 173(2) of the Code is to enable the Magistrate to satisfy himself that whether on the basis of report and the material filed along with it, a case for taking cognizance has been made out or not. If the police report and annexed material is sufficient to satisfy the

Magistrate for taking cognizance then his power is not fettered by any label given by the investigating agency to the report under section 173(2) of the Code or by mentioning therein that investigation is pending and supplementary charge sheet shall be filed. It is the jurisdiction of the Magistrate alone to decide whether the material placed by the prosecution is sufficient or not and whether the charge sheet is incomplete charge sheet. The reliance was placed on **State of Maharashtra V Sharadchandra Vinayak Dogre & others**, AIR 1995 SC 231 and **Narendra Kumar Amin V CBI**, MANU/SC/0038/2015.

17.2 The Special Judge vide order dated 28.05.2022 also held that the charge sheet was complete containing all the details and was filed by mentioning therein the relevant sections. The provision of section 167(2)(a)(i) & (ii) of the Code relates to completion of investigation pertaining to an 'offence' and not regarding 'transactions'. The Special Public Prosecutor relied on **Y.S. Jagan Mohan Reddy V CBI**, 2013 Cri. L.J. 2734 where in one RC several transactions were investigated regarding which separate charge-sheets were filed and the cases were tried as separate cases after taking cognizance. The

Supreme Court refused to consider pendency of investigation in other transactions as a ground for bail holding that economic offences are a class apart

17.3 The Special Public Prosecutor for the respondent/CBI further argued that mere fact that the cognizance is yet to be taken by the Magistrate cannot be consideration for grant of statutory bail in view of the **State of Maharashtra V Sharadchandra Vinayak Dongre and others**, AIR 1995 SC 231, **SFIO V Rahul Modi**, AIR 2022 SC 902, **Suraj V State of Delhi NCT**, Bail Application no. 120/2022 and **Deepender Kumar Srivastava V State**, MANU/DE/4193/2006. The accused continues to be in the custody of the Magistrate during the period i.e. between section 167 and section 309 of the Code and cannot be deemed to be under illegal custody. The charge sheet filed against the petitioner is complete and is sufficient to take cognizance against the petitioners and as such is not entitled to statutory bail merely because further investigation regarding other transactions is pending.

18. The application filed by the applicant/accused under section 167(2)(a)(ii) of the Code for grant of default bail titled as **Anand**

Subramanian V CBI was dismissed by the court of Sh. Rakesh Kumar-III, Special Judge (PC Act) (CBI)-02, Rouse Avenue, District Courts, New Delhi vide dated 28.05.2022. The relevant portion of order dated 28.05.2022 is reproduced as under:-

17. From the above discussed judgments, I am of the opinion that if a charge-sheet has been submitted while investigation is not complete for one reason or the other, it cannot be said that it is a document which has no effect in law being not in accordance with law and that for that reason alone, it must be deemed to be one with a view to circumvent or defeat the provision of Section 167(2) of Cr. P. C.

18. More so there is no bar to further investigation and Section 173(8) of Cr. P. C. cannot be limited in its operation in respect of offences which are already the subject matter of police report. There is no merit in the arguments that merely because further investigation after filling of the police report is to be on as permitted by sub Section 8 of 173 Cr. P. C., the applicant would be entitled to be released on bail U/s 167(2) of the Code.

20. The very purpose of completing the investigation within 60 days/90 days as postulated U/s 167(2) Cr. P. C. is that an accused who is in JC or whose liberty has been curtailed cannot remain incarcerated indefinitely due to non completion of investigation on the part of the investigating agency in a time bound manner. Rather it should be completed in above specified time failing which he will be entitled to statutory bail U/s 167(2) Cr. P. C.

21. In the present case, the charge-sheet was filed on 57th day i.e. well within time. The charge-sheet filed in sum and substance meet all the requirements of Sec. 173(2) Cr. P. C. (a) to (g). The charge-sheet clearly describes in detail of all

the material collected by th IO/Investigating agency during the investigation, as also role played by Chitra Ramakrishna and Anand Subramaniam, including what offence(s) were committed and by whom which was in terms of Clause (d) of Section 173 (2) Cr. P. C. on the basis of material collected by the investigating agency/IO. The details of Section(s)/offence(s) 120 B, 204 IPC and Section. 7, 12, 13(2), r/w 13(2) (d) of PC Act and substantive offences thereof have also been mentioned in the charge-sheet filed U/s 173 (2) Cr.P. C. So far as Sanction is concerned, it is totally separate from the concept of investigation.

22. In my opinion, charge-sheet has been filed mentioning the relevant sections and after completion of the investigation against the applicant/accused. Only because the prayer of further investigation is appearing in the concluding part of the charge-sheet would not confer a right upon the accused to claim bail U/s 167(2) of Cr. P. C. Hence, application U/s 167(2) of Cr. P. C. is dismissed.

19. Chapter XII of the Code deals with information to the police and their power to investigate. Section 173 of the Code deals with report of police officer on completion of investigation. Sub section (1) provides that every investigation shall be completed without unnecessary delay. Sub section (2) proves that the investigating officer shall forward the police report or charge sheet after completion of investigation to the magistrate who is empowered to take cognizance. Sub section (8) deals with further investigation if further evidence oral

or documentary is obtained by the investigating officer. The Code does not use and define the expression 'charge sheet' or 'final report'.

20. The provisions under the Code relating to remand of an accused during the stage of investigation and after cognizance is taken indicates that the legislature intended investigation of certain crimes to be completed within 60 days or 90 days depending upon nature of offence. The accused acquires an indefeasible right to be granted bail if the investigation is not completed by the investigating authorities within stipulated time and if the accused offers to furnish bail. The court does not have option except to release the accused on bail. If once the charge sheet is filed then such right came to an end and the accused would be entitled to pray for regular bail on merits. The right to bail under the proviso to section 167(2) of the Code is commonly known as '**default bail**' or '**compulsive bail**'. It is granted due to default of the investigating agency in not completing the investigation within the prescribed time irrespective of the merits of the case. Section 167(2) of the Code reads as under:-

Section 167. Procedure when investigation cannot be completed in twenty four hours.—

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no

jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II. If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.” In common legal parlance, the right to bail under the Proviso to Section 167(2) is commonly referred to as ‘default bail’ or ‘compulsive bail’ as it is granted on account of the default of the investigating agency in not completing the investigation within the prescribed time, irrespective of the merits of the case.

21. Before entering into critical and analytical analysis of facts, it is necessary to discuss scope and magnitude of section 167(2) of the Code. The Supreme Court and High Courts in various cases have considered object and scope of section 167 (2) of the Code. The Supreme Court in **Satender Kumar Antil V Central Bureau of Investigation and another**, 2022 SCC OnLine SC 825 reiterated by

observing that it is duty of the courts to see to it that an accused gets the benefit of Section 167(2) of the Code and any detention beyond this period would certainly be illegal being an affront to the liberty of the person concerned. It was observed as under:-

Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect. Such a right cannot be taken away even during any unforeseen circumstances.....

21.1 The Supreme Court in **Uday Mohanlal Acharya V State of Maharashtra**, (2001) 5 SCC 453 discussed and highlighted indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed. It was observed as under:-

13.3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of

the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

13.4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no chargesheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

13.5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to subsection 2 of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during that period the investigation is complete and chargesheet is filed then the so called indefeasible right of the accused would stand extinguished.

22. The Supreme Court in *M Ravindran V The Intelligence Officer*, (2021)2SCC485 while tracing history of enactment of section 167(2) of the Code and practice of filing preliminary charge sheets being followed by the investigating officers observed that Article 21 of the Constitution of India provides that no person shall be deprived of his

life or personal liberty except according to procedure established by law and as per **Maneka Gandhi V Union of India**, (1978) 1 SCC 248 that such a procedure cannot be arbitrary, unfair or unreasonable. It was further observed that the history of Section 167(2) of the Code and the safeguard of 'default bail' contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law. The Supreme Court while tracing jurisprudential history of section 167 of The Code laid emphasis on safeguard attached with section 167 of the Code observed as under:-

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

"13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond

the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution."

17.1. Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248] , that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2 Under Section 167 of the Code of Criminal Procedure, 1898 ('1898 Code') which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigative officers would file 'preliminary chargesheets' after the expiry of the remand period. The State would then request the magistrate to postpone commencement of the trial and authorize further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final chargesheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pages 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the Courts. It was also pointed out that there was conflict in judicial opinion as

to whether the magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3 Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that “while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual.” Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4 The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pages 7677). The Law Commission reemphasized the need to guard against the misuse of Section 344 of the 1898 Code by filing ‘preliminary reports’ for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein “the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner.” Hence the Commission recommended fixing of a maximum time limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60 day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior Courts would help circumvent the same.

17.5 The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of

the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

“3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:—

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.”

17.6 It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the Court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7 Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three - Judge Bench of this Court in *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67, which laid down certain seminal principles as to the interpretation of Section 167(2), CrPC though the questions of law involved were somewhat different from the present case. The questions before the three Judge Bench in *Rakesh Kumar Paul* were whether, firstly, the 90 day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90 day limit is only available in respect of offences where a minimum ten year imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the Court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

“29. Notwithstanding this, the basic legislative intent of completing investigations within twenty four hours and also within an otherwise time bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the

investigating agency accountable that time limits have been laid down by the legislature...

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32...Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

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41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.” (emphasis supplied)

Therefore, the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8 We may also refer with benefit to the recent judgement of this Court in *S. Kasi v. State Through The Inspector of Police Samaynallur Police Station Madurai District* (Criminal Appeal No. 452 of 2020 dated 19 th June, 2020), 2020 SCC OnLine SC 529, wherein it was observed that the infeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article

21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a chargesheet.

17.9 Additionally, it is well settled that in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10 With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the three fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11 Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

22. Various High Courts also deliberated scope and ambit of section 167(2) of the Code. The Kerala High Court in **S.M. Purtado V Dy. S.P., C.B.I., Kochin**, 1996 CrI.L.J. 3042 observed that the investigation under section 167 of the Code can involve one or more

offences against the accused persons. The investigation of a case cannot be split up in such a way to file piece-meal reports before Court. Section 173 of the Code does not stipulate a piece-meal investigation and filing of incomplete charge sheet before Court. It contemplates filing of a charge/refer report after completion of the entire investigation of the case in respect of all offences and where several offences are involved in a case, a charge report could be laid before the court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused. It was further held as under:-

11. In the decision reported in Vijayaraghavan v. CBI 1984 Ker LT 522 : 1984 Cri LJ 1277, this Court held that the investigation of a cases relates to the entire transaction of which information is given and not merely one of the offences committed in the course of the transaction. In paragraph 10, this Court held thus:

10. The expression 'case' used in the provisions under examination has to be understood in the general sense and not in a narrow or technical way. The words 'offence' and 'case' are not synonymous, though an offence always leads to a case and a case would always involve an offence or offences. An occurrence or transaction may involve commission of only one offence; or it may involve several offences. When a police officer receives information about the commission of a cognizable offence, and records the same, he is said to register a case, sometimes called a crime case. 'Case' understood in this general sense means that

the case before the police officer arising from the information placed before him regarding an occurrence in which an offence or offences are committed. 'Case' relates to the transactions of which information is given and not merely one of the offences committed during the course of the transaction.

This Court further held that when Section 173 speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences and a final report or charge sheet under Section 173 could be filed only after completion of the investigation in the case relating to all the offences arising in the case. We are in respectful agreement with the said finding arrived at by U. L. Bhat, J., as he then was. Viewed in that light, it must be held that the 'charge report' stated to have been filed by the CBI on 10-4-1996 cannot be said to be a final report as contemplated under Section 173 of the Code and we must say that the prosecution was not justified in making piecemeal charge report in respect of various offences alleged to have been committed by the petitioners. In the absence of completion of the investigation of the case against the petitioners, we hold that the Magistrate cannot take cognizance of the case as contemplated under Section 309 of the Code.

12. A Magistrate can take cognizance of an offence only on filing of a report under Section 173(2) of the Code. Unless power is conferred by law, there is no inherent power to remand an accused to custody. Holding so, in the decision reported in *Natabar Parida v. State of Orissa*, the Supreme Court proceeded to say that under Section 167(2) proviso and under Section 309(2) of the new Code, the power of remand of jail custody conferred on the Magistrate during the pendency of the investigation is only under the former Section and not under the latter Section. The Supreme Court also held that Section 309(2) is attracted only after

cognizance of an offence is taken or commencement of the trial has proceeded.

13. A remand under Section 309(2) of the Code can be made only after taking cognizance of the offence. That being the position, in the absence of a final report regarding all the offences alleged to have been committed by the accused persons, it has to be held that the Magistrate has not taken cognizance of the offences as required by Section 309(2) of the Code. The Magistrate is not empowered to order remand of the accused to judicial custody unless final report as contemplated under Section 173(2) of the Code is laid before Court.

14. Thus, in the light of the report filed by the CBI, a further investigation in respect of the offences under the Official Secrets Act, IPC, Act and the Order is necessary. If final report is laid before Court and the Magistrate takes cognizance of the offence, a further report under Section 173(8) of the Code regarding commission of offences or involvement of the accused in connection with the other offences can be made. But in the absence of a final report in respect of all the offences, it cannot be said that a final report under Section 173(2) in respect of the offences alleged to have been committed by the petitioners under the Official Secrets Act could be legally filed by invoking the provisions of Section 173(8) of the Code. The finding of the Court below to the contra is, in our view, illegal.

15. Admittedly, no final report has been filed by the CBI against the petitioners in respect of the various offences. In its absence, the prosecution is not justified in resorting to Section 173(8) of the Code to submit a further report in respect of the alleged involvement of the petitioners under the Official Secrets Act, IPC, Act and the Order. Since the investigation of the case is not complete, we find no reason to deny the statutory bail to the petitioners under Section 167(2) of the Code.

16. The Supreme Court has held that in the scheme of the 1973 Code, remand to custody during investigation can be made only under Section 167 of the Code and remand to custody under Section 309 can be made only after taking cognizance of the offence by the Court. The result is that if the investigation is not over and the period mentioned in Section 167(2) to detain the accused is custody is over, by invoking Section 309 of the Code, the custody of the accused cannot be extended and are to be released on bail.

22.1 The learned Single Judge of this Court after referring, considering and discussing **Uday Mohanlal Acharya and S.M. Purtado in Tunde Gbaja V Central Bureau of Investigation, 2007** (95) DRJ 429 observed as under:-

20. It is well known that the court takes cognizance of the crime, not the offender. The argument that the respondent filed a charge-sheet, within time, when it did, is not correct. The charge-sheet pertains only to the offence under the Foreigners Act, for which, as per proviso to Section 167(2) had to be filed within 60 days. But for the other offences, in respect of which the period prescribed, for filing the charge sheet is 90 days, no charges were indicated. Though the right of the investigating agency to file a supplementary charge sheet, or a further report (under Section 173(8) pursuant to order of the court) cannot be disputed, yet the fact remains that there cannot be part charge sheet, as has been contended in the present case. Therefore, following the decision in S.M.Purtado's case, as well as the Supreme Court ruling in Uday Mohanlal Acharya, it has to be concluded that the petitioner is entitled to be enlarged on bail. This is without prejudice to such other rights the respondents may have in law, to place further materials in support of the case, before the trial Court.

22.2 The Telangana High Court in **C. Parthasarthy V Director of Enforcement**, Criminal Petitions No 3786, 4127 & 4137 of 2022 decided on 17th May, 2022 after referring **M Ravindran** held as under:-

16. From the above decision, it is clear that a time limit for completing investigation was incorporated in order to ensure that the accused does not languish in jail for the investigative authority's failure to complete investigation. It was held that the right to statutory bail accrues on a person if the charge sheet is not filed within the prescribed period of sixty days. The said right to bail is indefeasible and is interlinked with personal liberty as envisaged under Article 21 of the Constitution of India.

21. The Supreme Court in **Satya Narain Musadi v. State of Bihar**, (1980)3SCC152 discussing Section 173(2) of the Cr.P.C. has held that a charge sheet can be filed only after the completion of investigation. The relevant paragraph is extracted below:

9. Section 173(2)(1) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. Sub-section (5) of Section 173 makes it obligatory upon the police officer to forward along with the report all documents or relevant extracts thereof on which the prosecution

proposes to rely and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses at the trial.

Similarly, the Supreme Court in *Manu Sharma v. State (NCT of Delhi)*, (2010)6SCC1 has held that the object behind Section 173 of the Cr.P.C. is to complete the investigation and file the charge sheet. The idea is to ensure that cognizance is taken without any delay. The relevant paragraph is extracted below:

206. Section 173 commands the investigating agency to complete the investigation expeditiously without unnecessary delay and when such an investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of offence on a police report the details in the form as may be prescribed by the State Government and provide the information required under this section.

22. From the above decisions, it is clear that a charge sheet can be filed only after the completion of investigation. Investigation is said to be completed if sufficient material is collected by the Investigating Officer based on which cognizance can be taken under Section 167 of the Cr.P.C.

22.2.1 The learned Single Judge of the Telangana High Court also referred *M Ravindran* wherein the Supreme Court deprecate practice of filing preliminary charge sheets to seek extension of remand beyond the statutory period. It was further observed that it was to discourage such abuse of process that a statutory limit of sixty days was incorporated in Section 167(2) to complete the investigation and file the charge sheet. A complaint/charge sheet filed without

completing the investigation cannot be used to circumvent the right of statutory bail under Section 167(2) of the Cr.P.C.

22.3 The Bombay High Court in **Sharadchandra Vinayak Dongre V State of Maharashtra**, 1991MahLJ656 discussed a distinction between completion of investigation and further investigation and observed that it is only after the completion of investigation and filing of charge sheet that further investigation can be resorted to. In other words, Section 173(8) of the Code comes into picture only after completion of investigation and filing of the charge sheet under Section 173(2) of the Code Further, the court held that by filing incomplete charge sheets, the State cannot circumvent Section 167(2) of the Code. It was held as under:-

23. Reference here may usefully be made to a decision of the Supreme Court in **Abhinandan Jha v. Dinesh Mitra**, AIR 1968 SC 117, which points out that the investigation under the Code takes in several aspects and stages ending ultimately with the formation of an opinion by the police as to whether, as from the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of either a charge-sheet or a final report is dependent on the nature of the opinion so formed. The formation of the said opinion by the police is the final step in the investigation evidenced by the "police report" contemplated under section 173(2) of the Code.

24. In my view, a plain reading of section 173 of the Code shows that every investigation must be completed without

unnecessary delay and as soon as it is completed, the Officer-in-charge of the Police Station shall forward a report to the Magistrate in the form prescribed. Therefore, there is no question of sending up of a "police report" within the meaning of section 173, sub-section (2) of Criminal Procedure Code until the investigation is completed. Any report sent before the investigation is completed will not be a police report within the meaning of sub-section (2) of section 173 of the Criminal Procedure Code read with section 2(r) of the Code and there is no question of the Magistrate taking cognizance of the offence within the meaning of section 190(1)(b) of the Code on the basis of an incomplete charge-sheet. In the present case, admittedly an incomplete charge-sheet has been filed and it is specifically stated therein that the investigation is not yet completed. The application, Exhibit 2, clearly further recites that the investigation is not completed and this fact is even admitted before me as stated in the reply affidavit filed by the Investigating Officer opposing the present Application. Consequently, the incomplete charge-sheets cannot be treated as a "police report" at all as contemplated under section 173(2) of the Code to entitle the Magistrate to take cognizance of the offences. The learned Counsel for the applicants is right in contending that the definition of "police report" as given in the Code cannot be enlarged under the guise of interpretation and it is contended that when the meaning of a statutory provision is plain and clear, the Court should not be impelled by factors like practical difficulties and inconvenience. The learned Counsel appears to be further right when he canvassed that the expression "incomplete charge-sheet" does not occur anywhere in the Code and that forwarding of a "police report" after the completion of the investigation is the requirement of sub-section (2) of section 173 of the Code. Any report or statement of facts in the form of an "incomplete charge-sheet" does not become "police report" by merely giving a particular nomenclature.

25. The learned Counsel for the State contended that the new provision added in sub-section (8) of section 173 of the Code can be resorted to by the Investigating Officer for collecting further evidence. According to him, it tends to indicate that the investigation is not shut but remains in suspended animation till the police report is sent to the Magistrate. As has already been pointed out, a police report as defined in section 2(r) of the Code can only be filed "as soon as the investigation is completed". If it is not complete; no such report can be filed. When no report is forwarded as required by the Code, the Magistrate cannot take cognizance. Thus, unless all these steps are crossed, sub-section (8) cannot be pressed in aid for collecting further evidence which really can be called in aid if further evidence is discovered after the filing of the charge-sheet or the police report on the completion of the investigation.

26. As stated earlier, sub-section (2) of section 173 of the Code also speaks of taking cognizance of the offence by a Magistrate on a police report. Thus, without the police report as defined in section 2(r) of the Code, the Magistrate is not empowered and is incapacitated to take cognizance and unless cognizance has been taken, sub-section (8) cannot be set in motion.

27. The question thus emerges naturally is, whether the Magistrate can take cognizance on the admittedly "incomplete charge-sheet" forwarded by the police. The answer stubbornly and admittedly must be in the negative, because the investigation is yet incomplete and the "police report" yet remains to be filed. Thus, the filing of the incomplete charge-sheet cannot circumvent the provisions of sub-section (2) of section 173 of the Code and incomplete report or an incomplete charge-sheet with whatsoever expression it may be called does not meet the obligatory requirements of law. If the view as contended by the State is accepted, the provisions of section 167(2) or to say section 468 of the Criminal Procedure Code can always be circumvented by the prosecution and the apparent

legislative intents under those provisions would not only be not effectuated but undoubtedly stultified.

22.4 The Andhra Pradesh High Court in **Akula Ravi Teja V State of A.P.**, (2021)1ALT(Cri)291 dealt with a situation where a 'preliminary charge sheet' was filed without completing the investigation. The Court therein held that an incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Cr.P.C. The relevant paragraphs are extracted below:

19. Now the crucial question that arises for determination is whether filing a preliminary charge-sheet without completing the investigation would defeat the right of the accused to claim default bail under proviso (a) to Section 167(2) Cr.P.C. In this context, it is relevant to note that the Parliament in its wisdom, considering the right of the accused to speedy investigation, stipulated period of time in proviso (a) to Section 167(2) Cr.P.C. stating that in all offences which are punishable with death or life imprisonment or with 10 years imprisonment, the investigation is to be completed within 90 days and in other offences, the investigation is to be completed within 60 days. The Code clearly envisaged that if the prosecuting agency fails to complete the investigation within the said stipulated period of time as contemplated under the Code, the accused is entitled to claim default bail. The said right conferred by the statute on the accused is an indefeasible right and he is entitled to bail as a matter of right on account of the default committed by the prosecuting agency in completing the investigation within the time stipulated by the statute.

20. It is significant to note that a plain reading of proviso (a) to Section 167(2) Cr.P.C. makes it manifest that what is required to claim for default bail under proviso (a) to Section 167(2) Cr.P.C. is failure on the part of the Investigating Agency to complete the investigation within the stipulated period of time. In other words, it is the default committed by the Investigating Agency to complete the entire investigation within the stipulated time that confers right on the accused to claim for default bail. So, filing of charge-sheet is not the criteria or the actual test to be applied to decide whether the accused is entitled to default bail or not. It is relevant to note that the charge-sheet after completion of investigation will be filed to enable the Court to take cognizance of the offence. So, the Court cannot take cognizance of the offence on the basis of a preliminary charge-sheet filed without completing the entire investigation. Therefore, the crucial aspect that needs to be ascertained to consider the claim of the accused for default bail is whether the investigation is completed within the stipulated time of 90 days or not. So, when the Investigating Agency files only preliminary charge-sheet within the said stipulated time keeping the investigation pending or without completing the investigation, it will not under any circumstances defeat the right conferred on the accused to claim for default bail. By mere filing a preliminary charge-sheet without completing the entire investigation and filing a final and full-fledged charge-sheet, the prosecuting agency cannot vanquish the indefeasible statutory right of the accused to claim for default bail.

21. The 3-Judge Bench of the Supreme Court in the case of Rakesh Kumar Paul v. State of Assam² held that right to personal liberty under Article 21 of the Constitution of India includes right to speedy investigation and entitlement to "default bail" where statutory period of filing charge-sheet has expired and accused has applied and is willing to furnish bail.

22. A plain reading of Section 167 Cr.P.C. makes it abundantly clear that it is not the intention of the legislation that charge-sheet is to be filed within the stipulated period. The intention of the legislation is that the investigation is to be completed within the stipulated time. Nowhere in Section 167 Cr.P.C. it is stated that the charge-sheet is to be filed within the prescribed period of time. All that it is stated in Section 167 Cr.P.C. is that the investigation is to be completed within the said stipulated period of 90 days or 60 days, as the case may be. Therefore, the Court has to see whether the investigation is completed or not while considering the plea of the accused for grant of default bail. Generally, charge-sheet will be filed only after completion of the investigation. So, when the charge-sheet is filed, it indicates that investigation is completed. Therefore, it is in practice that when the Investigating Agency files the charge-sheet that the Courts usually presume that the investigation is completed. However, it is to be noticed that at times, even when the investigation is not fully completed that the police are in the habit of filing preliminary charge-sheet or an incomplete charge-sheet keeping some part of the investigation pending as a clever contrivance and subterfuge to prevent the accused from claiming default bail by exercising his right conferred under the Code. So, Courts must be on guard and should not fall in the trap of such trickery and tactics of the investigating agency when they only file preliminary charge-sheet without fully completing the investigation. Therefore, the real test to be applied to ascertain whether the accused is entitled to default bail or not in a given case is not to see whether the charge-sheet is filed or not. It has to be ascertained whether the entire investigation is completed or not within the stipulated period of time and whether the said charge-sheet is filed after completion of the entire investigation or not. A preliminary charge-sheet filed without completing the entire investigation cannot be allowed to serve as an impediment to come in the way of exercising the statutory right of the accused for default bail.

23. The very contents of the charge-sheet, which are extracted above, clinchingly establishes that the investigation is not completed and many crucial witnesses are yet to be examined to prove the overt acts of the accused in this crime and some other evidence as stated by the investigating officer is still to be secured. Therefore, on account of default committed by the prosecuting agency in completing the investigation within the stipulated period of time, the petitioner acquired an indefeasible right to claim default bail under proviso (a) to Section 167(2) Cr.P.C.

24. In a petition filed under proviso (a) to Section 167(2) Cr.P.C. for grant of default bail, no discretion is vested with the Magistrate/Court to deny bail to him. In the judgment of the aforesaid 3-Judge Bench of the Apex Court, it is clearly held that no discretion is vested with the Court while granting default bail where accused satisfies the prerequisite for grant thereof. The Apex Court in another case *Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotic Control Bureau, New Delhi*³ held as follows: "The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not Court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days."

Therefore, the legal position is very clear that irrespective of the gravity of the offence and the nature and seriousness of the offence, the moment the accused claims bail under proviso (a) to Section 167(2) Cr.P.C. on account of the default committed by the Investigating Agency to complete the investigation within the stipulated time, and he is prepared to furnish bail, the Court has no other option except to grant bail to him. The very nature of right which is "indefeasible right" indicates that the said right cannot be defeated or frustrated once accrued to the accused. Even

filing of preliminary charge-sheet cannot defeat the said right.

25. Therefore, in the considered opinion of the Court, after analysing the law on the point, it would be more in consonance with the legislative mandate to hold that mere filing preliminary charge-sheet without completing the investigation will not defeat the indefeasible statutory right of the accused to claim for default bail. In a way the right to claim bail by a remanded accused touches the personal liberty of an individual guaranteed under the Constitution of India. Personal liberty is a valuable right of an individual and it is one of the cherished objects of the Indian Constitution. It can be deprived only in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. Therefore, when the law mandates that the Magistrate could authorise detention of the accused in custody up to a maximum period as indicated in the proviso to sub- section (2) of Section 167 Cr.P.C. any further detention beyond the period when, the investigation is not completed and the final charge-sheet is not filed on completion of the entire investigation by the Investigating Agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code. Therefore, it could be violative of Article 21 of the Constitution of India.

23. The filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2) of the Code and taking of cognizance is not material to section 167 of the Code. The scheme of the Code is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. In *Serious Fraud Investigation Office V Rahul Modi*,

AIR2022 SC902 which is also relied upon by the Special Public Prosecutor for the respondent/CBI, the High Court considered the regular bail applications filed by the respondent Nos. 1 and 2 on 31.05.2019 and directed their release on bail on the ground that they were entitled to statutory bail on sole reason given for grant of bail by the High Court is that the trial court has not taken cognizance of the complaint before the expiry of the 60-day period which entitled the respondent Nos. 1 and 2 to statutory bail, as a matter of indefeasible right. The issue which was under consideration before the Supreme Court was whether an accused is entitled for statutory bail under Section 167(2) of the Code on the ground that cognizance has not been taken before the expiry of 60 days or 90 days, as the case may be, from the date of remand. It was observed as under:-

9.....The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in Bhikamchand Jain (supra). This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of

charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2), CrPC and that taking of cognizance is not material to Section 167. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2).

10. It is clear from the judgment of this Court in *Bhikamchand Jain (supra)* that filing of a charge-sheet is sufficient compliance with the provisions of Section 167, CrPC and that an accused cannot demand release on default bail under Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in *Bhikamchand Jain (supra)*.

24. The Supreme Court in *Fakhrey Alam V The State of Uttar Pradesh*, 2021(5) SCALE346 observed that there can only be one

charge sheet but there is no restriction on filing of number of supplementary charge sheets. It was observed as under:-

9. On the second aspect, it is urged that what is called as the second charge sheet is really a supplementary charge sheet as there is no restriction on the number of supplementary charge sheets which can be filed but there will be only one charge sheet in view of 1 (2020) 10 SCC 616 judgment of this Court in the case of Vinay Tyagi vs. Irshad Ali @ Deepak & Ors., (2013)5scc762.

11. On the second aspect we cannot lose sight of the fact that what was envisaged by the Legislature was that the investigation should be completed in 24 hours but practically that was never found feasible. It is in these circumstances that Section 167 of the Cr.P.C. provided for time period within which the investigation should be completed, depending upon the nature of offences. Since, liberty is a Constitutional right, time periods were specified in the default of which the accused will have a right to default bail, a valuable right.

25. The petitioners in Abdul Azeez P V and others V National Investigation Agency, 2014 AIR SCW 6537 relied on by the respondent/CBI filed a petition before the Special Court, NIA Cases by submitting that they were entitled to get statutory bail under Section 167(2) of the Code in as much as the investigating agency had failed to file the final report within 180 days. It was further submitted that the bank account details and mobile phone call details of the petitioners as stated in the charge-sheet itself were yet to be

verified and that the charge-sheet filed in court was not a final report as contemplated under Section 173(2) of the Code. The submissions were negated by the Special Court by holding that the petitioners were not entitled to statutory bail under Section 167(2) of the Code which was challenged in the High Court of Kerala at Ernakulam. The High Court went through the charge-sheet and found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report. The High Court dismissed the appeal which was challenged before the Supreme Court. It was observed as under:-

4. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.

5. The special leave petition is, therefore, dismissed.

26. The Supreme Court in **Dinesh Dalmia V C.B.I**, 2008Cr1.L.J.337 observed that a charge sheet is a final report within the meaning of Sub-section (2) of Section 173 of the Code and is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The power of the investigating officer to make a prayer for making further investigation in terms of Sub-section (8) of Section 173 is not taken away only because a charge sheet under Sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate. It was observed asunder:-

28. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by the Parliament at two stages; pre-cognizance and post cognizance. Even in the same case depending upon the nature of charge sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge sheet is not filed within the meaning of Sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of Sub-section (8) of Section 173 of the Code.

27. The Supreme Court in Suresh Kumar Bhikamchand Jain V State of Maharashtra & another, 2013 CrL.J.1625 held that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise and filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) of the Code. It is not material whether cognizance is taken or not as far as Section 167 of the Code is concerned. It was also observed that grant of sanction is not contemplated under section 167 of the Code which is related to completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. It was observed as under:-

18. None of the said cases detract from the position that once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as Section 167 Cr.P.C. is concerned. The right which may have accrued to the Petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to grant of statutory bail, as envisaged in Section 167 Cr.P.C. The scheme of the Cr.P.C. is such

that once the investigation stage is completed, the Court proceeds to the next stage, which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) Cr.P.C., the Magistrate is vested with authority to remand the accused to custody, both police custody and/ or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period, the accused is entitled to be released on statutory bail. In such a situation, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the Court trying the offence, when the said Court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 Cr.P.C. The two stages are different, but one follows the other so as to maintain a continuity of the custody of the accused with a court.

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) Cr.P.C. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings.

28. The Supreme Court in **State of Maharashtra V Sharadchandra Vinayak Dongre, 1995 SCC (1) 42** observed that the power of Magistrate to take cognizance is not lost even if the investigating

officer termed the police report as incomplete. It was observed as under:-

7. The purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1)(b) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) CrPC. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

29. The supreme court in **Rakesh Kumar Paul V State of Assam**, (2017) 15 SCC 67 also held that the indefeasible right for default bail accrued to the petitioner when the period of 60 days for completing the investigation and filing a charge-sheet came to an end and the indefeasibility right accruing to the accused is enforceable only prior to the filing of the charge-sheet and does not survive thereafter, if already not availed of. If the charge-sheet is not filed then right for default bail has ripened into status of indefeasibility which cannot be frustrated by the prosecution and the courts on any pretext.

30. The legal position pertaining to scope of section 167(2) of the Code emanating from above referred decisions can be summarised as under:-

i) The object of the section 167(2) of the Code is to ensure an expeditious investigation and a fair trial and is another limb of Article 21.

ii) The accused has indefeasible right in his favour for being released on bail on account of default by the investigating agency to complete investigation within the prescribed period.

iii) It is duty of the courts to ensure that benefit of Section 167(2) of the Code be given to the accused and detention beyond statutory period would be illegal being opposed to the liberty of the accused.

iv) Section 173 of the Code does not stipulate a piece-meal investigation and filing of incomplete charge sheet before Court and contemplates filing of a final report after completion of the entire investigation of the case in respect of all offences and where several offences are involved in a case. The practice of filing preliminary charge sheets to seek extension of remand beyond the statutory period should be deprecated.

v) The charge report can be filed before the court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused.

vi) There is a distinction between completion of investigation and further investigation. The further investigation can be resorted to only after the completion of investigation and filing of charge sheet.

vii) The investigating agency cannot circumvent section 167(2) of the Code by filing incomplete charge sheets. The police report or charge sheet cannot be sent within the meaning of section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of section 173 (2) of the Code.

viii) The incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Code.

ix) The right of the accused to statutory bail came to an end once the charge sheet is filed within the stipulated period. The filing of charge sheet is sufficient compliance with the provisions of section 167(2) of the Code and taking of cognizance is not material to Section 167.

x) There can only be one charge sheet but there is no restriction on filing of number of supplementary charge sheets.

xi) The charge-sheet can be said to be complete when it enable the court to take or not to take cognizance of the offence after application of mind and if certain facets called for further investigation does not render such report anything other than a final report.

xii) The power of Magistrate to take cognizance is not lost even if the police report is termed as incomplete by the investigating officer.

xiii) If the charge-sheet is not filed then right for default bail has ripened into status of indefeasibility which cannot be frustrated by the prosecution and the courts on any pretext.

xiii) Economic offences having deep rooted conspiracies and involving huge loss of public funds, constitute a class apart and need to be viewed seriously.

31. It is reflecting from record that the respondent/CBI registered FIR bearing no RC/AC1/2018/A0011 dated 28.05.2018 registered at PS CBI/AC-I for offences punishable under sections 120B/204 IPC and sections 7/12/13(2) read with 13(1)(d) of the PC Act and section 66 of the Information Technology Act, 2000 wherein the petitioner/accused was named or implicated. The respondent/ CBI received a request from the Ministry of Finance, Govt. of India vide letter dated 05.03.2022 to investigate the issues arising out of SEBI order dated 11.02.2022 which was passed in the matters pertaining to illegal appointment of the petitioner/accused as 'Chief Strategic

Advisor' (CSA), his re-designation as 'Group Operating Officer' and Advisor to MD' and other issues. The respondent/CBI took up investigation and issue highlighted in the order dated 11.02.2022 was found to be linked with ongoing investigation by the respondent/CBI in pursuance of present FIR. The petitioner/accused was arrested on 24.02.2022. The respondent/CBI did not complete investigation in respect of all the offences as mentioned in FIR. The respondent/CBI has filed charge sheet before the concerned court on 21.04.2022 i.e. 57th day from the date of arrest only for offences punishable under sections 13 (1)(d) and 13(2) of the PC Act and section 120 B IPC. The investigation pertaining to other offences under section 66 of IT Act 2000, section 204 IPC and sections 7 and 12 of the PC Act is still pending and not completed. The Special Judge, CBI has not taken the cognizance on charge sheet filed on 21.04.2022 against the petitioner/accused and co-accused.

32. Issue which needs judicial consideration and assessment is that whether filing of charge sheet by the respondent/CBI before concerned court on 21.04.2022 pertaining to offences punishable under sections 13 (1)(d) and 13(2) of the PC Act and section 120 B

IPC is sufficient compliance of section 167 (2) of the Code to deny statutory bail or default bail to the petitioner/accused as argued by the respondent/CBI or said charge sheet is incomplete or piece meal charge sheet and does not fall within ambit of section 167(2) of the Code as argued by the learned Senior Counsel for the petitioner/accused.

33. In view of the legal position pertaining to section 167(2) of the Code as discussed hereinabove, section 173 of the Code only permits filing of a final report after completion of the entire investigation in respect of all offences and does not permit a piece-meal investigation and filing of incomplete charge sheet before Court. The charge sheet filed by the respondent/CBI is a piece meal charge sheet and is not filed in respect all offences subject matter of present FIR. The respondent/CBI is not legally permitted to pick one portion of investigation and to complete it and thereafter file piece meal charge sheet in respect of few offences subject matter of FIR and to left open investigation in respect of other offences and subsequent filing of charge sheet in respect of left over offences. This would be complete negation of section 167(2) of the Code. The investigating agency

cannot be permitted to fragment or break FIR for the purpose of different charge sheets and this will tantamount to negation of section 167(2) and would against mandate of Article of 21 of the Constitution. The practice of filing such types of charge sheets to seek extension of remand beyond the statutory period was deprecated by the Superior Courts in past. The investigating agency is required to form opinion regarding all offences subject matter of FIR after completion of entire investigation.

33.1 There is no force in the arguments advanced by the Special Public Prosecutor for the respondent/CBI that the right of the applicant/accused under section 167(2) of the Code has come to an end immediately after filing of charge sheet on 21.04.2022 and said right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section 8 of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent/CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the co-accused in initial appointment of the petitioner

and subsequent re-designation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of section 173 (8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge sheet.

33.1.1 The decisions rendered in **Dinesh Dalmia CBI, 2008 Cri.LJ.337** and **Abdul Azeez PV V NIA, 2014 AIR SCW 6537** and cited by the Special Public Prosecutor do not provide much assistance to arguments of the Special Public Prosecutor for the respondent/CBI. In **Abdul Azeez P V and others V National Investigation Agency**, investigation only pertaining to minor details such as the bank account details and mobile phone call details was pending for verification. The Special Court negated submissions for grant of statutory bail. The High Court after going through the charge-sheet found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report and dismissed the appeal. The Supreme Court observed that the charge-sheet so filed before the Special Court was complete in all respects so as to enable the learned Special Court to

take cognizance and merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report and dismissed the special leave petition. In present case substantial investigation arising out of present FIR is still pending and even allegations as made in charge sheet filed on 21.04.2022 regarding illegal appointment of the petitioner/accused are also directly related to pending investigation pertaining to abuse of server architecture.

33.1.2 In Dinesh Dalmia V C.B.I., the Supreme Court observed that a charge sheet is a final report within the meaning of Sub-section (2) of Section 173 of the Code and is filed if it enables the court to apply its mind as to whether cognizance of the offence thereupon should be taken or not and the power of the investigating officer for making further investigation in terms of section 178 (8) of the Code is not taken away only because a charge sheet under Sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate. The investigation arising out of present FIR is incomplete investigation as only one part of investigation regarding alleged appointment of the

petitioner/accused is completed and pending investigation qua other offences for which charge sheet is not filed is still pending. It is not a case of further investigation as argued by the Special Public Prosecutor.

33.2 There cannot be any dispute to the legal proposition that the purpose of police report under section 173(2) of the Code is to enable the Magistrate to satisfy himself on issue of taking cognizance or not. The concerned Special Court can take cognisance only in respect of some of offences for which charge sheet was filed on 21.04.22 but cannot take cognizance in respect of offence for which investigation is still pending and charge sheet is not filed. It is not permissible within mandate of legal provisions as contained in sections 173(2) and 167(2) to take cognizance in piece meal or in parts. It would amount to negation of indefeasible right given to the accused under section 167(2) of the Code. The constitutional right under section 167(2) of the Code and granted to accused in case of non-completion of investigation within stipulated period cannot be interpreted to convenience of investigating agency. In the present case, the respondent/CBI itself preferred to club investigation of issues arising

out of SEBI order dated 11.02.2022 with investigation of offences subject matter of present FIR. The investigating agency cannot circumvent section 167(2) of the Code by filing incomplete charge sheet and cannot be filed within the meaning of section 173 (2) till the investigation is completed and any report sent before the investigation is completed will not be a police report within the meaning of section 173 (2) of the Code. The respondent/CBI cannot take shelter of filing charge sheet in respect of offences pertaining to alleged illegal appointment of the petitioner/accused by giving nomenclature of complete charge sheet or final report as per section 173(2) of the Code to defeat the right of statutory bail under Section 167(2) of the Code.

33.3 The Special Judge while dismissing application for grant of statutory bail vide order dated 28.05.2022 did not appreciate legal provisions pertaining to section 167(2) in right perspective by holding that the charge sheet was complete containing all the details and was filed by mentioning therein the relevant sections. The Special Judge did not appreciate difference between incomplete investigation and further investigation and accepted both phrases as carrying same meaning. The Special Judge did not correctly observed and held that

the charge-sheet filed on 21.04.2022 clearly describes details of all the material collected by the IO/Investigating agency during the investigation regarding role played by the co-accused and the petitioner/accused. The charge sheet filed on 21.04.2022 was confined to the investigation related to alleged illegal appointment of the petitioner/accused and subsequent re-designation and is not related to their role in abuse of server architecture. There can only be one charge sheet out of investigation although there is no restriction on filing of number of supplementary charge sheets. The decision in **Y.S. Jagan Mohan Reddy V CBI** cited by the Special Public Prosecutor for the respondent/CBI where in one RC several transactions were investigated regarding which separate charge-sheets were filed and the cases were tried as separate cases after taking cognizance and the Supreme Court refused to consider pendency of investigation in other transactions as a ground for bail holding that economic offences are a class apart. It is true that present FIR involves huge financial and economic offences but in present investigation, the offences for which charge sheet was filed on 21.04.2022 and offences for which investigation arising out of present FIR is still pending are

interconnected and interlinked and cannot be separated and even this reflecting from Status Report filed by the respondent/CBI and written arguments submitted on behalf of the respondent/CBI. Moreover, the petitioner/accused was arrested for offences subject matter of present FIR and her arrest is not confined to offences for which charge sheet was filed on 21.04.22.

34. There is legal force and supported by judicial decisions as mentioned hereinabove that the respondent/CBI has failed to complete investigation in respect of all the offences as mentioned in FIR and to file a Final Report under section 173 of the Code within stipulated time i.e. sixty days from the date of the arrest of the petitioner/accused and filed an incomplete/piece-meal charge sheet before the concerned court on 21.04.2022 i.e. 57th day from the date of arrest.

35. After considering all facts, the application is allowed and the applicant is admitted to bail as per section 167(2) of the Code on furnishing a personal bond in the sum of Rs.5,00,000/- (Rupees Five Lakhs Only) with one surety of the like amount to the satisfaction of the concerned trial Court subject to the following conditions:-

- i. The applicant/accused shall not leave the country without prior permission of the Court;**

- ii. The applicant/accused shall surrender his passport before the concerned trial Court, if not surrendered yet, within 7 days of release from the custody in pursuance of this order;
 - iii. The applicant/accused shall co-operate and participate in the investigation as and when directed by the Investigating Officer;
 - iv. The applicant/accused shall not temper with the evidence and shall not influence the witnesses;
 - v. The applicant/accused shall provide his contact number to the concerned Investigating Officer and shall keep his mobile in operational mode so that the Investigating Officer as and when required can contact her.
36. The present bail application alongwith pending applications, if any, stands disposed of.
37. Nothing in this order shall affect the final merits of the case.

SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 28, 2022
N/SD