(2020) 09 SHI CK 0476

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1162 Of 2020

Hitesh Gandhi APPELLANT

Vs

Central Bureau Of Investigation RESPONDENT

Date of Decision : 24-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 120B, 409, 419, 465, 466, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2), 45
Code Of Criminal Procedure, 1973 — Section 167(2), 173(2), 173(8)

Citation : (2020) 09 SHI CK 0476

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jyotirmay Bhatt Sushmit Bhatt, Udayanand Sharma, Anshul Bansal

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Where, based on alleged, prima facie, strong evidence, serious allegations of cheating, criminal breach of trust, forgery and siphoning of student scholarship funds in conspiracy with the government and bank officials have been levelled against the head of a private educational institute, then should he be granted regular bail on the ground that the investigating agency will take indefinite and indeterminate time for completely investigating the matter, considering the fact that investigation of one out of the two involved institutes headed by this person is over and of the other institute is going on at slow pace, is the main question raised in this bail petition.

2. Gist of Allegations:-

2(i). An FIR No.133 of 2018 was registered on 16.11.2018 at Police Station East, Shimla. FIR was registered on the basis of a complaint made by the State Project Officer, State Project Monitoring and New Initiative Unit, Department of Higher

Education, Himachal Pradesh, Shimla. It was alleged in the FIR that various complaints were received in the Education Department regarding non-receipt of scholarships by the students under the State and Centrally Sponsored Schemes for SC/ST/OBC/MC students. Preliminary inquiry conducted by the State Project Officer revealed mis-appropriation of scholarship funds on large scale with complicity of officials working in the Education Department, Central Government, Banks and Private Institutions. It was further alleged in the FIR that income/ caste certificates of students were not verified and did not appear to be genuine. Through single application, disbursement of scholarships under two different categories of SC & ST also came to light. Many loopholes were detected in 'hp-e-pass' software used by the State Education Department, whereby the same mobile and bank account numbers were accepted for more than one application. Applications for scholarships were accepted without regard to any Aadhar number. Instructions issued by the Central Government for disbursing the scholarships through smart cards were not adhered to by the officials of the Education Department. Verification of scholarship applications was not carried out by the concerned Education Department officials. It was further alleged that the private educational institutions had opened bank accounts of the students near their institutes. Some of the bank accounts in Chandigarh and Haryana were alleged to be dubious. 80% of total scholarship money disbursed was granted through private educational institutions.

2(ii). Pursuant to notification dated 20.03.2019, the FIR dated 16.11.2018 was entrusted to CBI and case RC0962019A0002 was registered on 07.05.2019 at CBI, ACB, Shimla under Sections 409, 419, 465, 466 and 471 of the Indian Penal Code against unknown persons. After entrustment of FIR, CBI carried out investigations. Noticing the complicity of public servants of Directorate of Higher Education, Bank Officials and Officials of the private educational institutions, Section 120-B of IPC and 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, were added in the case. CBI conducted searches of 22 private institutions, which had disbursed the scholarships, w.e.f. 13.05.2019 to 16.05.2019 at 22 locations in the States of Himachal Pradesh, Haryana, Punjab and Union Territory of Chandigarh. Following table gives the macro view of post-matric scholarship funds alleged to have been illegally siphoned off through private institutions:-

2(iii). According to the status report, investigation is being conducted institution-wise. 22 private educational institutions in all are under investigation. Investigation of one of the institute, i.e. K.C. Group of Institutions, Pandoga, District Una, has been completed. Charge-sheet for embezzlement of scholarship funds of Rs.13.19 crores has already been filed in the Court of learned Special Judge (CBI), Shimla on 30.03.2020 by keeping the investigation open under Section 173(8) of the Code of Criminal Procedure. Investigation regarding second institute of K.C. Group of Institutions at Nawanshahr, Punjab is being carried out. According to the status report, the investigation has revealed that scholarships were claimed by these institutes without admission of students; documents of students, who had taken admission in K.C. Group of Institutions, Pandoga, District Una, were also used in K.C. Group of Institutions Nawanshahr, Punjab, for claiming scholarship; Some of the General Category students of K.C. Group of Institutions, Pandoga, District Una, were shown as students of SC category in K.C. Group of Institutions Nawanshahr, Punjab for claiming scholarship; Students shown as belonging to SC category in K.C. Group of Institutions, Pandoga, District Una during the years 2013-14 and 2014-15, have been shown as belonging to ST students in K.C. Group of Institutions, Nawanshahr, Punjab, during the years 2015-16 and 2016-17; Many of the students were found non-existent during investigations. Scholarship funds of Rs.11.33 crores were disbursed to K.C. Group of Institutions, Nawanshahr, Punjab.

2(iv). Alleged role of petitioner:-

2(iv)(a). Petitioner is owner and Vice-Chairman of K.C. Group of Institutions, established by K.C. Social Welfare Trust. Two such K.C. Group of Institutions are involved in the FIR, i.e. K.C. Group of Institutions at Nawanshahr, Punjab and K.C. Group of Institutions at Pandoga, Una, H.P.

2(iv)(b). According to the status report, investigations revealed that:-

i). Petitioner in conspiracy with other co-accused Arvind Rajta, a government official, posted at the relevant time in Scholarship Branch of Directorate of Higher Education, Himachal Pradesh, Shimla and Surinder Pal Singh, working at the relevant time as Cashier at Central Bank of India, Nawanshahr Branch, Punjab, had claimed false scholarship funds in the name of 963 students during 2013-14 to 2016-17.

ii). 23 out of 24 students, shown by K.C. Group of Institutions Nawanshahr, Punjab, as residents of Districts Una, Kullu and Chamba, denied taking admission in the institution. Addresses of some of the students were found to be fake.

iii). Some of the students shown as beneficiaries of post-matric scholarship in K.C. Group of Institutions, Nawanshahr, Punjab w.e.f. 2013-14 to 2016-17 had purportedly taken admission in K.C. Group of Institutions, Pandoga, Una and not in Nawanshahr, Punjab.

iv). Scholarships were claimed by these two institutions without admission of students. Documents of students, who had taken admission in K.C. Group of Institutions, Pandoga, were used in K.C. Group of Institutions, Nawanshahr, Punjab for claiming scholarship. Some of the general category students, who had studied from K.C. Group of Institutions, Pandoga, Una, were shown as students of Scheduled Caste category for claiming scholarship. Students shown as belonging to SC category in K.C. Group of Institutions, Pandoga, Una during the years 2013-15 have been shown as belonging to ST category in K.C. Group of Institutions, Nawanshahr, Punjab during the years 2015-17.

v). Two bank accounts were opened for some of the students in the name of one student. In one bank account, students admitted their signatures on the account opening forms as well as their photographs, but denied having been granted any scholarship from the Directorate of Higher Education, Himachal Pradesh. In the second account opening forms, students denied their photographs as well as signatures. It has been alleged that the accounts have been opened by the bank officials in conspiracy with the petitioner.

vi). It is further alleged that the petitioner in conspiracy with co-accused Surinder Pal Singh, working as Cashier at the relevant time in Central Bank of India, Nawanshahr Branch, Punjab, had withdrawn scholarship amount through 49 vouchers amounting to Rs.48,75,500/- on a single day, i.e. 08.05.2018. Signatures of students did not match on these vouchers. Still these were passed by the Cashier fraudulently in conspiracy with the petitioner.

vii). Petitioner is also stated to have conspired with one Sunil Kumar, who operated a Computer Centre at Amb, Una. Documents of sixty students from this centre were statedly collected by the petitioner for claiming scholarship funds in conspiracy with co-accused Arvind Rajta, the then Superintendent Grade-II, Directorate of Higher Education, Himachal Pradesh, Shimla. Documents of eighteen students of Computer Science of this Computer Centre were used by the petitioner for claiming scholarship funds.

viii). Allegedly, streams of various students were subsequently changed by K.C. Group of Institutions for claiming higher amount of scholarship, i.e. students, who had purportedly initially taken admission in the diploma course, were shown as students of degree course in the next year.

ix). It has also been alleged that as per the applicable guidelines, amount of fee component can be transferred directly to the bank account of the concerned institute, subject to the condition that the institute has not charged any fees from the students. Though no such affidavit was filed by K.C. Group of Institutions before the Directorate of Higher Education, Himachal Pradesh, still the scholarships were claimed on the basis of false information and forged documents in conspiracy with co-accused public servants.

x). Petitioner is stated to be the ultimate beneficiary of scholarship amount of Rs.11.33 crores, which has been claimed on the basis of false and forged documents in K.C. Group of Institutions, Nawanshahr and Rs.13.19 cores in K.C. Group of Institutions, Pandoga, Una. Petitioner has allegedly misappropriated the scholarship amount by violating all the guidelines and by submitting forged documents in conspiracy with co-accused public servants. Petitioner is involved in transferring the scholarship amount from the bank accounts of students to different bank accounts of K.C. Group of Institutions by using their documents and submitting false & forged documents of students.

3. Events:-

3(i). Petitioner was arrested on 03.01.2020. He is in judicial custody w.e.f. 08.01.2020.

3(ii). A previous bail application, being Cr.MP(M) No.209 of 2020, filed by the petitioner, was dismissed by a Co-ordinate Bench of this Court on 29.06.2020.

3(iii). Besides the petitioner, one Arvind Rajta, the then Dealing Hand-cum-Superintendent Grade-II, working in the Scholarship Branch, Directorate of Higher Education, Himachal Pradesh, Shimla, was also arrested on 03.01.2020. He is also in custody ever since and has moved bail application No.Cr.MP(M) No.1040 of 2020, which is being considered separately. One another co-accused Sh. Surinder Pal Singh, working as Cashier at the relevant time in the Central Bank of India, also arrested on 03.01.2020, was enlarged on bail by a Co-ordinate Bench of this Court vide order dated 11.06.2020 passed in Cr.MP(M) No.409 of 2020.

4. Submissions:-

4(i). Learned counsel for the petitioner prayed for release of the petitioner on bail. His precise submissions are:-

4(i)(a). FIR was registered on 16.11.2018. It was entrusted to CBI on 20.03.2019. As per its own showing, CBI has to investigate 22 private educational institutes in all, whereas even after more than a year and four months from the date of registration of the case, CBI has been able to file charge-sheet only with respect to one institute, i.e. K.C. Group of Institutions, Pandoga, District Una. This charge-sheet was filed on 30.03.2020 by keeping the investigations open under Section 173(8) Cr.PC only to come out of the provisions of Section 167(2) of Cr.PC.

4(i)(b). Pace of investigation in the case is very slow. As per its own admission, CBI is yet to investigate dozens of private educational institutes. Petitioner cannot be incarcerated in custody for an uncertain period of time, which may traverse to years together. Petitioner even otherwise has no concern with the other private education institutes. He is owner and Vice- Chairman of two K.C. Group of Institutions involved in the case, i.e. at Pandoga, H.P. and Nawanshahr, Punjab.

4(i)(c). The charge-sheet filed by the respondent in respect of K.C. Group of Institutions, Pandoga, District Una, reveals that out of twelve accused persons named therein, five belong to K.C. Group of Institutions, namely:-

(i) Petitioner, Vice-Chairman and owner of K.C. Group of Institutions Pandoga (Una) and Nawanshahr (Punjab).

(ii) Smt. Saroj Sharma, the then Campus Director, K.C. Group of Institutions, Pandoga, Una.

(iii) Dr. B.S. Sandhu, the then Campus Director, K.C. Group of Institutions, Pandoga, Una.

(iv) Sh. Prem Pal Gandhi, Chairman and Owner of K.C. Group of Institutions, Pandoga (Una) and Nawanshahr (Punjab).

(v) Smt. Kiran Chaudhary, the then Officiating Principal, K.C. Institute of Pharmaceutical, Pandoga, Una.

Learned counsel contended that the investigating agency is carrying out investigation in a discriminatory manner. Petitioner is the Vice- Chairman of 2 out of 22 concerned institutions. He was not involved in day-to-day administration of these two institutions, yet it is the petitioner, who has been made the scapegoat and arrested, whereas the other four accused persons, who were working in K.C. Group of Institutions, even though have been challaned for the common offences faced by all five accused persons, were not taken into custody. In case the investigating agency did not feel the necessity to arrest the other four accused persons belonging to K.C. Group of Institutions, then there was no occasion even to arrest the petitioner, much less any further need to continue to keep him behind the bars for an indefinite period. There have been no arrests regarding the other private educational institutes statedly involved in the case.

4(i)(d). Learned counsel also highlighted the fact that the bank official Surinder Pal Singh, a co-accused in the FIR, in conspiracy with whom petitioner had allegedly transferred/withdrawn scholarship funds, has already been enlarged on bail in Cr.MP(M) No.409 of 2020.

4(i)(e). Citing various judgments in support of his prayer for release of the petitioner on bail, learned counsel submitted that the petitioner is aged about 41 years. He has no criminal antecedent. Besides the two educational institutions, he is the Vice-Chairman of nine companies (KC Land & Finance Limited, Farady Engineering Industries Private Limited, Indigo Fincap Private Limited, King Entertainment Private Limited, Future Web Solutions Private Limited, Pandoga Research and Foundation Private Limited, Mahalon Education and Medical Research Foundation Private Limited, Sutlej Service Station Private Limited and Walia Traders Limited). Petitioner is economically sound and has deep roots in the society. There is no possibility of his tampering with the prosecution evidence or influencing the prosecution witnesses. He is permanent resident of Mohali, Bhatti colony, Nawanshahr, Punjab. He will not abscond and will abide by all the terms & conditions, which may be imposed upon him by this Court and will join the investigation as and when the respondent directs him to do so.

4(ii). Learned Special Prosecutor for the CBI opposed the bail plea on the grounds that:-

4(ii)(a). Investigation in the FIR is still going on. Around 17 private educational institutes are still to be investigated. No timeline can be given for completion of investigation. As of now, investigation into K.C. Group of Institutions at Pandoga, District Una, has been completed and charge-sheet regarding that has already been presented before the competent Court on 30.03.2020 while keeping open the investigation under Section 173(8) Cr.PC.

4(ii)(b). Investigation conducted so far has practically proved the petitioner to be guilty of grave socio-economic offence as not only substantial financial loss has been caused to the State Government, but the students of weaker sections of society have also been deprived of their legitimate due. In the event of conviction of the petitioner, severe punishment has been prescribed in law.

4(ii)(c). The respondent has strong apprehension that in case of enlargement on bail, petitioner shall try to conceal/destroy material documents of K.C. Group of Institutions, Nawanshahar, Punjab and influence material witnesses/employees of this institute. It has also been submitted that prosecution case is based on documentary and oral evidence and most of the witnesses belong to the area of the petitioner. Many witnesses are employees of the two institutes owned by the petitioner. Therefore, petitioner, an influential man, will try to win over the witnesses and temper the evidence. It has been alleged that in December, 2019, petitioner had tried to influence two witnesses by calling them and discussed their questioning by CBI. Petitioner will tamper with the evidence, influence the witnesses and can also abscond.

4(ii)(d). Earlier bail plea of the petitioner was dismissed with the observation that "the magnitude of the scam is significant, the accused/petitioner thwarted the Government's efforts to create a level playing field for the underprivileged students belonging to the weaker sections of the society. Let CBI investigate on material aspects." Investigation as yet is still going on. There is no change in the circumstances, therefore, bail petition should be dismissed.

In support of these submissions, reliance upon various judgments was placed.

5. Observations:-

It is well settled that grant of bail involves judicious exercise of discretionary power of the Court, wherein not only the nature of accusations, severity of punishment, nature of evidence, apprehension of influencing the witnesses, tampering with evidence, possibility of accused standing the trial are some of the factors to be considered, but the valuable right of liberty of an individual and interest of society in general also have to be balanced.

5(i). In the instant case, FIR was registered on 16.11.2018. Pursuant to notification dated 20.03.2019, case was entrusted to CBI and was registered by it on 07.05.2019. Petitioner was arrested on 03.01.2020 and is in judicial custody.

5(ii). 22 private institutes were to be investigated by the CBI for unearthing illegal disbursement of post-matric scholarship funds amounting to Rs.2,09,93,53,223/- by private educational institutions, out of which, at present, investigations into K.C. Group of Institutions, Pandoga, District Una, for embezzlement of scholarship amount of Rs.13.19 crore has already been completed. Charge-sheet in that regard stands filed before the competent Court on 30.03.2020 by keeping further investigation open under Section 173(8) of the Code of Criminal Procedure. The respondent is also stated to have investigated into the illegal disbursement of scholarship amounts to the tune of Rs.29.80 crores in eight institutes, from where the funds were statedly transferred to the accounts of ASA Marketing Solutions and about illegal disbursement of scholarship funds amounting to Rs.11.33 crores to another K.C. Group of Institutions, Nawanshahr, Punjab.

5(iii). Investigation into 17 other private educational institutes is yet going on. CBI has not been able to indicate any timeline whatsoever about the completion of investigation. It has already taken about a year and half for completing the investigation of one private institute, i.e. K.C. Group of Institutions at Pandoga, District Una. It is yet to formally complete the investigation into K.C. Group of Institutions at Nawanshahr, Punjab.

5(iv). Present is not a case where multiple FIRs were registered with respect to different institutes. One FIR has been registered involving all the private educational institutes. To obviate the compulsion under Section 167(2) Cr.PC, final report has been presented on 30.03.2020 under Section 173(2) Cr.PC only regarding K.C. Group of Institutions, Pandoga, District Una by keeping the investigation open under Section 173(8) Cr.PC.

Even in this challan, twelve persons have been named as accused, out of which five belong to K.C. Group of Institutions, including the petitioner. Four accused persons, who were working in different capacities in the K.C. Group of Institutions at the relevant time and responsible for various transactions in issue, have not been arrested. This is despite the fact that all of them are facing the same FIR for the same offences.

5(v)(1). In (2017) 13 SCC 751, titled State of Bihar and another Versus Amit Kumar @ Bachcha Rai, Hon'ble Supreme Court held that bail cannot be granted in a mechanical manner to the alleged kingpin of 'Bihar Toppers Scam' on the ground that accused was in custody for long time. Socio-economic offences constitute a class apart and need to be visited with different approach in matter of bail.

5(v)(2). Hon'ble Apex Court in (2013) 7 SCC 466, titled Nimmajadda Prasad Versus CBI, while observing that white collar crimes were on the rise affecting development of the country as a whole, held that while granting bail, the Court has to keep in mind the nature of accusations, nature of evidence in support thereof, severity of punishment on conviction, character of accused, circumstances peculiar to the accused, reasonable possibility of securing presence of accused at trial, reasonable apprehension of witnesses being tempered with, larger interests of public/State and other similar considerations. At this stage, it is not necessary to establish guilt of accused beyond reasonable doubt. Economic offences need to be viewed seriously.

5(v)(3). In (2013) 7 SCC 439, titled Y.S. Jagan Mohan Reddy v. CBI, Hon'ble Apex Court held that economic offences need to be visited with different approach. It was held as under vide paras 34 and 35:-

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

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

5(v)(4). In (2018) 11 SCC 46, titled Rohit Tandon Versus Directorate of Enforcement, involving Prevention of Money Laundering Act, 2002 including Section 45 thereof, which has overriding effect on general provisions of Cr.PC, it was held that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and are considered as grave offences affecting the economy of the country as a whole. It was also expounded that at the stage of considering the bail application, it requires to be seen whether the accused had requisite mensrea. A balance has to be maintained between a judgment of acquittal and conviction and an order granting bail. The duty of Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

5(v)(5). It will also be appropriate to take note of (2012) 1 SCC 40, titled Sanjay Chandra Versus Central Bureau of Investigation, wherein Hon'ble Apex Court dealing with the issue of grant of bail in an economic offence of formidable magnitude, observed that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused would stand trial when called upon and that Courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. Object of bail is neither punitive or preventive. Hon'ble Court sounded a caveat that it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him taste of imprisonment as a lesson. Discretionary jurisdiction to grant bail to an accused pending trial has to be exercised with care and caution by balancing valuable right of liberty of individual and interest of society in general. Seriousness of charge is no doubt one of the relevant consideration while examining bail application, but it is not the only factor. The grant or denial of bail is regulated to a large extent by the facts and circumstances of each case. Detention in custody of undertrial prisoner for an indefinite period would amount to violation of Article 21 of the Constitution. It was held that it would be contrary to the concept of personal liberty enshrined in the constitution that any person should be punished in respect of a matter, on which he has not been convicted and should be deprived of his liberty only on the belief that he will temper with witnesses if set free save in extraordinary circumstances. Seriousness of charge is not the only factor to be considered while deciding the bail petitions. Paras 21 to 24, 39 and 46 of the judgment are as under:-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

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

24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice.

39. Coming back to the facts of the present case, both the Courts have refused

the request for grant of bail on two grounds: the primary ground is that offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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

These principles were reiterated in (2017) 5 SCC 218, titled Manoranjana Singh Versus CBI.

5(v)(6). In AIR 2019 SC 5272, titled P. Chidambaram Versus Central Bureau of Investigation, CBI had opposed the bail plea on the grounds of:- (i) flight risk; (ii) tampering with evidence; and (iii) influencing witnesses. The first two contentions were rejected by the High Court. But bail was declined on the ground that possibility of influencing the witnesses in the ongoing investigation cannot be ruled out. Hon'ble Apex Court after considering (2001) 4 SCC 280, titled Prahlad Singh Bhati v. NCT, Delhi and another; (2004) 7 SCC 528, titled Kalyan Chandra Sarkar v. Rajesh Ranjan and another; (2005) 2 SCC 13, titled Jayendra Saraswathi Swamigal v. State of Tamil Nadu and (2005) 8 SCC 21, titled State of U.P. through CBI v. Amarmani Tripathi, observed as under:-

"26. As discussed earlier, insofar as the "flight risk" and "tampering with evidence" are concerned, the High Court held in favour of the appellant by holding that the appellant is not a "flight risk" i.e. "no possibility of his abscondence". The High Court rightly held that by issuing certain directions like "surrender of passport", "issuance of look out notice", "flight risk" can be secured. So far as "tampering with evidence" is concerned, the High Court rightly held that the documents relating to the case are in the custody of the prosecuting agency, Government of India and the Court and there is no chance of the appellant tampering with evidence.

28. So far as the allegation of possibility of influencing the witnesses, the High Court referred to the arguments of the learned Solicitor General which is said to have been a part of a "sealed cover" that two material witnesses are alleged to have been approached not to disclose any information regarding the appellant and his son and the High Court observed that the possibility of influencing the witnesses by the appellant cannot be ruled out. The relevant portion of the impugned judgment of the High Court in para (72) reads as under:

"72. As argued by learned Solicitor General, (which is part of 'Sealed Cover', two material witnesses (accused) have been approached for not to disclose any information regarding the petitioner and his son (co-accused). This court cannot dispute the fact that petitioner has been a strong Finance Minister and Home Minister and presently, Member of Indian Parliament. He is respectable member of the Bar Association of Supreme Court of India. He has long standing in BAR as a Senior Advocate. He has deep root in the Indian Society and may be some connection in abroad. But, the fact that he will not influence the witnesses directly or indirectly, cannot be ruled out in view of above facts. Moreover, the investigation is at advance stage, therefore, this Court is not inclined to grant bail."

29. FIR was registered by the CBI on 15.05.2017. The appellant was granted interim protection on 31.05.2018 till 20.08.2019. Till the date, there has been no allegation regarding influencing of any witness by the appellant or his men directly or indirectly. In the number of remand applications, there was no whisper that any material witness has been approached not to disclose information about the appellant and his son. It appears that only at the time of opposing the bail and in the counter affidavit filed by the CBI before the High Court, the averments were made that "....the appellant is trying to influence the witnesses and if enlarged on bail, would further pressurize the witnesses....". CBI has no direct evidence against the appellant regarding the allegation of appellant directly or indirectly influencing the witnesses. As rightly contended by the learned Senior counsel for the appellant, no material particulars were produced before the High Court as to when and how those two material witnesses were approached. There are no details as to the form of approach of those two witnesses either SMS, email, letter or telephonic calls and the persons who have approached the material witnesses. Details are also not available as to when, where and how those witnesses were approached.

31. It is to be pointed out that the respondent - CBI has filed remand applications seeking remand of the appellant on various dates viz. 22.08.2019, 26.08.2019, 30.08.2019, 02.09.2019, 05.09.2019 and 19.09.2019 etc. In these applications, there were no allegations that the appellant was trying to influence the witnesses and that any material witnesses (accused) have been approached not to disclose information about the appellant and his son. In the absence of any contemporaneous materials, no weight could be attached to the allegation that the appellant has been influencing the witnesses by approaching the

witnesses. The conclusion of the learned Single Judge "...that it cannot be ruled out that the petitioner will not influence the witnesses directly or indirectly....." is not substantiated by any materials and is only a generalised apprehension and appears to be speculative. Mere averments that the appellant approached the witnesses and the assertion that the appellant would further pressurize the witnesses, without any material basis cannot be the reason to deny regular bail to the appellant; more so, when the appellant has been in custody for nearly two months, co-operated with the investigating agency and the charge sheet is also filed.

32. The appellant is not a "flight risk" and in view of the conditions imposed, there is no possibility of his abscondence from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail to the appellant particularly, when there is no such whisper in the six remand applications filed by the prosecution. The charge sheet has been filed against the appellant and other co-accused on 18.10.2019. The appellant is in custody from 21.08.2019 for about two months. The co-accused were already granted bail. The appellant is said to be aged 74 years and is also said to be suffering from age related health problems. Considering the above factors and the facts and circumstances of the case, we are of the view that the appellant is entitled to be granted bail."

5(v)(7). In 2019 SCC OnLine SC 1549, titled P. Chidambaram v. Directorate of Enforcement, after taking note of various precedents, it was deduced that basic jurisprudence relating to a 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. Irrespective of nature and gravity of charge, the ultimate consideration will have to be on case to case basis on the facts involved therein and securing the presence of accused to stand trial. Para 23 of the judgment reads as under:-

"23. 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."

5(vi). Petitioner is not the sole accused in the charge-sheet filed by the respondent. Eleven other persons are also named therein as accused. Four of them besides the petitioner belong to K.C. Group of Institutions. But for petitioner and his father Sh. Prem Lal Gandhi, the other three are the employees of the K.C. Group of Institutions and are also alleged to be involved in commission of offences. It is only the petitioner, who has been arrested.

5(vii). Out of 22 private educational institutions stated to be involved in the scam, respondent as yet has completed the investigation only of one private institute. Respondent is unable to give any timeline about completion of investigation in respect of remaining institutes, though it has come in the status report that the respondent has conducted searches and seized material and records from concerned 22 private institutions.

5(viii). Present is a case where 22 institutes are involved in one FIR and not in multiple FIRs. Charge-sheet under the FIR qua one of the institute already stands filed through by keeping the investigation open under Section 173(8) Cr.PC. This was to obviate the compulsion under Section 167(2) Cr.PC.

5(ix). Even if present is a case of socio-economic offence of serious magnitude and respondent may have strong evidence about involvement of the petitioner, yet 'gravity can only beget length of sentence' provided in law, after the trial. Grant of bail cannot be thwarted merely by asserting that offence is grave and therefore, petitioner should remain in custody till the investigation of all 22 private educational institutes is completed, regarding timeline of which, respondent apparently has no clue.

5(x). Even in cases involving economic offences, where there is strong, prima facie, evidence against the accused, it cannot be said as a matter of abstract principle that bail should invariably be refused. It is impossible to hold that an accused should not be granted bail during pendency of whole of investigation.

5(xi). The principle laid down by Hon'ble Apex Court in Sanjay Chandra's case, supra, and in various other pronouncements cannot be lost sight of that punishment begins after conviction and that every man is deemed innocent until duly tried and proved guilty. Detention of the petitioner, an under-trial prisoner, for an indefinite period would amount to violation of Article 21 of the Constitution. Consequences of pre-trial detention are grave.

5(xii). The offending acts are already complete and reflected as such in the records. As per the status report, voluminous record has already been seized by CBI during raids conducted by it in 22 private institutes, though investigation is still going on. As per the respondent, petitioner is involved only in two out of 22 private educational institutes. Charge-sheet in respect of one of the petitioner's institute, i.e. K.C. Group of Institutions, Pandoga, District Una, stands filed on 30.03.2020, wherein allegation of embezzlement of scholarship funds of Rs.13.19 crores has been levelled. Investigation in respect of the second institute of petitioner, i.e. K.C. Group of Institutions, Nawanshahr, Punjab, is though stated to be going on, however, it appears from the record that respondent has already seized a lot of materials and documents regarding this institute as well to allege embezzlement of scholarship funds of Rs.11.33 crores in this institute. The institutes where investigation is yet to be carried out have been spelt out in the status report submitted by the respondent in Cr.MP(M) No.1040 of 2020 as under:-

"11. .... The investigation of the institutions which is yet to be carried out are given below:

Sr. No.

Name of Institute

1.

ITFT Education, New Chandigarh

2.

Chandigarh University, Kharar

3.

ICL Group of Colleges, Shazadpur, Ambala, Haryana

4.

Apex Institute of Management, Indri, Karnal, Haryana

5.

Dev Bhumi Group of Institute, Una, HP

6.

Arni University, Kathgarh, HP

7.

Lovely Professional University, Jalandhar, Punjab

8.

Vidaya Jyoti Group of Institutions, Ambala, Haryana

9.

Doaba Khalsa Trust, Ghataur, Kharar, Mohali

10.

Himalayan Group of Professional Institute, Kala Amb, HP

11.

Shiva Institute of Engineering and Technology, Chandpur, Bilaspur, HP

12.

Sukhjinder Group of Institutes, VPO Hayat Nagar, Gurdaspur

13.

Sukhjinder Group of Institutes, Pathankot

14.

Indus International University, Bathu, Una, HP

15.

IEC University, Baddi

16.

Bahra University, Waknaghat, Kandaghat, Solan, HP

17.

APG Shimla University, Shimla, HP"

Name of K.C. Group of Institutions, Nawanshahr, Punjab does not figure in the above list. In such situation, continued custodial interrogation of the petitioner is not necessary.

5(xiii). Though while dismissing petitioner's previous bail petition, it was observed that magnitude of scam is significant and CBI should investigate into material aspects, yet even three months thereafter, investigation has not formally been completed in the second K.C. Group of Institutions. Investigation should not be carried out indefinitely and forever without any regard to time, considering the interests of all involved. Nonetheless it is open to the respondent to continue to investigate into the matter, however, for this reason, petitioner cannot be permitted to incarcerate as a pre- trial prisoner. His liberty enshrined under Article 21 of the Constitution is also required to be protected. In the facts and circumstances, petitioner, therefore, has right to file instant bail petition.

5(xiv). Respondent while opposing the bail plea besides submitting that strong evidence is available against the petitioner, also expressed its apprehension that petitioner after grant of bail is likely to abscond or temper with evidence or will influence the witnesses. It cannot be presumed that petitioner will flee justice or will influence the investigation/witnesses. No material in support of these apprehensions has been placed on record. The alleged incident of petitioner's inquiring from two witnesses in December, 2019 about CBIs line of questioning happened before his arrest and cannot stricto senso be termed as influencing the witness. As per status report, CBI has already conducted searches at 22 private educational institutions including the two K.C. Group of Institutions at Pandoga & Una and seized voluminous physical and electronic record. Petitioner is in custody w.e.f. 03.01.2020. It is not disputed that he is Vice President of various other companies, owns educational institutes in the respondent-State and is a resident of State of Punjab. The apprehensions expressed by respondent can be taken care of while imposing conditions for enlargement on bail. In the given facts and circumstances of the case, continued custodial interrogation of the petitioner is not necessary. Enlargement of petitioner on bail subject to stringent conditions will not pose any threat to society.

Therefore, present bail petition is allowed and the petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.1,00,00,000/- (Rupees One Crore only) with two local sureties, each in the amount of Rs.25,00,000/- (Rupees Twenty Five Lacs only) to the satisfaction of the learned trial Court/Special Judge (CBI), Shimla, subject to the following conditions:-

(i). Petitioner shall cooperate with the investigation, shall join the investigation and make himself available for interrogation as and when called by the Investigating Agency in accordance with law.

(ii). Petitioner in any case will report to the Trial Court and the investigating officer once in a fortnight till the investigation in the case is completed in entirety.

(iii). Petitioner shall surrender his passport to the Trial Court, if not surrendered already. He shall not leave India without prior permission of the Court. Petitioner shall intimate the investigating agency about the place, where he shall reside during the investigations and the trial. Any change in his place of residence shall be immediately notified by him to the investigating agency.

(iv) . Petitioner shall furnish a cell number to the investigating officer on which he can be contacted at any time. He shall also ensure that the number remains active and switched on at all times. He shall submit details of his Aadhar Card and other proofs of identity with the investigating agency.

(v). Petitioner shall not temper with the prosecution evidence or hamper the investigation in any manner whatsoever.

(vi). Petitioner shall not make any inducement, threat or promise directly or indirectly to the investigating officer, to the witnesses or to any other person acquainted with the facts of the case to dissuade him from disclosing such facts to the Courts or any Police Officer. Petitioner shall not maintain any direct or indirect contact with officials of bank/ education department/private educational institutions concerned with the case. Petitioner shall not directly or indirectly contact the employees of K.C. Group of Institutions involved in the case. Petitioner shall not deal with any record relevant to the case. He shall not prejudice the proceedings in the matter.

(vii). Petitioner shall attend trial on each and every hearing unless exempted by the Court, in accordance with law.

Any breach, violation or non-compliance of the above conditions will be viewed seriously and will give right to the investigating agency to seek cancellation of bail. Any unwarranted conduct or action of the petitioner necessitating recall of bail be brought to the notice of the Court. In case of any genuine difficulty being faced due to any of the above conditions, it shall be open to the petitioner/ respondent to move an application seeking modification thereof either before this Court or after cognizance of the matter before the learned Trial Court as the case may be. Learned Trial Court may impose any other condition considered appropriate as and when necessary.

It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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