(2020) 01 OHC CK 0005

In the Orissa High Court

Case No : Bail Application No. 5450 Of 2019

Shrikant Mohta APPELLANT

Vs

Republic Of India RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 160, 161, 173(8), 439
Indian Penal Code, 1860 — Section 120B, 420, 403, 405, 406, 408, 409, 418, 420
Prize Chits And Money Circulation Schemes (Banning) Act, 1978 — Section 4, 5, 6
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Arbitration And Conciliation Act, 1996 — Section 34
Securities And Exchange Board Of India Act, 1992 — Section 4(3), 11(1), 11B, 11(4), 24

Citation : (2020) 01 OHC CK 0005

Hon'ble Judges : S.K. Sahoo, J

Bench : Single Bench

Advocate : Suresh Tripathy, Kali Charan Mishra

Final Decision : Dismissed

Judgement

S. K. Sahoo, J

1. The petitioner Shrikant Mohta earlier knocked the doors of this Court for bail in an application under section 439 of the Code of Criminal Procedure in BLAPL No.1983 of 2019 in connection with R.C. Case No. 39/S/2014-Kol dated 05.06.2014 corresponding to SPE Case No. 34 of 2014 pending on the file of Special C.J.M. (C.B.I.), Bhubaneswar which was rejected as per order dated 13.05.2019. After submission of charge sheet against the petitioner on 22.05.2019 for commission of offences punishable under sections 420, 409 read with section 120-B of the Indian Penal Code and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereafter '1978 Act'), he has again approached this Court for bail after his prayer for bail before the learned Sessions Judge, Khurda at Bhubaneswar in Bail Application No.854 of 2019 was rejected vide order dated 18.06.2019.

2. The present case was instituted by clubbing three First Information Reports of three different cases i.e. Buguda P.S. Case No.75 of 2013, Jeypore Town P.S. Case No.71 of 2013 and Nuapada P.S. Case No.82 of 2013 in pursuance of the order dated 09.05.2014 of the Hon'ble Supreme Court of India passed in W.P. (Civil) No.401 of 2013 filed by Shri Subrata Chattoraj and W.P. (Civil) No.413 of 2013 filed by Shri Alok Jena.

According to the prosecution case, Rose Valley Group of Companies (hereafter for short 'Rose Valley') collected huge amount of money from public enticing them with false promise of paying higher rates of interest although Rose Valley was not having any authorization from the Reserve Bank of India (hereafter for short 'RBI') or the Securities and Exchange Board of India (hereafter for short 'SEBI') for carrying out such activities and therefore, the company cheated the public.

Investigation revealed that 'Rose Valley Resorts and Plantations Limited, Kolkata' was founded in the year 1997 and in the year 2002, SEBI imposed ban on the teak based investment schemes which the company was carrying out, for which the schemes floated were stopped. The company was renamed as 'Rose Valley Hotel and Entertainment Limited' in the year 1999. Two more companies in the name of 'Rose Valley Real Estates Constructions Limited' and 'Real Estate and Landbank India Ltd.' were founded subsequently in the year 1999 and 2001 which were registered with the Registrar of Companies (hereafter for short 'ROC'). Rose Valley started expanding its spheres and a lot of new companies were formed in between 1997 to 2012. The accused persons, namely Gautam Kundu, Chairman of Rose Valley, Shibamoy Dutta, Managing Director, Ashok Kumar Saha and Ram Lal Goswami, Directors of Rose Valley in furtherance of criminal conspiracy by establishing branches of the companies in different parts of India, collected money from the public through multi-level agent network system. They cheated the investors/depositors by way of camouflaged schemes and false assurance about legal sanctity and false promise of higher rates of interest. The accused persons also cheated the depositors as well as the agents by making false assurance that the accused companies were legally empowered to collect money from the public. They were running ponzi schemes and circulating the money collected from the depositors which was not disclosed to the depositors and agents. The accused persons made false propaganda that Rose Valley is having a big business empire and diversified business. They fraudulently claimed that the money collected from the depositors would be invested in those businesses and with the help of high returns from those companies, they would be able to pay back to the depositors their invested money with interest on maturity. The accused persons deceived the depositors and deliberately induced them to invest their hard-earned money in the accused companies. It further revealed from the scrutiny of the balance sheet of all the companies of Rose Valley that almost all the companies were making loss and old depositors were paid by using money of the new depositors since there was no income generated by the companies from any source. It further revealed that the total business model of Rose Valley was commercially unrealistic/unviable and it was not in a position to pay to its depositors the promised higher rates of interest and therefore, it was just rotating the money. Rose Valley not only collected thousand of crores of rupees illegally from the depositors by cheating them but they did not utilize the same for the purpose for which the money was invested. The accused persons did not return the money of lakh of depositors and thereby committed criminal breach of trust. The total money collection of Rose Valley according to the database up to the financial year 2012-13 was Rs.1471,18,81724/- (rupees fourteen hundred seventy one crores eighteen lakhs eighty one thousand seven hundred twenty four only).

On 06.01.2016 first charge sheet was submitted against accused Gautam Kundu, Shibamoy Dutta, Ashok Kumar Saha, Ram Lal Goswami and three Rose Valley Companies under sections 420, 408, 409, 120-B/34 of the Indian Penal Code and sections 4, 5 and 6 of 1978 Act keeping the further investigation open under section 173(8) of Cr.P.C. for ascertaining the role of regulatory agencies like SEBI, ROC and RBI and other agencies and also other influential persons involved in it and for probing the larger criminal conspiracy and money trailing.

During course of further investigation, the roles of Tapas Paul and Shri Sudeep Bandyopadhyay, both Members of Parliament were examined and it was found that both the accused allowed their stature to be used to allure the investors, agents and in return, they also gained wrongfully. In order to promote the illegal money collection business of Rose Valley, they grossly abused their respective official positions and overtly certified the business of Rose Valley and their presence with the company bestowed confidence in the minds of agents and investors about the credential of the company. Thus, the two accused M.Ps. also deceived the investors to deposit money in the Rose Valley, cheated them and misappropriated the money in conspiracy with other accused persons.

On 26.04.2017 second charge sheet was submitted under sections 420 and 409 read with section 120-B of the Indian Penal Code and sections 4 and 6 of 1978 Act and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 against the M.Ps. Tapas Paul and Shri Sudeep Bandyopadhyay and others keeping the further investigation open to look into the role of the regulatory authorities, larger criminal conspiracy and money trailing.

During course of further investigation, materials were found against accused Ramesh Gandhi, who was the Managing Director of M/s. Rainbow Productions Limited. It was found that having full knowledge that Rose Valley was collecting money from the general public in an illegal manner and their activities were under the scanner of law enforcement agencies, accused Ramesh Gandhi, who was a producer of T.V. programmes and was in electronic media business entered into business relation with accused Gautam Kundu and an agreement was executed to protect illegal money collection business of Rose Valley and to gain wrongfully. The said accused Ramesh Gandhi projected himself to be keeping control over the media channels/ newspapers of Assam for protecting the business of Rose Valley. Huge amount was paid to M/s. Rainbow Productions Ltd.

towards the release of advertisements of the company from the account of Rose Valley.

On 15.05.2018 third charge sheet was submitted against accused Ramesh Gandhi, M/s. Rainbow Productions Ltd. and M/s. Aarambh Advertising and Marketing Ltd. under section 120-B read with sections 420 and 409 of the Indian Penal Code and sections 4 and 6 of 1978 Act keeping the further investigation open.

During course of further investigation, it was found that the petitioner is the Founder Director of M/s. Shree Venkatesh Films Private Limited (hereafter 'SVFPL'). SVFPL entered into an agreement with a sister concern of Rose Valley, namely, M/s. Brand Value Communication Ltd. (hereafter 'BVCL') on 07.04.2010 for supplying the telecast rights of seventy Bengali films for an amount of Rs.25 crores to be broadcasted through the satellite channel of BVCL namely 'Rupashi Bangla'. During telecast of Bengali films, publicity of Rose Valley was made in the T.V. channel owned by Rose Valley for alluring the investors to make investment which reflected the real purpose behind the agreement for supply of seventy Bengali films to BVCL. Nineteen films supplied by SVFPL to BVCL amounting to Rs.6.84 crores were found to be technically not viable and as such those films were returned to SVFPL but the amount of Rs.6.84 crores was not returned back by SVFPL to BVCL.

Investigation further revealed that BVCL lodged a First Information Report against SVFPL and its employees on 16.11.2011 at Baguiati Police Station, Kolkata in which charge sheet was submitted against all the F.I.R. named accused persons including the petitioner. The said charge sheet was challenged by the petitioner and other accused persons before the Hon'ble Calcutta High Court and the Hon'ble Court quashed the charge sheet. BVCL challenged the matter before the Hon'ble Supreme Court which upheld the decision of the Hon'ble Calcutta High Court. Finally, as it was found that the SVFPL had not supplied nineteen technically feasible films to BVCL, in an arbitration proceeding, the learned Arbitrator vide order dated 13.06.2018 awarded a payment of Rs.6.84 crores by SVFPL to BVCL. The award amount of Rs.6.84 crores passed by the learned Arbitrator was not paid by SVFPL. Investigation further revealed that the petitioner and accused Gautam Kundu, Chairman of Rose Valley entered into a criminal conspiracy amongst themselves to misappropriate the public fund illegally collected by the Rose Valley on the garb of an agreement for telecast right of films to the BVCL. The illegal financial business activities of the Rose Valley Group of companies namely Rose Valley Real Estates & Constructions Ltd., Rose Valley Resorts & Plantations Ltd. (subsequently renamed as 'Rose Valley Hotels and entertainments Ltd.'), Real Estates & Landbank India Ltd. were banned by SEBI by its orders in the year 2002 and during 2010-11 respectively. The same was widely publicised through media. The petitioner having full knowledge of banning of the activities of Rose Valley by the regulatory authority SEBI, entered into an agreement with BVCL. The petitioner through his company

SVFPL purchased paintings from an exhibition held in Kolkata during 2011-13 for a declared amount of Rs.15 lakhs from 'Jago Bangla'. According to the prosecution, the amount which was received by SVFPL from BVCL was the money collected by the Rose Valley Group of companies from the depositors by deceiving them with assurance of getting higher returns without the permission of RBI. The money so collected was diverted by the Rose Valley to its sister concern BVCL which was further diverted to the accounts of SVFPL. It is the case of the prosecution that the petitioner belonged to the community of media and he was supposed to have the knowledge of the banning of the activities of the Rose Valley by the regulatory authority SEBI and in spite of that the petitioner's company SVFPL entered into an illegal agreement with BVCL. During course of investigation, as the petitioner did not cooperate with the investigation and prima facie case relating to his involvement in the crime was made out, he was arrested and forwarded to Court on 25.01.2019.

After rejection of the earlier bail application of the petitioner by this Court in BLAPL No.1983 of 2019, charge sheet was submitted against the petitioner on 22.05.2019 under sections 420, 409 read with section 120-B of the Indian Penal Code and sections 4, 5 and 6 of the 1978 Act.

In the charge sheet dated 22.05.2019, it is mentioned that SVFPL was registered with Registrar of Companies (ROC), Kolkata, West Bengal. The company was renamed as M/s. SVF Entertainment Private Ltd. (hereafter 'SVEPL') on 16.03.2017. The Directors of the company were the petitioner, Sri Mahendra Suni, Shri Bishnukanta Mohta and Sri Jeeban Das Mohta. The main object of the company was to carry out the business of exhibition, distribution of cinema TV, video films and production of cinema TV, Video cassettes etc. Investigation revealed that since the company M/s Rose Valley Resort and Plantation was indulged in illegal deposit collection business, SEBI had banned the collection of deposits in the name of M/s. Rose Valley Resorts & Plantation Ltd. vide order dated 24.02.2002. SEBI had also directed the M/s. Rose Valley Resorts and Plantation Ltd. to refund the money collected under the schemes within one month from the date of the order. The order passed by the SEBI was uploaded in the public domain. In compliance with the order of the SEBI dated 24.02.2002, M/s. Rose Valley Resorts and Plantation Ltd. wind up the CIS Scheme and repaid money to the investors. Subsequently during an enquiry by SEBI started from 08.01.2010, the company M/s. Rose Valley Real Estate and Construction Ltd. was also found to be engaged in running "Collective Investment Scheme" and soliciting money from the public in the name of plot selling without having any permission from the SEBI. In order to prevent the activities of M/s Rose Valley Real Estate and Constructions Ltd, SEBI banned the business of the company vide order dated 03.01.2011 and the said order was also uploaded in public domain and published in the newspaper "The Times of India" dated 19.05.2013 for the awareness of general public. Investigation further revealed that though SEBI had banned the company M/s. Rose Valley Resort and Plantation Limited, accused Gautam Kundu, Chairman of M/s. Rose Valley Group continued with illegal deposit collection business with an intention to cheat the public by changing the name of the company M/s. Rose Valley Resorts and Plantation Ltd. to M/s. Rose Valley Hotels and Entertainment Ltd. in the year 2007. In addition to that, with an intention to promote the illegal chit fund business of M/s. Rose Valley Group and to divert the money received from public, accused Gautam Kundu set up media business in the name of M/s. Rose Valley Films Ltd. and BVCL. To carry on the media business with the ulterior motive to promote illegal chit fund business, accused Gautam Kundu wanted to purchase some good films and telecast those films through 'Rupashi Bangla' Channel of BVCL. Investigation further revealed that the petitioner was the chief promoter of SVFEPL which was engaged in production and distribution in the field of media, music, digital cinema, exhibition since 1996. Though Shri Mahendra Soni, Jeewan Das Mohta and Shri Vishnukant Mohta were also the directors of SVFEPL, all the decisions were taken by the petitioner since he was the main director of the company. Despite being in the world of media, the petitioner was closely associated with the Managing Director of M/s. Rose Valley Group who was none else than accused Gautam Kundu and despite having knowledge about the illegal business activities of the Rose Valley Group, he entered into the business alliance which was in the nature of criminal conspiracy to divert the ill-gotten money in the guise of commercial ties.

Investigation further revealed that before entering into an agreement with BVCL, the petitioner and Mahendra Soni, both directors of SVFEPL company had joined in a meeting with accused Gautam Kundu, Shri Satyajit Saha, Director and Shri Kranti Kumar, staff of BVCL at Hotel Taj on 26.01.2010 and in the said meeting, accused Gautam Kundu on behalf of Rose Valley Group and the petitioner on behalf of SVFEPL discussed to promote the actual business i.e Chit fund business of M/s Rose Valley in the garb of business opportunity. In the said meeting, accused Gautam Kundu disclosed about his actual chit fund business in the name of M/s Rose Valley to the petitioner. He further requested the petitioner to promote his media business by supplying good films produced by SVFPL since during the relevant period of time TRP of SVFPL was very high in comparison to other production houses. Accused Gautam Kundu disclosed that his company's actual source of income was deposit collection from the public and he wanted to invest the said money in the media business for branding and promotion of his chit fund business. The petitioner knowing the facts that accused Gautam Kundu was doing illegal chit fund business by collecting the deposits from the public in the name of M/s. Rose Valley agreed to enter into an agreement and other business alliance with accused Gautam Kundu and finally both agreed mutually and decided the agenda vide item numbers 1, 2 & 3 of the minutes of the meeting which was sent by Mahendra Soni on behalf of SVFPL. In a said meeting, Shri Satyajit Saha, Shri Kranti Kumar of BVCL and Mahendra Soni were present. Investigation further revealed that agenda item no. 1 was the film deal i.e. M/s. Rose Valley principally agreed to acquire satellite right of seventy films from SVFPL for a period of three years. Agenda item no.2 was the fiction show i.e.

SVFPL agreed to produce one fiction show for M/s. Rose Valley for 9 p.m. slot.

Rose Valley had suggested launching the show by the end week of February. Further, M/s. Rose Valley approved the concept given by SVFPL and for the said fiction show, M/s. Rose Valley would provide the shooting floor. Agenda item no.3 was the film distribution and M/s. Rose Valley had asked SVFPL to distribute all their upcoming films and Shri Kranti Kumar was to further coordinate with SVFPL on the way forward.

Investigation further revealed that the petitioner as Director of SVFPL had entered into a criminal conspiracy with accused Gautam Kundu to promote the illegal chit fund business in the garb of business transaction with BVCL in spite of knowing the facts that M/s. Rose Valley Group was indulged in an illegal business activities i.e deposit collection from the public which was already banned by the SEBI in the year 2002 and in furtherance of that, an agreement dated 07.04.2010 was signed by Shri Mahendra Soni, Director on behalf of SVFPL and Shri Satyajit Saha, Director on behalf of BVCL for films assignment of sole and exclusive satellite television broadcasting rights in respect of seventy films through its channel 'Rupashi Bangla' at mutually agreed consideration amount of twenty five crores.

Investigation further revealed that as soon as the agreement was signed, total consideration amount of rupees twenty five crores after deducting a sum of Rs.2.5 crores on account of Tax Deducted at source (TDS) i.e Rs 22.50 crores was paid by accused Gautam Kundu to the petitioner by issuing cheques under his own signatures. The total amount of Rs 22.50 crores was debited from the account of BVCL. The said amount was diverted by accused Gautam Kundu in the account of BVCL from M/s. Rose Valley Real Estate & Constructions Ltd. During the relevant period of transaction i.e. 03.04.2010 to 01.07.2010, the major amount credited into the account of BVCL was from M/s. Rose Valley Real Estate & Construction Ltd. (Group Company of M/s. Rose Valley). The Rose Valley Real Estate & Constructions Ltd. was collecting investment from the public in an illegal manner for which the company was banned by the SEBI vide order dated 03.01.2011 and later on 06.01.2016 this company was charge sheeted by C.B.I. in this case. Investigation established that the amount received by SVFPL was actually the ill-gotten money invested to Rose Valley Real Estate & Constructions Ltd. which was transferred to BVCL by accused Gautam Kundu. Investigation further revealed that an amount of rupees nine crores was paid by BVCL by way of a cheque credited on 28.06.2010 in the account of SVFPL (TV & Studio Division). Another cheque for rupees nine crores was credited on 24.04.2010 in the account of SVFPL and another cheque for Rs 4.5 crores was credited on 05.05.2010 in the OD account of SVFPL.

Investigation further revealed that the petitioner did not supply films in spite of full payment received for supply of the films. Out of the seventy films, SVFPL finally supplied only fifty one films and the remaining nineteen films remained unsupplied which showed the actual attitude and intent of the said Company. The petitioner intended to receive the ill-gotton money in the garb of a genuine business deal/agreement but investigation established that by entering into a criminal conspiracy in the form of a business deal with accused Gautam Kundu, the petitioner conspired to cheat the general public since the amount received by him on the guise of the business transaction was the public money.

Investigation further revealed that apart from the film assignment agreement, to promote the chit fund business of M/s Rose Valley Group, SVFPL and BVCL had also entered into another agreement on 23.05.2010 to produce TV Serial "Suhashini" by SVFPL for BVCL @ Rs.1,45,000/- + Service Tax per episode and the said TV Serial was telecasted from 'Rupashi Bangla' channel of BVCL. Further, BVCL also provided shooting floor to SVFPL for the shooting of said TV serial.

Investigation further revealed that in order to bring more and more advertisers for telecasting their advertisements during the intervals of movies of SVFPL, one brochure was designed by using SVF logo and 'Rupashi Bangla' logo so that the advertisers might know that the films of SVFPL, a reputed production house which was known for production of quality films would be shown in the television channel of BVCL. The brochure was shown to the intending advertisers so that they could subscribe their advertisements during the programme which would increase the revenue and prestige of BVCL. Further, in the 'Rupashi Bangla' channel of BVCL, the advertisement of Rose Valley was used to be shown on a regular basis. By such agreement, SVFPL helped BVCL to enhance their revenue generation and also their prestige.

Investigation further disclosed that some differences between BVCL and SVFPL culminated into registration of F.I.R. No.689 of 2011. Finally, SVFPL and its inmate along with two employees of BVCL were charge sheeted. However, the said proceeding was quashed by the Hon'ble Calcutta High Court. Investigation further disclosed that in respect of alleged amount of said agreement dated 07.04.2010 which was the subject matter of the said proceeding, it was not surfaced at that time that the said amount was actually the misappropriated property of the general public invested with M/s. Rose Valley Real Estate & Constructions Ltd. Accordingly, C.B.I. while tracing the trail of money ascertained that SVFPL and its directors had conspired to misappropriate the fund of ill-gotten money. Though in the Baguiati P.S. case, the aggrieved party was BVCL but in the instant case, the aggrieved parties are poor and gullible investors and the public at large. In Baguiati P.S. case, whether the money involved was actually the money invested by poor investors or not, was never investigated.

Investigation further revealed that till 2010-11, the M/s. Rose Valley Group of companies had already raised funds to the tune of Rs.5357,92,82,699/- illegally. The payments made to SVFPL by BVCL was nothing but the investments made by gullible investors illegally collected by M/s. Rose Valley Group. The petitioner despite being a high profile person in the world of media, maintained his relationship with the Managing Director of M/s. Rose Valley Group and entered into business alliance with him, in spite of having fine knowledge about the illegal business activities of the M/s. Rose Valley Group. It is further stated that the illegal act of the companies, conspiracy angle for promoting the chit fund business under the guise of film supply, production of TV Serial, all these factual criminal angles were not placed before the Hon'ble High Court and instead of that, only agreement part was highlighted for treating the matter as civil in nature.

Investigation further revealed that a Divisional Bench of Calcutta High Court appointed an Arbitrator to decide the dispute between BVCL and SVFPL. During the arbitral proceedings, the learned Arbitrator compensated BVCL for the loss of title rights to telecast nineteen films for which it had paid and accordingly, taking average valuation of each film, compensation was awarded to the tune of Rs.6.84 crores to be paid by SVFPL to BVCL along with an interest @ 8% per annum w.e.f. 06.08.2013 to 13.06.2018 and further interest of 9% was directed to be levied on the awarded amount plus the interest amount from 14.06.2013 till the date of actual payment which was to be paid by SVFPL.

3. The earlier bail application of the petitioner was rejected by this Court considering the nature and gravity of the accusation, strong prima facie case available against the petitioner to show his involvement in the economic offence committed by Rose Valley, likelihood of tampering with the evidence when the investigation was at a crucial stage and several bank accounts of the petitioner and his company were under scrutiny to trace out any further money transactions with Rose Valley and above all in the larger interest of society.

4. The learned Sessions Judge, Khurda, Bhubaneswar while rejecting the bail application of the petitioner as per order dated 18.06.2019 in BLAPL No.854 of 2019 has been pleased to hold that the accusations are serious in nature and the evidence, which had been collected, was also peculiar in the sense that the same has origin in the activities of the accused firms. It was held that the possibility of the petitioner trying to tamper with the evidence collected cannot be ruled out, if he is granted bail. It was further held that although charge sheet had been submitted, but the investigation had been kept open and after rejection of the bail application by this Court, there was no material change in the circumstance to grant bail to the petitioner.

5. Mr. Suresh Tripathy, learned Senior Counsel appearing for the petitioner contended that the petitioner is in judicial custody since 24.01.2019 and in the name of carrying out investigation, C.B.I. which is the premier investigative agency in the country has taken away the liberty of petitioner, who is a respectable person in the society, for the reasons that are patently oblique and the investigation is not fair and impartial. He argued that SVFPL was formed way back in 18.09.1995 and it is a reputed Media and Entertainment Company which was doing business in film production, film distribution and television serial production and has produced about one hundred and twenty films since its inception and it has played a pioneer role in taking Bengali cinema to a global platform. It has produced five national award winning films. He argued that a

film assignment agreement was executed between SVFPL as assignor and BVCL as assignee on 07.04.2010 by virtue of which the assignor assigned sole and exclusive satellite television broadcasting rights of seventy feature films to the assignee to be broadcasted through the satellite channel of BVCL namely 'Rupashi Bangla' and the total consideration of the assigned films was rupees twenty five crores. Dispute arose between BVCL and SVFPL when some of the films supplied to BVCL by SVFPL were found to be not technically feasible for telecast and those were not replaced by SVFPL. BVCL launched a criminal prosecution against the petitioner and other directors of SVFPL at Baguiati police station and on completion of investigation, charge sheet was submitted under sections 403, 405, 406, 408, 418, 420 of the Indian Penal Code. The matter was challenged before the Hon'ble Calcutta High Court in CRR No.2927 of 2012 and CRAN No.1887 of 2013 by the petitioner and others and the Hon'ble Court vide judgment and order dated 15.01.2014 quashed the charge sheet. BVCL challenged the order of the Hon'ble Calcutta High Court before the Hon'ble Supreme Court in SLP (Crl.) No.4271-4272/2014 which was dismissed as per order dated 30.11.2015. A retired Judge of the Hon'ble Supreme Court adjudicated the dispute between the parties in an arbitration proceeding and passed an award on 13.06.2018 and directed SVFPL to pay Rs.6.84 crores to BVCL with interest @ 8% per annum from 06.08.2013 till 13.06.2018 and the said award has been challenged by SVFPL before the learned District Judge, Barasat taking recourse to section 34 of the Arbitration and Conciliation Act, 1996 which is subjudiced. He argued that if SVFPL fails, the amount with interest would go to Rose Valley and if SVFPL becomes successful, then the award gets set aside. It is contended that merely because the arbitral award amount of Rs.6.84 crores plus interest which comes to Rs.9.98 crores was not paid by SVFPL to BVCL since the impugned award is under challenge before the proper forum, it cannot be said that the non-refund of balance amount constitutes any criminal offence. According to Mr. Tripathy, the allegations levelled against the petitioner and SVFPL relating to cheating, misappropriation and conspiracy have been adjudicated conclusively by the Hon'ble Calcutta High Court and by the Hon'ble Supreme Court and submission of charge sheet against the petitioner is contemptuous on the face of the orders passed by both the Courts. It is contended that the investigating agency was not fair and impartial and it indirectly tried to defend BVCL what BVCL could not achieve directly and merely because the price of the painting was rupees fifteen lakhs which was paid by way of a cheque and duly reflected in the books of accounts of SVFPL, it cannot be said that the petitioner has committed any criminal offence. It is strenuously argued that the petitioner had neither collected any money from the public either himself nor as an agent of Rose Valley and he had no concern with Rose Valley as he and the company that he formed are independent entities engaged in altogether different business activities. The petitioner had not assured the public to refund money with higher interest. Therefore, the accusation levelled by the C.B.I. against the petitioner that he had cheated the public by not refunding the public money is fallacious and lacks commonsense. A mere meeting of the petitioner with accused Gautam Kundu for commercial purpose cannot be termed as criminal conspiracy as desperately sought to be made out by C.B.I. There was no illegal act agreed to be committed. So far as the offence under section 420 of the Indian Penal Code, the petitioner has neither made any representation to the public nor any demand or deception. He was under no legal obligation to refund Rs.6.84 crores with interest to the public. Thus charge of cheating fails and consequently the criminal conspiracy fails. The business carried out by the petitioner was neither illegal nor forbidden by law and the agreement was also lawful. Once the agreement is recognised as a legally valid document, the non-refund of amount as alleged has to be dealt with in accordance with the said agreement which is basically civil in nature. The learned counsel further contended that the finding of the investigating agency that the petitioner was aware of the illegal activities of Rose Valley is based on no material. SVFPL's agreement was with BVCL, an independent legal entity, duly incorporated under the provisions of the Companies Act, 1956 that suffered no stigma from any quarters then and even till date. As it was authorised by Government of India to broadcast, SVFPL as a business enterprise, entered into the transaction, strictly as per its MOA noted in para 16.6 of the charge sheet. BVCL suffered no restraint order from any quarter and it was legally entitled to have its business with any entity regardless of whether accused Gautam Kundu happened to be its chairman. The commercial transaction of SVFPL was with BVCL by way of an agreement and it was not expected on the part of the petitioner to enquire in detail as to from which source the money came to BVCL or to verify the status of BVCL. It is contended that the petitioner and his company were in film business since 1995 and Rose Valley came at a later point of time and there was no occasion on the part of the petitioner to know that the money which was received by SVFPL by virtue of a valid agreement from BVCL had flown from Rose Valley. It is further contended that in pursuance of the notices under sections 160 and 91 of Cr.P.C., the petitioner appeared before the investigating agency on 29.08.2018, 27.11.2018 and 04.12.2018 and produced all the relevant documents including judgment, order and award and the arrest of the petitioner was illegal, capricious, unjustified and reflects abuse of power. Learned counsel emphasised that it was not a case of money trailing which means money parked unlawfully and whose identity is undisclosed rather it is a case of valid contract between the two parties. He argued that C.B.I. is now stated to be probing the role of Shri Rajiv Kumar, I.P.S., who is alleged to have destroyed evidence as SIT chief while looking into chit fund scam. The said Rajiv Kumar is now armed with an order of anticipatory bail granted by Hon'ble Calcutta High Court. He argued that 'Jayo He' is an annual charitable event hosted by Kolkata police in collaboration with W.B. Government. Star TV had purchased the rights of the event and petitioner's company was engaged by Star TV to produce the programme. According to the learned counsel, there is no chance of absconding of the petitioner or tampering with the evidence and the case is under investigation since 2014 and four charge sheets have already been submitted so far including the last one against the petitioner and there is nothing left for further investigation so far as the petitioner is concerned. Accused persons who were M.D./Director of Chit Fund Companies have been released on bail either by this Court or by Hon'ble Supreme Court. Investigation is complete and C.B.I. has laid no material that petitioner would not join the trial as and when it takes place. The petitioner is suffering from different ailments and he has already suffered brain strokes twice for which he was hospitalized at S.C.B. Medical College & Hospital, Cuttack and AIIMS Hospital, Bhubaneswar and therefore, the bail application of the petitioner may be favourably considered. He placed reliance in the decision of the Hon'ble Supreme Court in the cases of Shri P. Chidambaram -Vrs.- Central Bureau of Investigation in Criminal Appeal No. 1603 of 2019 delivered on 22.10.2019 and P. Chidambaram -Vrs.- Directorate of Enforcement delivered on 04.12.2019.

Mr. Kali Charan Mishra, learned Special Public Prosecutor for C.B.I. produced the case records and submitted that though in the first three charge sheets, there was nothing against the petitioner but in the fourth charge sheet, it is clearly mentioned as to how the petitioner being a Director of SVFPL entered into criminal conspiracy with accused Gautam Kundu, Chairman of Rose Valley and others to misappropriate the public fund illegally collected by Rose Valley in the garb of an agreement for telecast right of Bengali feature films to the BVCL. The petitioner was having knowledge about the illegal chit fund business activities of Rose Valley Group and its Chairman accused Gautam Kundu and in spite of that, he held meetings with him secretly and entered into the business alliance with such Group as a result of which after execution of an agreement, ill-gotten money was diverted from BVCL to SVFPL in the guise of commercial ties. He fairly submitted that even though the petitioner was not holding any post in the Rose Valley Group but since the Hon'ble Supreme Court has directed to investigate the money trailing aspect, during investigation of the case, it came to light that there has been money trailing from Rose Valley to BVCL and then from BVCL to SVFPL and the public money collected by Rose Valley illegally was utilised in an illegal way for the sake of production of films to be telecasted in 'Rupashi Bangla' channel and such telecast had also an illegal purpose to promote chit fund business activities of Rose Valley Group. It is argued that the role played by the petitioner in flourishing the business activities of Rose Valley cannot be said in any way minimal in nature rather by such telecast of films in the 'Rupashi Bangla' channel and the advertisements of Rose Valley shown during the telecast, allured the investors to make huge investment that increased the collection of deposits from general public which was the real purpose behind the telecast. He submitted that from the record, it is evident that the total collection of Rose Valley Group since beginning till 2010-11 was Rs.5357,92,82,699/- only but during the year 2011-12, the total collection raised to Rs.3322,67,60,290/- in a single year and raised further in the year 2012-13. He further contended that the submission of the learned counsel for the petitioner that there was no fair investigation by C.B.I. is not correct inasmuch as while submitting the fourth charge sheet, it is clearly mentioned that prosecutable evidence against Kranti Kumar, Satyajit Saha and Mahendra Soni was not found. He further contended that on the report of accused Gautam Kundu, Baguiati Police Station of Kolkata had registered a case of cheating against the petitioner for not supplying all the films as per agreement even after getting the full payments for the same and for non-refunding of the money by SVFPL to BVCL. Though other accused persons of the said case were duly arrested by the police but the petitioner and his family members (who were the directors of SVFPL) like his brother and father were not arrested by police which indicates the influence of the petitioner over local police. The police filed charge sheet against the petitioner and others in the said case without bringing anything regarding the criminality aspects like cheating and misappropriation of the ill-gotten fund of Rose Valley for which the petitioner succeeded before the Hon'ble Calcutta High Court and Hon'ble Supreme Court of India in projecting the said case as a civil matter. He submitted that the investigation in that case was in a different context and not related to the source of money of BVCL which led to the business activities between the parties and an award has been passed against SVFPL in an arbitration proceeding which is also under challenge before the appropriate forum. It is submitted that further investigation is continuing in respect of the charge sheeted accused persons, commission/omissions on the part of the regulatory authorities, larger conspiracy and money trailing and in fact the investigation is at a crucial stage and the copies of ledger for the period from the year 2008 to 2011 were not provided by SVFPL till today even after much persuasion. The petitioner and his company SVFPL were associated with the arrangements of the annual programme of Kolkata Police named 'Jayo He' which was sponsored by Star TV as revealed from the statement of Shri Rajesh Bajaj, Vice President of Star TV. Investigation regarding 'Jayo He' cultural programme for Kolkata Police Family Welfare Centre arranged by the petitioner is under investigation. This is quite significant, since the investigation revealed so far that the petitioner was having influence over the Kolkata Police/West Bengal Police and high officers/politicians of the State of West Bengal. Similarly, SVFPL has not provided the details of payment with supporting documents in respect of organization of the aforesaid programme 'Jayo He' for which it affected the smooth investigation. The Call Data Records of the petitioner established that he had called Chief Minister's office and Commissioner of Police, Kolkata number of times during the period from 01.01.2018 to 29.01.2019. Even on the day of his arrest, the petitioner used his contacts with high level personalities of West Bengal as a result of which Kasba Police Station Officers visited the office of the petitioner and unduly intervened in the job of the C.B.I. team which had reached there. The statement of Satyajit Saha recorded under section 161 of Cr.P.C. was placed with regard to seeking help of the petitioner to promote business of accused Gautam Kundu and to extend the help of State administration including police to the Rose Valley Group. It is further contended that the employees association of Tara TV, owned by Sardha Group had filed a petition before the Hon'ble Calcutta High Court with the intention of running the said channel which was on the verge of collapse due to Sardha scam. The State Government of West

Bengal had stated before the Hon'ble Court that they would support the survival of Tara TV. As per the direction of the Hon'ble Calcutta High Court, the name of the petitioner was proposed by the Government of West Bengal as one of the members of the Committee to be constituted to supervise the functioning of the Tara TV since the petitioner had a close contact with political party in power of the State and also with local administration including State police. While concluding the argument, it is submitted by Mr. Mishra that whenever the petitioner requiring any medical treatment, the same was provided to him in Specialised Government Hospitals and there is no negligence on the part of the jail authorities in that respect and therefore, the ailment of the petitioner cannot be a ground to grant him bail. He placed reliance in the cases of Nimmagadda Prasad -Vrs.- C.B.I. reported in (2013) 55 Orissa Criminal Reports (SC) 833, C.B.I. -Vrs.- V. Vijay Sai Reddy reported in (2013) 7 Supreme Court Cases 452, Ram Chandra Hansdah -Vrs.- Republic of India reported in (2015) 62 Orissa Criminal Reports 219, K.K. Jerath -Vrs.- Union Territory, Chandigarh reported in (1998) 4 Supreme Court Cases 80, State of Madhya Pradesh -Vrs.- Kajad reported in (2001) 21 Orissa Criminal Reports (SC) 507, State of Maharashtra -Vrs.- Captain Buddhikota Subha Rao reported in A.I.R. 1989 S.C. 2292 and C.B.I. -Vrs.- Ramendu Chattopadhyay passed by the Hon'ble Supreme Court in Criminal Appeal No.1711 of 2019 decided on 19.11.2019.

6. There is no dispute that the case relates to commission of economic offences which involves huge loss of investors' money invested in the companies of Rose Valley. Large number of innocent depositors invested their hard-earned money with the hope of getting higher rates of interest which is stated to have been misappropriated. In the case of Y.S. Jagan Mohan Reddy -Vrs.- C.B.I. reported in (2013) 55 Orissa Criminal Report (SC) 825, it is held as follows:-

"15. 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.

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 public/State and other similar considerations."

In case of State of Gujarat -Vrs.- Mohan Lal Jitamal Torwal reported in A.I.R. 1987 S.C. 1321, it is held as follows:-

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

In the case of Nimmagadda Prasad (supra), it was held that economic offences have serious repercussions on the development of the country as a whole. Such offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

In the case of Ram Chandra Hansdah (supra), it is held that economic offences are considered grave offences as it affects the economy of the country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously. Economic offence is committed with cool calculation and deliberate design solely with an eye on personal profit regardless of the consequence to the community.

In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and State.

The nature and seriousness of an economic offence and its impact on the society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail applications.

In the case of Ramendu Chattopadhyay (supra), it is held as follows:-

"8. This Court is conscious of the need to view such economic offences having a deep-rooted conspiracy and involving a huge loss of investors' money seriously. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key role in the promotion of the chit fund scam described supra, thereby cheating a large number of innocent depositors and misappropriating their hard-earned money.

9......Moreover, it is relevant to note that the investigating agency has not yet assessed the exact total amount invested by the people of Orissa in the accused company, so as to find out the specific liability of the company in that regard. However, it is argued by both the Counsel that the amount may be about Rs. 350 Crores. Be that as it may, having regard to the material on record, and since a huge amount of money belonging to investors has been siphoned off, as well as for the aforesaid reasons, the High Court, in our considered opinion, should not have released the Respondent on bail."

7. The case in hand not only involves public interest at large as they are the real sufferers but also there is accusation of criminal conspiracy between the accused Gautam Kundu and the petitioner to expand the chit fund business activities of Rose Valley and the petitioner has played his part whereby the illegal object of huge investment by innocent people was fulfilled. In the case of V. Vijay Sai Reddy (supra) while considering a case of grave economic offence, Hon'ble Supreme Court held that if there is specific allegation by the prosecution that an accused in question was a party to the criminal conspiracy, neither the Special Court nor the High Court would be justified in granting bail to the said person.

In the case of K.K. Jerath (supra), it is held that in considering a petition for grant of bail, necessarily if public interest requires detention of citizen in custody for purposes of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence.

8. This is the second or successive bail application of the petitioner. The change in the circumstance is stated to be submission of charge sheet within ten days of rejection of the first bail application. The said charge sheet is not the final one but it appears that further investigation on some important aspect is still continuing. Filing of the charge sheet may be treated as a changed circumstance enabling the accused to file a fresh bail application after rejection of his previous one under section 439 of the Cr.P.C. but unless the change is a substantial one, the Court cannot take a different view particularly when the accusation is serious one and further investigation relating to the role played by the accused is still pending and more over public interest is involved in the case. In the case of Kajad (supra), Hon'ble Supreme Court held that successive bail applications are permissible under the changed circumstances but without the change in the circumstances, the second application would be deemed to be seeking review of the earlier judgment which is not permissible under the criminal law. In the case of Captain Buddhikota Subha Rao (supra), it is that once the bail application is rejected, there is no question of granting similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation and the change means a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence.

9. Keeping in view the aforesaid settled principle of law and adverting to the contentions raised by the learned counsel for the respective parties and on a careful scrutiny of the case records and the documents submitted by the parties, the following things emerge:

(i) The investigation of the case commenced in the year 2014 after the order dated 09.05.2014 was passed by the Hon'ble Supreme Court in W.P. (Civil) No.401 of 2013 and W.P. (Civil) No.413 of 2013. First charge sheet was submitted on 06.01.2016, second charge sheet was submitted on 26.04.2017 and third charge sheet was submitted on 15.05.2018 but till submission of third charge sheet, there was no accusation against the petitioner.

(ii) SEBI in its order dated 24.12.2002, in exercise of its powers conferred under section 11B read with section 4(3) of the Securities and Exchange Board of India Act, 1992 (hereafter 'SEBI Act') and regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999 (hereafter 'CIS Regulations'), directed M/s. Rose Valley Resorts and Plantations Ltd., Kolkata to refund the money collected under the collective investment schemes with returns which was due to the investors as per the terms of the offer within a period of one month from the date of order, failing which consequential actions, inter alia, like initiation of prosecution proceedings under section 24 of the SEBI Act would be taken against the company.

(iii) SEBI in exercise of its powers conferred under section 11B of the SEBI Act and regulation 65 of CIS Regulations in its order dated 03.01.2011 directed M/s. Rose Valley Real Estates and Constructions Ltd. not to collect any money from the investors or to launch any scheme, not to dispose of any of the properties or delineate assets of the Ashirbad Scheme and not to divert any fund raised from public at large kept in bank account and/or at the custody of the company.

(iv) SEBI published an advertisement in the Times of India on dated 19.05.2013 in the public interest by cautioning the general public that none of the companies of Rose Valley Group had obtained a certificate of registration from SEBI to run a collective investment scheme to raise money from the investors.

(v) The whole time Member of SEBI in exercise of the powers conferred under sections 11(1), 11B and 11(4) of the SEBI Act read with regulation 65 of CIS Regulations in the order dated 10.07.2013 directed M/s. Rose Valley Hotels and Entertainments Ltd. and its Directors not to collect any more money from the investors under the existing schemes, not to launch any new schemes, not to dispose of any of the properties or alienate any of the assets of the schemes and not to divert any funds raised from public which were kept in bank accounts and/or in the custody of the company.

(vi) A film assignment agreement was executed between SVFPL as assignor and BVCL, a sister concern of Rose Valley as assignee on 07.04.2010, by virtue of which the assignor assigned the sole and exclusive satellite television broadcasting rights of seventy feature films to the assignee to be broadcasted through the satellite channel of BVCL namely 'Rupashi Bangla' and the total consideration of the assigned films was Rs.25 crores.

(vii) The petitioner being a Director of SVFPL stated to have knowledge about the illegal chit fund business activities of Rose Valley Group and in spite of that he held secret meetings with accused Gautam Kundu and entered into criminal conspiracy with him and others to misappropriate the public fund illegally collected by Rose Valley in the garb of such agreement for telecast right of Bengali feature films to BVCL.

(viii) There is allegation of money trailing from Rose Valley to BVCL and then from BVCL to SVFPL and the public money collected illegally was utilised in an illegal way for the sake of production of films to be telecasted in 'Rupashi Bangla' channel for promoting chit fund business activities of Rose Valley Group.

(ix) Dispute arose between BVCL and SVFPL when some of the films supplied to BVCL by SVFPL were found to be not technically feasible for telecast which were not replaced by SVFPL and SVFPL also did not refund the money to BVCL for which BVCL launched criminal prosecution against the petitioner and other Directors of SVFPL at Baguiati police station, in which after completion of investigation, charge sheet was submitted. The investigation in that case was in a different context and not related to the source of money of BVCL which led to the business activities between the parties.

(x) Submission of charge sheet was challenged by the petitioner and others before Calcutta High Court in CRR No.2927 of 2012 and CRAN No.1887 of 2013 and the Hon'ble Court quashed the charge sheet as per judgment and order dated 15.01.2014. BVCL challenged the order of the Calcutta High Court before the Hon'ble Supreme Court which was dismissed as per order dated 30.11.2015.

(xi) A retired Judge of the Hon'ble Supreme Court adjudicated the dispute between the parties in an arbitration Proceeding and passed the award on dated 13.06.2018 and directed SVFPL to pay Rs.6.84 crores to BVCL with interest @ 8% per annum from 06.08.2013 till 13.06.2018.

(xii) The total outstanding amount to be paid by SVFPL to BVCL as per the award passed in the arbitration proceeding is Rs.9.98 crores. The arbitral award has been challenged by SVFPL before the learned District Judge, Barasat taking recourse to section 34 of the Arbitration and Conciliation Act, 1996 which is subjudiced.

(xiii) The petitioner through his company SVFPL purchased paintings drawn by a powerful political leader of West Bengal from an exhibition organized by 'Jago Bangla' held in Kolkata during the year 2011-13 for a declared amount of Rs.15,00,000/-(rupees fifteen lakhs), which according to the C.B.I. came from the funds received from BVCL.

(xiv) The petitioner is stated to have close links and influence over some of high level personalities including the politicians of the State of West Bengal.

10. It is well settled principle of law that while dealing with an application for grant of bail, the Court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy itself as to whether there

is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

Even though till submission of third charge sheet, there was no material against the petitioner but thereafter during course of further investigation, it was found out that the petitioner was the chief promoter and main director of SVFEPL and all the decisions of the company were taken by the petitioner. The petitioner's close link with accused Gautam Kundu was traced out and it was found that accused Gautam Kundu being well aware that the petitioner is a top producer of Bengali film industry known for production of quality films and wielding considerable clout and influence on the television audience, he wanted the Bengali films produced by the petitioner to be telecasted in the channels of BVCL for capturing more and more audience. The petitioner entered into the business alliance with the accused Gautam Kundu which was in the nature of criminal conspiracy to divert the ill-gotten money of Rose Valley in the guise of commercial ties. Secret meetings were held between them. Accused Gautam Kundu disclosed before the petitioner about his actual chit fund business and requested him to promote his media business by supplying good films produced by SVFPL which would be utilised for branding and promotion of his chit fund business. The petitioner knowing all the facts regarding illegal chit fund business of Rose valley and that it was banned by SEBI in the year 2002, entered into an agreement and other business alliance with accused Gautam Kundu for films assignment relating to sole and exclusive satellite television broadcasting rights in respect of seventy films through channel 'Rupashi Bangla', a channel of BVCL for consideration amount of twenty five crores. The agreed amount after deducting TDS was diverted by accused Gautam Kundu in the account of BVCL from M/s. Rose Valley Real Estate & Constructions Ltd. and then credited in the account of SVFPL. The petitioner intended to receive the ill-gotten money in the garb of a genuine business deal/agreement with accused Gautam Kundu and conspired to cheat the general public since the amount received by him on the guise of the business transaction was the public money. One brochure was designed by using SVF logo and 'Rupashi Bangla' logo which was shown to the intending advertisers so that they would subscribe their advertisements during the programme which would increase the revenue collection and prestige of BVCL. In the 'Rupashi Bangla', the advertisement of Rose Valley was shown on a regular basis and in that process, SVFPL helped BVCL to enhance its revenue generation and also its prestige.

The dispute between BVCL and SVFPL, lodging of prosecution by BVCL against SVFPL and the petitioner, quashing of the criminal proceeding, passing of award in the arbitration proceeding and challenge to such award are not very much relevant in adjudicating the bail application. The crux of the matter is from which source money came to BVCL that passed to SVFPL. What was the real purpose behind money trailing to SVFPL? Why such an agreement was executed? What benefit Rose Valley achieved due to such agreement? Who were the sufferers? How the business activities of Rose Valley flourished in spite of ban order imposed by SEBI? The investigation has unearthed many vital links between the petitioner with accused Gautam Kundu and also with other high level personalities and politicians. Many more important areas of the case are still under investigation.

11. Coming to the contention raised by the learned counsel for the petitioner that the investigation is not fair and impartial, it is not in dispute that a fair, impartial, truthful and independent investigation is crucial to the preservation of the Rule of law and in the ultimate analysis to liberty itself. Mere accusation against the investigating agency is not acceptable. Learned counsel has failed to bring any specific instances to substantiate any kind of unfairness or impartiality committed by the investigating agency rather I find that the investigation in the present case is being conducted responsibly and impartially by an officer of the rank of Deputy Superintendent of Police, C.B.I. and that is how while submitting charge sheet against the petitioner, the investigating agency mentioned that there is no prosecutable evidence against three persons though initial accusations were made against them.

The further contention made by the learned counsel for the petitioner that submission of charge sheet against the petitioner is contemptuous on the face of the orders passed by the Hon'ble Calcutta High Court and Hon'ble Supreme Court is not at all acceptable inasmuch as the investigation in Baguiati police station case was in a different context and not related to the source of money of BVCL and money trailing from Rose Valley to BVCL and then to SVFPL which led to the business activities between the petitioner and accused Goutam Kundu. It was held in the said case that the dispute between BVCL and SVFPL was civil in nature for which the criminal proceeding was quashed.

On scrutiny of the case records, it is apparent that there is no material collected till now that the petitioner had either collected any money from the public himself or as an agent of Rose Valley or had assured the public to refund money with higher interest but the contention of the learned counsel for the petitioner that the petitioner had no concern with Rose Valley is very difficult to be accepted particularly in view of the statements of witnesses that a meeting was held between the petitioner and accused Gautam Kundu in the Hotel Taj where discussion took place to promote the chit fund business of Rose Valley and the petitioner was requested to promote the media business of BVCL by supplying good films produced by SVFPL which would be utilised for promotion of chit fund business of Rose Valley. The petitioner's company SVFPL then entered into an agreement to produce Bengali feature films for BVCL which were telecasted in 'Rupashi Bangla' Channel and commercial advertisement of Rose Valley shown during telecast boosted the business of Rose Valley which led to huge investment made by the public.

Contention was raised by the learned counsel for the petitioner that prima facie ingredients for commission of offence under section 420 of the Indian Penal Code against the petitioner is not made out as he has neither made any representation to the public nor any demand or deception and he has also no legal obligation to refund any money to the public. It cannot be lost sight of the fact the deception by Rose Valley was continuing when the petitioner joined with accused Gautam Kundu and the plan was chalked out secretly and the petitioner performed his part successfully and thereby the investment in Rose Valley increased substantially and the illegal object was achieved. It was not a sheer commercial transaction between BVCL and SVFPL but the crafty investigation raised the curtains to show what the reality behind such transaction was. Even though this Court is not supposed to adjudicate in this bail application whether the object or consideration of the agreement between BVCL and SVFPL was unlawful and opposed to public policy and therefore void but certainly the materials collected during investigation to show the consequence of such agreement and after effects of telecasting of Bengali feature films produced by SVFPL in the satellite channel of BVCL namely 'Rupashi Bangla' and publicity of Rose Valley during the telecast, cannot be ignored.

The further contention raised by the learned counsel for the petitioner that there was no occasion on the part of the petitioner to know that the money which was received by SVFPL by virtue of a valid agreement from BVCL had flown from Rose Valley cannot be accepted at this stage. Cat closes its eyes while drinking milk and thinks nobody is watching it. In view of the communication made between the petitioner and accused Gautam Kundu before execution of agreement which is stated by the witnesses, such ignorance plea is not acceptable.

In the case of Shri P. Chidambaram (supra) cited by the learned counsel for the petitioner, it is held that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on its facts and circumstances and on its own merits. The discretion of the Court has to be exercised judiciously and not in an arbitrary manner. In the case of P. Chidambaram (supra) cited by the learned counsel for the petitioner, it is held that even if the allegation is one of grave economic offence, it is not the 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. It is further held that 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.

12. Physical ailment of the petitioner is taken as a ground for his release on bail. It appears that the petitioner was shifted to AIIMS, Bhubaneswar and S.C.B. Medical College & Hospital, Cuttack whenever there was necessity. The treatment papers were also produced by the parties. In absence of any negligence on the part of the jail authorities in providing proper treatment to the petitioner, bail cannot be granted on that ground. It is expected that such facility will also be provided to the petitioner in the Specialised Government Hospital in future at the time of need.

13. Some of the co-accused persons have been released on bail and the learned counsel for the petitioner produced the copies of bail orders but when the petitioner has played a key role in ensuring huge investment of public money in Rose Valley and his part is still under investigation, he cannot claim parity with others.

14. Considering the facts and circumstances of the case, at this juncture, when the petitioner's key role in the commission of economic offence by Rose Valley is prima facie apparent, there is deep rooted criminal conspiracy to cheat the public with an eye on personal profit, large number of innocent depositors have been duped of their hard-earned money, there was cool calculation and deliberate design by the accused persons to flourish the illegal chit fund business activities of Rose Valley and further investigation is at a crucial stage and the release of the petitioner who is a very influential person having close contacts with high level personalities and politicians of West Bengal is likely hamper such investigation, in the larger interest of public and State, I am not inclined to release the petitioner on bail.

15. Rose Valley's lucrative offer and mirage of huge outturn on investments as projected successfully during telecast of Bengali feature films produced by the petitioner's company in satellite channel 'Rupashi Bangla" mesmerised the gullible investors and they could not realise that all that glitters is not gold. For collecting pearl of high interest, they drowned themselves in the sea of treachery. Before they could wake up from their deep slumber, they had already been trapped and squeezed and were left only with tears in their eyes which never dried up. The incomprehensible pain and sufferings of those hundreds and thousands of investors are apparent and nobody knows when and how they would get back their money. Business tycoons have played the game with people's money very cunningly with active support of some of the high level politicians, police officials and film personalities. It was bed of roses for them but bed of thorns for the investors.

In view of the foregoing discussions, the bail application of the petitioner sans merit and hence stands rejected.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.

Urgent certified copy of this order be granted on proper application.