



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 9th DAY OF MAY 2022

BEFORE

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA
CRIMINAL MISC. PETITION (MAIN) No. 856 OF 2022

Between:-

VIKAS BANSAL
S/O LATE SH. NARESH GUPTA,
R/O OPPOSITE DEVI MANDIR,
LADAWA, DISTRICT KURUKSHETRA,
HARYANA, AGED 44 YEARS.

.....PETITIONER

(BY SH. AJAY KOCHHAR, ADVOCATE)

AND

CENTRAL BUREAU OF INVESTIGATION

.....RESPONDENT

(BY SH. ANSHUL BANSAL, SPECIAL PUBLIC
PROSECUTOR)

Whether approved for reporting?

*This petition coming on for orders this day, the
Court passed the following:-*

ORDERS

Vide R.C. No. 0962019A0002, a case has been registered by the Central Bureau of Investigation (for short CBI) under Sections 409, 419, 465, 466, 471 read with Section 120(B) of the Indian Penal Code (in short IPC) and

Sections 13 (1) (c) and 13 (1) (d) read with 13(2) of the Prevention of Corruption Act at Police Station CBI, ACB Railway Board Building, The Mall Shimla. Petitioner was arrested in this case on 08.04.2022. A bail petition preferred by him under Sections 439 of the Code of Criminal Procedure was dismissed by learned Special Judge (CBI), Shimla on 13.04.2022. Through instant petition, he seeks his release on regular bail.

2. Gist of Allegations.

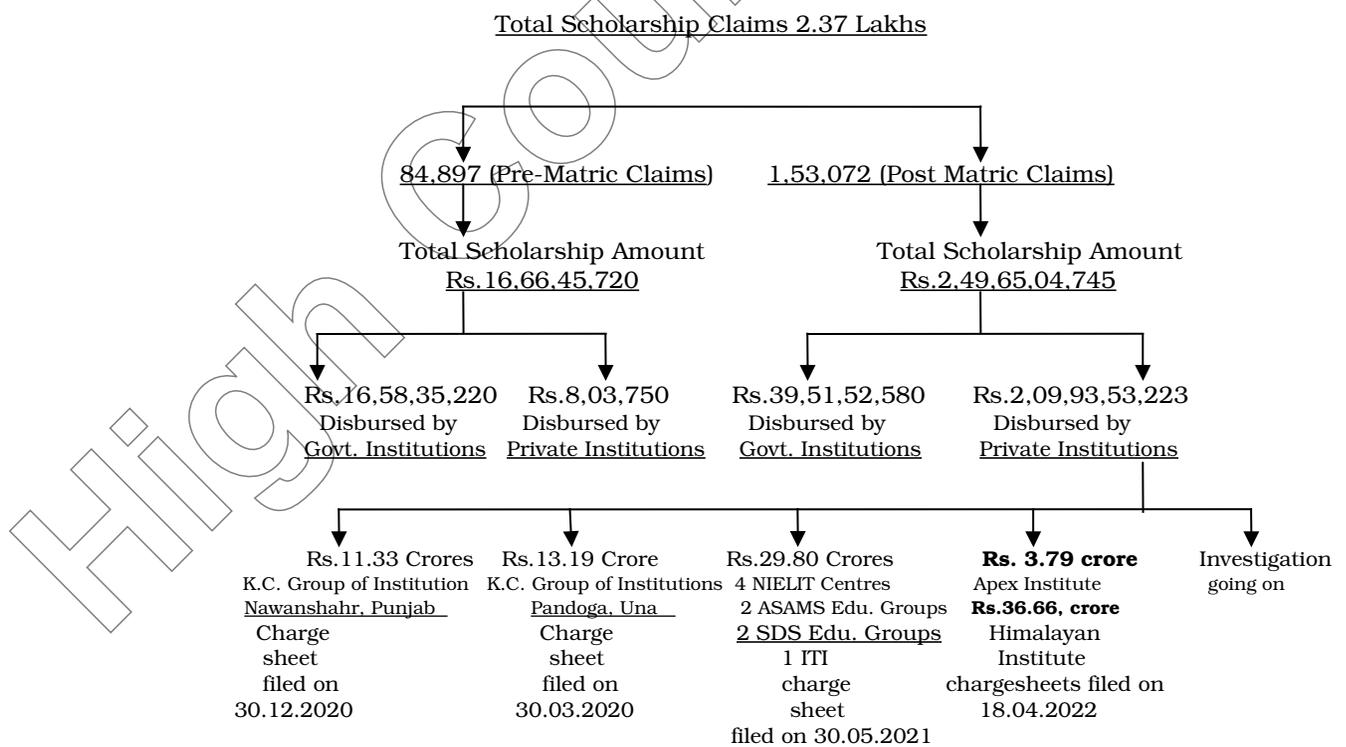
The aforementioned case is in respect of alleged misappropriation of government scholarship funds on large scale with complicity of officials working in the Education department, Central Government, Banks and private institutions.

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 postmatric scholarship funds alleged to have been illegally siphoned off through private institutions:-



26 institutions were taken up for investigation by the CBI on the basis of their scholarship claims.

2(iii) Charge sheet for misappropriation of scholarship funds amounting to Rs. 13.19 crore in respect of K.C. Group of

institutions Pandoga, District Una was filed before the Court of Special Judge CBI, Shimla on 30.03.2020 by keeping the investigations open under Section 173(8) of Cr.P.C. Second charge sheet was filed on 30.12.2020 in respect of K.C. Group of institution at Nawanshehar, Punjab for misappropriation of scholarship fund of Rs. 11.33 crore. Chargesheet in respect of misappropriation of scholarship amount of Rs.29.80 crores by nine other institutions (NIELIT/ITI in Himachal Pradesh) was filed on 30.05.2022.

2(iv) During investigation, it came out that the Apex institute had dishonestly claimed an amount of Rs.3.79 crores for the students of SC/ST/OBC category from the Directorate of Higher Education Government of Himachal Pradesh. An amount of Rs.36.66 crores was dishonestly claimed by Himalayan Group of Professional Institute. It was also revealed in the investigation that none of the students shown to have been enrolled in these Institutions, were admitted in the institutions.

3. Alleged role of petitioner :-

Petitioner was the Vice chairman of Apex Institute as well as Himalayan Group of Professional Institute, Kala amb, Himachal Pradesh. He was actively involved in the affairs of the institutes. In conspiracy with Mr. Rajneesh Bansal-the Chairman of the institutions, he had dishonestly claimed scholarship amounts from the Directorate of Education, Himachal Pradesh causing huge loss to the Government exchequer. A lot of irregularities and forgeries were committed for obtaining the false scholarship of the

students, who had not even studied in the institutions in question. Fake bank accounts of students were opened without the knowledge of the students. Apex institution had dishonestly claimed an amount of Rs. 3.79 crores for the students of SC/ST/OBC categories from the Directorate of Higher Education of Himachal Pradesh during the years 2013-2017. Petitioner was also actively involved in dishonestly claiming Rs.36.66 crores towards scholarship amount of non-existing students from the Directorate of Higher Education of Himachal Pradesh on behalf of Himalayan Group of Professional Institute. Money was transferred in the account of the institutes pursuant to criminal conspiracy involving the petitioner and others. The investigation revealed that none of the students shown to have been enrolled in these institutions, were admitted in the institutions. The payments of scholarships were made in the bank accounts operated by the petitioner and his brother.

4. Events

4(i) The petitioner was arrested on 8.4.2022. He was remanded to police custody till 10.4.2022. At the instance of CBI, he was sent to judicial custody on 11.4.2022 where he is lodged till date.

4(ii) Hitesh Gandhi, Vice President of K.C. Group of Institutions, a co-accused in the charge-sheet filed by the CBI was arrested on 03.01.2020. He was enlarged on regular bail on 24.09.2020 in Cr.M.P.(M) No. 1162 of 2020. Arvind Rajta-one of

the government official, who is the main accused alleged to have released the scholarship funds to different institutions, was arrested on 03.01.2020. He has also been enlarged on bail on 24.09.2020 in Cr.M.P.(M) No. 1040 of 2020. One other co-accused Surinder Pal Singh, working as cashier in Central Bank of India, arrested on 03.01.2020, was enlarged on bail vide order dated 11.06.2020, passed in Cr.M.P.(M) No. 409 of 2020. Mangal Singh Negi, the then Branch Manager Allahabad/Indian Bank has been granted interim anticipatory bail in Cr.M.P.(M) No. 321 of 2021. Smt. Babita Rajta was enlarged on bail in Cr.M.P.(M) No. 369 of 2021 decided on 26.03.2021.

5. Submissions

5(i) Learned Senior Counsel for the petitioner prayed for release of the petitioner on bail. His precise submissions are that FIR was registered on 16.11.2018. It was entrusted to CBI on 20.03.2019. As per its own showing, the CBI has to investigate 26 private institutes in all. Even after about two years, CBI has been able to file charge-sheet only with respect to a few institutes i.e. K.C. Group of Institutions Pandoga, District Una and K.C. Group of Institutions Nawanshehar, Punjab, NIELIT/ITIs in Himachal Pradesh, Apex Institute of Management Indri Karnal and Himalayan Group of Professinkal Institute Kala-Amb, H.P. Pace of investigation in the case is very slow. The CBI is yet to investigate dozens of private institutes. Petitioner cannot be

incarcerated in custody for an uncertain period of time which may traverse to years together.

5(ii) The alleged role of the petitioner is limited only in the capacity as Vice Chairman of Apex Institute of Management & Himalayan Group of Professional Institute. The investigation in respect of these institutes is complete and chargesheet stands filed. Under these circumstances, further incarceration of the petitioner is not warranted.

5(iii) Petitioner ever since registration of FIR in 2018 has been participating and co operating in the investigation by the CBI. He remained in police remand for three days. It was at the instance of the CBI itself that petitioner was sent to judicial custody on 11.4.2022. This fact itself is an indication that the investigation vis-a-vis the petitioner is complete.

5(iv) Citing various judgments in support of his prayers for release of the petitioner on bail, learned Senior Counsel submitted that the petitioner, aged about 58 years, has deep roots in the society and will not flee from justice. He is not in a position to tamper with the prosecution evidence or influence the prosecution witnesses. He will abide by all the terms and conditions, which may be imposed upon him by this Court and will join investigation as and when the respondent directs him to do so.

6. Learned Special Prosecutor for the CBI opposed the bail on the grounds that :-

6(i) Investigation in the FIR is still going on. Many private educational institutes are still to be investigated. No timeline can be given for completion of the investigation in respect of all the private institutes involved. As of now, investigation into K.C. Group of Institutions at Pandoga, District Una as well as at Nawanshehar, NIELIT/ITI in Himachal Pradesh, Apex Institute at Indri Karnal and Himalayan Group of Professional Institute, Kala-Amb Himachal Pradesh has been completed and charge-sheets regarding these institutions have already been presented before the competent Court.

6(ii) The investigation conducted into the affairs of Apex Institute of Management & Himalayan Group of Professional Institute has practically proved the petitioner to be guilty of grave socio economic offence as not only financial loss has been caused to the State Government, but the students of weaker section of society have also been deprived of their legitimate dues. In the event of conviction of the petitioner severe punishment has been prescribed in law.

6(iii) In respect of the Apex Institute of Management & Himalayan Group of Professional Institute, the respondent though has completed entire investigation and chargesheet has also been filed in the court of competent jurisdiction, however, there is strong apprehension that in case of enlargement on bail, petitioner will try to win over the witnesses and tamper the prosecution evidence. It has been submitted that petitioner is a

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

7. 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.

7(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. The petitioner was arrested on 8.4.2022. He remained in police custody till 10.4.2022. At the instance of CBI, he was sent to judicial custody on 11.4.2022.

7(ii) 22/26 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, investigation into K.C. Group of Institutions, Pandoga, District Una for misappropriation of scholarship amount of Rs. 13.19 crore and investigation into K.C. Group of Institution Nawanshehar, Punjab for misappropriation of scholarship amount of Rs. 11.33 crore

has been completed. Investigation in respect of misappropriation of scholarship amount of Rs. 29.80 Crores in nine institutions (NIELIT/ITI) has also been completed. Charge sheets in this regard stand filed before the competent Court. As per the stand taken by the respondent during hearing of the case, entire investigation with respect to the illegal disbursement of scholarship amount in the Apex Institute of Management & Himalayan Group of Professional Institute allegedly at the instance of petitioner & some other persons is complete and charge sheet in this regard has already been filed. Petitioner is stated to be Vice chairman of these institutions.

7(iii) Investigation into various other private educational institutions is yet going on. CBI has not been able to indicate any timeline whatsoever about completion of investigation. It has also taken about two years and ten months for completing the investigation of a few private institutions i.e. K.C. Group of Institution at Pandoga, District Una and K.C. Group of Institution at Nawanshehar, Punjab, NIELIT/ITI etc.

7(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 institutions. Accused Hitesh Gandhi, Arvind Rajta and Surinder Singh, arrested on 03.01.2020, have already been enlarged on bail. Mangal Singh Negi has also been granted interim anticipatory bail. All of them

are facing the same FIR and it has been alleged that all of them alongwith petitioner and others had conspired.

7(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.

7(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.

7(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.”

7(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.

7(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 unconvicted 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 unconvicted 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 tampering 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 allay the apprehension expressed by CBI."

These principles were reiterated in **(2017) 5 SCC**

218, titled **Manoranjana Singh Versus CBI**.

7(v)(6) In **AIR 2019 SC 5272**, titled **P. Chidambaram v. 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.”

7(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."

7(vi) It is the case of the respondent that it has conducted searches and seized material and record from 22/26 private institutions, including the institute involving the petitioner.

It has been the stand of the respondent-CBI from the very beginning i.e. from September, 2020 onwards if not earlier that the petitioner was involved in illegal claims of scholarship amount by the Apex Institute of Management & Himalayan Group of Professional Institute, which received Government scholarship funds to the tune of Rs. 3.79 & Rs. 36.66 crores respectively. It is not in dispute that the petitioner had joined the investigation right from the year 2019 onwards as and when called by the respondent-CBI. He was arrested on 8.4.2022 and remanded to police custody. It was at the instance of the CBI that he was sent to judicial custody on 11.4.2022. The fact itself leads to an inference that investigation required to be carried out from him has been completed. Admittedly, no application was thereafter moved by the CBI seeking his police remand. During hearing of the case, it was stated that entire investigation in respect of this institute is complete and chargesheet in this regard has already been filed.

7(vii) 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 the private educational institutes is completed, regarding timeline of which, respondent apparently has no clue.

Even in cases involving economic offences, where there is strong, prima facie, evidence against the accused, it cannot be said by way of an 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.

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.

7(viii) The offending acts are already complete and reflected as such in the records. As per the respondent, voluminous record has already been seized by CBI during raids conducted by it in 22/26 private institutes, including the institution involving the petitioner, though investigation is still going on. In such situation, no purpose is going to be served by keeping the petitioner in judicial custody. Charge-sheet in respect of petitioner's institution stands filed.

7(ix) 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.

7(x) 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. As per status report, CBI has already conducted searches at 22/26 private educational institutions, including the institution involving the petitioner, and seized voluminous physical and electronic record. Premises of petitioner have also been searched. Petitioner was in police remand from 8.4.2022. At the instance of CBI, he was sent to judicial custody on 11.4.2022. CBI has not moved any application seeking his police remand. 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.25,00,000/- (Rupees Twenty Five Lacs only) with two local sureties, each in the like amount to the satisfaction of the learned trial Court/Special Judge (CBI)/CJM, 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 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.

Learned counsel for the petitioner is permitted to produce copy of order downloaded from the High Court website before the concerned authorities, who shall not insist for certified copy of the same, however, it may verify the order from the High Court website or otherwise.

**Jyotsna Rewal Dua
Judge**

09th May, 2022 (rohit)