

HIGH COURT OF DELHI**Bench: Hon'ble Ms. Justice Swarana Kanta Sharma****Date of Decision: 4th June 2024**

Case No.: BAIL APPLN. 2229/2023

AMANDEEP SINGH DHALL Petitioner**VERSUS****CENTRAL BUREAU OF INVESTIGATION Respondent****Legislation:**

Section 439 of the Code of Criminal Procedure, 1973

Section 120B of the Indian Penal Code, 1860

Section 7 of the Prevention of Corruption Act, 1988

Subject: Bail application under Section 439 Cr.P.C. for regular bail in a case involving alleged irregularities in the framing and implementation of the Delhi Excise Policy 2021-22.

Headnotes:

Delay in Deciding Bail Application – Applicant argued undue delay in deciding bail application, alleging 40 listings without decision – Court found majority of delays due to multiple interim applications filed by the applicant for medical relief and treatment – No merit in argument attributing delay to court proceedings [Paras 20-31].

Principles Governing Grant of Bail – Reviewed legal principles for grant of bail, including factors such as nature of accusations, severity of punishment, risk of absconding, potential for evidence tampering, and threat to witnesses – Noted seriousness of economic offences and their impact on society [Paras 32-35].

Role of Applicant – Applicant was named in FIR and alleged to be part of criminal conspiracy involving framing and implementation of Excise Policy – Played key role in meetings and transactions facilitating the conspiracy –

Issued additional credit notes without manufacturer's authorization, generating illicit funds [Paras 36-52].

Recovery of Incriminating Documents – Confidential documents related to policy formulation found in applicant's possession during searches – Indicative of involvement in conspiracy [Paras 53-55].

Whistleblower Argument – Applicant claimed to be whistleblower – Court found no evidence supporting this claim – Statements of other witnesses and actions contradict the whistleblower narrative [Paras 56-60].

Triple Test for Bail – Considered flight risk, potential for evidence tampering, and influence on witnesses – Applicant involved in bribery case to influence investigation – Seriousness of allegations and potential impact on investigation justified denial of bail [Paras 61-67].

Decision: Bail application dismissed – Court found sufficient prima facie evidence supporting applicant's involvement in conspiracy – Concerns over influencing witnesses and tampering with evidence reinforced decision – No grounds for bail at this stage [Paras 69-71].

Referred Cases:

- Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496
- Nimmagadda Prasad v. CBI (2013) 7 SCC 466
- Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439

Representing Advocates:

Mr. N. Hariharan, Senior Advocate with Mr. Vedant Varma and others for the
Petitioner

Mr. D.P. Singh, SPP for CBI with Mr. Manu Mishra and others for the
Respondent

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. The present bail application under Section 439 of the Code of Criminal Procedure, 1973 (*‘Cr.P.C.’*) has been filed on behalf of the applicant Sh. Amandeep Singh Dhall for grant of regular bail in case arising out of FIR bearing No. RC0032022A0053, registered on 17.08.2022 by the Anti Corruption Branch, Central Bureau of Investigation (*‘CBI’*), Lodhi Road, Delhi.

FACTUAL BACKGROUND

2. On 17.08.2022, the present case was registered by the CBI for offences punishable under Section 120B read with Section 447A of the Indian Penal Code, 1860 (*‘IPC’*) and Section 7 of Prevention of Corruption Act, 1988, (*‘PC*

- Act'*) on the basis of the directions of competent authority conveyed by Director, Ministry of Home Affairs ('MHA'), Government of India, through letter dated 22.07.2022, wherein inquiry had been directed on the basis of a letter/complaint dated 20.07.2022 written by the Lieutenant Governor, GNCTD, thereby alleging irregularities in framing and implementation of excise policy of GNCTD for the year 2021-2022.
3. The prosecution has alleged that during the formulation of Delhi's Excise Policy for 2021-22, the accused persons had engaged in a criminal conspiracy, and they had intentionally created or left loopholes in the policy to be exploited later. Allegedly, substantial kickbacks were paid to the public servants involved, in exchange for undue pecuniary benefits to the conspirators in the liquor trade. As alleged, kickbacks totaling around Rs. 90-100 crores, were paid in advance to Sh. Vijay Nair, Sh. Manish Sisodia, and other co-accused persons, by individuals in the South Indian liquor business (*the 'South Group'*). These kickbacks were reportedly returned to the conspirators through profit margins of wholesale distributors and credit notes issued to retail zone licensees connected to the South liquor lobby. The criminal conspiracy is also said to have resulted in the formation of a cartel involving three key components of the policy: liquor manufacturers, wholesalers, and retailers.
 4. After conducting investigation, the Central Bureau of Investigation had filed first chargesheet against 07 accused persons for offences punishable under Sections 120B of IPC and Sections 7, 7A and 8 of PC Act before the learned Trial Court on 25.11.2022, cognizance of which was taken on 15.12.2022.
 5. Thereafter, further investigation was conducted by the Central Bureau of Investigation, during which the present applicant was also arrested on 18.04.2023. On 25.04.2023, the first supplementary chargesheet was filed before the learned Trial Court against four other accused persons including the present applicant. Second supplementary chargesheet was later filed on 08.07.2023 against other accused persons.
 6. The regular bail application of the applicant Sh. Amandeep Singh Dhall was dismissed by the learned Trial Court *vide* impugned order dated 09.06.2023.

SUBMISSIONS ON BEHALF OF THE APPLICANT

7. Sh. N. Hariharan, learned Senior Counsel appearing on behalf of the applicant submits that the applicant had fully cooperated in the investigation

conducted by the CBI to the best of his capabilities; he had joined the investigation more than 35 times upon being called to join the investigation by the Investigating Officer. Furthermore, the applicant had also supplied documents by submitting hard copies as well as by emailing the documents to the CBI. It is further submitted that despite cooperating with the investigating agency, the applicant was arrested on 18.04.2023, and within 8 days of his arrest, the CBI had filed its supplementary chargesheet dated 25.04.2023 *qua* the present applicant. It is thus argued that the arrest of the applicant, in view of the admitted investigation, was uncalled for.

8. Learned Senior Counsel fervently argues that even otherwise, it was the applicant who had sent the complaint to the Excise Department, Delhi citing irregularities in the application of M/s Indo Spirits i.e., one of the wholesalers (L1-Licensee) in the alleged Excise Policy 2021-22. It is argued that the applicant herein was a whistleblower as he had organized the filing of several complaints before the Excise Department, Delhi and he had also perpetuated the filing of a petition bearing no. W.P. (C) 6515/2021 dated 13.07.2021 before this Court against the tendering of retail licenses without publishing the retail price or wholesale price, and the applicant had also organized the filing of W.P.(C) 492/2021 dated 02.11.2021 before the Hon^{ble} Supreme Court of India against the purported cartelization in the liquor market. It is submitted that it was the applicant herein who had brought to the notice of the then Delhi Excise Department that certain companies and individuals had indulged in cartelization of the market and that the cognizance of such actions needed to be taken by the regulatory authorities. It is further argued that it is the case of the CBI itself in the chargesheet that coaccused Sh. Abhishek Boinpally and Sh. Arun R. Pillai had threatened the applicant herein and M/s DIAGEO to refrain from filing complaints/writ petitions against the South Group.

9. It is contended by learned Senior Counsel that as far as the allegations leveled by the respondent that the draft of the New Excise Policy 2021-22 was available in the applicant's WhatsApp chat on 31.05.2021 before its official uploading on the Delhi Excise website, i.e., on 05.07.2021 and that the applicant had changed his mobile phone on three occasions is concerned, the applicant herein was a part of various WhatsApp Groups which had been created by several stakeholders (i.e., manufacturers / distributors /retailers /sales representatives, concerned with the Liquor industry) wherein information pertaining to developments in the proposed New Excise Policy were being routinely shared and circulated in April-May,

2021. It is further submitted that such information was in circulation on a mass scale for the benefit of all stakeholders being interested parties, and the information circulated included various internal documents such as minutes of meetings, including confidential Cabinet Notes, and also the stakeholder suggestions and comments; and at no point of time did the applicant herein ever obtain, attempt to obtain, or secure any of these documents by direct interaction with any of the public officers.

10. It is also submitted that the applicant or his company had no reason whatsoever to enter into, to be a part of, participate or join any criminal conspiracy in this case for the simple reason that under the old policy, the applicant and his company was an Authorized Agent also termed as a Power of Attorney Holder of manufacturers like United Spirits Limited (also known as 'DIAGEO') as well as United Breweries Limited. It is stated that the applicant's company represented these manufacturers right from 1973 without break and also on an exclusive basis in Delhi, as well as represented the aforesaid manufacturers in various other states of the country. It is also submitted that the accounted audited balance sheets of M/s Brindco before the promulgation would go on to indicate that the „gross margin“ of Brindco, throughout the past financial years, has been to the tune of approximately 9.4% annually for Delhi operations without any risks/investments to be borne by Brindco. Hence, there was no reason/business rationale for Brindco to seek and to participate in some sort of alleged conspiracy for the obliteration of the government control as the very regime under government control sale was yielding handsome returns and profits through sales for Brindco.

11. Sh. N. Hariharan further argues that as far as the allegations of giving additional credit notes are concerned, the applicant herein had forwarded credit notes issued by the manufacturers to the retailers as per the directions of the manufacturers, with the caveat that some credit notes shown in the ledgers/books were „pending reconciliation“, which fact was fairly disclosed in the books of account and was brought to the notice of CBI by the applicant himself, and that the accounts of M/s. Brindco Sales Pvt. Ltd. were properly audited by external auditors and while examination at the end by CBI, nothing wrong was found.

12. It is argued on behalf of applicant Sh. Amandeep Singh Dhall that the investigation *qua* the present applicant stands crystallized and completed, all recoveries have been affected and that all the alleged conspirators in the present case are either not arrested at all by the CBI or have been bailed out, except the applicant who is undergoing incarceration. Furthermore, it is

stated that the applicant herein passes the tripod test of bail in as much as he is neither a flight risk nor can there be any propensity on his part to tamper with any kind of evidence of influence any witness in as much as the entire domain of evidence is in the nature of documentary evidence unhindered and untampered. Therefore, since further custody of the applicant herein is neither needed nor is there any reasonable basis for the continuance of his custody by any stretch of the imagination, it is prayed that the applicant be enlarged on regular bail.

SUBMISSIONS ON BEHALF OF CBI

13. Sh. D.P. Singh, learned Special Public Prosecutor ('SPP') for the CBI argues that the present applicant was a part and parcel of the criminal conspiracy as well as the cartel in the present case, from very beginning and he became a member of the said conspiracy at a stage while the said policy was still being drafted.

14. It is argued by Sh. Singh that the investigation had revealed that the applicant, who was the Managing Director of M/s Brindco Sales Pvt. Ltd. (wholesaler/L-1 licensee), was in close contact with coaccused Vijay Nair, and he was arranging meetings of Sh. Vijay Nair with the officials/representatives of different liquor manufacturers at the stage of formulation of the excise policy. It is further submitted that the applicant was present in the meeting held between co-accused Sh. Vijay Nair with members of the South Group and others in Hotel Oberoi Maidens, Delhi on 27.03.2021 and also in the meeting held at Gauri Apartments in May, 2021. Learned SPP further states that the applicant had held meetings with the South Group, and in pursuance to the criminal conspiracy, he had paid excess credit notes to the retail zones controlled by the accused persons of the South Group as well as arranged cash payment against the excess credit notes to co-accused Sh. Abhishek Boinpally, as part of 6% commission out of the enhanced 12% profit margin of the wholesalers. It is also argued that the applicant was even found in possession of certain incriminating documents pertaining to the policy formulation during the course of searches conducted in the present case.

15. It is contended on behalf of CBI that the applicant was examined and confronted with the evidence during the course of investigation, however, he had continued to misguide the investigation and had not revealed the true facts. During the custodial interrogation also, the applicant had not cooperated and had deliberately given evasive replies, contrary to the

evidences on record. It is further argued that the applicant had not given proper explanation for passing additional credit notes, on his own, to the retail zones controlled by the accused persons of the South Group. It is also submitted that the applicant had proper answer either for what purpose did he organize meetings between co-accused persons or as to why he was in possession of confidential official documents related to the Excise Policy.

16. It is also submitted that during the course of investigation, another FIR was registered by the CBI against the present applicant, his father and other accused persons on the basis of information received by Directorate of Enforcement that the applicant had paid bribe of Rs. 5 crores to some persons including one officer of Directorate of Enforcement in order to influence investigation and get his name deleted from the array of accused persons.

17. Thus, it is argued on behalf of CBI that there is sufficient oral and documentary evidence collected during the investigation against the applicant, reflecting that he was part of the entire conspiracy since beginning and was instrumental in implementation of the Excise policy. It is submitted that economic offences constitute a class apart and they need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole. It is also stated that the applicant, being the director of M/s Brindco Sales Pvt. Ltd., is a well-established distributor in Delhi Liquor Business and is a very influential person. The witnesses already examined are either known to him or have business relationships with him, and thus, there are credible reasons to believe that he may influence the witnesses and tamper with evidence, if released on bail.

18. It is, therefore, prayed on behalf of CBI that the present bail application be dismissed.

19. This Court has heard arguments on behalf of the applicant as well as the respondent, and has perused and considered the material placed on record by both the parties.

ANALYSIS AND FINDINGS

I. WHETHER THERE WAS DELAY IN DECIDING THE PRESENT BAIL APPLICATION BY THIS COURT?

20. One of the arguments raised on behalf of the applicant, before this Court, was the undue delay in deciding the present bail application. It was

also stated on behalf of the applicant before the Hon^{ble} Apex Court that this bail application was listed and heard on 40 occasions by this Court, but was thereafter adjourned to 08.07.2024 for arguments. This necessitated an order from the Hon^{ble} Apex Court for the pre-ponement of the date of hearing, resulting in such pre-ponement and conclusion of arguments and decision on the bail application. Though this Court on its own had pre-poned the date of hearing of regular bail application, the applicant herein had also filed an application seeking early hearing of the bail application, which had become infructuous. The relevant portion of this application reads as under:

“3. That the Applicant is constrained to file the present application seeking preponement of the captioned bail application since the matter pertains to the constitutional right of personal liberty of an individual and the same deserves to be adjudicated expeditiously. That in lieu of the same, the Applicant herein approached the Hon^{ble} Supreme Court of India in *SLP (Crl.) No. 6973/2024* which was listed for hearing on 17.05.2024. Here, the Apex Court, directed this Hon^{ble} High Court to decide the bail application of the Petitioner prior to the Court’s closure for the summer vacations.”

21. Therefore, it would be important to first examine the said issue raised on behalf of the applicant.

22. Present Bail Application seeking regular bail was filed before this Court on 05.07.2023. A list of the dates, on which the bail application was listed, and the orders passed by the Predecessor Bench and this Bench, are summarized hereunder:

- (a) The matter was first listed on 06.07.2023 and was thereafter listed on 12.07.2023 before the learned Predecessor Bench of this Court, when notice was issued to the CBI and reply was called for.
- (b) On 16.08.2023, arguments were part-heard by the Predecessor Bench and matter was listed for 04.09.2023.
- (c) On 04.09.2023, a detailed order was passed by the Predecessor Bench on the interim bail application filed by the applicant, and arguments on the main bail application were not addressed on behalf of applicant.
- (d) After the Predecessor Bench had released the matter from „parheard category“, on 19.10.2023, this Bench had listed the matter for arguments on 18.12.2023 at the request of parties.

- (e) On 18.12.2023, the Bench was on leave, and therefore, the matter was renotified for the next day.
- (f) On 19.12.2023, arguments were not addressed on the main bail application, but on the interim bail application preferred on behalf of the applicant on medical grounds. After hearing arguments, the interim bail application was reserved for orders, and a 23-page judgment was delivered on 22.12.2023 *vide* which the said application was disposed of.
- (g) On 09.01.2024, i.e. after a period of 06 months from filing of present bail application, arguments were addressed on the main bail application on behalf of the applicant, before this Bench, for the first time.
- (h) On 19.01.2024, the matter was listed for 16.02.2024. In the meanwhile, since an application seeking extension of treatment and hospitalization had been moved, the medical report *qua* the applicant was called on 16.02.2024 and arguments on main bail application were not addressed on behalf of the applicant.
- (i) On 21.02.2024, this Bench was on leave. On 28.02.2024, the matter was listed on 11.03.2024 and on 11.03.2024, the matter was listed for next day i.e. 12.03.2024. On the next date of hearings i.e. 12.03.2024, and 10.04.2024, the Bench was on leave, and thus, arguments on bail application could not be heard. However, on all these days, other interim applications had also been listed alongwith the main bail application.
- (j) On 30.04.2024, when the main bail application was listed, arguments were rather addressed on the application seeking extension of treatment and hospitalization of the applicant and *vide* order dated 30.04.2024, the applicant was directed to surrender before the jail authorities on 06.05.2024. The main bail application was renotified for 08.07.2024.
- (k) It was after this order, when the applicant's stay in hospital (in custody) was not extended, that the applicant had preferred Special Leave Petition before the Hon'ble Apex Court, submitting that his application for regular bail had been taken up, heard but not decided on 40 occasions, though incorrectly.

(l) Thereafter, this Court, on its own, had preponed the date of hearing in the present case to 21.05.2024. On 21.05.2024, arguments were addressed on behalf of the applicant, and at the request of learned senior counsel appearing on behalf of applicant himself, the matter was listed for further arguments on 29.05.2024. On 29.05.2024, the matter was reserved for orders. 23. It will also be important to highlight that other than the abovementioned dates, on which the regular bail application had been listed, the applicant had also moved several other applications seeking interim

reliefs, and thus, the matter was heard on those interim applications on numerous occasions as it was pleaded that the applicant required immediate attention and passing of orders. The relevant details regarding the same, are summarized hereunder:

- (a) On 25.08.2023, notice was issued on the interim bail application filed by the applicant, which was then disposed of *vide* order dated 04.09.2023 by the Predecessor Bench.
- (b) Applications seeking modification of order dated 04.09.2023 were disposed of on 13.09.2023. On 15.09.2023, notice was issued on the applications seeking transfer of the applicant to a private hospital instead of AIIMS. On 19.09.2023, the said applications were disposed of by the Predecessor Bench by an order running into 12 pages.
- (c) *Vide* order dated 16.10.2023, this Court had disposed of applications filed by the applicant herein seeking admission in a private hospital, in custody, for his treatment.
- (d) On 03.11.2023, the matter was listed on applications filed by the applicant seeking extension of duration of medical treatment, and notice was issued to the respondents.
- (e) On 07.11.2023, orders were reserved in the above-mentioned applications. Judgment dated 17.11.2023 was delivered *vide* which these applications were disposed of.
- (f) Interim Bail applications were again filed on 07.12.2023, when notice was issued by this Court. As noted in the preceding paragraph also, on 19.12.2023, the orders in said interim bail applications were reserved and judgment was delivered on 22.12.2023.
- (g) Thereafter, applications were preferred seeking modification of judgment dated 22.12.2023, arguments on which were heard by this Court on 03.01.2024 and the same were reserved for orders. Detailed order on the said applications was delivered on 08.01.2024 by this Court.
- (h) Again on 24.01.2024, applications seeking directions for shifting of the applicant to private hospital were listed, on which arguments were heard by this Court. The applications were listed for orders on 29.01.2024. On the said date, the applications were allowed and the applicant was permitted to be transferred to a private hospital for treatment.
- (i) Thereafter, the applicant had again preferred applications seeking extension of duration of treatment in the hospital, for which a report was called from concerned hospital on 26.02.2024 and the stay at hospital was extended till next date.

(j) The aforesaid application was finally disposed of *vide* order dated 30.04.2024.

24. However, it is shocking to note that a submission was made on behalf of the applicant before the Hon^{ble} Apex Court that the regular bail application had been heard by this Court on 40 occasions and was yet not disposed of, whereas the record reveals to the contrary.

25. It is pertinent to note that before the present bail application was reserved for orders after conclusion of arguments by both the parties on 29.05.2024, **the regular bail application i.e. BAIL APPLN. 2229/2023 had been listed on 17 occasions.** However, **out of the 17 occasions** when the regular bail application had got listed for hearing, **on about 09 occasions**, applications seeking interim bail on medical grounds, admission in private hospital, extension of period of hospitalization in custody, etc. had also been listed for hearing, on which the learned counsel for the applicant himself had argued extensively and prayed for passing of urgent orders. Out of the remaining 08 occasions, either the notice had been issued or arguments had been addressed on behalf of the applicant before the Predecessor Bench on 03 such occasions. As noted above, on 18.12.2023, the matter had been re-notified only on the request of counsels for the parties. Thus, the arguments on bail application were addressed, and **heard by this Bench, only on 04 occasions.**

26. Furthermore, **on about 20 other occasions**, the matter had been listed and heard by this Court on **multiple applications filed by the present applicant** on similar grounds as mentioned above, i.e. seeking interim bail, extension of period of hospitalization in custody, admission in private hospital, etc., and orders were passed thereon.

27. Therefore, **on about 29 hearings out of total 37**, it was the **applicant himself** who was moving multiple applications and seeking issuance of notice, praying for hearing arguments on interim applications, and not regular bail application, on the grounds that the applicant was suffering from medical ailments and required either interim bail or treatment in hospital in custody or change of hospital, etc. It is noteworthy that over the past 11 months, **the applicant had moved as many as 14 applications seeking interim reliefs** in the present bail application itself, and on all the hearings, arguments had been heard by this Court and effective orders had been passed, **and all the 14 applications stand disposed of as of today.**

28. It is also important to note that pursuant to orders passed by this Court, though the applicant was never released on interim bail, he was

provided hospitalization and medical treatment of his choice, in hospitals including AIIMS, ILBS, Safdarjung Hospital and Indian Spinal Injuries Centre. In fact, **out of the total period of custody of about 15 months**, the **applicant was permitted to remain in judicial custody though remaining hospitalized** for a surgery, and for a major period, for the post-surgery physiotherapy and post-epidural care, which is not any kind of surgery, for more than 06 months. **This was permitted notably** since the machines for such physiotherapy etc., at that relevant time, were not available in the jail hospital or referral hospitals and the accused insisted that even AIIMS was not able to give the best treatment that he was entitled to, as he could afford it.

29. Another argument of the learned counsel had been that the petitioner herein had undergone spinal surgery and the necessary treatment for post care surgery and other complications is not available in the hospital. Taking note of the aforesaid **grievance of the applicant** regarding non-availability of physiotherapy machines in the jail hospitals, this Court had **issued certain directions to the Government of Delhi and constituted a Committee for the purpose of ascertaining the requirements of necessary medical equipment in the jail hospitals**, *vide* judgment dated 22.12.2023. After the said order was passed in this case itself, taking note of the hardships faced by under trials and prisoners who face health challenges in the prison, **this Court observes on a heartening note that the directions for best healthcare in prisons were acceded to** and Government of Delhi had also agreed and provided certain machines and healthcare equipments, physiotherapy equipments, etc. which were not earlier available in the jail hospitals. The Government of Delhi itself had provided the required healthcare machines in the hospital, which are now of use to all the prisoners including the present accused. As recorded in order dated 30.04.2024, the directions issued by this Court have been **complied with** by the State and jail authorities.

30. Once this Court had observed that the physiotherapy equipments in the jail hospital and other care that the applicant requires was now available in the Jail hospital, the applicant was asked to surrender on 06.05.2024.

31. Therefore, in view of above discussion, the argument that the liberty of an individual is his fundamental right and his incarceration being prolonged due to non-hearing by this Court is contrary to the record, and rather the conduct of the applicant in moving multiple, frequent, interim applications resulted in postponement of the date of hearing in the regular bail application,

though in the meanwhile, he remained in private hospital of his choice and government hospitals on many occasions. Therefore, the delay if any in hearing the bail application cannot be imputed to any court and be made a ground for grant of bail.

II. PRINCIPLES GOVERNING GRANT OF BAIL

32. Before assessing the merits of the present case, it shall be essential to consider the legal principles that govern the law of grant of regular bail, including in cases of economic offences.

33. The principles and factors governing the grant of regular bail under Section 439 of the Cr.P.C. have been summarized by the Hon^{ble} Supreme Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496***, as follows:

- “9. ... (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
 - (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail;
 - (v) character, behaviour, means, position and standing of the accused;
 - (vi) likelihood of the offence being repeated;
 - (vii) reasonable apprehension of the witnesses being influenced; and
 - (viii) danger, of course, of justice being thwarted by grant of bail.”

34. The pertinent observations of the Hon^{ble} Supreme Court in ***Nimmagadda Prasad v. CBI (2013) 7 SCC 466***, are as follows:

“24. While granting bail, the court has to keep in mind the **nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations**. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the

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

(emphasis supplied)

35. In *Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439*, the Hon^{ble} Supreme Court noted that economic offences constitute a distinct category, and the severity of such offences must be considered while deciding bail applications. The relevant observations are as follows:

“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.”

(emphasis supplied)

III. ROLE OF APPLICANT IN THE PRESENT CASE

Applicant’s name in the FIR

36. In the initial discussion, this Court has taken note of the fact that the present FIR i.e. RC0032022A0053 was registered by the CBI, on the basis of directions issued by the Ministry of Home Affairs, after receipt of a letter written by the Lieutenant Governor of Delhi. A perusal of the FIR reveals that present applicant Sh. Amandeep Singh Dhall was one of the fourteen individuals who were named directly in the FIR.

37. The FIR records that present applicant, alongwith Sh. Vijay Nair, Sh. Manoj Rai and Sh. Sameer Mahandru was actively involved in committing irregularities in framing and implementation of the Excise Policy of GNCTD for the year 2021-22. It was also alleged that that some of the L-1 License holders (i.e. wholesale distributors) were issuing credit notes to retail vendors with an *ab-intio* intention to divert the funds as undue pecuniary advantage to Public servants, and in furtherance to this, they were showing false entries in their books of accounts.

Applicant's Association with Co-accused Vijay Nair and His Role in Arranging and Participating in Meetings with Co-accused Persons

38. The investigation has revealed that applicant Sh. Amandeep Singh Dhall was in **close contact with co-accused Sh. Vijay Nair** since March 2021. The applicant had **arranged meetings** between Sh. Vijay Nair and key figures from major liquor manufacturers such as M/s Pernord Ricard India Pvt. Ltd. and M/s DIAGEO (formerly, United Spirits Ltd.), as well as other stakeholders involved in the new Delhi Excise Policy. It is undisputed that the present applicant was the distributor for M/s DIAGEO in Delhi even before the implementation of the new Excise Policy.

39. Further, the present applicant had attended a **meeting at Gauri Apartment** near Claridges Hotel, Delhi, **on 21.05.2021**, along with co-accused Sh. Vijay Nair and other members of the South Group. During this meeting, in furtherance of the criminal conspiracy, they had discussed modalities for securing financial advantages in exchange for undue favors to wholesalers, including applicant's own company, M/s Brindco Sales Pvt. Ltd.

40. The investigating agencies including the Directorate of Enforcement had additionally found during the course of investigation that the applicant had also played a crucial role in organizing a **meeting** between Sh. Vijay Nair and members of the South Group at **Hotel Oberoi Maidens**, Delhi, on 27.03.2021. A statement recorded under Section 50 of PMLA of Sh. Benoy Babu confirmed that the applicant had introduced co-accused Sh. Vijay Nair to the South lobby during this meeting.

41. A **WhatsApp chat** recovered by the agency also reveals that it was the present applicant who had shared the mobile number of coaccused Sh. Vijay Nair, with Sh. Benoy Babu, and had asked him to contact him on Signal app.

42. The fact that both the aforesaid meetings had taken place and that the applicant was present in those meetings has not been disputed by the applicant. Though he has given a different version as to what transpired in these meetings, the same is contrary to the versions given by other witnesses and approvers in their statements recorded under Section 161/164 of Cr.P.C. and even in Section 50 of PMLA.

Issuance of Additional Credit Notes by the Applicant

43. According to the prosecution, a meeting involving co-accused persons namely Sh. Vijay Nair, Sh. Dinesh Arora, Sh. Arun R. Pillai, Sh. Abhishek

- Boinpally, and Sh. Butchi Babu had taken place at ITC Kohinoor, Hyderabad, from 18.06.2021 to 20.06.2021, in connection with the Delhi Excise Policy. During this meeting, it was allegedly agreed that Sh. Abhishek Boinpally would send around Rs. 30 crores to Sh. Vijay Nair through Sh. Dinesh Arora, which would be recovered by taking a 6% commission from the wholesalers' increased profit margin of 12% from earlier margin of 5%. Approver Sh. Dinesh Arora in his statement disclosed that the present applicant was expected to secure the wholesale distributorship of M/s DIAGEO in Delhi, and Sh. Vijay Nair had informed him that he had discussed this with the present applicant. Sh. Dinesh Arora had also disclosed that the applicant herein was responsible for providing this commission through credit notes, with Sh. Dinesh Arora tasked with collecting them.
44. The company of the present applicant i.e. M/s Brindco Sales Pvt. Ltd. was awarded the wholesale L-1 license under the new Excise Policy of Delhi. Investigations revealed that applicant Sh. Amandeep Singh Dhall, in furtherance of the criminal conspiracy, **had issued additional credit notes worth Rs. 4.97 crores** through his company M/s Brindco Sales Pvt. Ltd. **to various retailers, without receiving corresponding credit from the manufacturer** i.e. M/s DIAGEO.
45. **Normally**, credit notes are issued by manufacturers to retailers *via* wholesalers. **However**, the applicant had issued additional credit notes **on his own**, to allegedly generate illicit cash and provide a 6% commission out of the 12% profit margin to the South Group.
46. Out of these, additional credit notes worth Rs. 2.58 crores were given to **four companies/retailers of the South Group**: (i) M/s Organomix Ecosystems Pvt. Ltd., (ii) Sri Avantika Contractors (I) Ltd., (iii) M/s Trident Chemphar Ltd., and (iv) M/s Magunta Agro Farms Pvt. Ltd. It was revealed that Sh. Abhishek Boinpally had negotiated for the first three retailers, while Sh. Raghav Magunta Reddy had negotiated for the fourth.
47. There are statements of witnesses Sh. Ashish Sahrawat, Sh. Prathmesh Mishra and Sh. Saurabh Kumar of M/s DIAGEO, recorded by CBI, to the effect that **M/s Brindco Sales Pvt. Ltd. could not have issued additional credit notes of worth around Rs. 4.97 crores, to the retailers, without its prior permission**. Another statement of witness Sh. Rahul Kapur, Chartered Accountant at M/s Grand Thronton revealed that the said credit notes were not issued for business purposes or for promotion of sales of the M/s Brindco.
48. Further investigation revealed that **additional credit notes worth Rs. 34.55 lakhs** were given to M/s ACE Finance Company, which was controlling two

retail zones under the new Excise Policy. These notes **were issued by the present applicant** on Sh. Vijay Nair's direction, and **equivalent cash was transferred** from M/s ACE Finance Company to co-accused Sh. Abhishek Boinpally through approver Sh. Dinesh Arora. These allegations are also supported *prima facie* by the statements of approver Sh. Dinesh Arora, as well as Sh. Virat Mann and Sh. Deepender Sahrawat, who used to manage M/s ACE Finance"s credit notes.

49. In addition to aforesaid, the applicant had also **issued credit notes** to M/s JSN Infratech, M/s Sakaria Technologies Pvt. Ltd., M/s Grow Tradex and M/s Adharv Enterprises, through his company for beer sales in November 2022, **after the excise policy had come to an end on 31.08.2022**. This was allegedly done without prior agreement or trade scheme information from M/s UBL, **in order to adjust the amounts kept by M/s Brindco Sales Pvt. Ltd. in its accounts for payment of its share of commission of 6%, out of 12% profit margin**, to the retail zone entities controlled by South lobby as per the terms of above criminal conspiracy.

50. The learned Trial Court also, in impugned order dated 09.06.2023, after going through the entire record and the statements of the witnesses, has noted that these allegations are *prima facie* supported by the witnesses Sh. Anil Kumar and Ms. Neha Juneja of M/s UBL; Sh. Puneet Ahuja of M/s JSN Infratech, Sh. Sanjeev Mittal of M/s Adharv Enterprises, Sh. Gaurav Arora of M/s Glow Tradex and Sh. Hari Ram Khatri of M/s Sakriya Technology Pvt. Ltd.

51. Learned Senior Counsel for the applicant, during the course of arguments, had argued at length that the income tax returns as well as the other accounts maintained by the company of the applicant does not disclose that any irregularity was found, as alleged by the prosecution. It was also stated that this Court can go through the account details and other documents of credit notes, etc. to reach a conclusion of innocence of the present accused. However, this Court is of the opinion that at the stage of hearing of bail application, this Court cannot conduct a mini-trial and ignore the material against the applicant collected by the investigating agencies by way of statements of witnesses, WhatsApp conversations, and money trail through issuance of additional credit notes.

52. The argument regarding giving of additional credit notes on the directions of the manufacturers is also without merit, at this stage, since the prosecution has relied upon statements to show that all the concerned liquor manufacturers i.e. DIAGEO, M/s United Breweries Ltd. (UBL) and M/s Sula

Vineyards Pvt. Ltd., **had confirmed** during the course of investigation that **they had not directed the applicant to pass any additional credit notes to the retailers on his own.** Recovery of Incriminating Documents from the Applicant

53. During the course of investigation, a search was conducted at the premises of M/s Brindco Sales Pvt. Ltd., owned by the present applicant, on 19.08.2022 by the CBI. During the search, the agency had seized a file containing:

- (i) a **copy of the tender document** dated 07.06.2021,
- (ii) a **confidential note** dated 20.05.2021 signed by co-accused Manish Sisodia, and
- (iii) an **unsigned copy** of the Group of Ministers report dated 22.03.2021.

54. The prosecution has filed the search list (D-159) and the file (D194) alongwith the supplementary chargesheet which *prima facie* points out that the applicant was in possession of these documents *prima facie* shows his involvement in the commission of offence.

55. The tender document which was seized from his office was dated 07.06.2021, whereas the actual date of floating of tender was 28.06.2021, but the contents of both these documents were entirely the same, except the date of tender. These documents, which were included in the supplementary chargesheet filed on 25.04.2023, reflect that the present applicant was part of the conspiracy.

Argument regarding Applicant being Whistleblower

56. Learned Senior Counsel for the applicant had argued that it was the applicant herein who had in fact perpetuated filing of petitions before this Court and the Hon^{ble} Apex Court against tendering of Retail licenses without publishing the Retail Price or Wholesale Price, and against cartelization in the liquor market, respectively. Learned Senior Counsel had also referred to various statements of co-accused persons, witnesses and the contents of chargesheet, to establish that the applicant was the whistleblower of the entire case and the other accused persons were against the conduct and actions of the present applicant.

57. This Court has given its thoughtful consideration to the grounds taken in the present bail application in this regard, however, the applicant's claim

that he had acted as a whistle-blower in this case does not inspire confidence.

58. This is so since there is no evidence on record indicating that the applicant had himself submitted any complaint to the Excise Department, or had filed any petition before this Court or the Hon^{ble} Supreme Court. Reliance on the statement of Sh. Jagbir Sidhu, Corporate Relations Director of M/s DIAGEO, recorded by the CBI during the course of investigation is also of no help to the applicant since in the said statement itself, Sh. Jagbir Sidhu had revealed that when he had inquired from the applicant and his father about filing any petition before any Court or any complaint with the Excise Department, both the applicant and his father had denied doing so.

59. Further, Sh. Varun Chaudhary, who had actually filed a petition before the Hon^{ble} Supreme Court regarding the Delhi Excise Policy, had disclosed in his statement recorded by the CBI during the investigation that he was a social activist and had filed the petition after gathering information. However, he had also disclosed that it was the applicant herein who had requested him to desist from pursuing the petition in November 2021, leading to the eventual withdrawal of the petition.

60. From these observations, it appears that the applicant was not a whistle-blower but was, in fact, instrumental in the non-pursuance and ultimate withdrawal of the said petition.

IV. WHETHER THE APPLICANT HAS MADE OUT A CASE FOR GRANT OF BAIL?

61. Learned Senior Counsel for the applicant had argued that the applicant Sh. Amandeep Singh Dhall fulfills the *triple test* for grant of bail and thus, he ought to be granted regular bail in the present bail. In this regard, this Court notes that the triple test for grant of regular bail require that the following factors be taken into consideration:

- (i) Whether the accused is a flight risk?
 - (ii) Whether the accused can tamper with evidence if released on bail?
- and
- (iii) Whether the accused can influence witnesses if released on bail?

62. In addition to the triple test, the judicial precedents have held that other factors such as nature of offence and severity of punishment, nature of

evidence collected by the investigating agency, etc. are also to be considered while deciding the issue of grant of bail to an accused.

Role Of Applicant: Summed Up

63. As far as nature of offence and material and evidence collected by the prosecution is concerned, the material available on record, discussed in the preceding paragraphs, *prima facie* reveal that the applicant Amandeep Singh Dhall, who owns M/s Brindco Sales Pvt. Ltd., was in criminal conspiracy with the co-accused Vijay Nair and he was instrumental in facilitating and arranging meetings with members of South Group. He was also *prima facie* involved in recoupment of bribes/kickbacks by issuing additional credit notes through M/s Brindco Sales Pvt. Ltd. (L-1 licensee), out of the 12% wholesale profit margin of his company since in pursuance of the conspiracy, 6% of the profit margin was agreed to be paid towards recoupment of the kickback or bribe amount. The possession of confidential government documents by the present applicant also indicates his key role in formulating and manipulating the Excise Policy to secure undue financial benefits, since, as alleged, these documents could not have been legitimately possessed by the applicant, which highlights his involvement in the entire conspiracy. These allegations are *prima facie* supported by the statements of the witnesses and approver recorded under Section 161 and 164 of Cr.P.C., as well as documentary evidence in the form of recovery of incriminating documents from the premises of applicant, WhatsApp chats, etc.

Role and Conduct of Applicant in Influencing Those Who Were

Conducting Investigation

64. This Court notes that an FIR No. RC0032023A0033 was registered on 07.08.2023 against the present applicant Sh. Amandeep Singh Dhall, his father, one Chartered Accountant Sh. Praveen Vats, one Assistant Director of Directorate of Enforcement, one Upper Division Clerk of Directorate of Enforcement, one Sh. Deepak Sangwan, and one other person. The said FIR was registered on the basis of complaint filed and information shared by the Directorate of Enforcement wherein it was disclosed that from the statements of various persons recorded under Section 17 and 50 of PMLA, **it was revealed that the present applicant and his father had given Rs. 5 crores, initially Rs. 3 crores in the month of December 2022 - January 2023, and thereafter Rs. 2 crores to one Sh. Praveen Vats, Chartered**

Accountant, for arranging help in Directorate of Enforcement, in respect of the on-going investigation in the present Excise Policy case against the present accused/applicant. From the statement of Sh. Praveen Vats, it was revealed that Sh. Deepak Sangwan had assured Sh. Praveen Vats that he could help the present applicant, had also made Sh. Praveen Vats met one Assistant Director of Directorate of Enforcement. Sh. Praveen had then taken **Rs. 3 crores** from the present applicant in six tranches of Rs. 50 lakhs each, in the months of December 2022 - January 2023. Thereafter, Sh. Deepak Sangwan had proposed that he will be taken out from the list of accused in this case, upon payment of an additional amount of Rs. 2 crores. Thereafter, Sh. Praveen had conveyed the same to the applicant herein, who had agreed to the proposal, and Sh. Praveen had taken **Rs. 2 crores** from him in four tranches of Rs. 50 lakhs each. All the payments from the applicant were received by Sh. Praveen at his home. Sh. Praveen Vats, Chartered Accountant has also disclosed in his statement as to how the cash amount was paid as well as the place where cash amount was paid and the specific dates when it was paid to the person who was being bribed, including the Assistant Director of Directorate of Enforcement. The statements of the other abovementioned persons are not being discussed herein in detail. In addition to the statements, the CCTV footages of the relevant places was also collected by the agency. During the search operation, about Rs. 2.20 crores in cash was recovered from the residence of Sh. Praveen Vats.

65. However, for the purpose of deciding the bail application and for the said purpose deciding as to whether the applicant herein is capable of influencing the witnesses or tampering with evidence and whether such apprehension is reasonable and based on genuine material, the contents of the aforesaid FIR are clear that the sum of Rs. 5 crores was paid by the applicant for the purpose of not arresting the present applicant and deleting his name from the entire case of excise policy.

66. Furthermore, as noted above, the FIR also mentions that incriminating evidence was also collected with regard to the said offence, which is a matter of investigation of the said case. The same points out that the applicant had paid bribe amount to and was constantly in touch with other co-accused persons in this FIR which includes an officer of Directorate of Enforcement, to get his name deleted from the array of accused persons in the liquor scam and to ensure that he is not arrested in the present case. This persuades this Court to observe that there is well-founded apprehension of the applicant herein influencing the witnesses and tampering with the

evidence as, as a testament to the same an FIR stands registered against the accused.

67. Moreover, since many of the witnesses in this case are well known to the present applicant and the applicant herein was also in contact with influential leaders of Aam Aadmi Party in Delhi Government for hatching conspiracy, this Court holds that the triple test for grant of bail is not satisfied by the applicant herein.

68. The allegations against the applicant are also serious in nature and their impact on the society and common man at large has to be considered as a factor while adjudicating an application seeking grant of regular bail.

The Decision

69. It was argued on behalf of the applicant that his incarceration is in direct conflict with his fundamental right to personal liberty and that no useful purpose will be served by keeping him in jail as chargesheet against him has been filed and it will take a long time to decide the case. This Court, in this regard, is of the opinion that the role of the applicant herein, discussed in detail in the preceding paragraphs of the judgment, clearly outlines as to how he was instrumental and part of the conspiracy since its inception, and his role in payment of additional credit notes worth Rs. 4.97 crores has been clearly brought out through the statements of various witnesses and approver Sh. Dinesh Arora recorded under Section 161 and 164 of Cr.P.C. by CBI.
70. Considering the overall facts and circumstances of the case, seriousness of the allegations and the evidence collected by the prosecution, and when charges are yet to be framed and evidence is yet to be recorded, and the fact that an FIR already stands registered against the applicant for paying bribe to an officer of Directorate of Enforcement for getting his name removed from the present case, this Court does not find any ground for grant of bail to the applicant, at this stage.
71. Accordingly, the present bail application stands dismissed. All other pending applications are also disposed of.
72. It is, however, clarified that the observations made hereinabove shall not affect the merits of the case during trial.
73. The judgment be uploaded on the website forthwith.

*Disclaimer: Always compare with the original copy of judgment from the official website.