P Chidambaram vs Central Bureau Of Investigation on 22 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5272, AIRONLINE 2019 SC 1239, 2020 CRI LJ 663, (2019) 14 SCALE 157, (2019) 4 ALLCRILR 321, 2019 CRILR(SC MAH GUJ) 1228, (2020) 1 BOMCR(CRI) 225, (2020) 1 RECCRIR 100, (2020) 206 ALLINDCAS 256, (2020) 77 OCR 19, AIR 2020 SC(CRI) 193

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Bench: Hrishikesh Roy, A.S. Bopanna, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1603 2019
(Arising out of SLP(Crl.) No.9269 of 2019)

SHRI P. CHIDAMBARAM ...Appellan

VERSUS

CENTRAL BUREAU OF INVESTIGATION …Respondent

WITH

CRIMINAL APPEAL NO. 1605 2019
(Arising out of SLP(Crl.) No.9445 of 2019)

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. These appeals arise out of the impugned judgment dated 30.09.2019 passed by the High Court of Delhi in Bail Application No.2270 of 2019 in and by which the High Court refused to grant bail to the appellant in the case registered by the respondent- Central Bureau of Investigation (CBI) under Section 120B IPC read with Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. This appeal relates to the alleged irregularities in Foreign Investment Promotion Board (FIPB) clearance given to the INX Media for receiving foreign investment to the tune of Rs.305 crores against approved inflow of Rs.4.62 crores. Briefly stated case of the prosecution as per the FIR is as under:- In 2007, INX Media Pvt. Ltd. approached Foreign Investment Promotion Board (FIPB) seeking approval for FDI upto 46.216 per cent of the issued equity capital. While sending the proposal by INX Media to be placed before the FIPB, INX Media had clearly mentioned in it the inflow of FDI to the extent of Rs.4,62,16,000/- taking the proposed issue at its face value. The FIPB in its meeting held on 18.05.2007 recommended the proposal of INX Media subject to the approval of the Finance Minister-the appellant. In the meeting, the Board did not approve the downstream investment by INX Media in INX News. INX Media committed violation of the recommendation of FIPB and the conditions of the approval as:- (i) INX Media deliberately made a downstream investment to the extent of 26% in the capital of INX News Ltd. without specific approval of FIPB which included indirect foreign investment by the same Foreign Investors; (ii) generated more than Rs.305 crores FDI in INX Media which is in clear violation of the approved foreign flow of Rs.4.62 crores by issuing shares to the foreign investors at a premium of more than Rs.800/- per share.

4. Upon receipt of a complaint on the basis of a cheque for an amount of Rs.10,00,000/- made in favour of M/s Advantage Strategic Consulting Private Limited (ASCPL) by INX Media, the investigation wing of the Income Tax Department proceeded to investigate the matter and the relevant information was sought from the FIPB, which in turn, vide its letter dated 26.05.2008 sought clarification from the INX Media which justified its action saying that the downstream investment has been approved and that the same was made in accordance with the approval of FIPB. It is alleged by the prosecution that in order to get out of the situation without any penal provision, INX Media entered into a criminal conspiracy with Sh. Karti Chidambaram, Promoter Director, Chess Management Services Pvt. Ltd. and the appellant-the then Finance Minister of India. INX Media through the letter dated 26.06.2008 tried to justify their action stating that the downstream investment has been approved and the same was made in accordance with approval.

5. It is alleged that INX Media Group in its record has clearly mentioned the purpose of payment of Rs.10,00,000/- to ASCPL as towards “management consultancy charges towards FIPB notification and clarification”. The FIR further alleges that for the services rendered by Sh. Karti Chidambaram to INX Media through Chess Management Services in getting the issues scuttled by influencing the public servants of FIPB unit of the Ministry of Finance, consideration in the form of payments were received against invoices raised on INX Media by ASCPL. It is further alleged that the very reason for getting the invoices raised in the name of ASCPL for the services rendered by Chess Management Services was with a view to conceal the identity of Sh. Karti Chidambaram. It is stated that Sh. Karti Chidambaram was the Promoter, Director of Chess Management Services whereas ASCPL was being controlled by him indirectly. It is alleged that the invoices approximately for an amount of Rs.3.50 crores were falsely got raised in favour of INX Media in the name of other companies in which Sh. Karti Chidambaram was having sustainable interest either directly or indirectly. It is alleged that such invoices were falsely got raised for creation of acquisition of media content, consultancy in respect of market research, acquisition of content of various genre of Audio-Video etc. Alleging that the above acts of omission and commission prima facie disclose commission of offence, on 15.05.2017, CBI registered FIR in RC No.220/2017-E-0011 under Section 120B IPC read with

Section 420 IPC, Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against the accused viz. (i) INX Media through its Director Indrani Mukherjea; (ii) INX News through its Director Sh. Pratim Mukherjea @ Peter Mukherjea and others; (iii) Sh. Karti P. Chidambaram; (iv) Chess Management Services through its Director Sh. Karti P. Chidambaram and others; (v) Advantage Strategic Consulting through its Director Ms. Padma Vishwanathan @ Padma Bhaskararaman and others; (vi) unknown officers/officials of Ministry of Finance, Govt. of India; and (vii) other unknown persons for the alleged irregularities in giving FIPB's clearance to INX Media to receive overseas funds of Rs.305 crores against approved Foreign Direct Investment (FDI) of Rs.4.62 crores.

6. Apprehending arrest, the appellant filed petition under Section 438 Cr.P.C. before the High Court seeking anticipatory bail. Vide order dated 31.05.2018, the High Court granted interim protection to the appellant and the said interim protection continued till 20.08.2019. By the order dated 20.08.2019, the High Court dismissed the application for anticipatory bail to the appellant. Challenging the order declining anticipatory bail to the appellant, SLP(Crl.) No.7525 of 2019 was preferred by the appellant before the Supreme Court on 21.08.2019. In the meanwhile, the appellant was arrested by the CBI on the night of 21.08.2019 and the appellant has been in custody since then. Since the appellant was arrested in connection with CBI case, the appellant's SLP being SLP(Crl.) No.7525 of 2019 was dismissed as infructuous. Insofar as the case registered by Enforcement Directorate, SLP(Crl.) No.7523 of 2019 was dismissed by this Court refusing to grant anticipatory bail to the appellant by a detailed order dated 05.09.2019. In the present case, we are concerned only with the case registered by the respondent-CBI in RC No.220/2017-E-0011.

7. The High Court by its impugned judgment dated 30.09.2019 refused to grant regular bail to the appellant and dismissed the bail application. Before the High Court, three contentions were raised by the respondent-CBI:- (i) flight risk; (ii) tampering with evidence; and

(iii) influencing witnesses. The learned Single Judge did not accept the objection relating to "flight risk" and "tampering with evidence". Insofar as the objection of "flight risk" is concerned, the High Court held that the appellant was not a "flight risk" and it was observed that by issuing certain directions like "surrender of passport", "issuance of look-out notice" and such other directions, "flight risk" can be secured. So far as the objection of "tampering with evidence", the High Court held that the documents relating to the present case are in the custody of the prosecuting agency, Government of India and the Court and therefore, there is no possibility of the appellant tampering with the evidence. But on the third count i.e. "influencing the witnesses", the High Court held that the investigation was in an advance stage and the possibility of the appellant influencing the witnesses cannot be ruled out.

8. The appellant has challenged the impugned judgment denying bail to him on the court's apprehension that he is likely to influence the witnesses. So far as the findings of the High Court on two counts namely "flight risk" and "tampering with evidence" holding in favour of the appellant, CBI has filed SLP(Crl.) No.9445 of 2019.

9. Mr. Kapil Sibal, learned Senior counsel for the appellant has submitted that the High Court erred in dismissing the bail application on mere apprehension that the appellant is likely to influence the witnesses and there is no supporting material on the possibility of the appellant of influencing the witnesses. Learned Senior counsel further submitted that the reference to the two material witnesses (accused) having been approached not to disclose information regarding the appellant and his son, is not supported by any material and the same lacks material particulars and no credibility could be given to the allegations given in a sealed cover. It was further submitted that the learned Single Judge did not appreciate that in various remand applications filed by the respondent, there was no allegation that any material witnesses (accused) having been approached not to disclose information about the appellant and his son and the above allegation has been made as an afterthought in a sealed cover only to prejudice the grant of bail to the appellant. The learned Senior counsel submitted that the appellant was interrogated by the CBI only once though the CBI had taken appellant's custody for number of days.

10. Dr. A.M. Singhvi, learned Senior counsel submitted that "bail is a rule and jail is an exception" and this well-settled position has not been kept in view by the High Court. The learned Senior counsel submitted that bail was denied to the appellant based on what was given in a sealed cover and submitted "that the apprehension of CBI-possibility of influencing the witnesses" is an afterthought. Placing reliance upon Mahender Chawla and others v. Union of India and others 2018 (15) SCALE 497, the learned Senior counsel submitted that if really the appellant approached the witnesses so as to influence them, the prosecution could have taken steps and sought for protection of the witnesses as per the "witnesses protection scheme" laid down in Mahender Chawla's case. The learned Senior counsel further submitted that all other accused are on bail and there is no justifiable reason to deny bail to the appellant. It is also contended that now the charge sheet has been filed and it does not indicate that tampering with evidence or intimidating witness is a charge but the allegation is continued to be made based on something unilaterally recorded and produced in a sealed cover before the High Court which was only to prejudice the mind of the Court.

11. So far as the cross appeal filed by the CBI, the learned Senior counsel for the appellant submitted that after the anticipatory bail was refused to the appellant by the High Court on 20.08.2019, the appellant approached the Supreme Court for urgent hearing on the very same day i.e. on 20.08.2019 and made a mention before the Senior Judge on 21.08.2019 who had directed the matter be listed for urgent hearing after placing the matter before Hon'ble the Chief Justice of India and thereafter, the matter was listed on 23.08.2019. The learned Senior counsel submitted that on 20.08.2019 and 21.08.2019, the appellant had consultation with his lawyers and was preparing the matter for filing SLP and there was no question of his abscondence. It is submitted that the appellant thereafter addressed a press conference and then proceeded to his own house from where he was arrested. It was submitted that the appellant had thus not even attempted to conceal himself or evade the process of law. It was contended that the FIR is of 2017 and the appellant has not left the country ever since, instead he had joined the investigation and co-operated with the investigating agency. It was further submitted that the appellant being a Member of Parliament and a Senior Member of the Bar, there is no question of "flight risk" and the High Court rightly held in favour of the appellant on two counts viz. "flight risk" and "tampering with evidence".

12. Mr. Tushar Mehta, learned Solicitor General submitted that while considering the bail application, the court should look into the gravity of the offence and that the possibility of the accused apprehending his conviction fleeing the country and since many economic offenders have fled from the country and the nation is facing this problem of the "economic offenders fleeing the country". It was submitted that the second test is to find out whether the accused has wherewithal to flee the country and possessing resources and capacity to settle abroad. It was contended that the respondent-CBI has definite material to show that the "witness was influenced" and in order to prevent further possibility of influence and the vulnerability of the witness, the identity and the statement of the said witness cannot be shared with the accused. It was submitted that the statement of the said witness that he was being approached not to disclose any information regarding the appellant and his son, was produced before the High Court in a sealed cover and based upon the same, the High Court rightly refused to grant bail on the ground of "likelihood of influencing the witnesses". The learned Solicitor General submitted that "likelihood of influencing the witness" is not a mere apprehension but based upon material and there is serious danger of the witnesses being influenced and the mere presence of the accused-appellant would be sufficient to intimidate the witnesses.

13. The learned Solicitor General further submitted that the charge sheet has been filed on 18.10.2019 against the appellant and his son Sh. Karti Chidambaram and others including the officials under Section 120B IPC read with Section 420 IPC, Sections 468 and 471 IPC and under Section 9 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. It was submitted that the investigation qua INX is largely over and the investigation reveals that more companies are involved and the investigation qua other companies are going on and if the appellant is granted bail at this stage, it would prejudicially affect the further course of investigation. The learned Solicitor General therefore prayed for dismissal of the appeal filed by the appellant accused and allow the appeal filed by the CBI.

14. We have carefully considered the contentions and perused the impugned judgment and materials on record. The question falling for consideration is when other factors i.e. "flight risk" and "tampering with evidence" are held in favour of the appellant, whether the High Court was justified in declining regular bail to the appellant on the apprehension that there is possibility that the appellant might influence the witnesses.

15. The learned Senior counsel for the appellant submitted that in the High Court, the appellant made submission limited to the applicability of the certain "Press Note" and the correctness of the decision taken by FIPB and the Finance Ministry only to show prima facie for the purpose of grant of bail and to show that the allegations against the appellant are unfounded and incorrect. It was submitted that the learned Single Judge even before the charges being framed and trial being held, had gone into the merits and demerits of the allegations against the appellant and rendered conclusive findings on the merits merely based on the allegations itself causing serious prejudice to the appellant and his defence in the impending trial and the impugned judgment passed by the High Court is completely contrary to the law laid down by the Supreme Court. In support of this contention, the learned Senior counsel placed reliance upon Niranjan Singh and another v. Prabhakar Rajaram Kharote and others (1980) 2 SCC 559.

16. Refuting the said contentions, the learned Solicitor General submitted that though at the stage of grant or refusal to grant of bail, detailed examination of the merits of the matter is not required, but the court has to indicate reasons for prima facie concluding as to why bail was granted or refused. In support of his contention, the learned Solicitor General placed reliance upon Kalyan Chandra Sarkar v. Rajesh Ranjan and another (2004) 7 SCC 528 and Puran v. Rambilas and another (2001) 6 SCC 338. It was contended that the findings recorded by the learned Single Judge is only to record prima facie finding indicating as to why bail was not granted and the reasonings cannot be said to be touching upon the merits of the case.

17. Expression of prima facie reasons for granting or refusing to grant bail is a requirement of law especially where such bail orders are appealable so as to indicate application of mind to the matter under consideration and the reasons for conclusion. Recording of reasons is necessary since the accused/prosecution/victim has every right to know the reasons for grant or refusal to grant bail. This will also help the appellate court to appreciate and consider the reasonings for grant or refusal to grant bail. But giving reasons for exercise of discretion in granting or refusing to grant bail is different from discussing the merits or demerits of the case. At the stage of granting bail, an elaborate examination of evidence and detailed reasons touching upon the merit of the case, which may prejudice the accused, should be avoided. Observing that "at the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided", in Niranjan Singh, it was held as under:-

> "3. .....Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

18. In the present case, in the impugned judgment, paras (51) to (70) relate to the findings on the merits of the prosecution case. As discussed earlier, at the stage of considering the application for bail, detailed examination of the merits of the prosecution case and the merits or demerits of the materials relied upon by the prosecution, should be avoided. It is therefore, made clear that the findings of the High Court in paras (51) to (70) be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial or other proceedings.

19. The learned Senior counsel for the appellant has taken us through the dates and events and submitted that in the Enforcement Directorate's case after the dismissal of the appeal by the Supreme Court refusing to grant anticipatory bail, immediately the appellant sought to surrender in the Enforcement Directorate's case; but the same was objected to by the Enforcement Directorate and the Department has sought to arrest the appellant subsequently only on 11.10.2019 and the investigating agencies are prejudicially acting against the appellant to ensure that the appellant is not released on bail and continues to languish in custody.

20. Refuting the said contention of the appellant that the investigating agencies-CBI and Enforcement Directorate are bent upon prolonging the custody of the appellant, the learned Solicitor General submitted that after the anticipatory bail was dismissed by the Supreme Court in Criminal Appeal No.1340 of 2019 on 05.09.2019, the appellant has filed the petition to surrender in the Enforcement Directorate's case on 05.09.2019 itself and the Enforcement Directorate objected to the surrender of the appellant. The learned Solicitor General submitted that the Enforcement Directorate wanted to take custody of the appellant in the Enforcement Directorate's case only after examination of witnesses and collecting relevant materials. It was submitted that between 06.09.2019 and 09.10.2019, twelve witnesses were examined and thereafter, the Enforcement Directorate filed an application on 11.10.2019 seeking permission to arrest the appellant in connection with Enforcement Directorate's case and thereafter, application for custodial interrogation of the appellant was filed and the Enforcement Directorate has taken the appellant to custody for interrogation for seven days (vide order dated 17.10.2019). It was therefore contended that no motive could be attributed to the investigating agency be it CBI or Enforcement Directorate on the timing of their action in the case against the appellant.

21. In this appeal, we are only concerned with the question of grant of bail or otherwise to the appellant in the CBI case. We have referred to the submission of learned Senior counsel for the appellant and learned Solicitor General only for the sake of completion of the sequence of the contentions raised. Since the matter pertaining to Enforcement Directorate is pending before the concerned court, we are not expressing any opinion on the merits of the rival contention; lest it might prejudice the parties in the appropriate proceedings.

22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

23. In Kalyan Chandra Sarkar v. Rajesh Ranjan and another (2004) 7 SCC 528, it was held as under:-

> "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
>
> (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
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> (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
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> (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC
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> 338.) Referring to the factors to be taken into consideration for grant of bail, in Jayendra Saraswathi Swamigal v. State of Tamil Nadu (2005) 2 SCC 13, it was held as under:-
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> "16. .....The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case....."

24. After referring para (11) of Kalyan Chandra Sarkar, in State of U.P. through CBI v. Amarmani Tripathi (2005) 8 SCC 21, it was held as under:-

> "18. It is well settled that the matters to be considered in an application for bail are (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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....".

25. In the light of the above well-settled principles, let us consider the present case. At the outset, it is to be pointed out that in the impugned judgment, the High Court mainly focussed on the nature of the allegations and the merits of the case; but the High Court did not keep in view the well-settled principles for grant or refusal to grant bail.

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.

27. The learned Solicitor General submitted that when the accused is facing grave charges and when he entertains doubts of possibility of his being conviction, there is a "flight risk". It was submitted that the appellant has wherewithal to flee away from the country and prayed to refuse bail to the appellant on the ground of "flight risk" also. We find no merit in the submission that the appellant is a "flight risk" and there is possibility of his abscondence. In the FIR registered on 15.05.2017, the High Court has granted interim protection to the appellant on 31.05.2018 and the same was in force till 20.08.2019 – the date on which the High Court dismissed the appellant's petition for anticipatory bail. Between 31.05.2018 and 20.08.2019, when the appellant was having interim protection, the appellant did not file any application seeking permission to travel abroad nor prior to the same after registration of FIR any attempt is shown to have been made to flee. On behalf of the appellant, it is stated that the appellant being the Member of Parliament and a Senior Member of the Bar has strong roots in society and his passport having been surrendered and "look out notice" issued against him, there is no likelihood of his fleeing away from the country or his abscondence from the trial. We find merit in the submission of the learned Senior counsel for the appellant that the appellant is not a "flight risk"; more so, when the appellant has surrendered his passport and when there is a "lookout notice" issued against the appellant.

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, e-mail, 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.

30. The learned Solicitor General submitted that the statement of witness 'X' who is said to have been approached not to disclose any information regarding the appellant and his son, has been recorded under Section 164 Cr.P.C. in which the said witness 'X' has made the statement that he has been approached. Statement under Section 164 Cr.P.C. of the said witness 'X' is said to have been recorded on 15.03.2018. The said witness allegedly approached or the other witnesses in a case of the present nature, cannot be said to be a rustic or vulnerable witness who could be so easily influenced; more so, when the allegations are said to be based on documents. More particularly, there is no material to show that the appellant or his men have been approaching the said witness so as to influence the witness not to depose against the appellant or his son.

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.

33. In the result, the impugned judgment dated 30.09.2019 passed by the High Court of Delhi in Bail Application No.2270 of 2019 is set aside and the appeal arising out of SLP(Crl.) No.9269 of 2019 is allowed. The appellant is ordered to be released on bail if not required in any other case, subject to the condition of his executing bail bonds for a sum of Rs.1,00,000/- with two sureties of like sum to the satisfaction of the Special Judge (PC Act), CBI-06, Patiala House Courts, New Delhi. The passport if already not deposited, shall be deposited with the Special Court and the appellant shall not leave the country without leave of the Special Court and subject to the order that may be passed by the Special Judge from time to time. The appellant shall make himself available for interrogation as and when required. Consequently, the appeal arising out of SLP(Crl.) No.9445 of 2019 preferred by the CBI stands dismissed. Since the High Court, in the impugned judgment, has expressed its views on the merits of the matter, the findings of the High Court in the impugned judgment shall not have any bearing either in the trial or in any other proceedings. It is made clear that the findings in this judgment be construed as expression of opinion only for the limited purpose of considering the regular bail in CBI case and shall not have any bearing in any other proceedings.

.....J. [R. BANUMATHI] .....J. [A.S. BOPANNA] .....J. [HRISHIKESH ROY] New Delhi;

October 22, 2019