

Vipul Agarwal vs Central Bureau Of Investigation & Anr. on 28 March, 2025

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

* IN THE HIGH COURT OF DELHI AT NEW DELHI
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Pronounced on: 28th

+ CRL.M.C.2526/2019, CRL.M.As.10049/2019 &
M/S PRAKASH INDUSTRIES LTD & ANR

Through: Mr. Vikas Pahwa, S
with, Mr. Gurpreet
Amir Khan, Mr. Shi
Ms. Namisha Samshi
Tandon, Mr. Kunal
Mr. Ali Kazi, Advo

versus

DIRECTORATE OF ENFORCEMENT & ANRRespondents

Through: Mr. Ripudaman Bhardwaj, SPP
with Mr.Kushagra Kumar and Mr.
Abhinav Bhardwaj and Mr. Vishal
Baliyan, Advocates for CBI.

+ CRL.M.C. 7396/2023 & CRL. M.A. 27609/2023
VIPUL AGARWAL

Through: Mr. Arshdeep Singh
Peeyush Bhatia and
V. S., Advocates

versus

CENTRAL BUREAU OF INVESTIGATION
& ANR.

.....Respondents

Through: Mr. Ripudaman Bhardwaj, SPP
with Mr.Kushagra Kumar and Mr.
Abhinav Bhardwaj and Mr. Vishal
Baliyan, Advocates for CBI.

CORAM:

CRL.M.C.2526/2019 & one other connected matter

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HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

1. At the outset, it is stated that by way of both the captioned petitions, the petitioners have sought for common reliefs and have made similar submissions before this Court. Therefore, for the purpose of adjudication, this Court has culled out the facts and submissions from Crl.M.C. 2526/2019 for convenience.

FACTUAL MATRIX

1. The instant petition, CRL.M.C.2526/2019, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the petitioner seeking supply and quashing of ECIR no. 07-DLZO-01/2018; quashing of RC no. - AC- 1/2014/A-0005/CBI/AC-I dated 1st August, 2014; quashing of final report dated 27th September, 2017 filed in CC No. 30/2017, arising out of RC no. - AC-1/2014/A-0005/CBI/AC-I as well as quashing of the order of cognizance dated 9th March, 2018 passed by the learned Special Judge, CBI-05, Patiala House Courts, New Delhi district, New Delhi.

2. It is pertinent to note that vide order dated 16th August, 2023, in CRL. M.C. 2526/2019, in view of the request made by the petitioner, the Directorate of Enforcement was deleted from the array of parties. It was further recorded that no relief was being pressed against the Directorate of Enforcement, and thus, this Court shall not be delving into prayer „a , „b and „f in CRL. M.C. 2526/2019.

CRL.M.C.2526/2019 & one other connected matter

3. Petitioner no. 1 in CRL. M.C. 2526/2019, i.e., M/s Prakash Industries Ltd. (hereinafter "PIL") is a company incorporated and is engaged in the business of coal mines, iron and steel, power and wind energy. Petitioner no. 2, i.e., Mr. Ved Prakash Agarwal is the Chairman and Managing Director (hereinafter "CMD") of PIL. The petitioner, in CRL. M.C. 7396/2023, namely Mr. Vipul Agarwal, is a Chartered Accountant and has been working as a Financial Consultant in PIL since 2013. He has been associated with the company for a considerable period of time and was a Director (Finance and Accounts) prior to the year 2013.

4. PIL, vide letter dated 14th October, 2009, addressed to the State Bank of India, submitted Form 83 for the allotment of loan registration number of their Foreign Currency Convertible Bonds (hereinafter "FCCB") amounting to USD 50 Million in light of the External Commercial Borrowing (hereinafter "ECB")/FCCB guidelines of the Reserve Bank of India (hereinafter "RBI").

5. In furtherance of the aforesaid letter, PIL submitted the details of the transaction pertaining to the issuance of FCCB, which were required to be forwarded to RBI. Subsequently, on 15th October

2009, RBI, in response to PIL's request, allotted Loan Registration Number 2009538 under the applicable, ECB/FCCB guidelines. It is stated that the entire process was handled by one Mr. Pawan Bansal, accused in the aforesaid FIR, who is also a Director in M/s Altis Finserve.

6. Thereafter on 6th March 2014, PIL applied to the Syndicate Bank for ECB of USD 45 million to buyback/refinancing of its outstanding FCCB. It is stated that a copy of Information of Memorandum of PIL was filed along with the said application. Since, the transaction was related to CRL.M.C.2526/2019 & one other connected matter the time period between 2009-2010, Mr. Pawan Bansal was appointed to pursue the said loan application.

7. Accordingly, on 10th April 2014, CMD of Syndicate Bank was informed regarding the use of ECB of USD 45 Million and it was informed that the said loan would be exclusively utilized for buyback/redemption of outstanding FCCB of PIL. Following the same on 23rd April 2014, information was sought by the authorized representative Syndicate Bank, London branch with regard to proposal for ECB term loan from PIL. The requisite details, as sought on 23rd April, 2014, were duly furnished by PIL on 25th April, 2014.

8. On 21st May, 2014, Syndicate Bank sent a communication to PIL and informed that the competent authorities have accorded an "in principal clearance", for considering proposal for term loan of USD 20 Million on bilateral basis, subject to certain terms and conditions. Subsequently, on 23rd May, 2014, additional information was sought by the authorized representatives of Syndicate Bank, London branch with regard to proposal for ECB term loan from PIL, for which information was provided by PIL vide letter dated 26th May, 2014. Thereafter on 2nd June, 2014, as per the prescribed format, a processed note was forwarded to Syndicate Bank, by the officials of PIL, following which on 3rd June, 2014, the authorized representative of PIL, via email dated 3rd June, 2014, acknowledged the "in-principal clearance" for USD 20 Million ECB.

9. Following the aforesaid chain of events, on 6th June, 2014, as per clarifications sought by Syndicate Bank, for „in-principal clearance of term loan of USD 20 million, PIL wrote a letter providing a detailed reply to all the queries raised by the bank. Thereafter, on 11th June, 2014, PIL, CRL.M.C.2526/2019 & one other connected matter in furtherance of the loan application dated 6th March, 2014, and the pending loan from Syndicate Bank, PIL submitted additional documents to Syndicate Bank, including „balance confirmation with existing lenders of PIL, net worth statements of the promoter directors etc. .

10. On 12th June, 2014, PIL further supplied the information regarding the „mining plan of Chota mines to Syndicate Bank, for which the loan was sought.

11. Pursuant to the above, on 20th June, 2014, PIL, through its authorized representative, submitted a response to the queries raised by the bank in connection with their "in-principal letter", to immediately arrange the balance amount of USD 25 Million as the bank only sanctioned USD 20 Million against the original loan request of USD 45 Million. In furtherance to the same, on 9th July, 2012 and 20th July, 2014, PIL further submitted their reply to the queries raised by the syndicate bank with regard to the sanctioned loan. In the meanwhile, on 12th July, 2014 and 16th July, 2014,

Syndicate Bank, posed certain queries to PIL with regard to the approval of term loan.

12. In reply to the same, on 14th July, 2014, the Credit Approval Committee of Syndicate Bank, in its meeting dated 14th July, 2014, approved term loan of USD 20 Million as against the original request of USD 40 Million. The Credit Approval Committee of Syndicate Bank, London branch recommended the above mentioned proposed loan before the sanctioning authority on 15th July, 2014 and on 23rd July, 2014, Syndicate Bank, London Ranch, in connection with the loan application proposal confirmed the approval of ECB term loan of USD 20 Million CRL.M.C.2526/2019 & one other connected matter granted to PIL on bilateral basis for the purpose of buyback/redemption of FCCB issued by the company subject to certain terms and conditions.

13. Consequently on 1st August 2014, criminal law was set into motion with the registration of the instant FIR, under Sections 9 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act") and Section 120B of the Indian Penal Code, 1860 (hereinafter "IPC") against the petitioner and other co-accused persons.

14. After the registration of the FIR by the CBI, on 4 th August, 2014, 5th August, 2014, 22nd August, 2014, 9th April, 2014 and 19th August, 2016, statements of Mr. Uday Shankar Majumdar was recorded under Section 161 of the CrPC. It is to be noted that Mr. Uday Shankar Majumdar worked as a General Manager, Treasury, and International Banking Department, Syndicate Bank. He stated that the department was responsible for assessing the proposals for loans which were received from foreign branches of Syndicate Bank.

15. It is stated by the petitioners that the case put up by the prosecution against the petitioners is based on the intercepted conversation dated 17th May, 2014, 22nd May, 2014, 9th June, 2014 and 15th July, 2014, which are not admissible under the law. Further, the said conversations were recorded prior to the registration of the instant FIR.

16. Thereafter, on 5th August, 2014, the statement of Mr. Ghanshyam Mudgal was recorded under Section 161 of the CrPC pursuant to which, on 27th September, 2017, the CBI filed its final report/chargesheet under Section 173 of the CrPC in the aforesaid FIR, under Sections 9, 10, 11, 12 and 13(2) read with 13(1)(d) of the PC Act and Section 120B of the IPC CRL.M.C.2526/2019 & one other connected matter against the petitioners and the other co-accused persons. The said chargesheet has been challenged by the petitioners before this court.

17. Pursuant to the filing of the chargesheet, on 9th March, 2018, learned Special Judge took cognizance of the aforesaid charge sheet and summoned the petitioners as well as the other co-accused persons to appear on 26th March, 2018 to face trial for the alleged offences as mentioned herein above.

18. Now the petitioners are aggrieved by the aforesaid summoning order and proceedings arising out of the same and has sought for quashing of the FIR, chargesheet as well as the summoning order. PLEADINGS BEFORE THIS COURT

19. The instant petition has been filed on the following grounds:

"A. Because from the bare perusal of the Final Report dated 27.09.2017 and the documents filed along therewith, do not disclose commission of any offence, muchless offences under Section 9 of The Prevention of Corruption Act or Section. 120 B of the Indian Penal Code;

B. Because, the prosecution has not placed on record a single legal evidence or document on record which substantiates, even prime-facie, involvement of the Petitioners in commission of any offence;

C. Because, there is no legal evidence to show the culpability of the Petitioners and to establish that there was any agreement between the Petitioners and one Mr. Pawan Bansal, who has been alleged to have obtained for the Public Servant an alleged gratification;

D. Because, the prosecution of the Petitioners for an offence of Conspiracy under Section. 120 B of the Indian Penal Code is totally and completely without jurisdiction as there is not even a single averment in the charge sheet that there was any agreement between the Petitioners and the other accused namely Mr. Pawan Bansal to commit any illegal act CRL.M.C.2526/2019 & one other connected matter and the whole case of the prosecution is based on conjectures and inferences, which is impermissible in law. That, the prosecution of the Petitioners is in teeth of law laid down by the Hon'ble Supreme Court in the case of "Baldev Singh verses State of Punjab" reported in "(2009) 6 SCC 564" wherein the Hon'ble Supreme Court has held as Under....

.....

E. Because, there is no averment or an allegation in the charge sheet that there was prior meeting of mind between the accused and there are only assertions that the Petitioners were aware of the alleged conspiracy. It is submitted that not a single instance of any action of the Petitioners has been made in the charge sheet which action would constitute an offence. That the prosecution of the Petitioners is contrary to the dicta laid down by the Hon'ble Supreme Court in the case of "Central Bureau of Investigation verses K. Naravan Rao" reported in "(2012) 9 SCC 512" wherein it has been held as under:

F. Because, there is no provision in the Prevention of Money Laundering Act, 2002, which authorizes officers of Respondent No.1 to register "Enforcement Case Information Report" and initiate penal proceedings on the basis of an action which has no basis in any statutory proceedings "B. BECAUSE THE PETITIONERS HAVE BEEN ARRAIGNED IN AS AN ACCUSED MERELY ON THE PRETEXT THAT HE WAS FAMILIAR WITH A CO-

ACCUSED PERSONS. WITHOUT THERE BEING ANY ALLEGATION OF ANY OVERT ACT ON THE PART OF THE PETITIONERS AND AS SUCH. THE PETITIONERS IS BEING PROSECUTED ON THE BASIS OF PRESUMPTIONS AND SURMISES:

B.1. A perusal of the entire Charge-sheet, statements of witnesses and the documents relied upon by the prosecution do not make out the requisite allegations CRL.M.C.2526/2019 & one other connected matter against the Petitioners for commission of the offences alleged.

B.2. In fact, the allegation levelled against the Petitioner no 2 of being familiar with one of the co- accused (@ Para No. 17.6). The relevant portion of the Charge-sheet in this regard is as under..... B.3. M/s Prakash Industries Ltd had engaged the services of Sh. Pawan Bansai for pursuing its loan proposal with Syndicate Bank and with respect to the same, the Petitioner no 2 was being updated the status of the Application (@ Para No. 17.17 and 17.19). However, the same does not imply any conspiracy on the part of the Petitioner.

B.4. It is submitted that from the above, it is clear that the Petitioner no 2 is victim of being familiar with a person, though there is no iota of evidence of the Petitioner no 2 being familiar of the conspiracy, much less, being part of the same.

B.5. Merely knowing an accused would not lead to the assumption that the Petitioners were involved in the alleged offence, as it is trite that even knowledge of conspiracy is irrelevant.

B.6. The Hon'ble Supreme Court of India in K. R, Purshothaman Versus State of Kerala, 2005 (12) see 631 has held that....

B.7. Hence, it is submitted that the impugned Final Report and proceedings arising out of the same are liable to be quashed and set-aside.

C. BECAUSE THE ENTIRE CASE IS BASED ON CDRS.

WHICH IN NO MANNER CONNECT THE PETITIONERS WITH THE OFFENCE AND FURTHER.

DESPITE THE FACT THAT CDRS ARE ONLY CORROBORATIVE WEAK PIECE OF EVIDENCE. NO independent EVIDENCE TO CORROBORATE ALLEGATIONS AGAINST THE PETITIONERS ARE ON RECORD:

CRL.M.C.2526/2019 & one other connected matter C.1. To prove the Allegation there is no direct evidence against the Petitioners, much less, any other independent evidence. The only evidence on which the prosecution is relying is CDR's. It is submitted that the Transcripts of the CDR's are attached in and as D-59, D-84, D-85, D-86, D-87, and D-137.

C.2. In Para No. 17.10 of the Charge-sheet, it has been alleged that various mobile/ landline numbers were put under surveillance by the Special Unit, CBI, New Delhi after obtaining the approval of competent authority, including that of the Petitioner.

C.3. Thereafter, from Para No. 17.22 to 17.23 of the chargesheet dated 27.09.2017, there is only allegations viz. the said alleged conversations. However, in the entire CDRs, there is nothing to point out that the Petitioner no 2 was involved in the alleged offence or that the Petitioner had required Sh. Pawan Bansal to make payment of any illegal gratification to Accused - S. K. Jain.

C.4. Even if the entire CDRs are taken to be true on the face value, the maximum that can be alleged against the Petitioner is that he was being updated about the status of the loan proposal of Petitioner No 1/ M/s Prakash Industries Ltd. However, the same is both in routine and normal, without there being anything unusual about the same.

C.5. As such, the prosecution was required to produce some independent evidence against the Petitioners to corroborate the allegations levelled by the prosecution against the Petitioner, as the CDRs are a very weak piece of evidence, which can be used only for the purposes of corroboration. C.6. That in the absence of primary evidence, the CDRs cannot be used, being irrelevant and ought not to be relied upon, even at the stage of summoning.

C.7. It is submitted that the Hon'ble Supreme Court of India in the matter titled as Mahabir Prasad Verma Vs. Dr. Surinder Kaur AIR 1982 SO 1043 has held that CRL.M.C.2526/2019 & one other connected matter tape recorded conversations can only be relied upon as corroborated evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and cannot be relied upon.

E. BECAUSE THE ENTIRE CASE OF THE PROSECUTION IS UNSUSTAINABLE IN THE EYES OF LAW. AS THERE ARE CONTRADICTORY ALLEGATIONS IN THE MATTER. WHICH CLEARLY MAKE THE ALLEGATIONS IMPROBABLE:

E.1. That the entire case of the prosecution is itself unsustainable in the eyes of law, as the allegations levelled by the prosecution are themselves contradictory and do not, at all, point out towards the alleged offence.

E.2. In this regard, it would be important to note that services of M/s Altuis Finserve Pvt. Ltd, the Company in which Sh. Pawan Bansal was a Director, were availed of by M/s Prakash Industries Ltd. And as such, any payment made to Sh. Pawan Bansal were in routine.

E.3. The same is more so in view of the fact that Sh. Pawan Bansal is alleged to have been in touch with Accused - S. K. Jain for various clients of his and as such, mere factum of payment of alleged illegal gratification to Accused - S. K. Jain, even if assumed to be correct, does not automatically connect the same with M/s Prakash

Industries Ltd.

E.4. Hence, the prosecution was required to connect the very payment made by Petitioner No 1/ M/s Prakash Industries Ltd with Accused - S. K. Jain, which it has failed to do.

E.5. Rather, the allegations levelled in the Charge- sheet are contradictory and improbable, as is clear from the following....."

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20. The CBI has opposed the present petition on the following contentions:

"I. That the averments made in para 1 of the petition are admitted to the extent the same is matter of record. II. That the contents made in Para 2A & 2B are wrong and misleading whereas it submitted that the Ld. Trial Court has instituted the process against the Petitioners while observing all legal and codal formalities and the Ld. Trial Court has categorically mentioned in its order dated 09.03.2018 while taking cognizance against the accused petitioner that "this court has gone through the charge- sheet, statements of witnesses recorded under Section 161 of Cr.PC and attached documents" and also mentioned that this court is satisfied that there is sufficient material on record to take cognizance of offence and thereby took cognizance against the accused persons including the accused petitioner under the relevant sections of law. The Ld. Special Judge has followed all the regulatory provisions as well as law laid down by this Hon'ble Court and Hon'ble Supreme Court at the time of taking cognizance and the impugned order was passed after due application of facts and circumstances of the case. Hon'ble Delhi High Court in Vikas Thakur vs. State of NCT of Delhi CRL M.C.6619/2023 observed that "at the time of taking cognizance a magistrate is required to judicially apply the mind be satisfied on the basis of facts what are borne out from the statement of the complainant as made in the complaint or what are borne out from the report of the investigation officer or what are the surrounding facts and circumstances based on the prima facie documents and material in existences or what are the contents of the FIR. In effect it is the satisfaction of the Magistrate which plays a pre dominant role while taking cognizance coupled with fact that there are enough material to convince him or her for taking such cognizance". The impugned order was CRL.M.C.2526/2019 & one other connected matter passed after due appreciation of facts and circumstances of the case and after due application of judicial mind. III. That the contents made in Para no. 2C, 2D and 2E are false, misleading and hence denied. It is submitted that when the facts stated by the prosecution prima-facie disclose the commission of cognizable offences and necessary ingredients to constitute the offence, the order of cognizance passed by the Ld. Trial Court cannot be quashed. The accused-petitioner has been charge-sheeted for his active criminal involvement in commission of instant offence. The Petitioner has been charge-sheeted on the basis of evidence on record

which can be established in the Court of Law beyond reasonable doubt neither on the basis of presumption and surmises nor of familiarity with other accused persons. The accused petitioner played an active role in the chain of commission of instant offence and the Judicial process initiated against him is as per the provisions stipulated in the law and the sufficiency, reliability and admissibility of evidence is to be tested in course of trial and not at this stage. Recently Hon'ble Supreme Court in Captain Manjit Singh Viridi (Retd.) vs. Hussain Mohammed Shattaf & Ors. 2023 Live law (SC) 462 observed and held that "truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial".

IV. That the averments made in Para no. 2F to 2L are false, misleading and hence denied. It is most humbly submitted that there are evidences on record to establish the active involvement and complicity of the accused petitioner as well as act of commission made by the accused petitioner in this conspiracy. The accused petitioner played a pivotal role for getting favorable approval for loan to Mis Prakash Industries. Limited and paying the kickbacks of Rs. 3.25 Crores to the accused public servant through illegal channel. There are evidence on record to substantiate the allegation against the accused petitioner.

V. That the averments made in Para no. 2M to 2X are in repetition on behalf of the Accused Petitioner and already · CRL.M.C.2526/2019 & one other connected matter been replied in Para 16 (II) & (III) and hence is not repeated.

VI. The averments made in Para 3(1) & 3(II) are admitted to the extent the same is matter of record. However, it is denied that the accused petitioner has been falsely implicated. It is also submitted that the evidences against the petitioner shall be proved in course of trial of accused petitioner no. 2 being working with M/s PIL but it is humbly submitted that, it is submitted that the accused petitioners have been charge sheeted for his criminal deeds and not falsely implicated. VII. That, the averments made in Para 3 (III) to (XXIV) are the chronological developments of the different stages of applying the loan by M/s PIL from Syndicate Bank to buyback of Foreign Currency Convertible Bonds (FCCB) and requires no reply. However, it is submitted that there was no written authorization from M/s PIL to Syndicate Bank with respect to persuasion of its loan proposal by Pawan Bansal or his firm with the bank.

VIII. That, the averments made in Para 3 (XXV), (XXVI) & (XXVII) are matter of record and hence requires no reply. It is submitted that apart from the dates provided by Accused/ Petitioner regarding recording of the statement of Sh. Uday Shankar Majumdar, his statement was also recorded on 20.08.2016 and the same is available on record. IX That the averments .made in Para 3 (XXVIII), (XXIX) & (XXX) are ambiguous as the Accused/Petitioner is discussing about two different aspects viz. the expert opinion, voice identification memo and letter of State Bank of India wherein Annexure P-24 is of SBI letter dated 16.10.2014.

X. That the averments made in Para 3 (XXXI) to L are matter of record and is part of charge sheet, hence need no reply.

XI. That the averments made in Para 3 (LI) & (LII) are related to the provisions of the Prevention of Money Laundering Act, 2002 which are being looked after by the Enforcement Directorate and hence needs no reply. XII.

CRL.M.C.2526/2019 & one other connected matter That the averments made in Para 3 (LUI) to (LXIV) are matter of record and hence, need no reply.

XIII. That the averments made in Para 4 A, B & C are false, misleading and hence denied. In this regard it is submitted that there are evidence to establish the complicity and involvement of the accused petitioner. The accused- petitioner played/acted as an important link in the chain commission of the offence by facilitating the transaction of bribe amount from one accused to another accused public servant. There are material on record in the form of oral and documentary evidence to invoke penal provisions of section 13 of Prevention of Corruption Act, 1988 and other offences against the accused public servants and the accused petitioner which shall be proved in course of trial. XIV. That the averments made in Para 4 D & E are admitted to the extent the same is reproduction of the statutory enactment and the law laid down by Hon'ble Supreme Court. However, it is submitted that there is evidence to establish that the accused petitioner was in criminal conspiracy and complicity with other co-accused persons to commit the alleged offence.

XV. That the averments made in Para 4 F, G & H are related to the provisions of the Prevention of Money Laundering Act, 2002 which are being looked after by the Enforcement Directorate and the accused petitioner has withdrawn the averments submitted by him which were related to the ECIR registered by Enforcement Directorate, hence, needs no reply.

XVI. That the averments made in Para 4 (I) & (J) are false misleading and hence denied. It is humbly submitted that the Ld. Trial Court has fairly considered all material on record for taking cognizance into this matter. It is also relevant to mention here that the Ld. Trial Court has taken cognizance on the basis of prima-facie material on record and accused- petitioner has been charge-sheeted for his active criminal involvement in commission of alleged offence. XVII. That the averments made in Para 4 K (A.1) & (A.2) are admitted to the extent the same is matter of record. However, CRL.M.C.2526/2019 & one other connected matter it is submitted that the transaction of bribe was initiated through M/s PIL and and Sh. Vipul Agarwal, Chartered Account, PIL facilitated the bribe to public servant by using the services of Sh. Pawan Bansal. There are evidence to establish the criminal involvement and complicity of accused petitioner in commission of the alleged offence. In addition to the intercepted conversation, there are evidences on record in the form of oral statement of witness to reveal the criminal involvement of accused petitioner for facilitating the transaction of bribe amount to the accused public servant.

XVIII. That the averments made in Para 4 K (A.3) is matter of record, hence need no reply.

XIX. That the averments made in Para 4 K (A.4), (A.5), (A.6), (A.7), (A.8), (A.9), (A.10), (A.11), (A.12), (A.13) & (A.14) are admitted to the extent the same refers the judicial decisions however it is submitted that from Para no. 17.17, 17.18 & 17.19 of the chargesheet relevant portion of the same is reproduced as under....."

SUBMISSIONS (on behalf of the petitioner)

21. Mr. Vikas Pahwa, learned senior counsel appearing on behalf of the petitioners submitted that a bare perusal of the charge sheet dated 27th September, 2017, along with the documents filed there with, does not disclose commission of any offence, let alone offence under Section 9 of the PC Act or Section 120B of the IPC.

22. It is submitted that the prosecution has not placed on record a single piece of legal evidence or document to substantiate, even prima facie, the involvement of the petitioners in commission of any offence as alleged.

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23. It is submitted that there is no legal evidence to establish the culpability of the petitioners or to demonstrate the existence of any agreement between the petitioners and one Mr. Pawan Bansal, who is alleged to have obtained gratification for a public servant, i.e., Mr. SK Jain.

24. It is submitted that the prosecution of the petitioners for the offence of criminal conspiracy under Section 120B of the IPC is wholly without jurisdiction, as there is not even a single averment in the chargesheet alleging any agreement between the petitioners and the co-accused, namely, Mr. Pawan Bansal, to commit an illegal act. The entire case of prosecution is based on conjectures and inferences, which is impermissible in law.

25. It is submitted that there is no averment or allegation in the charge sheet of any prior meeting of minds between the accused. The only assertion made is that the petitioners were allegedly aware of the purported conspiracy. However, not a single event or a specific allegation to the petitioners has been cited in the charge sheet as constituting an offence. It is submitted that the prosecution of the petitioners is contrary to the law laid down by the Hon ble Supreme Court in CBI v. K. Naryaan Rao¹ wherein it was held that the essential ingredients of the offence of criminal conspiracy include an agreement between two or more persons to do an illegal act, or to a legal act by illegal means. It was further held that even if certain acts are proved to have been committed, it must be clear that they were committed in pursuance of an agreement (2012) 9 SCC 512 CRL.M.C.2526/2019 & one other connected matter made between the accused persons, who were parties to the alleged conspiracy.

26. It is submitted that petitioner no. 2 cannot be made vicariously liable for a criminal offence merely by virtue of his designation as the CMD of petitioner no. 1, in the absence of specific allegations against him in the charge sheet.

27. It submitted that the allegations levelled by the prosecution in the charge sheet are to the effect that the accused, Mr. Pawan Bansal, paid illegal gratification to accused, namely Mr. Sudhir Kumar Jain @ Mr. SK Jain (CMD of Syndicate Bank) for allegedly favoring PIL. It is submitted that the charge sheet does not contain any allegations against the petitioners regarding the commission of any act which could be said to form part of the alleged offence. The only reference against the

petitioner no. 2 is that he was apprised of the proposal of petitioner no. 1, i.e., PIL. It is submitted that the same was informed to the petitioner solely in his official capacity and there is nothing on record to attach any criminality to the same.

28. It is submitted that the petitioners have been arraigned as accused solely on the basis of their designation, which is evident from the perusal of paragraphs 16.5, 17.6 and 17.19 of the charge sheet. It is also submitted that even assuming, without admitting that the entire set of allegations levelled by the prosecution in the present matter are correct, they still do not disclose the commission of any offence committed by the petitioners as vicarious liability cannot be imposed on petitioner no. 2 for any alleged act of petitioner no. 1 company, in the absence of specific statutory provision.

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29. It is submitted that the Hon ble Supreme Court in Sunil Bharti Mittal v. CBI², held that there is no concept of vicarious liability in criminal law, until the statute specifically provides for the same. In the instant matter, petitioner no. 2 has been summoned solely on the basis of his designation as CMD of the accused company. It is also submitted that in Avnish Bajaj v. State³, a Coordinate Bench of this Court held that a Managing Director cannot be summoned merely on the basis of his post and designation.

30. It is submitted that a perusal of the entire charge sheet, including the statements of witnesses and documents relied upon by the prosecution does not disclose the essential ingredients necessary to establish commission of the offenses alleged against the petitioners for alleged against them. In fact, the only allegation levelled against petitioner no. 2 is that he was acquainted with the co-accused, Mr. Pawan Bansal. It is submitted that PIL had engaged the services of Mr. Pawan Bansal to pursue its loan proposal with Syndicate Bank, and with respect the same petitioner no. 2 was being updated about the status of the loan application of PIL in his official capacity. However, such updates do not imply any conspiracy on the part of the petitioner no. 2.

31. It is submitted that it is clear that the petitioner no. 2 is being targeted merely due to his familiarity with a person who is alleged to be a part of the conspiracy. There is no iota of evidence to suggest that petitioner no. 2 had knowledge of, the conspiracy, much less, being part of the same. Merely knowing an accused person does not lead to the (2015) 4 SCC 109 2008 (3) JCC 1726 CRL.M.C.2526/2019 & one other connected matter presumption that the petitioners were involved in the alleged offence, In this regard, reliance is placed on K.R. Purshothaman v. State of Kerala⁴, wherein the Hon ble Supreme Court held, that mere knowledge or even discussion of a plan would not per se constitute conspiracy.

32. It is submitted that there is no direct evidence against the petitioners, much less, any other independent evidence, to support the allegations against the petitioners. The only evidence relied upon by the prosecution is Call Data Records (hereinafter "CDRs"). The charge sheet contains allegations based solely on the purported conversations reflected in the CDRs. However, the CDRs do not indicate any involvement of petitioner no. 2 in the alleged offence nor do they reflect that he ever instructed Mr. Pawan Bansal to make any illegal gratification to the accused Mr. S.K Jain.

33. It is submitted that even if the CDRs are taken at face value, the most that can be inferred is that petitioner no. 2 was being updated about the status of the loan proposal of PIL. Such communication is routine and standard in the ordinary course of business and nothing unusual can be inferred from the same. In the absence of any independent corroborative evidence, the CDRs cannot be used as a piece of primary evidence against the petitioner. Without such corroboration, the CDRs are irrelevant and ought not to be relied upon, even at the stage of summoning.

34. It is submitted that the Hon ble Supreme Court in the matter titled as Mahabir Prasad Verma Vs. Dr. Surinder Kaur⁵ held that tape 2005 (12) SCC 631 AIR 1982 SC 1043 CRL.M.C.2526/2019 & one other connected matter recorded conversations can only be relied upon as corroborated evidence of conversation deposed by one of the parties to the conversation. In the absence of evidence of any such conversation, the tape-recorded conversation is not proper evidence and cannot be relied upon.

35. It is further submitted that it was essential for the prosecution to place on record some corroborative evidence connecting the petitioners with the alleged offence, however, from the perusal of the entire record, it is clear that there is no evidence whatsoever against the petitioners, either documentary or oral, which points out that the petitioners had participated in the commission of the alleged offence.

36. It is submitted that to the contrary, the CBI, during the course of investigation, interrogated LW-2, Mr. Ghanshyam Das Mudgal, who was specifically interrogated in order to implicate the petitioners in the alleged offence, however, the witness clearly stated that the petitioners had not directed payment of any bribe to accused - Mr. S.K. Jain. Hence, it is clear that there was no evidence on record to even prima facie justify the summoning of the petitioners to face a criminal trial.

37. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

(on behalf of the respondent-CBI)

38. Per Contra, the learned SPP appearing on behalf of the respondent CBI vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

39. It is submitted that investigation revealed that PIL is engaged in the business of coal mining, iron and steel, power and wind energy sectors.

CRL.M.C.2526/2019 & one other connected matter PIL applied for the loan from Punjabi Bagh branch of Syndicate Bank. However, the said loan proposal was rejected by the office of Deputy General Manager, Regional Office - II, Bhagwan Das Road, New Delhi, and this rejection was also conveyed to the Corporate Office of the Syndicate Bank, Bangalore.

40. It is submitted that the investigation further revealed that Mr. Pawan Bansal, who is Accused no. 2 in the charge sheet, is the Director of M/s Altius Finserve Pvt. Ltd. The basic function of the said company is investment, including syndication of loan, ECB and Non-Convertible Debentures (NCDs), mergers and acquisitions, etc. Mr. Pawan Bansal, through the aforementioned company, was pursuing the ECB term loan proposal of PIL with London branch of Syndicate Bank and the Bank of Maharashtra. Further, Mr. Pawan Bansal was claiming a huge amount from his clients in the name of consultancy services.

41. It is submitted that the investigation revealed Mr. Pawan Bansal was pursuing the loan proposal of PIL, even though there was no written authorization/mandate from PIL for pursuing the ECB term loan proposal from Syndicate Bank.

42. It is submitted that the investigation disclosed that petitioner no. 2 was in regular touch with Mr. SK Jain, CMD of Syndicate Bank through Mr. Pawan Bansal and that they allegedly conspired to expedite the approval of proposal of ECB term loan of PIL. The said proposal was approved by Mr. S.K. Jain, even after certain queries.

43. It is submitted that Mr. Uday Shankar Majumdar, the-then General Manager, treasury and international banking division, Syndicate Bank, Mumbai, stated that due to pressure from Mr. S.K. Jain, he sent the CRL.M.C.2526/2019 & one other connected matter proposal of PIL to Syndicate's Corporate Office without obtaining necessary clarifications on certain issues from the company and without confirmation of the internal rating of the company.

44. It is submitted that the investigation revealed that Mr. Vipul Agarwal also facilitated transaction of cash amounting to Rs. 3.25 crores approximately from PIL to Mr. Pawan Bansal through illegal channels, using the services of Mr. Ghanshyam Mudgal and Mr. Ashok Sharma, both employees of PIL., The said amount was received in Delhi by Mr. Ajay Bansal, a relative of Mr. Pawan Bansal.

45. It is further submitted that the investigation revealed that Mr. Pawan Bansal delivered gratification of Rs. 125 lakhs in cash to Mr. S.K. Jain through Mr. Mukesh Jindal (A - 7). This amount of gratification was received by one Mr. Vineet Godha (A-3) on behalf of Mr. S.K. Jain through Purshottam Totlani (A-4) in Bhopal.

46. It is submitted that the investigation revealed that gratification of Rs. 125 lakhs was facilitated by Mr. Naresh Chandni, an angadia of Bhopal on the directions of Mr. Tolani, from Mumbai to Bhopal in the month of July 2014 through Mr. Ashish Parekh, an angadia from Mumbai.

47. It is submitted that after considering the material on record and hearing arguments on behalf of the parties, and after due application of the legal mind, the learned Special Judge rightly concluded that a prima facie case is made out against accused persons, including the petitioners herein. Consequently, the learned Special Judge, vide order dated 9th March 2018, was pleased to take cognizance of the instant offence against the petitioners.

CRL.M.C.2526/2019 & one other connected matter

48. It is submitted that the learned Special Judge, while taking cognizance against the petitioners, held that „this court has gone through the charge-sheet, statements of witnesses recorded under Section 161 of the CrPC and attached documents. . It is submitted that the petitioners have been charge-sheeted for their active criminal involvement and commission of alleged offences, which can be established in the court of law beyond reasonable doubt. The cognizance is not based merely on presumption on the petitioner s association with other accused persons.

49. It is submitted that there is sufficient evidence to establish the involvement of the petitioners and the petitioner no. 2 as well as Mr. Vipul Agarwal, who played an active role in the chain of events leading to the commission of the offence by facilitating the transfer of the bribe amount from one accused to another accused public servant. The material on record, both oral and documentary, is adequate to invoke penal provisions against the petitioners.

50. It is submitted that the transaction of bribe was initiated through PIL and Mr. Vipul Agarwal facilitated the said bribe to public servant through Mr. Pawan Bansal. There is evidence on record to establish the criminal involvement and complicity of the petitioners in commission of the alleged offence. In addition to the intercepted communication, there is oral testimony of witnesses which reveals the criminal involvement of petitioners in facilitating, the transaction of bribe amount to the accused public servant.

51. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

CRL.M.C.2526/2019 & one other connected matter ANALYSIS AND FINDINGS

52. Heard the learned counsel appearing on behalf of the parties at length and perused the material on record.

53. The petitioners fundamentally challenge the legality of the chargesheet, arguing that it fails to establish a prima facie case against them. Their primary contention revolves around the absence of substantive legal evidence demonstrating their involvement in the alleged criminal conspiracy. Specifically, the petitioners contend that the prosecution has not produced any credible evidence, other than the transcripts of conversations among the accused persons, to substantiate even a prima facie connection to the alleged offences under the PC Act and Section 120B of the IPC.

54. The present petition primarily focuses on the lack of concrete evidence to support the charge of a criminal conspiracy, emphasizing that the prosecution s case is built entirely on conjectures and inferences. The petitioners argue that there is no documented evidence of a prior meeting of minds between the accused, and no specific actions attributable to them that would constitute an offense. Learned senior counsel has challenged the vicarious liability of the petitioner no. 2 (CMD of the petitioner no. 1 company), arguing that mere designation cannot form the basis for criminal prosecution, relying on various precedents of the Hon ble Supreme Court.

55. Petitioners have also challenged the evidentiary value of the CDRs, asserting that these cannot be used as standalone evidence without independent corroboration. They argue that even if the CDRs are taken at CRL.M.C.2526/2019 & one other connected matter face value, they merely demonstrate routine communication about a loan proposal and do not establish criminal intent.

56. The legal submission culminates in a comprehensive argument that the entire prosecution is fundamentally flawed, lacking any direct or independent evidence, and therefore fails to meet the legal threshold required for summoning the petitioners to face a criminal trial.

57. At this stage, this Court finds it prudent to peruse the chargesheet and the impugned order dated 9th March, 2018. Relevant paras of the same are reproduced below:

"Allegation in brief:

16.1 That, Shri Pawan Bansal, one of the Directors of M/s Altius Finserv Pvt; Ltd. having his offices at (i) 124, 21st floor, Freepress House, Nariman Point, Mumbai and (ii) 1205/1206, 12th Floor, Hallmark, Business Plaza, Sant Dyaneshwar Marg, Near Guru Nanak Hospital, Bandra East, Mumbai- 51 and also at 501, S"" Floor, Barakhamba Road, New Delhi had been acting as middleman between senior level functionaries of PSU banks and the private firms, who had submitted their loan proposals, through his firm on the pretext of providing various financial services like credit solutions, debt capital market investment banking etc. 16.2 That Shri Pawan Bansal regularly used to meet these bank officials to pursue the loan proposals prepared and processed by his firm on behalf of his clients. Source informed that Pawan Bansal pursued the cases of his clients by exercising his personal influence over the bank officials and used corrupt and illegal means to influence them. 16.3 Sh. Pawan Bansal was in regular contact with Sh.

Sudhir Kumar Jain, GMD, Syndicate Bank and was acting as his middleman in the corporate loans related matters pending with Syndicate Bank. Further. It is also informed that Sh. Pawan Bansal regularly obtains the official information from Sh. Sudhir Kumar Jain pertaining to the CRL.M.C.2526/2019 & one other connected matter present status of all such proposals and utilizes the same for impressing upon the various private firms.

16.4 That Shri Vineet Godha and Shri Puneet Godha are close relatives of Shri Sudhir Kumar Jain. Shri Vineet Godha is a practicing advocate and Shri Puneet Godha is in the business of real estate. The source has further informed that Shri Vijay Pahuja @ Soni, a businessman, residing at 97, Sant Kanwar Ram Nagar Colony, Bersiya Road, Bhopal acts as an agent on behalf of Shri Sudhir Kumar Jain and Shri Vineet Godha for receiving the ill gotten money of Shri Sudhir Kumar Jain through illegal channels and delivering the same to Shri Vineet Godha. It has also been learnt that another person Shri Purushottam Lai Totlani r/o 102, Ridge Road, Idgah Hills, Bhopal, who is in the business of Hotels and farm houses, also acts as an agent for such transactions on behalf of Shri Vineet Godha, 16.5 The source also revealed that M/s. Prakash Industries (hereinafter referred as PIL) is in the business of Coal Mines, Iron & Steel, Power and Wind Energy Sectors also hired the

services of M/s. Altius Finserve Pvt. Ltd. for sanction of External Commercial Borrowing (ECB) of 20 million US Dollars for buyback of Foreign Currency Convertible Bonds (FCCB). Shri Ved Prakash Aganwal, Chairman, M/s Prakash Industries and Shri Vipul Agarwal, Director of M/s. Prakash Industries were in regular contact with Shri Pawan Bansal in connection with the approval of their proposal at Syndicate Bank. Further, they had also conspired to approach Shri Sudhir Kumar Jain, CMD, Syndicate Bank, for expediting the approval of said proposal of M/s. Prakash Industries. Accordingly, several rounds of personal meetings have taken place between Sh. Pawan Bansal and Shri Sudhir Kumar Jain, CMD, Syndicate bank in this regard. It is also alleged that, in furtherance of the above said conspiracy Shri Pawan Bansal contacted Shri Sudhir Kumar Jain, CMD, Syndicate bank on 14.07.2014 and requested for expediting the approval to the proposal of M/s. Prakash Industries mentioning that acceptance of proposal by him at CRL.M.C.2526/2019 & one other connected matter this stage would benefit the company and thereafter the said proposal of M/s Prakash industries was approved on 15.07.2014 and conveyed by Shri Sudhir Kumar Jain to Shri Pawan Bansal. Source has also revealed that this proposal was approved by Shri Sudhir Kumar Jain, CMD, Syndicate Bank even when certain queries made by Shri U.S. Majumdar, General Manager, Syndicate Bank (Mumbai) in respect of the proposal submitted by M/s. Prakash Industries were still pending.

16.6 The source has also revealed that in order to get the expeditious results M/s Prakash Industries had earlier agreed to pay huge sums of money to. Shri Pawan Bansal for availing his services. It was also agreed upon that Shri Pawan Bansal will take care of the payments of illegal money to Shri Sudhir Kumar Jain and the same was also conveyed to Shri Sudhir Kumar Jain during the several rounds of personal meetings between them. As per their understanding the major portion of the agreed upon amount has already been provided to Shri Pawan Bansal by M/s. Prakash Industries through their employee Shri Ghanshyam. Further, the illegal gratification meant for Shri Sudhir Kumar Jain has been delivered in recent past to Shri Soni/Purushottam for onward delivery to Shri Vineet Godha to be received by him on behalf of Shri Sudhir Kumar Jain.

17. Result of Investigation: Investigation has revealed that; 17.1 Shri Sudhir Kumar Jain (A-1) s/o Late PC Palliwal had joined Syndicate Bank. Corporate Office, Gandhi Nagar, Bangalore, on 08.07.2013, as Chairman and Managing Director. On 01.08.2014, a regular case RC AC 1 2014 A0004 was also registered against him and others in CBI, AC-I, New Delhi wherein he has been charge sheeted under the relevant provisions of IPC and IPC Act, 1988 and that case is pending under trial in the court of Hon'ble Spl Judge, CBI cases, Patiala House New Delhi.

17.2 Shri Pawan Bansai (A-2) s/o Shri Kundal Lai CRL.M.C.2526/2019 & one other connected matter Bansal is a Director in M/s Altuis Finserve Pvt. Ltd. 124, Free Press House. Nariman Point, Mumbai which is registered with Security and Exchange Board of India (SEBI) and all other statutory bodies as Merchant Banker and facilitates its clients in consultancy services and raising funds from financial institutions. The basic function of the company is investment including syndication of loan, ECBs, NCDs etc, merger and acquisition etc. The company was also operating its business from another office in Mumbai i.e. 1205-1206, Hallmark Business Plaza, Sant Dyaneshwar Marg, Bandra (E), Mumbai and a Delhi based office i.e. 501- 508, 5th Floor, New Delhi House, Barakhamba Road, New Delhi-01. Shri Bansal through his above noted company was

pursuing ECB term loan proposal of M/s Prakash Industries Ltd (hereinafter mentioned as PIL) with London branch of Syndicate Bank and Bank of Maharashtra. He was providing consultancy services to various companies and claiming huge amount from his clients in the name of consultancy services.

17.3 Shri Vineet Godha (A-3) s/o Shri S C Godha is a lawyer practicing in the District Court at Bhopal and a resident of E-3/18, Arera Colony, Bhopal. His brother Puneet Godha and wife Sangeeta Godha are engaged in the business of real estate in Bhopal. His younger sister Mrs. Kamini Jain, is married with Sh. Sudhir Kumar Jain, the then CMD, Syndicate Bank (now terminated from service). Shri Godha is charge sheeted in another CBI cases RC AC 12014 A0004 registered against Shri Sudhir Kumar Jain and others.

17.4 Shri Vijay Pahuja @ Soni s/o Shri Fateh Chand Pahuja is a businessman in Bhopal and also the partner with Vineet Godha's family members in the business of real estate and familiar with Vineet Godha from last 20 years. He is also partner in various real estate projects with brother and wife of Shri Vineet Godha at Bhopal. He is also operating his business in CRL.M.C.2526/2019 & one other connected matter the name and style of M/s Akruti Dig! Sales, G-47, Vardhmaan City Plaza, Dawa Bazar, Bhopal. He is charge sheeted in another CBI case RC AC1 2014 A0004 registered against Sudhir Kumar Jain and others.

17.5 Shri Purshottam Lai Totlani (A-4) s/o Shri Gurmukhdas Totlani is a Bhopal based businessman in Bhopal and engaged in the business of real estate. Hotel (in the name of Sri Palace), Sweet Shop (in the name of Raja Sweet House) in Bhopal and also managing a marriage garden in the name of Landmark Garden. He is also a business partner in the real estate business of Puneet Godha and Mrs. Sangeeta Godha w/o Shri Vineet Godha. He was facilitating the transaction of ill gotten money of Shri Sudhir Kumar Jain to Vineet Godha through illegal channels. 17.6 Shri Ved Prakash Aggarwal (A-5) s/o Shri Basudev Agarwal is a Delhi based businessman and Chairman & Managing Director of M/s PIL, having production Units at Raipur and Champa in Chhattisgarh. The registered office of the company is at Srivan, near IOC petrol pump, Bijwasan Road, New Delhi and company is engaged in the production of Steel, PVC pipes and Power Generation through Wind Mills. He is familiar with Pawan Bansal and he is resident of House No. 36 road no. 78 Punjabi Bagh (West), New Delhi.

17.7 Shri Vipul Agarwal (A-6) s/o Late MS Gupta is a Chartered Accountant and working as Financial Consultant in M/s Prakash Industries Ltd from 2013 and getting monthly remuneration in lieu of his services. He is associated with Shri Ved Prakash Aggarwal from long back and before 2013 he was Director (Finance and Accounts) in M/s PIL. He was pursuing the proposal of ECB term loan of USD 20 Mio of M/s PIL with Syndicate Bank through Pawan Bansal and the employees of his company.

17.8 Mukesh Jindal (A-7) s/o Sh. Dharam Chand CRL.M.C.2526/2019 & one other connected matter Jindal, a cousin of accused Pawan Bansal is residing in Mumbai and he is associated in the business activities of Pawan Bansal through M/s Altius Finserve Pvt. Ltd, Mumbai. He was dealing with the accounts of M/s Altius Finserv Pvt. Ltd and actively involved with Pawan Bansal in accounting and

managing his unaccounted money and payment of illegal gratification to Sudhir Kumar Jain, the then CMD, Syndicate Bank. 17.9 Pankaj Bansal s/o Shri s/o Sh. Govind Ram is a relative of Pawan Bansal as well as an employee of M/s Altius Finserve Pvt Ltd, a company managed by Pawan Bansal. He was deployed in Delhi based office of the company. He has dealt the loan proposals of M/s PIL with London branch of Syndicate Bank and Bank of Maharashtra, Raipur in the year 2013-14.

CRL.M.C.2526/2019 & one other connected matter 17.11 M/s. PIL is engaged in the business of Coal Mines. Iron & Steel, Power and Wind Energy Sectors having its registered corporate office near IOCL Depot, Najafgarh- Bijwasan Road, Bijwasan, New Delhi- 110061. In the year 2013, M/s PIL applied for the loan CRL.M.C.2526/2019 & one other connected matter from Punjabi Bagh branch of Syndicate Bank and this loan proposal was pursued by Shri Nandi Vardhan Jain with Syndicate Bank, After obtaining NBG clearance the formal loan proposal of M/s PIL was rejected by the Office of the DGM, Region Office-II, Bhagwan Das Road, New Delhi and conveyed the same to the Corporate Office of the Syndicate bank at Bangalore. 17.12 In the month of October, 2009 and April, 2010, M/s PIL had issued Foreign Currency Convertible Bonds (FCCBs) in two tranches in the international market of value USD 50 and 60 Mio respectively. These FCCBs were valid for a period of 05 years and going to matured in the month of October, 2014 and April, 2010 respectively. From the first tranche, the bonds of value USD 32.9 Mio had already been converted into the equity shares of the company whereas the amount of USD 17.1 Mio was due for maturity and the total amount of FCCBs of second tranche i.e. USD 60 Mio was due for maturity In the Month of April, 2010. 17.13 In order to redeem/buyback of these FCCBs, M/s PIL vide its letter dated 06.03.2014 addressed to Chief Executive Officer, Syndicate Bank, London, M/s PIL had applied for the sanction of External Commercial Borrowings (ECB term loan) of USD 45 Mio, Hard copy of this ECB term loan proposal of M/s PIL of USD 45 Mio for buyback/redemption of FCCBs was submitted by M/s PIL to London branch of Syndicate bank, duly signed by Shri Vikram Agarwal of M/s PIL, Whereas, soft copy of this loan proposal was forwarded to London branch by the representatives of M/s Altius Finserve Pvt. Ltd.

17.14 This loan proposal was being pursued with Syndicate Bank by Pawan Bansal and the representatives of M/s Altius Finserve Pvt. Ltd, whereas there was no written authorization/mandate by M/s PIL for pursuance of ECB term loan proposal by M/s Altius Finserve Ltd with Syndicate Bank. Investigation has revealed that during processing of this loan proposal, CRL.M.C.2526/2019 & one other connected matter intimation copies of some of its communication (e- mails) addressed to M/s PIL were also sent by the bank to the representatives of M/s Altius Finserve Pvt. Ltd. 17.15 After processing by various committees at the branch level. T&IBD, Mumbai and Corporate level, the ECB term loan proposal of M/s PIL was forwarded by Shri US Majumdar, the then GM. T&IBD, Mumbai on 14.07.2014 to the Corporate Office, Bangalore for approval of Credit Approval Committee (Tier-I) who was competent authority for approving this loan proposal, 17.16 On 15.07.2014, Credit Approval Committee (Tier-I) of Syndicate Bank, headed by Shri Sudhir Kumar Jain, the then CMD sanctioned the ECB term loan of USD 20 Mio of M/s PIL, for the purpose of buyback/redemption of FCCBs. floated by M/s PIL in the international market, in the year 2009 and 2010, subject to the condition that prior to release of the loan amount M/s PIL has to obtain the approval of RBI. 17.17 Shri Sudhir Kumar Jain, the then CMD, Syndicate Bank and Pawan Bansal were familiar to each other and Pawan Bansal was in regular touch with Shri Sudhir Kumar Jain

over phone and regularly pursuing the ECB term loan proposal of M/s PIL with him. Even after the fact, that there was no written authorization from M/s PIL to Syndicate Bank with respect to pursuance of its loan proposal by Pawan Bansal or his firm with the bank, Sudhir Kumar Jain was discussing the development of this loan proposal of M/s PIL with Pawan Bansal and was sharing official information regarding this loan proposal and Pawan Bansal in order to create an impression on the party was sharing the same with Ved Prakash Agarwal and Vipul Agarwal of M/s PIL. Recorded conversation revealed that on the insistence of Shri Pawan Bansal, Sudhir Kumar Jain, talked 3-4 times with Shri US Majumdar, the then General Manager, Treasury and International Banking Division (T&IBD), Syndicate CRL.M.C.2526/2019 & one other connected matter Bank, Mumbai who was processing this ECB term loan proposal and asked him about the status of loan proposal of M/s PIL and to expedite the same. In his statement recorded u/s 164 Cr. PC Shri US Majumdar has stated that due to the pressure from Sudhir Kumar Jain he sent the proposal of M/s PIL to Corporate Office without getting the clarification on some issues from the company and without confirmation of the internal rating of the company.

17.18 Further, Vipul Agarwal, Consultant, M/s PIL was pursuing the ECB term loan proposal on behalf of M/s PIL with Syndicate Bank through Pawan Bansal. In this regard, he was in regular touch with Pawan Bansal over phone and getting updates of the status of the ECB term loan proposal from him which was pending with Syndicate Bank, London. On various occasions, Shri Vipul Agarwal also facilitated transaction of cash amount of Rs 3.25 crores approx from M/s PIL to Pawan Bansal, through illegal channel by using the services of Shri Ghanshyam Mudgal and Ashok Sharma both employees of M/s PIL and this amount was received by Shri Ajay Bansal a relative of Pawan Bansal in Delhi.

17.19 In connection with pursuing the ECB term loan proposal of M/s PIL with Syndicate Bank, Pawan Bansal was also in touch with Shri Ved Prakash Agarwal, CMD of M/s PIL over phone and time to time conveying the status of ECB term loan proposal, after obtaining the same from Shri Sudhir Kumar Jain. Investigation reveals that Pawan Bansal was providing the information to Shri Vipul Agarwal and Ved Prakash Agarwal regarding ECB term loan proposal of M/s PIL right from giving in principle clearance by the bank to the sanction of ECB term loan proposal and conveyance thereof by the bank to M/s PIL.

17.20 On 16.07.2014, Sudhir Kumar Jain conveyed Pawan Bansal about sanction of ECB term loan proposal of M/s PIL who on the same day conveyed it CRL.M.C.2526/2019 & one other connected matter to Shri Ved Prakash Agarwal and Vipul Agarwal of M/s PIL.

17.21 In between 14.07.2014 to 16.07.2014, during pendency of the ECB term loan proposal of M/s PIL in the Corporate Office of the Syndicate Bank, Shri Pawan Bansal delivered gratification of Rs 125 lakhs in the form of cash to Shri Sudhir Kumar Jain, through Shri Mukesh Jindal (cousin of Pawan Bansal). This amount of gratification was received by Vineet Godha (brother- in-law of Sudhir Kumar Jain) on behalf of Sudhir Kumar Jain through Purshottam Totlani (facilitator of transaction of gratification) in Bhopal.

CRL.M.C.2526/2019 & one other connected matter CRL.M.C.2526/2019 & one other connected matter CRL.M.C.2526/2019 & one other connected matter CRL.M.C.2526/2019 & one other connected matter "1. RC AC-I 2014 A0005 was registered on 01.08.2014 under Sections 9 & 13 (2) readwith Section 13(1) (d) of PC Act, 1988 and Section 120-B of IPC.

2. After completion of investigation, the charge-sheet was filed on 27.09.2017.

3. While the Ahlmad was scrutinizing the documents, several applications were filed on behalf of A-5 Sh. V. P. Aggarwal and A-8 M/s Parkash Industries Ltd.

4. The first application was filed on behalf of A-5 Sh. V. P. Aggarwal for immediate disposal of the application under Section 156 (3) of Cr.PC pending since August, 2014 which was filed on behalf of this accused for processing and consideration of various relevant and crucial documents attached with the application and also for passing necessary orders and directions to the concerned Investigating Officer for proper investigation.

5. Vide separate order this application has been allowed.

6. Vide separate orders, the application under Section 156 (3) of Cr.PC has been dismissed.

7. The second application was filed under Section 190 readwith Section 193 of Cr.PC on behalf of A-8 M/s Parkash Industries Ltd. for taking into consideration relevant facts at the stage of consideration on the aspect of cognizance against Sh. U. S. Majumdar, Sh. Naresh Chandani, Sh. Ashish Parekh and Sh. Prashant Jain who have though not CRL.M.C.2526/2019 & one other connected matter been charge-sheeted but against whom according to the applicant there are material available for prima-facie proceeding as additional accused.

8. Vide separate order, this application under Section 190 readwith Section 193 of Cr.PC has been dismissed.

9. The third application was filed under Section 340 of Cr.PC readwith Section 195(1)(b) of Cr.PC by accused A-5 Sh. V. P. Aggarwal.

10. The fourth application was also filed under Section 340 of Cr.PC readwith Section 195(1)(b) of Cr.PC on behalf of A-8 M/s Parkash Industries Ltd..

11. Lastly, another application was filed under Section 340 of Cr.PC readwith Section 195(1)(b) of Cr.PC by accused A- 5 Sh. V. P. Aggarwal which was treated as part of application earlier filed by him under Section 340 of Cr.PC.

12. In applications under Section 340 of Cr.PC readwith Section 195 (1) (b) of Cr.PC against unknown officers filed by A-8 M/s Parkash Industries Ltd., it is mentioned that no notice is to be given to the non-applicant as per amended Delhi High Court Rules vide notification

no.127/Rules/Delhi High Court dated 14.03.2011.

13. A perusal of the said notification shows that it is not mandatory that person concerned should be called upon to give explanation before ordering his prosecution. It does not say that in no case, notice is to be issued to the person concerned.

14. In the opinion of this court, the prosecuting agency is entitled to a notice of these applications.

15. Let a copy of these applications filed under Section 340 of Cr.PC readwith Section 195(1)(b) of Cr.PC be given by the Id. counsel for the applicants during the course of the day to the Ld. Sr. PR for CBI who will file the replies thereof on the next date of hearing.

16. Cognizance:- Charge-sheet was filed on 27.09.2017 and the Ahlmad could finally scrutinize the documents by 10.01.2018. However, no cognizance order could be passed earlier due to filing of aforementioned applications. Now, CRL.M.C.2526/2019 & one other connected matter arguments addressed by Sh. Pankaj Gupta, Ld. Sr. PP for CBI on cognizance have been considered.

17. This court has gone through the charge-sheet, statements of witnesses recorded under Section 161 of Cr.PC and attached documents.

18. This court is satisfied that there is sufficient material on record to take cognizance of offences punishable under Section 120-B IPC readwith Sections 10, 11 &13(2) readwith Section 13(1) (d) of PC Act, 1988 against A-1 Sh. S. K. Jain, under Section 120-B IPC readwith Sections 9 and 12 of PC Act, 1988 against A-2 Sh. Pawan Bansal, Section 120-B IPC readwith Section 9 of PC Act, 1988 against A-5 Sh. V P Aggarwal, A-6 Sh. Vipul Aggarwal and A-8 M/S Prakash Industries Ltd. through its CMD Sh. Ved Prakash Aggarwal and under Section 120-B IPC readwith Section 12 of PC Act, 1988 against A-4 Sh. Purshottam Lal Totlani, A-7 Sh. Mukesh Jindal and A-3 Sh. Vineet Godha.

19. Let the accused be summoned for 26.03.2018."

58. In the aforesaid extracts of the chargesheet, it is stated that Mr. Pawan Bansal (co-accused) is one of the Directors of M/s Altius Finserve Pvt. Ltd., a company engaged in providing financial services to private firms including credit solutions, debt capital, market investment banking, etc., and is duly registered with the Security and Exchange Board of India and other statutory bodies. Mr. S.K. Jain (co-accused), CMD, Syndicate Bank, is alleged to be involved in the conspiracy of the said offence.

59. Mr. Ved Prakash Agarwal (co-accused) is the CMD of PIL, whereas Mr. Vipul Agarwal (co-accused) is a Chartered Accountant and was working as Financial Consultant in PIL from 2013. He also acted as Director (Finance and Accounts) of PIL and is alleged to be involved in the perusal of the loan application qua Mr. Pawan Bansal (co-accused) CRL.M.C.2526/2019 & one other connected matter and his employees. M/s PIL is in the business of Coal Mines, Iron and Steel, and Power and Wind Energy.

60. Mr. Vineet Godha (co-accused) is an advocate practicing in Bhopal District Court. His younger sister is married to Mr. SK Jain and he is charge sheeted in another CBI case bearing no. RC/AC1/2014/A/004.

61. Mr. Vijay Pahuja (co-accused) is also a businessman based in Bhopal and a partner in various real estate projects along with his brother Vineet Godha and is also charge sheeted in another CBI case bearing no. RC/AC1/2014/A/004.

62. Mr. Purshottam Lal Totlani (co-accused) is also Bhopal-based businessman and alleged to be involved in facilitating illegal transaction of Mr. SK Jain to Mr. Vineet Godha (co-accused).

63. Mr. Mukesh Jindal (co-accused), a cousin of Mr. Pawan Bansal, is stated to be handling the accounts of M/s Altius Finserve. He is alleged to be involved in managing unaccounted money and facilitating illegal gratification to Mr. S.K. Jain.

64. As per the chargesheet, the CBI has alleged that in the year 2013, PIL had issued FCCB in two tranches of value USD 50 and 60 Million in the international market. These FCCBs had a maturity period of five years and were set to expire in October, 2014 and April, 2014 respectively. The equity share value of USD 32.9 million from first tranche was already converted but USD 17.1 Million from the first tranche and USD 60 Million from second tranche was due for maturity.

65. M/s Altius, qua PIL, applied to the Chief Executive Officer, Syndicate Bank, London for ECB of USD 45 Million for buyback/redemption of FCCB. It is stated that there was no written CRL.M.C.2526/2019 & one other connected matter agreement or authorization from the PIL to M/s Altius for availing its services but it was observed that the bank officials have also sent e-mail to the representatives of M/s Altius during the processing of the loan proposal.

66. It is stated that after various committees processed the loan proposal at the branch level and later on 14 th July, 2014, Mr. U.S. Majumdar, erstwhile GM, T&IBD, Mumbai, forwarded the loan proposal to the Credit Approval Committee (Tier-I) for further approval.

67. On 15th July, 2014, the Credit Approval Committee (Tier I) headed by Mr. SK Jain, approved and sanctioned the term loan of USD 20 Million subject to the prior approval of RBI by PIL.

68. It is stated that the phone conversation has revealed that Mr. Pawan Bansal was in regular contact with the Mr. SK Jain for the perusal of the ECB term loan proposal of ECB. It also revealed in the conversation that the Mr. SK Jain had shared some official sensitive information with Mr. Pawan Bansal, which Mr. Bansal later shared it with the Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal.

69. It is stated that Mr. SK Jain have also contacted Mr. US Majumdar regarding the loan proposal and inquire him about the status of the loan proposal. It is also alleged that Mr. US Majumdar, in his statement recorded under Section 164 of the CrPC, clearly stated that he had expedited the loan proposal due to pressure from Mr. Pawan Bansal and Mr. SK Jain and sent the loan proposal to the

Bank's corporate office, when the clarification from PIL and confirmation of internal rating of the company was still pending.

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70. It is further alleged that Mr. Vipul Agarwal, who was handling the ECB term loan with Syndicate Bank through Pawan Bansal, has given Rs. 3.25 Crores approx. to Mr. Pawan Bansal for the approval of loan application. The alleged transaction was proceeded via Mr. Ghanshyam Mudgal and one Mr. Ashok Sharma, both employees of PIL to Mr. Ajay Bansal, relative of Mr. Pawan Bansal.

71. It is further stated that on 16th July, 2014, Mr. SK Jain conveyed Mr. Pawan Bansal about the sanction of ECB Term Loan, who later conveyed it to Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal.

72. It is alleged that the Mr. Pawan Bansal has bribed Rs. 125 Lakhs cash to Mr. SK Jain for the loan proposal. It is also alleged that the money was given by Mr. Mukesh Jindal (cousin of Mr. Pawan Bansal) to Mr. Vineet Godha (brother-in-law of Mr. SK Jain) through Mr. Purshottam Totlani, who facilitated the alleged transaction.

73. It is also stated that the Mr. Naresh Chandnani, an angadia of Bhopal, facilitated this transaction on the direction of Mr. Purshottam Totlani, from Mumbai to Bhopal in July, 2014 qua Mr. Ashish Parekh, an angadia from Mumbai. This alleged transaction was corroborated by both of them in their statement recorded under Section 164 of the CrPC. Further, it is also alleged that the cash was arranged by Mr. Mukesh Jindal and Mr. Pawan Bansal, which corroborated by their CDR as on 14th July, 2014. This above statement is allegedly also supported by the telephonic conversation of Mr. Mukesh Jindal, Mr. Ashish Parekh, Mr. Naresh Chandnani and Mr. Purshottam Totlani.

74. It is stated that the Mr. Pawan Bansal was pursuing another loan on behalf of PIL with Bank of Maharashtra, Raipur and LIC of India, which CRL.M.C.2526/2019 & one other connected matter got rejected after registration of CBI cases against the promoters and director of PIL.

75. It is also alleged that Mr. Pawan Bansal was also pursuing the loan proposal of M/s Monnet Ispat and Energy Ltd with the help of Mr. SK Jain, but no written agreement/authorization was present for the same transaction. It is revealed from the phone conversation that allegedly Mr. SK Jain was asking from Mr. Pawan Bansal about interest rate to be applied in M/s Monnet's loan proposal. It is also revealed that the Mr. SK Jain headed the Credit Approval Committee of the bank and later sanctioned the said proposal.

76. It is submitted by the agency in the charge sheet that involvement of Mr. Vijay Pahuja and Mr. Pankaj Bansal has not been substantiated and hence not been charge sheeted.

77. It is further stated in the chargesheet that the above series of event have concluded as commission of offence and hence offence under Section 120B of the IPC read with Sections 10,11 & 13(2) read with 13(1)(d) of the PC Act is alleged to be proved against Mr. SK Jain, erstwhile CMD,

Syndicate Bank; and Section 120B of the IPC read with Section 9 and 12 of the PC Act against Mr. Pawan Bansal; Section 120B of the IPC read with Section 9 of the PC Act against Mr. Ved Prakash Agarwal, Mr. Vipul Agarwal and PIL through its CMD Mr. Ved Prakash Agarwal and Section 120B of the IPC read with Section 12 of the PC Act against Mr. Purshottam Totlani, Mr. Mukesh Jindal and Mr. Vineet Godha.

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78. Before advertng to the merits of the instant petition, this Court shall first discuss the settled position of law qua the issues which are to be adjudicated.

79. The first issue for consideration before this Court pertains to the „maintainability of a prosecution case based purely on alleged transcripts of conversation and CDRs, when such CDRs do not connect the accused to the alleged offence directly, and in absence of any other independent evidence to corroborate aforementioned evidence .

80. With regards to the same, it is pertinent to note judgment of a Coordinate Bench of this Court passed in Azad v. State of GNCTD & Anr.⁶ wherein, it was held that although CDR can be effective in assisting the Court to ascertain the presence of the accused with respect to the place of occurrence, but they can only serve as a corroborative piece of evidence, and that conviction cannot be made solely on the basis of CDR data. The Court held as under:

"35. The counsel for the appellant Azad @ Gaurav argued that impugned judgment was passed without proper appreciation of material brought on record. The testimony of the complainant Manish Aggarwal PW 1 is self contradictory in material aspects and cannot be relied upon and did not support the case of the prosecution. The complainant Manish Aggarwal PW 1 failed to identify the appellant Azad @ Gaurav as the person who was present at the spot and as such his testimony has no value. The testimony of the complainant Manish Aggarwal PW 1 is not corroborated by any other evidence. The alleged recoveries alleged to be made at the instance of the appellant Azad @ Gaurav are planted and such recoveries are highly improbable. No public witness was included at time of 2023 SCC OnLine Del 1769 CRL.M.C.2526/2019 & one other connected matter alleged recovery. The convicting court committed gross error while placing reliance on CDR and mere alleged presence in the close vicinity of place of occurrence cannot be a ground of conviction. The counsel for the appellant Azad @ Gaurav argued that the conviction cannot be sustained....

....44. The convicting court also relied on CDR Ext. PW 17- B in respect of SIM No. 9958081077 which as per CAF Ext. PW 17-A was issued in name of the appellant Azad @ Gaurav to establish his presence at the spot. The convicting court also relied on CDR Ext. PW 17-E in respect of SIM No. 9599541224 which as per CAF Ext. PW 17-D was issued in name of convict Kanhaie Jha to establish his presence at the spot. CDR data may be an important and effective piece of evidence which may facilitate

and assists courts in ascertaining the presence of different participants in commission of an offence including the complainant and proposed accused at one particular place or location which may be their presence at or near the place of occurrence. However, CDR data can only be taken as supporting or corroborative piece of evidence and conviction cannot be made solely on basis of CDR data. CDRs proved and relied on by the prosecution only proved that the appellants Jitender @ Jitu and Azad @ Gaurav, on day of incident, were present near place of occurrence/incident but it is not proved that they have actually participated in commission of offence as per complaint Ext. PW 1-A. The respective counsels for the appellants Jitender @ Jitu and Azad @ Gaurav rightly argued that CDR data cannot be safely relied on to establish their criminality for the offence punishable under Section 395IPC. The argument advanced by the Additional Public Prosecutor regarding reliance on CDR data is without much force."

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81. Similar view was taken in Harsh Chhabra v. State of NCTD7, relevant paragraphs of which are as under:

"33. The CDRs shows calls between the petitioner, as well as, coaccused Rishi Rajpal Singh Chauhan in the month of August, 2019 and the calls between petitioner and co-accused Hitesh Chauhan are in the month of October, 2019, whereas the incident is of 15.11.2019. In any case, the CDR data is not a substantive piece of evidence and can only be used as support or for corroboration and cannot form the sole basis of conviction. Reference may also advantageously be had to the decision of the Supreme Court in State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta, (2022) 12 SCC 633, the relevant paragraph of which reads as under:--

"12. ...The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial."

34. No other incriminating circumstance has been pressed against the petitioner. Further, as per the first chargesheet mobile phone of all five accused persons arraigned therein were recovered but prima facie it appears that nothing incriminating in the form of SMS or WhatsApp chats were found against the petitioner."

82. In light of the foregoing discussions, this Court is of the opinion that CDRs or the transcripts cannot be the sole basis for a prosecution's case, especially when there is no independent evidence corroborating the alleged CDRs, and in the absence of any connection being established between the accused and the alleged offence on the basis of such CDR data.

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83. With regards to the issue of „vicarious liability under criminal law , for an offence committed by a company, it is apposite to refer to the Hon ble Supreme Court s judgment passed in Maharashtra State Electricity Distribution Company Limited & Anr. v. Datar Switchgear Limited & Ors.⁸ The Hon ble Court therein held as under:

"30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh [(2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] : (SCC p. 667, para 19) "19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself."

31. Therefore, we are of the view that even the Board resolution, adduced by the complainant, does not establish that Appellant 2 was involved in the alleged fabrication of false evidence or adducing the same in evidence before the Arbitral Tribunal. In the absence of any such specific averment demonstrating the role of Appellant 2 in the (2010) 10 SCC 479 CRL.M.C.2526/2019 & one other connected matter commission of the offence, we find it difficult to hold that the complaint, even assuming it to be correct in its entirety, discloses the commission of an offence by Appellant 2 under Sections 192 and 199 IPC."

84. Another Division Bench of the Hon ble Supreme Court in Pooja Ravinder Devidasani v. State of Maharashtra & Anr.⁹ reiterated the aforesaid dicta and held as under:

"17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company--M/s Elite International (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour of cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does

not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not (2014) 16 SCC 1 CRL.M.C.2526/2019 & one other connected matter be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 :

(2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14) "13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

(emphasis in original)

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any CRL.M.C.2526/2019 & one other connected matter negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company."

85. Further, in *Sanjay Dutt & Ors. v. State of Haryana & Anr.*¹⁰, the Hon'ble Supreme Court held that vicarious liability is attracted by a legal fiction, and criminal liability by vicarious extension cannot be made out unless the concerned statute for the offence specifically provides for the same. The Hon'ble Court further clarified that vicarious liability needs to be supported by way of specific and substantiated allegations attributing a particular role to a company's director. The Hon'ble Court held as under:

"11. It appears that the Courts below proceeded on the erroneous assumption that the three appellants herein being responsible officers of the company are liable for the alleged offence. While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic. It depends on specific circumstances, particularly the interplay between the director's personal actions and the company's responsibilities. A director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability. Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the director stemmed from their 2025 SCC OnLine SC 32 CRL.M.C.2526/2019 & one other connected matter personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties. Thus, where the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. There has to be a specific act attributed to the director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

12. At the same time, wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. When it comes to penal provisions, vicarious liability of the managing director and director would arise provided any provision exists in that behalf in the statute. Even where such provision for fastening vicarious liability exists, it does not mean that any and all directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.

13. It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the

complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question.

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14. The allegations which find place against the appellants herein in their personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegations to constitute the various liability."

86. In light of the judicial precedent discussed hereinabove, it is clear that vicarious liability is a principle that finds relevance with respect to a particular offence only when the concerned statute provides for such liability. Especially in circumstances involving an offence being committed at the instance of a company, its executive or managing directors or any other officer cannot be held vicariously liable unless there are specific averments in the complaint, in addition to the statute providing for establishing such vicarious liability.

87. Now adverting to the other issue which is with respect to the „maintainability of an offence of conspiracy under Section 120B of the IPC in the absence of any allegation of prior meeting of mind, or an agreement to commit an illegal, and absence of any specific allegation in the chargesheet about the action of the accused constituting an illegal act .

88. There are various judgments of the Hon ble Supreme Court elaborating on the necessary ingredients to establish criminal conspiracy under Section 120 B of the IPC. In State (Govt. of NCT of Delhi) v. Nitin Gunwant Shah¹¹, the Hon ble Supreme Court held as under:

"17. The prosecution relies upon the existence of criminal conspiracy, which resulted into the death of Lalit Suneja. This Court has time and again laid down the ingredients to (2016) 1 SCC 472 CRL.M.C.2526/2019 & one other connected matter be made out by the prosecution to prove criminal conspiracy. It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However, while doing so, it must be borne in mind that meeting of mind is essential; mere knowledge or discussion would not be sufficient. Yet, the prosecution has failed to prove the evidence which establishes any prior meeting of minds of the accused. The prosecution merely proved that all the accused were present in Delhi on the date of occurrence, and that the alleged motorbike and the car used in the incident belonged to Respondent 2 Om Prakash Srivastava alias Babloo. The High Court rightly dismissed this argument, as the involvement of the said vehicles in commission of the crime was never proved. Neither was any prior meeting of minds of the accused proved, nor was any action, individually or in concert, proved against any of the accused. Needless to say that the

entire foundation of the prosecution story was never established."

89. Similarly, the Hon ble Supreme Court in *Bilal Hajar v. State*¹², held:

"31. The expression "criminal conspiracy" was aptly explained by this Court in *E.G. Barsay v. State of Bombay* [*E.G. Barsay v. State of Bombay*, (1962) 2 SCR 195 : AIR 1961 SC 1762 : (1961) 2 Cri LJ 828] . The learned Judge Subba Rao, J. (as his Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said : (AIR p. 1778, para 31) "31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an (2019) 17 SCC 451 CRL.M.C.2526/2019 & one other connected matter ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts."

32. Therefore, in order to constitute a conspiracy, meeting of minds of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy which is being hatched and nor is it necessary to prove their active part/role in such meeting.

33. In other words, their presence and participation in such meeting alone is sufficient. It is well known that a criminal conspiracy is always hatched in secrecy and is never an open affair to anyone much less to the public at large."

90. Further, in *Surendra Kumar v. State of UP*¹³, it was held that in order to infer a case of criminal conspiracy, the prosecution has to adduce solid evidence to prove meeting of minds. The Hon ble Supreme Court observed as follows:

"14. The appellant Ramveer was married with Kamla Rani and no criminal act is attributed to him. His conviction is entirely based on the theory that he hatched a conspiracy with his brother and father to eliminate Kamla Rani as he was unhappy with her looks. This appears to be far-fetched because the prosecution failed to adduce any evidence to prove the meeting of minds of the two brother or with the other two accused Shiv Kumar and Rajveer to eliminate Kamla Rani. The unhappiness attributed to the husband cannot reasonably implicate his brother Surendra Kumar or the two unrelated accused. In any event the additional charge against Shiv Kumar alias Pappu and Rajveer was under Section 394IPC but no such charge of robbery is attributed to the present two appellants. Most significantly (2021) 20 SCC 430 CRL.M.C.2526/2019 & one other connected matter there is no common conspiracy theory connecting all the accused in the case. The prosecution as can be noted, failed to establish any criminal conspiracy between Surendra and Ramveer on one hand and the accused Shiv Kumar and Rajveer who additionally were charged with robbery, on the other hand. Therefore, the theory of common

intention or meeting of mind between the appellants and the two acquitted accused Shiv Kumar and Rajveer, must be discarded as implausible.

...25. Similarly for the husband Ramveer, there is no direct evidence to establish his role in the incident. As his conviction is entirely based on a conspiracy theory, it is essential to determine whether there was an agreement between the parties for doing an unlawful act and it must emerge clearly from evidence that there was meeting of mind towards a common goal between Ramveer and his brother and also between Ramveer and the two armed robbers. The case evidence on record does not however establish any such agreement between Ramveer and the other accused. Conspiracy is a matter of inference and inference must be based on solid evidence. In case of any doubt the benefit must inevitably go to the accused. The second appellant's conviction simply because of his dislike for the deceased, even if accepted to be correct, would not in our opinion be justified in the absence of any evidence either direct or of conspiracy, to link him with the crime.

26. The conspiracy theory to kill Kamla Rani, only because she was not liked by her husband is far too improbable to accept since the prosecution failed to present any evidence to show meeting of minds and common intention of all the accused. Ramveer may not have been happy with his wife but this by itself does not establish that he hatched a conspiracy with his brother Surendra and his father Om Prakash (who died during trial), to kill Kamla Rani. The simple fact of being unhappy with a person even if accepted, do not provide a strong enough motive to hatch a conspiracy to eliminate the person. But this aspect was ignored by the courts below to attribute motive for the murder. In our CRL.M.C.2526/2019 & one other connected matter assessment the motive element in the chain of circumstances is not acceptable and the benefit of the broken link must be made available to the appellants."

91. The Hon ble Supreme Court in Praveen v. State of Haryana¹⁴ held that in the absence of any evidence to establish meeting of minds for the common objective of committing an illegal act, a case for conspiracy under Section 120B of the IPC cannot be made out. It was held as under:

"12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused...."

92. Therefore, it is a settled position of law that in order to prosecute an offence of conspiracy under Section 120B of the IPC, the ingredients required to be established are meeting of minds, particularly to further a common objective of committing an offence

93. Now adverting to the facts of the matter in hand.

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94. In paragraph no. 17.10 of the chargesheet, it is noted that CBI had placed certain mobile and landline numbers under surveillance after obtaining the required approval from the competent authority. The CBI has relied upon the authorization granted by the competent authority vide order no. 14/3/97-CBI to intercept and monitor these phone numbers and claims that the surveillance was conducted in accordance with due procedure. The details of the intercepted conversations and CDRs obtained through this surveillance have been included as part of the prosecution's evidence to establish a link between the accused persons including the petitioners and the alleged conspiracy.

95. The intercepted conversations purportedly reveal multiple telephonic communications between the accused persons, including conversations between Mr. Pawan Bansal, Mr. S.K. Jain, Mr. Ved Prakash Agarwal and other individuals involved in the matter. These conversations allegedly pertain to the ECB term loan proposal of PIL and discussions surrounding the approval process of the said proposal at Syndicate Bank. The prosecution has placed reliance on these communications to indicate a pattern of regular interaction between the accused, suggesting that these conversations were indicative of their involvement in the alleged conspiracy.

96. It has further been alleged in the paragraph no. 17.17 of chargesheet that the intercepted conversations point towards an understanding between Mr. Pawan Bansal and Mr. S.K. Jain to expedite the approval of the loan proposal of PIL and that certain directions were issued to Mr. Majumdar, the then General Manager of Syndicate Bank, to facilitate the same. The prosecution based on the communication dated 8th CRL.M.C.2526/2019 & one other connected matter July 2014, 12th July, 2014, and 14th July, 2014 has emphasized that the regular communication between the parties and the discussions surrounding the ECB loan proposal demonstrate a concerted effort to ensure the swift processing and approval of the said proposal, allegedly motivated by illegal gratification.

97. The CBI has also claimed that the surveillance data and CDRs reflect not only telephonic conversations but also a continuous exchange of information between the accused vide communication dated 17th May, 2014 and 18th May, 2014, which, according to the prosecution, points to a deliberate attempt to influence the decision-making process at Syndicate Bank. These intercepted communications have been presented as a key component of the evidence to establish a meeting of minds between the accused and substantiate the charge of conspiracy. Furthermore, the intercepted conversations allegedly say that Mr. Pawan Bansal, despite having no formal authorization from PIL to represent or pursue its loan proposal with Syndicate Bank, was actively engaging with Mr. Sudhir Kumar Jain and regularly updating Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal of PIL about the progress of the proposal. It is contended by the investigating agency that such interactions and exchanges of information, coupled with the alleged transfer of illegal gratification, are indicative of a larger conspiracy to ensure favorable treatment for PIL in securing the ECB term loan.

98. In light of the above, the surveillance data and the associated CDRs obtained through the interception of the identified mobile and landline numbers form a significant part of the evidence relied upon by the prosecution to substantiate the charges framed against the accused. The CRL.M.C.2526/2019 & one other connected matter prosecution contends that these intercepted communications demonstrate the existence of a common understanding and coordinated effort among the accused to influence the decision-making process in favor of PIL, which, according to the prosecution, amounts to a conspiracy under the relevant provisions of the law.

99. Upon examining the material placed before this Court and in terms of the settled law, it is evident that the chargesheet filed by the investigation agency is solely based on the conversation between the accused persons and the CDRs.

100. The agency has not produced any corroborative evidence to substantiate the allegations made against the petitioner, which renders the transcript and the CDRs insufficient to establish a prima facie case.

101. It is a settled position of law that mere allegation and the transcripts along with the CDRs and statements of witnesses, by themselves, cannot be relied upon exclusively to implicate an accused in the absence of corroborative evidence that validates the authenticity and relevance of the recorded conversations.

102. The law is well-settled that a CDR report, being a secondary piece of evidence, must be corroborated by independent evidence to establish the existence of any criminal conspiracy.

103. In the absence of corroborative material, reliance on CDR data alone would be insufficient to sustain the prosecution's case herein. The Hon'ble Supreme Court, in several landmark decisions, has consistently reiterated that mere telephonic conversations without corroboration do not establish the guilt of the accused beyond a reasonable doubt.

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104. Upon a careful perusal of the statements of witnesses, transcripts and CDRs report relied upon by the investigating agency, it is noted that the same merely reflects telephonic conversations among Mr. Ved Prakash Agarwal, Mr. Vipul Agarwal, Mr. SK Jain and Mr. Pawan Bansal. However, these conversations do not reveal or establish any element of criminal conspiracy or wrongdoing, as alleged by the prosecution with respect to the present petitioners insofar the allegation made is with regard to the alleged bribing of Mr. SK Jain in pursuant to PIL's proposal. The statements of witnesses, CDRs and the recorded conversation only demonstrates that these individuals were in communication, which, by itself, does not point to any corrupt or illegal activity „on the face value of the record .

105. Furthermore, it is an admitted position in this petition that Mr. Ved Prakash Agarwal availed the services of M/s Altius for the processing of his loan proposal. However, this fact, in isolation, does not imply any corrupt practice or criminal conspiracy. Engaging a consultancy firm for

loan-related assistance is a routine commercial transaction and does not indicate any culpability on the part of the petitioner.

106. Additionally, the charges framed against the petitioners include allegations of corruption, however, it is pertinent to note that Mr. Ved Prakash Agarwal is not a public servant, and as such, the provisions relating to corruption under the PC Act cannot be invoked against him without any direct evidence to link him to the alleged fact of bribing a public servant under Section 8 of the PC Act. Since corruption charges can only be attributed to public servants or those aiding and abetting them in committing corrupt acts, such charges cannot be sustained against the CRL.M.C.2526/2019 & one other connected matter petitioners in the present case in the absence of any specific material on record such as bank statements, any oral or written communication, or any material to indicate exchange of monies etc.

107. It is also noted that Mr. Pawan Bansal, one of the co-accused, has admitted that he was assisting in loan proposals for several other companies as well. Mr. Pawan Bansal was engaged in business dealings not only with Mr. Ved Prakash Agarwal's company but also with various other entities such as M/s Monnet Ispat and Energy Limited and the same is a crucial factor to determine the veracity of the allegations made in the chargesheet.

108. This fact raises a presumption of doubt in favor of the petitioners, as the existence of multiple business transactions weakens the inference of any exclusive or specific conspiracy between the parties involved from the CDR. Given the lack of direct and conclusive evidence to establish the alleged conspiracy or corruption, the benefit of doubt must accrue in favor of the petitioners. Therefore, considering the aforesaid admission by Mr. Bansal, it becomes impossible to conclusively trace or attribute any alleged transaction to the present petitioners. In the absence of any specific evidence linking the petitioners to any corrupt practice or conspiracy, a mere association or business relationship cannot form the basis of criminal liability.

109. Moving further, the statement of Mr. U.S. Majumdar, recorded under Section 164 of the CrPC has also been carefully scrutinized. In his statement, Mr. Majumdar mentioned that he was under pressure from his superior authorities, particularly Mr. S.K. Jain, who was serving as the CRL.M.C.2526/2019 & one other connected matter CMD, Syndicate Bank. It is alleged that Mr. S.K. Jain was exerting pressure to ensure the completion of the loan proposal.

110. However, upon a closer examination of Mr. Majumdar's statement, it is observed that the nature and extent of the pressure exerted by Mr. S.K. Jain have not been clearly articulated. The statement does not specify whether this pressure was related to the urgency of completing the work, the magnitude of the loan amount, or any undue influence to favor a particular party especially the petitioners. Since the loan amount in question was substantial, any apprehension or caution exercised by bank officials could have arisen due to the high financial risk associated with such transactions, rather than any illegal influence.

111. Moreover, Mr. Majumdar's statement does not directly or ex facie implicate Mr. Ved Prakash Agarwal in any manner and there is no mention of any undue pressure exerted by the petitioners

directly or any specific conduct that could be construed as coercive or improper on the part of the petitioners. The statement remains vague, ambiguous, and lacks any prima facie evidence to support the allegations leveled by the investigating agency.

112. In the absence of any clear, specific, and incriminating details in Mr. Majumdar's statement, reliance on such vague and unsubstantiated assertions cannot form the basis of criminal liability. It is a settled principle of law that uncorroborated statements cannot be the sole foundation for drawing adverse inferences against an accused.

113. Therefore, the allegations made by the investigation agency against the petitioner, based on Mr. Majumdar's statement, remain uncorroborated by any substantial or reliable evidence. Such unsupported CRL.M.C.2526/2019 & one other connected matter assertions cannot be treated as conclusive proof of any criminal conspiracy or misconduct. Consequently, this Court finds that the material relied upon by the agency is insufficient to establish a prima facie case against the petitioners.

114. In his statement made under Section 164 of the CrPC, Mr. Ghanshyam Mudgal, an employee of PIL, has stated that he has delivered Rs. 1.5 Crore to Mr. Pawan Bansal, but again, he gave contradictory statement by deposing that that he has not delivered the said money as a bribe to anyone. Further, he also specifically mentioned that he has never delivered the money „directly to Mr. Pawan Bansal .

115. It is pertinent to note that Mr. Mugdal categorically denied having paid any bribe to anyone and further clarified that he never delivered the said amount directly to Mr. Pawan Bansal. This inconsistency in his statement raises serious doubts regarding the veracity and reliability of his version. Therefore, it is drawn that upon further inquiry, the said witness provided a contradictory version, and hence his statement cannot be relied, as it is unclear.

116. Such self-contradictory statements, where the witness oscillates between different versions, lack the degree of certainty required to establish any incriminating fact. It is trite law that when a witness provides inconsistent and contradictory statements, such testimony cannot be relied upon as credible evidence for drawing adverse inferences against the accused. Therefore, Mr. Mugdal's statement does not offer any clear, credible, or conclusive evidence to support the prosecution's case. Consequently, this Court finds that no prima facie case can be CRL.M.C.2526/2019 & one other connected matter established against the petitioners based on the unsubstantiated and contradictory assertions made by Mr. Ghanshyam Mudgal.

117. Moving further, the prosecution has placed reliance on information sourced during the investigation, suggesting PIL, engaged in the sectors of Coal Mines, Iron and Steel, Power, and Wind Energy, hired the services of M/s Altius Finserve Pvt. Ltd. to facilitate the sanction of ECB amounting to USD 20 Million for the buyback of FCCB.

118. It is alleged that Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal, were in constant touch with Mr. Pawan Bansal for obtaining approval of their loan proposal by Syndicate Bank. Furthermore,

the investigating agency has contended that Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal conspired to approach Mr. SK Jain, CMD, Syndicate Bank, to expedite the said approval. The investigation alleges that multiple personal meetings occurred between Mr. Pawan Bansal and Mr. SK Jain, allegedly for this purpose.

119. The prosecution further claims that on 14th July, 2014, Mr. Pawan Bansal contacted Mr. SK Jain and requested him to expedite the approval of the said proposal. The approval was allegedly granted on 15 th July, 2014, and the decision was conveyed to Mr. Pawan Bansal by Mr. SK Jain. It is also alleged that the said proposal was approved despite certain queries raised by Mr. U.S. Majumdar, General Manager, Syndicate Bank (Mumbai), concerning the proposal submitted by PIL, which were still pending.

120. However, no direct or substantive evidence has been presented to establish any criminal conspiracy between the parties. The mere act of requesting for expediting the approval process of a legitimate business CRL.M.C.2526/2019 & one other connected matter proposal does not, by itself, amount to a conspiracy. A request to expedite a proposal, even if made through personal channels or professional intermediaries, cannot be presumed to be an unlawful act, unless supported by evidence demonstrating a quid pro quo or corrupt intent.

121. Conspiracy requires the existence of a prior agreement or meeting of minds to commit an illegal act, and in the absence of any tangible evidence indicating any coercion, undue influence, or gratification, the allegations appear to be based on mere conjecture and suspicion. There is no credible evidence to suggest that the proposal s approval was contingent upon any unlawful favour or that the alleged meetings between Mr. Pawan Bansal and Mr. SK Jain involved any discussion beyond the professional realm.

122. It is further observed that even if certain queries raised by Mr. U.S. Majumdar, General Manager, Syndicate Bank (Mumbai), remained pending, it cannot be conclusively inferred that the approval was granted with any mala fide intention. The authority to approve or reject a proposal lies within the discretion of the approving authority, and in the absence of any clear evidence suggesting coercion, inducement, or malice, the exercise of such discretion cannot automatically be deemed to be corrupt or collusive.

123. Moreover, it is pertinent to note that the allegations regarding a conspiracy between the parties are not corroborated by any contemporaneous records or documentary evidence. The mere fact that PIL engaged the services of M/s Altius Finserve Pvt. Ltd. and that meetings took place between Mr. Pawan Bansal and Mr. SK Jain does not inherently point towards a conspiracy, as such interactions are CRL.M.C.2526/2019 & one other connected matter commonplace in corporate and financial dealings. Without corroborative evidence, assumptions of criminality cannot be drawn from routine business interactions.

124. Mere suspicion or a speculative inference, without supporting material, cannot be the basis for a finding of conspiracy. The Hon ble Supreme Court has consistently held that a charge of conspiracy must be backed by cogent and convincing evidence establishing the meeting of minds

and a shared intention to commit an illegal act. In the present case, however, the prosecution has failed to establish any direct link between the parties with regard to the bribe that could justify invoking the charge of criminal conspiracy.

125. Consequently, in the absence of substantial, credible, and corroborative evidence supporting the allegations, the claims raised by the investigation agency remain unsubstantiated and speculative. This Court, therefore, finds that the alleged conspiracy is not established beyond reasonable doubt, and the allegations levelled by the prosecution, based on unverified sources and presumptions, do not withstand judicial scrutiny.

126. The prosecution has further alleged that PIL had agreed to pay a substantial amount of money to Mr. Pawan Bansal in exchange for his services to expedite the approval process. It is claimed that Mr. Pawan Bansal was entrusted with ensuring the payment of illegal gratification to Mr. S.K. Jain, CMD, Syndicate Bank, and that this arrangement was purportedly communicated to Mr. S.K. Jain during several rounds of personal meetings.

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127. The prosecution further contends that, pursuant to this understanding, a major portion of the agreed amount was allegedly delivered to Mr. Pawan Bansal by PIL through their employee, Mr. Ghanshyam. Additionally, it is claimed that the illegal gratification intended for Mr. SK Jain was subsequently delivered to Mr. Purushottam for onward transfer to Mr. Vineet Godha, who was purportedly acting on behalf of Mr. SK Jain.

128. Upon a careful examination of the allegations, this Court is unable to accept the claims made by the prosecution as the same lack corroborative evidence and remain unsubstantiated.

129. The entire premise of the alleged conspiracy and illegal gratification is based solely on the statements of witnesses, recorded conversation and CDRs, which merely indicate telephonic contact between the parties. It is a settled legal principle that CDR data alone, without any corroborative evidence, is insufficient to establish criminal intent or conspiracy.

130. CDR records may, at best, demonstrate communication between individuals but cannot, in isolation, be relied upon to draw an inference of conspiracy or the exchange of illegal gratification. The Hon ble Supreme Court has consistently held that mere communication between individuals, without any substantive corroborative material, cannot form the basis of a finding of conspiracy or corruption.

131. Furthermore, the allegations pertaining to the delivery of money by Mr. Ghanshyam to Mr. Pawan Bansal and subsequently for the benefit of Mr. SK Jain lack any credible evidence or documentary proof. The prosecution has failed to establish the necessary meeting of minds or a CRL.M.C.2526/2019 & one other connected matter common intention required to substantiate the claim of conspiracy. For a conspiracy to be established, there must be a clear and conscious agreement between the parties to commit an illegal act, accompanied by overt acts in furtherance of

that agreement. However, in the present case, there is no evidence indicating any such agreement or intention to provide or accept illegal gratification.

132. Moreover, the statement of Mr. Ghanshyam, which forms the basis of the allegation, is contradictory and inconsistent. While he initially claimed to have delivered the money, he later denied having given any bribe. His statements are vague, lack specificity, and do not provide any conclusive proof of the alleged delivery of money or the existence of any illegal agreement between the parties.

133. It is also pertinent to note that there is no direct evidence establishing that Mr. S.K. Jain was aware of or consented to receiving any illegal gratification through Mr. Vineet Godha. In the absence of any admissible evidence or corroboration, the prosecution's narrative remains speculative on the face of it.

134. Consequently, the allegations regarding the payment of illegal gratification and conspiracy between the accused persons are unsupported by credible evidence. The prosecution's case, being primarily based on unverified statements and CDR records, fails to establish the essential ingredients of conspiracy or corruption beyond reasonable doubt.

135. At this stage, this Court finds it pertinent to note that the pendency of a separate criminal case (RC AC 1 2014 A 0004) against Mr. S.K. Jain does not automatically imply his culpability in the present matter. It is a well-established principle that criminal liability is personal and cannot be CRL.M.C.2526/2019 & one other connected matter imputed merely based on the association or designation of the accused. Furthermore, the allegations against Mr. SK Jain in the present case must be evaluated independently and cannot be influenced by the pendency of RC AC 1 2014 A 0004. The prosecution is obligated to establish the guilt of the accused in the present matter beyond reasonable doubt, without drawing presumptions based on the existence of another criminal case against him.

136. It is pertinent to highlight that the allegations in RC AC 1 2014 A 0004 pertain to a distinct set of facts, transactions, and offences which are independent of the facts and circumstances of the present case. The prosecution has failed to establish any direct nexus or connection between the two cases, and no cogent evidence has been placed on record to show that the allegations in the current matter are a continuation or consequence of the previous case. Mere pendency of another case against the accused cannot be used as a presumption of guilt or propensity to commit offences in the present case. Consequently, any attempt by the prosecution to draw an inference of guilt based on the pendency of another case is legally untenable and cannot be sustained.

137. Summarily stated, the prosecution has alleged that Mr. S.K. Jain, the then CMD of Syndicate Bank, and Mr. Pawan Bansal were well acquainted and in regular contact regarding the ECB term loan proposal of PIL. It is asserted that although there was no formal written authorization granted by PIL to Syndicate Bank permitting Mr. Pawan Bansal or his firm to pursue the loan proposal on its behalf, Mr. S.K. Jain was allegedly discussing the developments of the proposal with Mr. Pawan Bansal and sharing official information. The prosecution further CRL.M.C.2526/2019 & one other

connected matter contends that Shri Pawan Bansal, in turn, shared the said information with Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal of PIL to create an impression of influence.

138. Mr. Majumdar, the then General Manager, Treasury and International Banking Division (T&IBD), Syndicate Bank, Mumbai, lack substantive corroboration. While Mr. Majumdar in his statement recorded under Section 164 of the CrPC stated that he forwarded the proposal of PIL to the Corporate Office under pressure from Mr. SK Jain, it is pertinent to note that his statement does not clearly define the nature, type, or intensity of the alleged pressure. Mr. Majumdar merely stated that there was pressure from senior officials, without specifying whether it was work-related pressure, urgency of a high-value proposal, or any undue coercion. Such vague and ambiguous statements cannot be relied upon to draw an adverse inference against the petitioners or to establish the existence of any criminal conspiracy.

139. Furthermore, the prosecution has not presented any concrete evidence to establish that Mr. Vipul Agarwal, Consultant, PIL, was involved in any unlawful activity. The allegations that Mr. Vipul Agarwal was pursuing the ECB term loan proposal through Mr. Pawan Bansal and was regularly in touch with him over the phone do not, in themselves, establish any culpability or conspiracy. Mere telephonic conversations between parties involved in a business proposal cannot be construed as evidence of a criminal act, unless accompanied by substantial proof indicating any mens rea. The law is well settled that suspicion, no matter how strong, cannot take the place of proof.

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140. It is also alleged that Mr. Vipul Agarwal facilitated the transfer of an amount of Rs. 3.25 Crores through illegal channels using the services of Mr. Ghanshyam Mudgal and Mr. Ashok Sharma, employees of PIL, which was allegedly received by Mr. Ajay Bansal, a relative of Mr. Pawan Bansal, in Delhi. However, this Court observes that no cogent evidence has been placed on record to substantiate this serious allegation. No documentary or independent proof has been adduced to establish the alleged transaction of Rs. 3.25 Crores. The mere mentioning of a figure in the allegations without any bank records, financial trail, or independent corroboration does not meet the standard of proof required in criminal cases.

141. In view of the aforesaid discussions of facts and law, this Court is of the considered view that the learned Special Judge has failed to consider that the proposal submitted by Mr. Majumdar was forwarded without obtaining the requisite clarifications and internal rating confirmation from the company. This procedural lapse, if any, should have been thoroughly examined by it, but the same was overlooked. The absence of any concrete evidence to establish the existence of a conspiracy or collusion between Mr. Sudhir Kumar Jain, Mr. Pawan Bansal, Mr. Vipul Agarwal, and others, further weakens the case of the prosecution.

142. In view of the above analysis, this Court finds that the allegations against the petitioners are based on telephonic conversations, vague statements, and uncorroborated allegations which are insufficient to establish a criminal conspiracy or wrongful conduct. Mr. Majumdar's statement under Section 164 of the CrPC does not contain any specific CRL.M.C.2526/2019 & one other

connected matter details or corroborative evidence to support the claims made by the prosecution. Moreover, the allegation of cash transfer of Rs. 3.25 crores is unsupported by any independent evidence or financial records, making it legally unsustainable.

143. It is further an admitted fact of the CBI in the chargesheet as mentioned in paragraph no. 17.26 that PIL was not solely pursuing the ECB term loan proposal with Syndicate Bank, but was simultaneously pursuing loan proposals with multiple financial institutions, including the Bank of Maharashtra, Raipur, and LIC of India. The recorded conversations indicate that Mr. Pawan Bansal was actively pursuing the loan proposal of PIL with these institutions as well. However, it is pertinent to mention that the loan proposal submitted to Bank of Maharashtra, Raipur, was rejected by the bank after the registration of the CBI case against the promoter directors of PIL.

144. This fact highlights that the loan proposal of PIL was being independently assessed by various financial institutions and not exclusively influenced or expedited by any alleged conspiracy involving Syndicate Bank. The simultaneous pursuit of loan proposals with multiple financial institutions indicates a legitimate and routine business practice of seeking financial assistance from various sources, which is a standard industry practice for large corporate entities.

145. Moreover, the rejection of the loan proposal by Bank of Maharashtra, Raipur, despite any alleged involvement of Mr. Pawan Bansal or any other individual, further weakens the CBI's claim of a larger conspiracy. The recorded conversations, while indicating that Mr. Pawan Bansal was pursuing the proposal, do not provide any CRL.M.C.2526/2019 & one other connected matter corroborative evidence that such pursuits were part of an orchestrated conspiracy to unduly influence the decision-making process of the banks.

146. Therefore, the mere act of pursuing multiple loan proposals with different banks and financial institutions, which is a common and legitimate business practice, cannot be construed as an act of conspiracy. In the absence of any tangible evidence to demonstrate that the approvals or rejections of these proposals were influenced by illegal gratification or undue pressure, the allegations leveled by the CBI cannot be relied upon to substantiate the charge of conspiracy.

147. Consequently, the prosecution has failed to discharge its burden of proof and establish the allegations prima facie, which is a sine qua non for conviction in criminal cases. Hence, no adverse inference can be drawn against the petitioners solely on the basis of assumptions, conjectures, or suspicion and it is held that the learned Special Judge erred in passing the impugned order, thereby, summoning the petitioners and further erred in accepting the charges framed against the petitioners in the chargesheet.

CONCLUSION

148. In view of the aforesaid facts and circumstances, the following directions are passed by this Court:

a. It is held that the learned Special Judge erred in passing the impugned order dated 9th March, 2018, thereby, summoning the petitioners namely M/s Prakash Industries Ltd. (through Mr. Ved Prakash Agarwal), Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal. The same is erroneous and legally unfounded as there is no substantial material to show that the said petitioners have CRL.M.C.2526/2019 & one other connected matter committed any offence on a prima facie perusal of the record. Accordingly, the impugned order dated 9th March, 2018 passed by the learned Special Judge, CBI-05, Patiala House Courts, New Delhi district, New Delhi is, hereby, quashed qua M/s Prakash Industries Ltd., Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal. b. Further, RC no. - AC-1/2014/A-0005/CBI/AC-I dated 1st August, 2014 as well as the final report dated 27th September, 2017 filed in CC No. 30/2017, and all the other consequential proceedings arising out of the said FIR are also quashed qua the petitioners M/s Prakash Industries Ltd., Mr. Ved Prakash Agarwal and Mr. Vipul Agarwal.

149. In view of the aforesaid terms, the captioned petitions are allowed and stands disposed of. Pending application(s), if any, also stand disposed of.

150. It is made clear that the observations made hereinabove shall not be construed as an expression of this Court on the merits of the case pending before the Court concerned.

151. It is also made clear that this Court has not gone into the veracity of allegations qua the other accused persons.

152. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH) JUDGE MARCH, 28, 2025 rt/ryp/kj Click here to check corrigendum, if any CRL.M.C.2526/2019 & one other connected matter