

**IN THE COURT OF SH. M. K. NAGPAL
SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES)
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

**Bail Matter No. 55/2023
CNR No. DLCT11-000214-2023
FIR No. RC0032022A0053
PS CBI, ACB, New Delhi
U/S 120B R/W 477A IPC & SEC 7 of the PC Act, 1988
(as amended in 2018)**

**MANISH SISODIA
Vs.
CENTRAL BUREAU OF INVESTIGATION (CBI)**

**ORDER ON BAIL APPLICATION FILED U/S 437/439
CR.P.C ON BEHALF OF ACCUSED MANISH SISODIA**

31.03.2023

1. By this order, I shall dispose of the application dated 03.03.2023 moved on behalf of the accused Manish Sisodia seeking his regular bail U/S 437/439 Cr.P.C. in the present case.

2. I have carefully gone through contents of the bail application as well as of the reply dated 10.03.2023 thereto filed on behalf of CBI, along with record of the judicial file, the case diary produced by the Investigating Officer (IO) and the written notes/submissions filed from both sides in support of their respective pleas. The extensive arguments advanced on the application by Sh. Dayan Krishnan, Sh. Mohit Mathur and Siddharth Aggarwal, Ld. Senior Counsels, assisted by Sh. Vivek Jain, Sh. Rishikesh Kumar, Sh. Mohd. Irshad, Sh. Karan Sharma, Sh. Abhinav Jain, Sh. Rohit Kaliyar, Sh. Mohit Siwach, Sh. Harsh Gautam, Sh. Rishabh Sharma, Sh. Sanjeevi Seshadri, Sh.

Sreedhar Kale, Sh. Kumud Ranjan Mishra and Sh. Mohit Bhardwaj Advocates, for the accused and Sh. D. P. Singh, Ld. Spl. PP, along with Sh. Raj Mohan Chand, Ld. DLA and Sh. Pankaj Gupta, Ld. Sr. PP for CBI, have also been heard and considered.

3. The instance case was registered by the CBI vide FIR/RC No. 0032022A0053 on 17.08.2022 for commission of the offence of criminal conspiracy punishable U/S 120B r/w 477A IPC and Section 7 of the PC Act, 1988 (as amended in the year 2018) and substantive offences thereof. This case has been registered in relation to the irregularities committed in framing and implementation of excise policy of the Government of National Capital Territory of Delhi (GNCTD) for the year 2021-22 and it was registered on the basis of a complaint dated 20.07.2022 made by the Hon'ble Lt. Governor, GNCTD and the directions of competent authority conveyed by Sh. Praveen Kumar Rai, Director, Ministry of Home Affairs (MHA), Government of India, through his letter dated 22.07.2022 and also based on some source information.

4. The applicant Manish Sisodia, the then Dy. Chief Minister as well as Excise Minister of the GNCTD and belonging to the ruling Aam Aadmi Party (AAP) in Delhi and fourteen other persons/entities were specifically named as accused in the FIR of this CBI case, which also included some other public servants of the Excise department of GNCTD and some private persons/entities. A chargesheet in this case for commission of the offence

of criminal conspiracy punishable U/S 120B IPC r/w Sections 7, 7A and 8 of the PC Act, and also the substantive offences thereof, against seven accused persons namely Kuldeep Singh, Narender Singh, Vijay Nair, Abhishek Boinpally, Arun Ramchandran Pillai, Gautham Mootha and Sameer Mahandru stands already filed by the CBI before this court on 25.11.2022 and vide order dated 15.12.2022, this court had even taken cognizance of the alleged offences and had directed summoning of the above said accused persons to face trial for the said offences. However, some further investigation into the case is still pending and the applicant herein had been arrested in this case by CBI on 26.02.2023, i.e. only after filing of the above chargesheet, and even investigation qua him is still going on.

5. It is necessary to mention here that in respect to proceeds of crime allegedly generated through commission of the scheduled offences of this case registered by the CBI, even the Directorate of Enforcement/Enforcement Directorate (DoE/ED) had registered a connected case vide No. ECIR/HIU-II/14/2022 on 22.08.2022 for commission of the offence of money-laundering defined by Section 3 of the PMLA, 2002 and as made punishable by Section 4 of the said Act and investigation in the said case is also going on, though two prosecution complaints even in that case stand filed before this court against total 17 accused persons till date. It is further necessary to mention here that the present applicant also stands arrested in the above case/ECIR registered by the ED on 09.03.2023 and he is presently running in judicial custody in both these cases.

6. The crux of allegations made and evidence collected by CBI in the present case is that the formulation and implementation of the above excise policy of GNCTD was manipulated to facilitate monopolization and cartelization of liquor trade in Delhi and it was done against advance kickbacks of around Rs. 90-100 crores paid by some persons in liquor business from the South, or the so called South lobby or South group, and to ensure repayment or recoupment of the said amount of kickbacks, certain provisions in the excise policy were inserted to favour the said lobby and other members of said cartel in liquor business. It is alleged that all this was done in furtherance of a criminal conspiracy hatched between various accused and the applicant was one of the conspirators and also the chief architect of said conspiracy as he was not only the Deputy Chief Minister of GNCTD at the relevant time, but was also Excise Minister of the said Government and was thus in a position to frame or amend the policy to suit the requirements of South lobby. It is the case of prosecution that the excise policy favouring South lobby and members of the said cartel was prepared at the instance of this accused, while ignoring recommendations of the Expert Committee constituted for this purpose, the public opinion invited on recommendations of the said Committee and also the adverse opinions expressed by certain legal luminaries with regard to the policy. It has been alleged that the above advance kickbacks were received by or paid to the co-accused Vijay Nair for this applicant, his other political colleagues of AAP and other public servants and out of the same, kickbacks of around Rs. 20-30 crores had been paid

through the approver Dinesh Arora.

7. It is the contention of Ld. Senior Counsels representing the applicant that the offences alleged in this case carry a maximum term of imprisonment upto 7 years only and hence, as per the settled position of law, bail has to be granted to the applicant in the present case even though it is being alleged to be an economic offence case. It is also their contention that no exceptional circumstances exist in this case to deny bail to the applicant and in support of their above contentions, they have also referred to the propositions of law laid down by the Hon'ble Supreme Court in cases of **Sanjay Chandra Vs. CBI, (2012) 1 SCC 40** and **P. Chidambaram Vs. ED, (2020) 13 SCC 791** and by the Hon'ble High Court in case **H.B. Chaturvedi Vs. CBI, 2010 SCC Online Delhi 2155**.

8. It is further the contention Ld. Senior Counsels representing the applicant that the timeline of this case and the conduct of accused are also two important considerations that have to be considered by this court in favour of the applicant for grant of bail to him. It has been submitted that FIR of this case was registered long back on 17.08.2022 and the applicant has been arrested in this case only on 26.02.2023 and it was despite the fact that he was specifically named in the FIR. It is also their submission that even the residential premises as well as the bank locker of applicant were searched in this case by the CBI long back on 19.08.2022 and 30.08.2022 respectively and though nothing incriminating was recovered in the said searches, but still

he had been illegally arrested by the CBI for some extraneous considerations and political reasons. It is further their submission that there is no document or material collected during the course of investigation by the CBI to justify his arrest or to show his involvement in commission of the alleged offences.

9. It is also the contention of Ld. Senior Counsels that the applicant attended investigation of this case on two occasions i.e. on 17.10.2022 and 26.02.2023 in response to notices issued to him U/S 41A Cr.P.C. and on 26.02.2023 itself, he had been arrested in this case. It is their submission that arrest of the applicant is contrary to the provisions contained U/S 41A Cr.P.C. as he had responded to the notices issued to him and even attended the investigation of case in compliance thereof. It is further stated that the applicant even produced his mobile phone before the IO on 19.09.2022 on receipt of a notice U/S 91 Cr.P.C. for the said purpose, though after being named in the FIR, he was under no obligation to produce or surrender the same in view of judgment of the Hon'ble Supreme Court in case of **V.S. Kuttan Pillai Vs. Ramakrishan & Anr., (1980) 1 SCC 264** and he had also suitably replied to the other notices issued under the above provisions and received by him. Thus, it is the contention of Ld. Senior Counsels that the allegations of non-cooperation in investigation being made against the applicant by the CBI are not factually or legally tenable because in the name of cooperation, he could not be asked or expected to make self incriminatory statements or confessions, as was held in the case of **Santosh Vs. State of Maharashtra, (2017) 9 SCC 714.**

10. It is further the submission of Ld. Senior Counsels that the applicant even satisfies the 'triple test' laid down by the Hon'ble Supreme Court in the cases of **P. Chidambaram Vs. CBI, (2020) 13 SCC 337** and **P. Chidambaram Vs. ED (Supra)**, which is of paramount consideration for the grant of bail to an accused in such a case, and though the other factors governing the grant of bail to an accused, like the nature or gravity of offences alleged and punishment provided therefor etc. are also the relevant considerations, but the applicant even meets and satisfies the said factors and considerations. It has been strongly argued by them that since the applicant was the Deputy Chief Minister of GNCTD and was also holding around portfolios of 17-18 Ministries at the relevant time, there are no chances of his absconding or fleeing away from trial of the case. It is also argued that since he has already remitted his offices and his residence and other premises and bank locker stand already searched and he had further produced his mobile phone before the IO, there are even no genuine or legitimate chances of tampering with evidence or influencing of witnesses of this case by him. It is further their submission that such apprehensions were even not expressed by the CBI earlier in their remand applications and though the same have been expressed now, but these are vague apprehensions and are not supported by any material.

11. Further, it is also the contention of Ld. Senior Counsels that though some allegations of destruction of mobile phones are being leveled against the applicant by CBI, but even these

allegations are false and motivated as the applicant had duly produced before the CBI his mobile phone, which he was using on the date he was asked to produce it. It is also their submission that as far as the allegations of destruction or non-production of some other mobile phones previously used by him are concerned, the applicant never expected or was under any obligation to keep or preserve these mobile phones as he never contemplated that the same would be required by CBI or any other agency or any FIR will be registered against him some day. It is further their submission that since the applicant was occupying a high and sensitive position, the change or destruction of mobile phones was in routine and as per requirements of his office and it was not with an intent to destroy the evidence and thus, the date of reference of excise policy matter by the Hon'ble Lt. Governor to CBI or non-production of mobile phone being used by applicant on that day become irrelevant.

12. It is further the submission of Ld. Senior Counsels that all the other three accused arrested in this case till date, i.e. co-accused Vijay Nair, Abhishek Boinpally and Butchibabu Gorantala, were granted bail by this court even before filing of chargesheets against them and hence, on the ground of parity and further in view of the settled propositions of law on bail as enunciated in the cases of **State of Rajasthan Vs. Balchand, 1977 AIR SC 2447; Gurcharan Singh Vs. State (Delhi Admn.), (1978) 1 SCC 118; Babu Singh Vs. State of U.P., (1978) 1 SCC 579; Moti Ram Vs. State of M.P., (1978) 4 SCC**

47; Prahlad Singh Bhati Vs. NCT, Delhi, (2001) 4 SCC 280; P. Chidambaram Vs. CBI (Supra), Ashok Sagar Vs. State (NCT of Delhi), 2018 SCC OnLine Del 9548, Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51 and Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 etc. as discussed by this court in bail orders of the above co-accused, the applicant deserves to be released on bail. It is also their submission that two other public servants made accused in the chargesheet filed in the court earlier, namely Kuldeep Singh and Narender Singh, were even not arrested by the CBI and were granted bail by this court later on, in view of judgment of the Hon'ble Supreme Court in case of **Satender Kumar Antil (Supra)** and hence, in view of judgments in the cases of **Ramchand Karunakaran Vs. Directorate of Enforcement, Order dated 23.09.2022 in CrI. A. No. 1650/2022; Binoy Jacob Vs. CBI, 1993 SCC OnLine Del 53** and **Dr. Bindu Rana Vs. SFIO, 2023 SCC OnLine Del 276** also, the applicant herein is entitled to be released on bail solely on the above said ground.

13. It is also their contention that as held in the case of **Ashok Sagar (Supra)** and **Satender Kumar Antil (Supra)** etc. pretrial incarceration of an accused is always punitive and it should be permitted only to secure presence of the accused during trial and for no other reasons and there are no reasons or grounds to believe that the applicant herein will not attend the trial of this case or will abscond therefrom.

14. Regarding merits of the case, it is the contention of Ld.

Senior Counsels that allegations against him are only that he manipulated certain provisions in the above said policy to favour the South lobby and there is no acceptable evidence collected by the CBI till date to show that the applicant had received or demanded any kickbacks or bribe for doing so. It is, thus, their submission that no substantive offence under the PC Act can be said to have been committed by the applicant and at the most, his role was only that of a player or conspirator in the above criminal conspiracy and hence, bail should be granted to him pending further investigation and trial of the case.

15. It is also the contention of Ld. Senior Counsels on merits that the report dated 13.10.2020 of the Expert Committee, which was given the task of framing of excise policy, was put in public domain only by this applicant on 31.12.2020 for comments and it remained in public domain till 21.01.2021 and thereafter, in February, 2021, a Group of Ministers (GoM) led by the applicant was assigned the job of formulation of policy and the report given by GoM in March, 2021 was approved by the Cabinet in April, 2021. Further, it is also their contention that though there was no requirement of obtaining consent of the Hon'ble Lt. Governor on the subject of framing of excise policy, as it fell within the legislative competence of the GNCTD, but still, the report of GoM, as approved by the Cabinet, was sent to Hon'ble Lt. Governor for his suggestions and modifications. It is stated that few modifications suggested by Hon'ble Lt. Governor in May, 2021 were also incorporated in the policy and thereafter, it was implemented and hence, once the excise policy stood

approved by the Hon'ble Lt. Governor, the said policy or the conditions of payment of 12% profit margin for the wholesalers and eligibility criteria of Rs. 500 crores turnover for a wholesaler, which were integral part of the policy, cannot be called in question in courts being a matter of legislative competence as the policy matters of a Govt. are not subject to judicial review. Reference to judgments in the cases of **State of Uttar Pradesh Vs. Chaudhari Ran Beer Singh, (2008) 5 SCC 550** and **Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors., (2007) 4 SCC 737** has also been made by the Ld. Senior Counsels in support of this submission and thus, it is their vehement contention that framing or implementation of the above excise policy or commission of alleged irregularities therein cannot be made subject matter of investigation of a criminal case and this court has also no power to test the vires of said policy and therefore, the applicant is entitled to be released on bail even on this ground.

16. It is also their contention that even otherwise, certain terms of the excise policy had already been the subject matter of judicial review or challenge before the Hon'ble High Court in different petitions in cases **Khao Gali Restaurant Pvt. Ltd. Vs. Commissioner, Excise, GNCTD & Ors.** and **Buddy (T-1D) Retail Pvt. Ltd. Vs. GNCTD & Anr.** and no observations were made by their Lordships in these cases that formulation of above said policy and its implementation or any clauses thereof was/were irregular or illegal. It has been submitted by them that merely because a policy has been made by the Government in a

certain way or it goes to favour someone ultimately, no criminality can even be attached to the same on this ground.

17. It is also the contention of Ld. Senior Counsels that further detention of the applicant in custody in this case is not at all required as he is in custody in this case since 26.02.2023 and he stands thoroughly interrogated as he was even remanded to CBI custody by this court for a period of six days and investigation qua him is on the verge of completion. It is also their submission that keeping in view the nature of allegations made in this case and multiplicity of accused, the final conclusion of investigation may take a long time and no purpose is going to be served by keeping the applicant in custody in the case till conclusion of investigation or during the course of trial.

18. It is also the submission of Ld. Senior Counsels that the applicant is entitled to be released on bail even on personal grounds as his wife is suffering from multiple sclerosis, which is a neuro-degenerative disorder, for the last around 20 years and some medical documents showing the ailment and condition of his wife are also found annexed with the application. It is further their submission that no one else is there in applicant's family to take care of his ailing wife as his son is studying abroad.

19. Per contra, it is the contention of Ld. SPPs for CBI that applicant was the main architect of entire criminal conspiracy of tweaking and manipulation in formulation and implementation of the excise policy as he not only headed the GoM, which was given the task of formulating the policy, but he was also holding

the portfolio of Excise Ministry at the relevant time. It is their submission that it was only at the instance of this applicant and his other political associates in the GNCTD that the co-accused Vijay Nair had been participating in different meetings held with the other conspirators in connection with formulation of the said policy and it is also their submission that the advance amount of kickbacks was transmitted by the South lobby through the co-accused Abhishek Boinpally and Vijay Nair only for the applicant and his other political associates. It has further been argued by Ld. SPPs that the applicant had brushed aside and ignored the main recommendations of the Expert Committee headed by the then Excise Commissioner Sh. Ravi Dhawan with regard to Govt. corporation owned wholesale model and allotment of maximum two shops per person through lottery system and the applicant even pressurized and threatened Sh. Ravi Dhawan and his successor Sh. Rahul Singh and got them transferred, when they did not accede to his directions to incorporate certain provisions or amendments in the Expert Committee report or Cabinet Note to suit the interests of South lobby.

20. It is also the submission of Ld. SPPs that even the exercise of putting the Expert Committee report in public domain was resorted to under directions of the applicant for name sake only as intent of the applicant and his other political associates was never to go by recommendations of the Expert Committee or the public opinion and it was only an eye-wash as the applicant had verbally directed the new Excise Commissioner Sh. Sanjay

Goel to prepare a fresh Cabinet Note after removing opinions of the legal experts, which were received when the report was in public domain, and he even did not return the file of previous Cabinet Note, which was prepared by Sh. Rahul Singh with reference to and while incorporating the Expert Committee report, summary of feed back received from public and other stakeholders and also comments of the legal experts.

21. It is further the contention of Ld. SPPs for CBI that even constitution of the GoM was with a pre-determined mind to frame and implement a policy to suit the needs and requirements of South lobby in cartel of liquor traders as investigation conducted so far in the case has suggested that no minutes of the GoM meetings were being prepared or recorded and there was also no discussion on certain clauses of the final excise policy in the GoM meetings. It is their submission that sufficient oral and documentary evidence has surfaced during the course of investigation to show that these clauses were inserted or included in the GoM report at the instance of applicant only and it was done after discussions with members of the South lobby, who were camping and staying in Hotel Oberoi, New Delhi during the said period. It is also argued that even the wholesale license to M/S Indospirts by the officers of Excise department was given under pressure of this applicant as the said firm was constituted to play an important part in repayment of kickbacks to the South lobby. It is also argued that the applicant changed his mobile phone handsets four times during the relevant period and it was only to destroy the digital evidence, which was existing in these

mobile phone handsets about existence of the above criminal conspiracy and also about the vital part played by him therein. It has also been submitted that evidence has further surfaced during investigation to show that some part of the above advance kickbacks received by the applicant from South liquor lobby was used for making cash payments to different vendors by the ruling party in Delhi, in connection with the Assembly Elections held in Goa in the year 2022.

22. It is further the contention of Ld. SPPs for CBI that though the applicant joined investigation of the case twice, but he did not disclose the true facts and did not offer any legitimate explanation to the oral and other documentary evidence collected during investigation and put to him and his attitude during investigation was totally non-cooperative and evasive and hence, his arrest in this case despite joining of investigation was totally justified. It is also their submission that though the applicant may not be a flight risk, but since he had been holding charge of around 18 Ministries of the GNCTD till recently, there is no doubt that he is an influential person and he can always tamper with evidence of the case and influence the witnesses in case he is granted bail in this case. Further, it is also their submission that there is even no parity between the role played by this applicant and the other co-accused, who have earlier been released on bail by this court. It has also been submitted by them that investigation of the case is still pending and the same may be seriously hampered in case the applicant is granted bail by the court.

23. In support of their above arguments, Ld. SPPs for CBI have also relied upon judgments in the cases of **Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439, Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466, Manoj Kumar Khokar Vs. State of Rajasthan & Anr., (2022) 3 SCC 501, Prahlad Singh Bhati (Supra), Paramjeet Vs. State of NCT of Delhi, Bail App. No. 1770/2013 decided by the Hon'ble High Court on 21.10.2013 and K.K. Jerath Vs. Union Territory, Chandigarh & Ors., (1998) 4 SCC 80.**

24. Admittedly, though none of the offences invoked by CBI in the present case carries a punishment of imprisonment for more than 7 years, but the term or severity of punishment is not the only criteria for deciding bail application of an accused because, as also held in the above said judgements being relied on by the Ld. Seniors Counsels for accused themselves, various other factors like the gravity or seriousness of offence, nature of allegations made and offences invoked in the case, its impact upon society, conduct and antecedents of the accused and the chances of his absconding, tampering with the evidence and influencing the witnesses etc. also play equally important role in deciding bail plea of the accused.

25. Though, it emerges out from the propositions of law governing the grant of bail that bail has generally to be granted to an accused in such a case where the offences carry a maximum punishment of 7 years, but it also comes out therefrom that grant of bail in such a case is not an absolute rule. The decision to grant bail to an accused in any case is a matter of discretion of the court and

that discretion is required to be exercised judicially on consideration of merits and demerits of the case and there cannot be any hard and fast rule or straight jacket formula for adjudicating upon the bail plea of an accused as each case has to be decided as the per peculiar facts and circumstances of that case only. The observations to this effect are even found to have been made in para no. 22 of the judgement in case of **P. Chidambaram Vs. CBI (Supra)** being relied upon by Ld. Senior Counsels and the same are being reproduced herein below :-

“22. There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.....”

26. Further, the observations made by their Lordships in the preceding para no. 21 of the above said judgement are also being reproduced herein below as these observations refer to the settled principles governing the grant of bail, as held in the earlier judgement in case of **Prahlad Singh Bhati (Supra)** being relied upon from both the sides,:-

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;**
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;**
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;**
- (iv) character behaviour and standing of the accused and the**

circumstances which are peculiar to the accused;
(v) larger interest of the public or the State and similar other considerations.

[Vide **Prahlad Singh Bhati v. State (NCT, Delhi)**]"

27. Again, the order of a court granting or refusing bail to an accused has to be a reasoned order and though, it is not the requirement of law that evidence collected in a case should be minutely analysed or discussed for deciding the question of bail, but the same has to be visited and touched upon broadly for the purpose of forming of a *prima facie* opinion by the court for granting or refusing bail to the accused. The observations to this effect are also found to have been made in para no. 16 of the above judgement of the Hon'ble Supreme Court in case of **P. Chidambaram Vs. CBI (Supra)**, which are also being reproduced herein below:-

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

'3.Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has

been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself’.”

28. The above principles governing grant of bail were though extracted from earlier judgements of the Hon'ble Supreme Court on the issue of bail, but the same were even reiterated subsequently by the Hon'ble Supreme Court in the other case **P. Chidambaram Vs ED (Supra)** being relied upon on behalf of the accused, while granting bail to the accused P. Chidambaram in the above said two cases and bail was granted to accused by the Hon'ble Supreme Court despite the fact that these cases were stated to be falling in the category of economic offences.

29. Since the instant case relates to formulation and implementation of a policy by the GNCTD in relation to sale of liquor in Delhi and governing various aspects related thereto and further effecting a larger section of the population in State, *prima facie* this case also falls in the category of economic policy matter offences. However, in view of the law laid down by the Hon'ble Supreme Court in cases of **P. Chidambaram (Supra)**, bail cannot be refused to the applicant simply because it is an economic offence. Still, the question of grant of bail has to be decided while taking into consideration all the attending facts and circumstances of the case and also the legal principles governing the grant of bail as laid down from time to time by the Hon'ble Supreme Court as well as the Hon'ble High Courts. However, so far as the submission of Ld. Senior Counsels regarding powers of investigating agencies or of the courts to scrutinize or review a Govt. policy is concerned, the same is not *prima facie* tenable as framing of the policy itself in

the present case stands surrounded by allegations of corruption or payment of bribe, which necessarily have to be looked into by the investigating agencies and can also be gone through or examined by the courts.

30. Coming to facts of the present case and the role played by applicant, it has already been discussed that the applicant was not only the Deputy Chief Minister of GNCTD at the relevant time, but he was also the Excise Minister and further, headed the GoM constituted by the Council of Ministers, GNCTD in connection with finalization of the said policy. Investigation conducted into the case so far has revealed that the Expert Committee headed by the then Excise Commissioner Sh. Ravi Dhawan for formulation of the new excise policy of Govt. for the year 2021-22 was constituted by the Delhi Govt. on 04.09.2020 and it gave its report on 13.10.2020. The major recommendations made by the Expert Committee are stated to have been for a Govt. corporation owned wholesale model and allotment of maximum two shops per person through lottery system. However, it has been observed from the statements of witnesses recorded and documentary evidence collected during the course of investigation that the said recommendations of the Expert Committee were not as per likings of the present applicant and his other colleagues, who were bent upon to frame a particular kind of excise policy leaving entire liquor trade in hands of private players for some monetary benefits and political reasons. Hence, it is being alleged by the CBI that the said Excise Commissioner was got transferred by the applicant on 29.10.2020 and in his place Sh. Rahul Singh was made the new Excise Commissioner and after

sleeping over the report of the Expert Committee for around 2½ months, the same was put in public domain on 31.12.2020 by the new Commissioner, as per directions of the applicant, to invite comments and suggestions to the same and it remained in public domain till 21.01.2021.

31. It has also emerged during the course of investigation that on 21.01.2021 itself, the applicant had called Sh. Rahul Singh at his residence in the evening and on being shown the file containing comments/suggestions received from the public and stakeholders in liquor trade, he handed over a printed draft note to Sh. Rahul Singh and directed him to prepare a Cabinet Note exactly on the same lines, while further informing Sh. Rahul Singh that a GoM headed by him was to be constituted vide Cabinet meeting proposed to be held on 28.01.2021 and the said GoM will give certain directions to the Excise department in connection with restructuring of the excise policy and Delhi will be divided into several zones and auction will be held for the retail zones. The applicant also expressed his displeasure to the Expert Committee report and directed Sh. Rahul Singh to prepare the above note to be presented before the Cabinet on 28.01.2021 with the comments received from the stakeholders/public. Though Sh. Rahul Singh expressed his reservations on modifying the Expert Committee report on such large scale, by the applicant told him that he need not worry as directions for such restructuring will come from the GoM. Further, a soft copy of the above draft note is also found to have been sent by an official from the office of applicant on mobile phone of Sh. Rahul Singh.

32. Investigation conducted by the CBI further reveals that Sh. Rahul Singh had then got prepared a Cabinet Note through his subordinates by forwarding the soft copy of said note to the then Assistant Commissioner (Policy) and it was prepared by the then dealing assistant, in name of the then Additional Secretary, Chief Minister Office and GAD, having additional charge of the Finance Department in absence of the regular Secretary (Finance), and soft copies of the said note as well as notings received on his mobile phone were approved by Sh. Rahul Singh on 28.01.2021, as he was on leave on that day due to hospitalization of his wife. Thereafter, the file containing hard copies of the note as well as notings was brought to Sh. Rahul Singh by the dealing hand in hospital, after it was approved by the then Deputy Commissioner, Excise, and after signing it, Sh. Rahul Singh had marked the said file to the present applicant, through the then Additional Chief Secretary looking after work of their department. The said file was then physically taken by the dealing assistant as well as by the then Assistant Commissioner (Excise) to the camp Office of Chief Minister and it was handed over to the then Additional Secretary, Chief Minister Office and GAD, who in turn further handed it over to the present applicant, as a Cabinet meeting was scheduled to be held there in the second half of 28.01.2021, though no matter of excise was formally fixed in agenda of the said meeting circulated on 27.01.2021.

33. Since as per instructions conveyed by Sh. Rahul Singh, not only the comments received from general public/stakeholders were incorporated in the said Cabinet Note by the officials of

Excise department, but they had also incorporated and annexed therewith certain comments received from three legal luminaries, which they are stated to have given on requests of some local liquor retailers. As the above Cabinet Note got prepared by Sh. Rahul Singh was not as per the format delivered to him by the applicant or liking of the Cabinet, the same was not considered by the Cabinet and investigation further reveals that even the fate of said file of Excise department handed over to the applicant is not known as it was neither returned back to above officials of the department waiting outside at end of the meeting nor sent back to the Excise office later on and it is alleged by CBI that the same has been destroyed by the applicant as it did not suit their intents and designs. Apart from the statements of all above witnesses concerned with preparation of the note and handing over of the file, digital evidence in the form of exchange of documents and informations through their mobile phones has also been collected by the investigating agency in support of above allegations.

34. Investigation has also revealed that the applicant got annoyed with Sh. Rahul Singh as he did not get prepared the Cabinet Note as per the draft handed over to him by the applicant and further as he got incorporated the opinion of legal experts also in the said note, along with Expert Committee report and the comments/feedback of public/stakeholders. Sh. Rahul Singh in his statement has even claimed that in the evening of 28.01.2021, he was telephonically scolded and threatened by the applicant to be removed from the post of Excise Commissioner and he was even got removed from the said post subsequently on 02.02.2021 and in

his place, Sh. Sanjay Goel joined as the new Excise Commissioner.

35. It is also the case of prosecution that the applicant then got prepared a fresh Cabinet Note with the help of Sh. Sanjay Goel and though the said note contained the Expert Committee recommendations as well as the comments/feedback received from the public/stakeholders, but as per instructions of the applicant, opinions given by the legal experts were not incorporated in or forwarded with the said report and this note was ultimately put up before the Cabinet on 05.02.2021 with a pre-conceived notion to bring about changes in the retail and wholesale models of the excise policy in total variance to the model, which was suggested by the Expert Committee. The decision to constitute GoM is also stated to have been taken by the Cabinet in this meeting, though GoM actually came to be constituted on 09.02.2021.

36. It has also been alleged by CBI that though few meetings of the GoM were held in the month of February, 2021 and various types of records and data were sought from the Excise department and considered by the GoM, but no record of such discussions or considerations of the GoM meetings has been maintained and the GoM acted in a disguised manner as no minutes of meetings of the GoM were being prepared. It is alleged that there was a lull period thereafter and no further meetings of the GoM were held till 22.03.2021.

37. It is also the case of prosecution that during this period, the co-accused Vijay Nair was very active and he was acting as

per instructions of this applicant and his other colleagues and he was constantly in touch with different stakeholders in liquor business, to help them in getting prepared a favourable excise policy, and he had demanded a huge illegal gratification in advance for the said purpose. It is stated that certain Whatsapp chats and other records collected during the course of investigation have revealed that some persons, who were part of the South liquor lobby, had planned 2-3 visits to Delhi for tweaking and freezing of the excise policy and they had stayed in Hotel Oberoi during the period from 14.03.2021 to 17.03.2021 and even the co-accused Vijay Nair had met them on 16.03.2021 and they had used the business centre of the hotel for taking print out of some document(s), which allegedly consisted of 36 pages and is being claimed to be the draft of GoM report.

38. It is also being alleged that a draft of the GoM report dated 15.03.2021 has been recovered from computer of the applicant in which there were provisions for 5% profit margin for wholesalers and eligibility criteria of turnover of Rs.100 crores only, but another draft of the GoM Report dated 18.03.2021 is also stated to have been recovered from the computer kept in conference hall of the office of applicant and it has been observed that the above two provisions in this draft are entirely different from the earlier draft dated 15.03.2021, as instead of profit margin of 5% for the wholesalers, this draft GoM report recovered from the computer kept in conference hall of the office of applicant contains a provision for 12% profit margin and even the eligibility criteria for wholesalers in this draft is found enhanced to Rs. 500 crores from

Rs. 100 crores. Again, specific oral and documentary evidence is also alleged to have been collected during the course of investigation to show that on 18.03.2021, a hard copy of the GoM report was given by the applicant to his Secretary for typing it on the computer kept in conference hall of his office and the said typing was completed during the night of 18/19.03.2021 and recovered copy of GoM report from this computer shows that the file thereof was finally amended at 10.28pm on 19.03.2021. It is the case of prosecution that the above provisions were inserted in the GoM report at the instance of this applicant and his other colleagues in Govt. and these were inserted in the said document, without there being any discussions or deliberations on these provisions in the meetings of GoM and the oral as well as documentary evidence collected so far also *prima facie* corroborates this allegation. It is being alleged that this was done only because the co-accused Vijay Nair had managed to receive advance kickbacks of around Rs. 90-100 crores from the South liquor lobby for getting these favourable provisions inserted in the GoM report and the excise policy ultimately to be prepared on its basis and for formation of monopoly and cartel between different stakeholders in liquor business in Delhi to ensure repayment of kickbacks to the South lobby.

39. Further, the investigation conducted so far also suggests that no documents or data existed in the Excise department about and even no inputs were provided by them to the applicant or to the GoM for incorporation of the above two clauses relating to 12% profit margin for the wholesalers and the eligibility condition or

criteria of annual turnover of Rs. 500 crores and there are specific statements made by the then Excise Commissioner as well as some other witnesses to this effect. This is equally true with regard to clauses incorporated in the GoM as well as the excise policy for division of Delhi in 32 retail zones and there being 27 vends in each zone and rather, the statement made by the then Excise Commissioner suggests that he had expressed his reservations to the applicant about the clause for providing 27 retail vends in a single retail zone. Again, no study or deliberations are also found to have been conducted about the provision for providing of rebates on MRPs of different liquor brands by the retailers and all the above facts coupled with the exchange of provisions of draft GoM reports dated 15.03.2021 and 18.03.2021 through Whatsapp by different co-accused, which ultimately were found incorporated in the final GoM report dated 22.03.2021, are alleged to be clear indications of existence of the above criminal conspiracy hatched between the applicant and other co-accused for favouring the South lobby against payment of advance kickbacks of around Rs. 90-100 crores paid by the said lobby and also the vital role played by the applicant in achieving objectives of the said conspiracy.

40. Apart from the above, there are also clear and specific allegations made by prosecution against this applicant that it was only at his instance that the L-1 licence of liquor brands of M/S Pernod Ricard was granted to the firm M/S Indospirits belonging to the co-accused Sameer Mahandru, in which two representatives of the South lobby namely the co-accused Arun Ramchandran Pillai and Sh. Prem Rahul Manduri were inducted as partners of

32.5% stake each. Admittedly, the above L-1 licence was initially applied by another company belonging to the above co-accused Sameer Mahandru and named M/S Indospirits Marketing Pvt. Ltd. and some complaint was filed with the Excise department alleging the formation of a cartel in the liquor business. There are specific statements made by the then Excise Commissioner and other witnesses to the effect that the present applicant had telephonically called the Excise Commissioner personally, as well as through his Secretary, and influenced him to grant L-1 licence to M/S Indospirits, in whose name the said licence was applied afresh to counter the said complaint and also some other litigation on the issue pending before the Hon'ble High Court.

41. Again, there is sufficient oral and documentary evidence collected by the investigating agency to show that this applicant was also instrumental in getting surrendered the L-1 licence of M/S Mahadev Liquors by extending threats through the approver Sh. Dinesh Arora and the co-accused Amit Arora and by forcing closure of certain manufacturing units of the said licensee and some other persons related to owners thereof by exercising influence upon the Excise department of Punjab, where also AAP was ruling, and this was done as the said licensee was not acceding to the demands for payment of bribe equivalent to 6% of their profit margin, out of 12% profit margin kept for them under the above said excise policy.

42. Further, specific allegations are also there against the applicant as to how in one of the meetings of GoM dated

05.04.2021, they changed the definition of term 'Related Party' on their own by going against the definitions of similar terms appearing in some other Statutes and this was also done apparently to achieve the objectives of said criminal conspiracy and for permitting the formation of cartels between different stakeholders in liquor business to ensure repayment of advance kickbacks and payment of bribe to the public servants.

43. Apart from all the above, there are also serious allegations made against the applicant that he tampered with evidence of this case by destroying some of his mobile phones, which were containing vital informations and documents in the form of digital evidence in respect to the above policy formulation and conspiracy entered into between the accused persons. It has been alleged that during the relevant period commencing from the date when this matter was referred to CBI by the Hon'ble Lt. Governor for inquiry and registration of a criminal case and till the date he was made to join investigation of the case, he possessed and used four different mobile handsets, out of which he had produced only one handset before the IO and has, thus, withheld three other handsets and the CBI has serious apprehensions that the same have been destroyed by him with a clear intent to cause destruction of the digital evidence contained therein about existence of the said conspiracy as well as the participation of various accused, including him, in the said conspiracy.

44. Thus, it is clear from the above discussion that the applicant had played the most important and vital role in the above

criminal conspiracy and he had been deeply involved in formulation as well as implementation of the said policy to ensure achievement of objectives of the said conspiracy. The payment of advance kickbacks of around Rs. 90-100 crores was meant for him and his other colleagues in the GNCTD and Rs. 20-30 crores out of the above are found to have been routed through the co-accused Vijay Nair, Abhishek Boinpally and approver Dinesh Arora and in turn, certain provisions of the excise policy were permitted to be tweaked and manipulated by the applicant to protect and preserve the interests of South liquor lobby and to ensure repayment of the kickbacks to the said lobby. The evidence collected so far clearly shows that the applicant through the co-accused Vijay Nair was in contact with the South lobby and formulation of a favourable policy for them was being ensured at every cost and a cartel was permitted to be formed to achieve monopoly in sale of certain liquor brands of favoured manufacturers and it was permitted to be done against very objectives of the policy. Thus, as per allegations made by prosecution and the evidence collected in support thereof so far, the applicant can *prima facie* be held to be architect of the said criminal conspiracy.

45. Hence, in opinion of this court, the allegations made against the applicant are serious in nature and at this stage of the case, he does not deserve to be released on bail as he has been arrested in this case only on 26.02.2023 and investigation even qua his role has still not been completed, what to say about some other co-accused involved in the case whose roles are also yet being investigated. Mere filing of a chargesheet against seven other co-

accused does not matter much in a case like this where deep rooted conspiracy for commission of some economic offences effecting the people at large is alleged to have been committed. Though, Ld. Senior Counsels for applicant have referred to certain observations made in the cases of **P. Chidambaram (Supra)** and **Satender Kumar Antil (Supra)** with regard to grant of bail in economic offences cases, but as already discussed, though bail can be granted even in such a case, but it does not mean that the same has to be granted necessarily and this may be one of the considerations, which coupled with certain considerations, can even be made a ground to deny bail to an accused. The observations about economic offences as made in the cases of **Y.S. Jagan Mohan Reddy (Supra)** and **Nimmagadda Prasad (Supra)** being relied upon by Ld. SPPs for CBI are rather found more suitable for disposal of the present application, which warrant for dismissal of the application because as held in these cases, the economic offences constitute a class apart and need to be visited with a different approach in the matter of grant of bail. It is so because in such matters deep rooted conspiracies are there and such cases even involved huge losses to the public funds and are, thus, required to be viewed seriously considering their grave nature effecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. Again, the observations in the case of **Satender Kumar Antil (Supra)** being referred to by Ld. Senior Counsel for applicant are found to have been made only with reference to cases falling under different categories of the accused persons who were not arrested by the investigating agencies and not with regard to cases of accused who

have been arrested and are sought to be released on bail.

46. Further, the applicant does not even satisfy the triple test as discussed above because though, admittedly, he cannot be considered to be a flight risk, but keeping in view his conduct as reflected from destruction or non-production of his previous mobile phones of the relevant period and also the apparent role played by him in not producing or missing of the file of one Cabinet Note put up through the then Excise Commissioner Sh. Rahul Singh, there may be serious apprehensions of destruction or tampering of some further evidence and even of influencing of some prime witnesses of this case by him or at his instance, in case he is released on bail by the court.

47. Again, though the ground of parity has also been invoked by Ld. Senior Counsels for seeking bail of the applicant, but in *prima facie* view of this court, the role played by this applicant cannot be equated with or put at par with the roles of other three accused who have been granted regular bail by this court earlier. Further, the role of this applicant can even not be equated with the role of other two public servants involved in this case as they were merely officials of the Excise department working ultimately under directions of the applicant holding the charge of Excise Ministry at the relevant time and the role of those two public servants was also limited only to the extent of processing of the above L-1 applications of M/S Indospirits Marketing Pvt. Ltd. and M/S Indospirits and they were not related to other aspects of the above conspiracy. On the other hand, the evidence collected so far by the

CBI not only shows applicant's active participation in the above criminal conspiracy, but also the *prima facie* commission of some substantive offences of the PC Act by him. There is also nothing apparent on record to infer or show that arrest of the applicant in this case was illegal or violative of any directions of the Hon'ble Supreme Court or the Hon'ble High Courts and rather, the material placed before this court by the CBI justifies the arrest of applicant in the case.

48. Further, though even medical condition of wife of the applicant has been sought to be made a ground for grant of bail to him, but it is observed that though the neurological or mental illness of wife of applicant is claimed to be around 20 years old, but the documents filed on record in support thereof are found to be of the years 2022-2023 only. Moreover, the condition of wife of the applicant as revealed through these documents cannot be considered to be severe or serious enough to release the applicant on bail and the same also cannot be taken to mean that she cannot take care of herself or has to be necessarily taken care of by the applicant only.

49. Hence, in light of the above discussion and keeping in mind the totality of facts and circumstances, this court is not inclined to release the applicant on bail at this stage of investigation of the case as his release may adversely affect the ongoing investigation and will also seriously hamper the progress thereof. Therefore, this bail application filed on behalf of the applicant is being dismissed. However, nothing contained herein

shall tantamount to expression of any opinion on merits of the case.

50. An e-copy of this order be given dasti to Ld. Counsel for the applicant as well as to Ld. SPP for CBI through Whatsapp/e-mail.

**Announced in open court
on 31.03.2023**

**(M. K. NAGPAL)
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 31.03.2023**