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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 21.07.2025**
Pronounced on:04.08.2025

\+ BAIL APPLN. 3640/2024 & CRL.M.A. 1156/2025 TO TAKE ON RECORD WRITTEN SUBMISSIONS

KAPIL WADHAWAN .....Petitioner

Through: Mr. N. Hariharan, Senior Advocate, Mr. Arvind Nayar, Senior Advocate with Mr. Ashish Verma, Mr. Prakhar Parekh, Mr. Debopriyo Moulik, Mr. Vijay Kari Singh, Ms. Iti Agarwal, Mr. Rohan Dakshini, Ms. Tanvi Mate, Mr. Raghav Dharmadhikari, Ms. Punya Rekha, Ms. Vasundharan, Mr. Aman Akhtar, Ms. Sana Singh, Mr. Vinayak Gautam, Mr. Praveen Jaiswal & Ms. Vasundhara Raj Tyagi, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION .....Respondent

Through: Mr. Anupam S. Sharma, SPP with Mr. Prakash Airan & Mr. Syamantak Modgil, Advocates
Mr. Alok Kumar Singh, Addl. SP, Inspector Rahul Reddy

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. The present application under Section 485 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 439 of the Cr.P.C., has been filed by the Applicant/Accused No. 1, Kapil Wadhawan, seeking necessary orders and directions from this Court for grant of regular bail in FIR/RC No. RC2242022A0001 dated 20.06.2022, registered under Sections 120B read with 409, 420, 477A IPC, Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and subsequently added Sections 411, 424, 465, and 468 IPC.

Background:

2. The present FIR/RC No. 2242022A0001 was registered by the CBI, New Delhi on 20.06.2022 under Sections 120B read with 409, 420, and 477A of the IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The case was registered against DHFL, its promoters Kapil Wadhawan (the applicant), Dheeraj Wadhawan, and others for entering into a criminal conspiracy to cheat a consortium of 17 banks led by Union Bank of India. They induced the banks to sanction loans aggregating to ₹57,242.05 crores and subsequently siphoned off and misappropriated large portions of the funds. Books of accounts of DHFL were allegedly falsified to conceal the fraud. The consortium suffered a wrongful loss of ₹34,926.77 crores during the period from January 2010 to December 2019.

3. Upon completion of the investigation, the CBI filed a charge sheet under Section 173 CrPC on 15.10.2022 against 18 individuals, including the present applicant, and 57 companies/entities. The

offences invoked included Sections 120B read with 206, 409, 411, 420, 424, 465, 468, and 477A IPC, along with Section 13(2) read with 13(1)(d) of the PC Act, 1988. The investigation revealed that the applicant and Dheeraj Wadhawan, in conspiracy with others, diverted DHFL's loan proceeds to the tune of ₹34,926.77 crores. This was done through acts of forgery, cheating, criminal breach of trust, and falsification of accounts. The diversion involved 87 shell companies operated in the names of employees, friends, and associates of the Wadhawan brothers.

4. It was discovered that these shell companies received funds without proper documentation, while on paper, the same funds were shown as disbursed to 2,60,315 fictitious retail borrowers. A fictitious branch termed 'Bandra branch-001' was virtually created in DHFL's system to execute these transactions. Manipulation of DHFL's software "Fox Pro" was done to create fake customers and dummy loan data. The transactions were manually fed into DHFL's Synergy system under this fake branch to fabricate accounting entries. Thus, fictitious retail loan accounts were used to mask the diversion of funds to shell companies.

5. Separate books of account, known as the "Bandra Book," were maintained for these fraudulent transactions, misleading the consortium banks and the National Housing Bank. Loans were also given to various developers without following lending norms or taking adequate security, many of whom were connected to the promoters of

DHFL. RBI and National Housing Board guidelines were grossly violated. On 26.11.2022, the Ld. Special Judge took cognizance and summoned all 75 accused persons/entities named in the charge sheet. The applicant was taken into custody on 19.07.2022.Though the applicant was granted default bail on 03.12.2022 and the same was upheld by the High Court on 30.05.2023, the Supreme Court later set aside both orders on 24.01.2024.

Role of the applicant:

6. The petitioner, as promoter and CMD of DHFL, is alleged to be the principal architect of a massive financial fraud involving diversion and misappropriation of approximately ₹34,926.77 crores from a consortium of 17 banks. He is accused of creating and operating 87 shell companies in the names of associates, employees, and relatives to siphon funds, falsely recorded as retail housing loans to over 2.6 lakh fictitious customers through a non-existent "Bandra Branch-001" in DHFL's internal systems. He allegedly manipulated the FoxPro and Synergy accounting software to fabricate loan accounts, maintained a parallel "Bandra Book" to conceal fraudulent transactions, and misled both the lending banks and the National Housing Bank.

7. Further, the petitioner is accused of misusing DHFL funds for personal and group benefit, including artificially inflating DHFL's stock price, diverting ₹7,748.75 crores sanctioned for Slum Rehabilitation projects, and routing large sums through sham transactions to settle liabilities and fund Wadhawan Group companies.

He allegedly converted unsecured debts into secured loans using complex layering, laundered proceeds of crime through high-value paintings while in custody, and continued to conceal the illicit origins of assets. The investigation portrays him as the central figure who conceived, directed, and benefited from the fraudulent scheme, causing massive loss to public funds and warranting denial of bail given the scale, gravity, and continuing nature of the offence.

Submissions on behalf of applicant:

8. Mr. Hariharan, learned senior counsel for the Applicant submitted that the Applicant has not committed any offence, and the allegations under Sections 120B, 409, 420, 477A IPC read with Sections 13(1)(d) and 13(2) of the PC Act are unfounded and that the investigation is documentary in nature and the Applicant has undergone police custody, followed by continued judicial custody for nearly four years (approximately 795 days in the present case). The CBI has already filed the chargesheet as also the supplementary chargesheet and has not asserted any further requirement of custodial interrogation. The trial has not commenced and is unlikely to conclude in the near future, given that the prosecution seeks to examine over 700 witnesses and relies on voluminous documents. In such circumstances, continued pre-trial incarceration violates Article 21 and the well-settled principle that bail is the rule and jail the exception.

9. It has been further submitted that the allegations in the chargesheet are based solely on the Grant Thornton forensic audit

report, which is inadmissible under Section 45 of the Indian Evidence Act. The report is unilateral, prepared without giving the Applicant an opportunity to rebut its contents, and is riddled with disclaimers and assumptions. The Applicant asserts a strong defence and submits that the allegations regarding creation of fake accounts and siphoning of funds are baseless and civil in nature. The Applicant had made genuine efforts to settle dues with the banks and the properties allegedly forming part of the proceeds of crime have already been attached by the CBI and ED. It was submitted that there is no apprehension of tampering with evidence or influencing witnesses, whose statements are already recorded and placed before the Court.

10. Mr. Hariharan, learned senior counsel further submitted that the present case was registered shortly after the NCLAT passed adverse findings against the COC and Administrator in the 63 Moons matter, exposing serious irregularities in undervaluing DHFL's asset pool. It was contended that only seven out of seventeen consortium banks have challenged the NCLAT Order, representing just 16% of the COC, thereby revealing selective mala fides. Learned senior counsel has placed reliance upon various judgments of the Supreme Court and co-ordinate benches of this Court, which includes ***P. Chidambaram v. Directorate of Enforcement*** (2020) 13 SCC 791, ***Satender Kumar Antil v. CBI***(2022) 10 SCC 51 and ***Arvind Kejriwal v. CBI***2024 SCC OnLine SC 2550, which reaffirm that economic offences are not a distinct class and that long incarceration of undertrials without

progress of trial is impermissible. It was further argued that concurrent jurisdiction under Section 439 CrPC empowers the High Court to grant bail directly and that the Applicant has already availed bail in most of the other cases pending against him.

11. Learned senior counsel highlighted that the Applicant has been granted bail in all other cases related to DHFL, including proceedings under both the IPC and the PMLA. The Applicant has been continuously in custody for over four years and ten months, with almost 3 years in the present case alone. The chargesheets cumulatively propose examination of more than 736 witnesses and rely on over 2.7 lakh pages of documents and around 2 TB of electronic data, which may translate into over a lakh additional page. It has been emphasised that this Court has already observed in the matter of co-accused, **Dheeraj Wadhawan v. CBI**, BAIL APPLN. 2040/2024 dated 09.09.2024 that the trial is not likely to conclude in the near future due to the large number of accused, witnesses, and voluminous evidence, which is primarily documentary in nature.

12. It was further submitted that the CBI has, in its own submissions, admitted that the Applicant has not violated any condition of bail and has not misused liberty. On the contrary, the delay in trial is attributable to the CBI's non-compliance with this Court’s order dated 26.07.2023, which directed inspection of documents, with repeated directions reiterated by the Trial Court in 2024. Furthermore, it has been submitted that, CBI's non-compliance

has effectively delayed the trial by over a year. Reliance has been placed upon the Supreme Court's judgment in ***Manish Sisodia v. ED***, 2024 SCC OnLine SC 1920, wherein the Court decried the practice of keeping undertrials incarcerated indefinitely, emphasizing that bail is the rule and jail is the exception. The Apex Court therein observed that depriving an accused of liberty pending trial, particularly when the evidence is primarily documentary and already seized, amounts to punishment before conviction and offends the fundamental right under Article 21 of the Constitution.

Submissions on behalf of Respondent/CBI

13. Mr. Anupam S Sharma, learned Special Counsel for the CBI submitted that the investigation has revealed a massive and complex financial fraud involving diversion and misappropriation of public funds by the promoters of M/s DHFL, including the applicant and his brother Dheeraj Wadhawan. A fictitious 'Bandra Branch-001' was created in the accounting system of M/s DHFL using Fox Pro software, through which fake home loan accounts were generated to mask fraudulent fund transfers to shell companies. These funds were shown as disbursed loans in the Synergy accounting system. The total amount diverted stood at ₹33,029.17 crores, exclusive of other loans under separate investigation (e.g., RC 2192020E0004, Mumbai). It was submitted that no explanation or justification has been offered for this diversion, and no repayments have been made towards this defrauded amount.

14. Learned Special Counsel submitted that DHFL had received a total disbursement of ₹57,242.05 crores from banks, out of which ₹34,926.77 crores were outstanding as per consortium records. Of the total disbursed funds, ₹33,029.17 crores were diverted and not a single rupee has been repaid. Furthermore, DHFL collected ₹2,39,491.98 crores through Non-Convertible Debentures (NCDs) and ₹5,296.03 crores through Fixed Deposits. The admitted dues at the time of the resolution process were approximately ₹90,000 crores. It was submitted that none of the orders of NCLT, NCLAT or the Supreme Court in ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd***. 2025 SCC OnLine SC 690 record any settlement or repayment by DHFL or its promoters towards the diverted amount, and that the applicant is misleading this Court with distorted figures.

15. The learned Special Counsel further submitted that although the FIR named only 3 individuals and 10 entities, loans and advances to 131 entities were under scrutiny. Out of these, 49 entities were found to be genuine borrowers, and 82 entities were involved in the diversion of funds. Out of these 82 entities, 6 were already being prosecuted in other cases (notably the Yes Bank case) and thus not reinvestigated. A few were duplicate entries or in resolution proceedings or had ceased to exist. Ultimately, 69 entities, including 57 "Bandra Book" entities, have been prosecuted. In total, 137 companies were used for diversion, but only those against whom prosecutable material was available were booked.

16. It was further submitted that under the approved resolution plan, Piramal Capital took over DHFL for a consideration of ₹37,250 crores. Notably, loans worth ₹45,000 crores were ascribed a nominal value of ₹1 due to their fraudulent nature and misappropriation by the promoters. The challenge raised by 63 Moons Technologies Limited against this ascription was dismissed by the Supreme Court. Hence, any argument advanced by the applicant relying on the value of these loans or the resolution plan is misplaced and untenable.

17. The learned Special Counsel submitted that the applicant was arrested on 19.07.2022 and that the charge sheet was filed within the stipulated period. Though initially released on statutory bail, the same was set aside by the Supreme Court upon the finding that the investigation was complete. The Court was informed that the applicant, despite being granted an opportunity to inspect unrelied documents, failed to do so within the prescribed time and sought repeated extensions. These tactics, it was argued, were employed solely to delay the proceedings. It was further submitted that in view of the gravity of allegations, the nature of the offence, and the punishment prescribed, particularly for offences under Sections 409 and 467 IPC (punishable with life imprisonment), bail is not warranted. Reliance was placed on ***CBI v. Subramani Gopal krishnan*** (2011) 3 SCC 296, to argue that volume of evidence or delay cannot, by themselves, be grounds for bail.

18. On the question of criminal antecedents, it was submitted that the Petitioner is a repeat offender involved in at least 12 other criminal cases involving massive financial frauds. These include high-profile cases relating to Yes Bank, UPPCL, Iqbal Mirchi, Usher Agro, and proceedings under PMLA, SFIO and EOW investigations across Mumbai, Chennai, Satara, and Delhi. The Petitioner is further alleged to have tampered with evidence while in judicial custody, specifically, by orchestrating the illegal sale and concealment of paintings worth ₹230 crores acquired through the proceeds of crime, with the aid of co-accused. The Special Judge, PMLA, Mumbai, had noted that hospital visits during custody were misused by the Petitioner to obstruct justice.

19. Finally, it was argued that the applicant cannot claim parity with co-accused who have been granted bail, as the circumstances in their cases were materially different. Co-accused Dheeraj Wadhawan's bail was granted solely on medical grounds by this court, is under challenge before the Supreme Court, Sunny Bathija's bail was granted due to prolonged custody and not on merits and Ajay Nawandar's bail was granted on medical grounds and due to his limited role. It was emphasized that the Petitioner, being CMD of DHFL, was the principal architect of the entire conspiracy and the prime beneficiary of the defrauded amounts. His custodial conduct, antecedents, and potential to tamper with evidence clearly disqualify him from the relief of bail. Reliance has been placed upon ***P. Chidambaram* v.**

Directorate of Enforcement (supra), and other judgments laying down the triple test for grant of bail, to submit that the applicant fails to meet any of the established criteria.

20. Further reliance has been placed on, ***State of Gujarat* v. *Mohanlal Jitamalji Porwal*** AIR 1987 SC 1321, ***CBI* v. *Ramendu Chattopadhyay*** AIR Online 2019 SC 1516, ***Gulabrao Baburao Deokarv. State of Maharashtra & Ors.*** 2014 Cri.L.J. 845, ***Gurmeet Singh & Anr* v. *CBI*** Bail Application No. 1707/2016, ***Sunil Dahiya* v. *State (Govt. of NCT of Delhi)*** 2016 SCC OnLine Del 5566, ***Nimmagadda Prasad* v. *CBI*** AIR 2013 SC 2821, ***State of Bihar and Anrv. Amit Kumar alias Bacha Rai*** AIR 2017 SC 2487 and ***Neeru Yadav* v. *State of Uttar Pradesh and Anr.*** AIR 2015 SC 3703.

Rejoinder submissions on behalf of the applicant:

21. The learned senior counsel for the applicant submitted that the CBI's contention that no recoveries or repayments have been made from DHFL and its assets is entirely misconceived and contrary to the public record. It was pointed out that claims amounting to more than ₹1,00,000 crores had been submitted before the Administrator appointed under the Insolvency and Bankruptcy Code, 2016. After due verification and scrutiny, the Administrator had admitted claims only to the tune of approximately ₹87,000 crores and rejected claims worth ₹8,000 crores, including those submitted by the consortium of banks themselves. The actual claims of the banks were adjudicated to be no more than ₹27,000 crores.

22. It was further submitted that the CBI has wrongly inflated the outstanding amount allegedly due from DHFL. Learned senior counsel drew attention to the resolution plan submitted by M/s. Piramal Capital and Housing Finance Ltd., which had been accepted by the Committee of Creditors and approved under the IBC framework. As per the resolution plan, a substantial recovery of approximately ₹50,446 crores had already been made through a combination of cash payments, interest entitlements, and non-convertible debentures, all of which were duly accepted by the financial creditors. Therefore, the assertion that no recovery has been made is patently false and misleading.

23. In support of the contention that the extent of fraud has been wrongly exaggerated, reliance was placed upon a categorical admission made by the CBI in its supplementary chargesheet. In paragraph 102 of the said chargesheet, the CBI has clearly acknowledged that no diversion of funds has been found in relation to loans worth ₹13,425.34 crores disbursed by DHFL. These loans were found to be legitimate, and no benefit was traced to the applicant or his associates. It was submitted that this admission itself undermines the entire foundation of the CBI's allegation of massive fraud and siphoning.

24. The learned senior counsel also brought to the Court's attention that loans worth ₹3,300 crores form the subject matter of a separate FIR registered in Mumbai, in which the petitioner has already been

granted bail. Therefore, these amounts should not be considered as part of the default in the present proceedings. It was thus urged that the actual recoveries and reductions in claims, when taken together, demonstrate that out of ₹87,000 crores of admitted claims, recoveries amounting to ₹66,700 crores have either been made or are in the process of realization.

25. It was further submitted that substantial securities worth ₹30,000-₹40,000 crores have not even been valued or factored in by the CBI while presenting the financial picture. Furthermore, it was pointed out that assets worth ₹2,200 crores belonging to the petitioner and his family have been attached by investigating agencies, a fact which has been deliberately suppressed by the prosecution. In these circumstances, it was urged that the CBI's financial projections and recovery claims are not only erroneous but also unreliable.

26. The learned senior counsel next submitted that the CBI has made as many as 11 co-accused persons as approvers, including those allegedly involved in frauds of over ₹14,000 crores, without effecting any recovery from them or requiring disclosure of any benefits gained. The apparent selective approach of the CBI, while denying similar relief to the petitioner despite his cooperation and the attachment of substantial assets, is both arbitrary and unjustified.

27. On the issue of delay, as submitted earlier it was strongly contended that the delay in commencement of trial is entirely attributable to the CBI. Although the chargesheet was filed in October

2022, the petitioner had promptly sought inspection of un-relied documents. This Court, vide order dated 26.07.2023, directed the CBI to provide such inspection and a list of un-relied documents. However, the CBI failed to comply with the said order and instead challenged it before the Supreme Court, without obtaining any stay.

28. It was submitted that the Trial Court, in its order dated 5th January 2024, clearly noted that the arguments on charge could not proceed due to the CBI's failure to comply with this Court's directions. Despite the absence of any stay, the CBI filed another application before the Trial Court seeking to withhold inspection and the list of un-relied documents, which was noted by the Court in its order dated 12th July 2024. Accordingly, the delay of over a year in commencement of the trial is solely attributable to the prosecution/respondent, entitling the petitioner to bail on this ground alone.

29. Addressing the CBI's other allegations, including those pertaining to creation of an ante-dated MOU and violation of COVID-19 restrictions, it was submitted that the statements relied upon by the CBI are unreliable, particularly in view of the antecedents of the witness (one of whom admitted to being a bookie). The MOU relates to paintings which have already been seized and are in the custody of the agency. Moreover, the petitioner was incarcerated at the relevant time, rendering the allegation of bail condition violation unsustainable.

In any event, all co-accused in the said transaction have already been granted bail.

30. Lastly, the learned senior counsel submitted that the petitioner has no prior convictions, and in all pending cases arising out of the affairs of DHFL, he has already been granted bail. It was also submitted that the matter is based entirely on documentary evidence, and no allegations have been made regarding witness tampering or non-cooperation. The petitioner has also been granted bail in a connected PMLA case. In light of the delay in trial, parity with other accused, and the need to prepare for a voluminous case, it is submitted that the petitioner is entitled to be enlarged on bail.

Analysis and Conclusion:

31. After hearing the rival submissions made by the parties and perusing the documents placed on record the court is not persuaded to grant regular bail to the applicant considering the magnitude, complexity, and gravity of the economic offences alleged against him. The material placed on record prima facie reveals that the applicant, as CMD of DHFL, was at the helm of a conspiracy that resulted in the diversion and misappropriation of approximately ₹34,926.77 crores from a consortium of 17 banks. The methodical falsification of accounts, creation of fictitious retail borrowers, manipulation of internal software, and maintenance of a separate "Bandra Book" strongly indicate premeditated, systemic fraud. These acts, if proven, are not merely violations of penal statutes, but subvert the very

integrity of financial institutions and investor confidence. Such economic offences are not private disputes but public wrongs that corrode the nation's economic fabric.

32. It is well settled that economic offences, particularly those involving large-scale financial fraud, constitute a distinct class of crime which are to be viewed with utmost seriousness. While personal liberty under Article 21 is sacrosanct, it must be balanced against the collective harm caused by white-collar crimes which undermine public trust in financial systems and regulatory institutions. The Supreme Court has consistently held that economic offences require a different approach when considering bail, especially where the offence involves deep-rooted conspiracy, fraudulent documentation, and abuse of fiduciary positions. The Court cannot be oblivious to the fact that such offences often have a cascading effect on the national economy and banking sector. In such circumstances, the presumption of innocence cannot be divorced from the practical necessity of ensuring that the rule of law is upheld.

33. The jurisprudence on bail, especially in cases involving economic offences, underscores the need for a cautious and calibrated approach. In ***Y.S. Jagan Mohan Reddy v. C.B.I*** (2013) 7 SCC 439 and ***Mohan Lal Jitamalji Porwal*** (supra), the Supreme Court emphasized that economic offences are distinct from other crimes due to their deep-rooted conspiracies and wide-ranging impact on the financial health of the country. While detailed evidence appraisal is

not required at the bail stage, a prima facie assessment and brief reasoning are imperative, especially where the allegations are serious. The discretion to grant bail must be exercised judiciously, and not as a routine matter. Factors like the nature and gravity of the offence, severity of punishment, and potential for tampering with evidence must weigh heavily in the Court's mind.

34. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*** 2004 SCC (Cri) 1977, ***Ram Govind Upadhyay v. Sudarshan Singh*** 2002 SCC (Cri) 688, and ***Prahalad Singh Bhati v. NCT, Delhi*** 2001 SCC (Cri) 674, the Supreme Court reiterated that while granting bail, courts must consider the seriousness of the allegations, the strength of supporting material, and whether the accused is likely to appear for trial or misuse liberty. The mere social standing of the accused cannot be the sole factor justifying bail. In contrast, the Supreme Court in ***Sanjay Chandra v. CBI*** (2012) 1 SCC 40 wherein it was *inter alia* held that,

> *"25……..It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused*

constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required".

35. The gravity of the charge and potential sentence must be balanced against the accused's right to be presumed innocent until proven guilty. Hence, each case must be tested on its own facts, with careful consideration of public interest and the administration of justice.

36. The applicant's argument regarding the delay in trial and the documentary nature of evidence is unavailing in the present case. While delay in trial can be a factor in granting bail, it must be shown that the delay is solely attributable to the prosecution and that the accused has cooperated fully without seeking unwarranted adjournments. In the present case, the record reveals that the delay has also been occasioned by repeated requests for inspection and interim applications from the side of the applicant, as noted by the Trial Court on 13.08.2024 (A*nnexure A-9).* Furthermore, the quantum and nature of the evidence, over 700 witnesses and voluminous digital data, make it clear that the trial will necessarily be protracted. This by itself cannot entitle the accused to bail when the allegations relate to fraudulent siphoning of funds on an unprecedented scale. In order to ensure that the trial is not delayed a Special Court has been constituted upon the orders of this Court to exclusively conduct the trial of this case on a day-to-day basis. In such a situation, further delay is likely to be curtailed.

37. The Supreme Court in ***State of Bihar and another v. Amit Kumar alias Bachcha Rai*** (2017) 13 SCC 751, while considering the bail application of an accused involved in economic offence of huge magnitude, *inter alia* held as under:-

> "*9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.*
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> *13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations.* ***It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail*** *[Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] . Usually socio-economic offence has deep-rooted conspiracies affecting the moral*

fibre of the society and causing irreparable harm, needs to be considered seriously."

38. In ***Rohit Tandon v. Directorate of Enforcement*** (2018) 11 SCC 46 the Supreme Court again reiterated the consistent view that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences, affecting the economy of the country as a whole. The relevant para is extracted herein below:

"21. ***The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country****. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.*

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjit Sing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. ***It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate***

balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."

39. The contention that the applicant has been granted bail in other related cases does not establish any right to parity in the instant matter. Parity is not a matter of arithmetical equality but is dependent on the facts, role, and circumstances of each case. As per the material filed by the CBI, the applicant played the central role in the present offence and was the principal decision-maker and beneficiary of the defrauded amounts. The role of co-accused who have been granted bail, including Dheeraj Wadhawan and others, have either been held to be of lesser magnitude or has been considered under different factual matrices such as health conditions or custody length. In contrast, the applicant's position as the architect of the entire fraudulent scheme precludes him from claiming parity with those whose involvement was tangential or derivative.

40. The applicant's submissions that a substantial portion of the claims has been recovered through the IBC resolution process or that certain loans were found to be genuine cannot dilute the seriousness of the allegations. Resolution under IBC does not exonerate criminal liability, and recoveries made by third-party resolution applicants cannot be construed as voluntary restitutions by the applicant. The

CBI's case rests on primary evidence indicating that the applicant misused his position to misappropriate public funds, conceal the proceeds of crime through a network of shell companies, and launder assets, even during custody. Allegations of manipulation of share prices, transfer of high-value paintings through ante-dated documents, and transactions routed through proxy companies lend further weight to the apprehension that the applicant has the means and influence to interfere with the course of justice if released. These facts warrant continued judicial custody.

41. The reliance on judgments such as ***Satender Kumar Antil*** (supra) and ***Manish Sisodia*** (supra) is misplaced in the facts of the present case. Those cases pertain to situations where the offence was less grave, or the custody prolonged without substantial justification. Here, the allegations concern large-scale financial engineering and deception over nearly a decade, involving multiple fictitious entities, forged documents, and deliberate falsification of corporate books and banking records. The custodial period of the applicant, although considerable, cannot override the risk posed by his release, especially in light of his access to resources, history of alleged tampering, and multiplicity of serious pending cases. This Court is of the considered view that the applicant fails to satisfy the triple test as specified in ***P. Chidambaram*** (supra) for grant of bail i.e., flight risk, tampering with evidence, and influencing witnesses as the allegations levied upon him is of tampering of evidence, influencing witnesses,

etc. Petitioner is involved in not one or two criminal cases but more than 5 different cases causing a total wrongful loss of more than ₹40,000 crores to the public exchequer.

42. The petitioner was taken into custody in the present case on 19.07.2022 and was granted default statutory bail on 03.12.2022, this court upheld the bail of the petitioner but the Supreme Court cancelled his bail on 24.01.2024. So the effective custody of the applicant is of around 2 years and not 4 years as claimed.

43. The allegations against the applicant are not based on conjecture or assumptions but flow from detailed forensic audit trails, cross-verification of fictitious borrower accounts, money trail analysis, and statements of approvers. The contention that the forensic audit report is inadmissible under Section 45 of the Evidence Act is a matter for trial and cannot be decided at the bail stage. The stage of trial is precisely when the evidentiary worth of the documents relied upon by the prosecution will be determined. At this juncture, the Court is only concerned with the existence of a prima facie case, the seriousness of the offence, and the potential impact on the trial. All these factors weigh against the grant of bail in the present case. The loss of funds as shown by the CBI/respondent cannot be discarded and this is a matter of trial.

44. The argument that non-repayment or default in repayment of loans is civil in nature, and hence, the prosecution has criminalised a commercial dispute, is specious and untenable. The case of the

prosecution is not one of mere default but of deliberate deception, diversion of public funds, creation of fictitious accounts, forgery, and laundering of money, all of which attract penal consequences. The act of fraudulently obtaining public funds and misusing them in a manner calculated to conceal the trail and mislead stakeholders falls squarely within the realm of criminal law. Merely cloaking the misappropriation in the language of "settlement" or "IBC recovery" does not alter the nature of the offence. Such economic offences are not only crimes against specific victims but against the financial system at large.

45. It is further noteworthy that the conduct of the applicant during custody has not been beyond reproach. The allegations regarding manipulation of valuable assets and transactions carried out during judicial custody are grave and suggest that the applicant continues to exercise significant control and influence. It has also been brought to the Court's notice that the applicant is facing multiple investigations and cases across jurisdictions involving serious financial offences, thereby undermining the argument that he poses no risk if enlarged on bail. The cumulative effect of these circumstances militates against grant of bail at this stage. The Court cannot permit the release of a person who is prima facie the mastermind of a deep-rooted financial fraud, especially when the trial is at a nascent stage.

46. Perusal of the order dated 01.09.2023 in SPL. CASES NO. 830 of 2021 reveal that during the applicant's referral to Sir J.J. Hospital and

K.E.M. Hospital for medical treatment, he was frequently visited by his relatives and was found using laptops and mobile phones. In ***Sunil Dahiya* v. *State (Govt. of NCT of Delhi)*** (supra), a coordinate bench of this court very correctly held as under;

> *"55.* ***The nature and gravity of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only in the progress of the case, but also on the trust of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high.*** *It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice."*

47. The court is of the opinion that if released on bail, the applicant may tamper with the evidence or worse flee from justice. Many of the witnesses in this case are stated to be either ex-employees or associates of DHFL and as such there is a high risk and possibility that the petitioner might try to influence the witnesses. Petitioner was summoned by ED where he did not appear on pretext of Covid-19, while he was caught with his entire family and entourage during complete lockdown and FIR was registered against him.

48. In ***Dinesh Sharma* v. *Emgee Cables and Communications Ltd. And anr.*** Spl. Leave to Appeal (crl) no. 10744-10745/2023, the Supreme Court inter alia held as under;

> *"23. ….. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken."*

49. For the reasons stated above, and having regard to the nature and seriousness of the allegations, the gravity of the offence, the applicant's central role in the conspiracy, the potential adverse impact of his release on the trial and the huge magnitude of the funds siphoned of, this Court finds no merit in the present application. Economic offences of such magnitude not only destroy public confidence in the financial system but also eat away the economic foundation of society. They require a firm judicial response guided by the rule of law and public interest. The application is accordingly **dismissed**.

RAVINDER DUDEJA, J.

04 August, 2025/na