

**IN THE COURT OF SH. SANJEEV AGGARWAL,
SPECIAL JUDGE (PC ACT) (CBI)-10, ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

CNR No. : DLCT11-001086-2019

Case No. : SC/16/2019

RC No. : 217-2013-A-0003

Branch : CBI/AC-VI (SIT)/New Delhi

U/Sec : 120B r/w 201, 420, 467, 468, 471 IPC and Sec 7, 8, 9,
12 & 13(2) r/w 13(1) (d) of P.C. Act, 1988.

**CBI v S. P. Tyagi & Ors.
(IA No. 10/2023)**

23.02.2024

ORDER

1. Vide this order, I shall dispose off the application moved on behalf of applicant/accused Christian James Michel for release.

2. In the application for release dated 07.12.2023, it is stated in the relevant para(s) as under :

1. It is humbly submitted that the present application is being filed by the Applicant/Accused Christian Michel James, British Citizen for the release.

2. The Central Bureau of Investigation registered an FIR, RC 217 2013 A 0003, dated 12.03.2013 against 18 accused persons / companies for offences punishable under section 120B, 420 IPC r/w section 7, 8, 9, 12, 13(2) r/w 13(1)(d) of Prevention of Corruption Act. It is submitted that the substantive offence alleged against the applicant in the charge sheet are under section 8, 9 and 12 of the Prevention of Corruption Act. A chargesheet was filed by the CBI on 31.08.2017 and sought permission for further investigation.

3. The accused though intended to cooperate with the

investigation and expressed his consent to participate in the investigation. But the Investigating Agency started the process for extraditing the applicant from Dubai and he was brought to India on 04.12.2018.

4. At the outset it is submitted that as per the first chargesheet filed by the CBI offence under sections 8, 9 and 12 of the PC act were alleged against the applicant and mentioned as substantive offences. As per the pre-amended section prior to 2014 the maximum sentence which can be awarded to the applicant is 5 Years. As the applicant has already undergone complete sentence till date. The applicant was extradited from Dubai on 4th December 2018 and was in custody which is more than 5 years. It is pertinent to mention here that the applicant was in custody during the extradition proceedings in Dubai. The 5 year undergone is the actual period in addition to the pre extradition incarceration and remission had to be calculated to commute the actual period undergone by the accused.

Applicability of Doctrine of Specialty (Section 21 of the Extradition Act).

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6. It is submitted that while interpreting section 21 of the extradition act the Hon'ble Apex Court in Daya Singh Lahoria vs Union Of India And Ors (2001) 4 SCC 516 held as follows:-

In view of the aforesaid position in law, both on international law as well as the relevant statute in this country, we dispose of these cases with the conclusion that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition Decree and for no other offence and the Criminal Courts of this country will have

*no jurisdiction to try such fugitive for any other offence.
This Writ Petition and Special Leave Petitions are
disposed of accordingly.*

7. It is submitted that in the extradition decree it is categorically mentioned that the applicant is extradited for the offence under section 415, 420, 120B of Indian penal code and section 8 of the prevention of corruption act. It is submitted that in the chargesheet filed by the CBI before this Hon'ble Court there is no ingredients of Section 415 and 420 of I.P.C. is not made out. Rather, it is impossible for the applicant to bribe anybody in India. On the contrary the applicant had only contractual relationship with Augusta Westland group of companies for servicing and supply of Spare Parts in the Asian Region. The allegation that the applicant has bribed which fall under Section 8 of the PC Act is also not substantiate even after filing of 3 chargesheets. There is no specific allegation against the applicant that he is committed any offence under Section 8 of the PC Act. In the absence of any allegation under Section 415 and 420 specifically against the accused/ applicant and coupled with the facts that the chargesheet filed by the CBI dated 08.09.2012 of PC Act 1988. It is submitted that those Sections as stood originally, amended before 2014, the maximum sentence prescribed is only 5 years. The applicant completed the maximum sentence in terms of the Chargesheets dated 31.08.2017 and 17.09.2020 on 05.12.2023 as a pre-trial incarceration. In view of Section 21 of the Extradition Act and the judgment in Daya Singh Lahoria (Supra).

8. It is submitted that the no allegation of cheating or

ingredients of Section 420 made against the applicant in the charge sheet dated 31.08.2017 and supplementary chargesheet dated 17.09.2020 or 15.03.2022 filed by the CBI. It is further submitted that no money trail found in respect of the accused nor the intention to cheat anyone including Government of India has not been established in favour of the accused. It is relevant to point out that none of the prosecution complaint alleged any money laundering committed by the accused. It is submitted that the chargesheet filed by the CBI dated 17.09.2020 has also not establish any specific allegation against the applicant regarding Sections 420 or 120B. So, it was the case in the chargesheet dated 15.03.2022.

Violation of UN convention on transnational organised crimes

9. It is submitted that the Judgement of Italian court which was relied by the prosecution, gives a complete exoneration to the applicant and others, after framing charges. Article 20 (2) of the constitution describes that No one shall be prosecuted and punished for the same offence more than once. It is pertinent to mention here that a conjoint reading of the UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME and Article 20 (2) OF the CONSTITUTION OF INDIA, which runs in sacrosanct, only on this basis the present prosecution against the applicant is not maintainable in the eyes of law. A copy of United Nations Convention against Transnational Organized Crime is annexed herewith and marked as ANNEXURE A-1. Pages

10. On 04.12.2018 the applicant was extradited from Dubai and he was produced before the Special CBI Court on 05.12.2018. The CBI filed applications for custodial interrogation of the applicant and he was in the CBI custody till 19.12.2018 (14 days). The Enforcement Directorate on 21.12.2018 filed an application for the production of the applicant and he was produced on 22.12.2018. The Enforcement Directorate arrested him on 22.12.2018, sought for custodial interrogation; the special CBI Court allowed the police custody till 05.01.2019 (14 days). An Extradition Decree passed by the Dubai Court dated 2nd September, 2018 a copy of extradition decree was not available with the CBI. An Arabic version and a translation were supplied by the applicant/accused before the Hon'ble High Court. The same is not produced by the prosecution till date before this Hon'ble Court. The translated copy of the Extradition Decree passed by the Dubai Court on 02.09.2018, translated by Arcadia Legal Translation Dubai, UAE is annexed herewith and marked as ANNEXURE A-2 along with this application. Pages

The Translation copy of the Extradition Decree passed by the Dubai Court on 02.09.2018 submitted by the prosecution before the Hon'ble High Court is annexed here and marked as ANNEXURE A-3. Pages

A copy of the extradition Treaty between India and UAE published on 20.07.2000 is annexed herewith and marked as ANNEXURE A-4. Pages

11. The Special CBI Court remanded the applicant to the judicial custody on 05.01.2019 and till today which

is more than 5 years he is on judicial custody. The applicant never intended to evade the process of law. The Italian court after issuing the arrest warrant, withdrawn the same on application filed by the applicant, and he was regularly represented before all the courts. It is submitted that even during the extradition proceedings at Dubai he was appearing in the court and was properly represented. It is submitted that during last several years of legal battle, the applicant never intended to evade the process of law in any country. The applicant extended his fullest cooperation throughout the investigation.

12. It is pertinent to mention that the applicant met the CBI officials in Dubai multiple times. It is further submitted that the applicant wrote letters to the Prime minister of India extending his cooperation to participate in the investigation in the year 2016 so also expresses his willingness come to India for investigation. Only request made by him was that he may be granted bail. But it is important to mention here that he was rendition by the Indian government and produced before the court as a quit pro quo for heading over Shake Lethifa who is the daughter of the ruler of Dubai. This fact was investigated by the United Nations Working Group on Arbitrary Detention (UN WGAD). The fact finding by the UN WGAD is very important which lead to even commission of serious Human Rights Violations.

13. It submitted that the applicant was illegally taken to custody by the government of India and through the executing agency CBI and deported from Dubai on

04.12.2018 and produced before this Hon'ble court. The illegal detention and deportation and custody of the applicant was assailed by the applicant before the United Nations human rights council Working Group on Arbitrary Detention (here in after called as UN HRC WGAD). The UN HRC WGAD passed its findings/ order/decision on its eighty-ninth session, held on 23-27 November 2020. It was categorically held by the UN HRC WGAD, that

"...the deprivation of liberty of Christian James Michel by the government of India, being in contravention of articles 3, 9, 10 and 11 (1) of the universal declaration of human rights and articles 9 (3); 10 (1); and 14 (1) (2) and (3) (b)-- (d) and (g) of the international covenant on civil and political rights".

A Copy of recommendation of Human Rights Council working group on Arbitrary Detention on its Eighty-Ninth Session, held 23-27 November 2020 in opinion No. 88/2020 concerning Christian James Michel is annexed herewith and marked as ANNEXURE A-5. Pages

14. It is submitted that the Hon'ble Supreme Court in Gramophone Company of India Ltd. vs. Birendra Bahadur Pandey & Ors 1984 SCR(2) 664 held that the opinion of the international community and treaties which are entered between the states is binding in nature. The UN Convention of Transnational Organized Crime and UNs Universal Declaration of Human Rights and India is party and the convenient of the convention and treaty has been incorporated by

the Government in different statutes. Also these principles have been well accepted as the ground for protecting the liberty of an individual under Article 21 of Constitution of India. Primarily India being the author and propagator for United Nations working group of arbitrary detention which is also an opinion making well established body which comes under the United Nations Human Right Council interfered in the case of the applicant and held that there are serious violations of provisions of Universal Declaration of Human Rights. In these circumstances, the judgment in Gramophone Company of India holds the field and the exception which has been carved out does not have any importance in the present case. The personal liberty which is guaranteed under Article 21 of the Constitution of India of the applicant has been arbitrarily violated and there is no sanction of law to detain the applicant beyond 5 years in custody in view of Section 21 of Extradition Act 1962.

15. The Extradition Decree only authorized for prosecution and to try for offences a maximum period of punishment goes upto 5 years, since there is no allegation of cheating is established alleged against the applicant by the CBI he cannot be considered to be in custody for an offence which is simply mentioned in the chargesheet. As far as other offences are concerned in terms of the Section 21 of the Extradition Act, he cannot be tried for any other offences where the punishment is greater than for the offences for which he has been extradited or surrendered. The principle again carved out in Gramophone and the subsequent

pronouncements of Hon'ble Supreme Court covers this filed. Since, the Doctrine of specialty has been incorporated in the relevant statute no interpretation whatsoever would like to be given by the prosecution does not have any value over and above the statute. This submission is also supported by the Hon'ble Supreme Court judgment in Daya Singh Lahoria vs Union of India (supra).

16. It is submitted that similar charges were framed by the Italian courts and other accused was tried and acquitted by the courts in Italy. When the courts in Italy in its judgment categorically exonerates the applicant specifically. The Italian prosecution renounced further prosecution of the applicant on the charges which is alleged against the applicant in the present Chargesheets. The Indian authorities were parties to such proceedings and participated in the trial.

17. It is pertinent to mention here that a conjoint reading of the UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME and Article 20 (2) OF the CONSTITUTION OF INDIA, which runs in sacrosanct, only on this basis the present prosecution against the applicant is not maintainable in the eyes of law.

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19. It is humbly submitted that the applicant is in custody for more than 5 years in addition to the pre extradition detention in Dubai and the offence under sections as alleged are not made out. No ingredients to allege offence under 420 and 120 B alleged against the

applicant in the charge sheet. Maximum sentence for offence punishable under section 8, 9 and 12 of PC act was only 5 years before the amendment in 2014. The cases were registered on 12.03.2013. No proof for any payment given by the Respondent for doing any corrupt practice to any of the government officials.

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21. Therefore, it is submitted that the applicant is in judicial custody since 05.12.2018 in addition to the pre extradition detention in Dubai and detention post 05.12.2023 is illegal. The accused is kept in India as a 'Judicial Hostage' since he completed the 5 years in judicial custody in terms of extradition decree.

Therefore, it is prayed that the applicant / accused Christian James Michel be released.

3. Short reply has been filed on behalf of the CBI to the above application of accused, in which in the relevant para(s), it is stated as under :

1. That at the outset, it is submitted that the Application under Reply (Application) being devoid of any merits, is liable to be dismissed. It suffers from factual inconsistencies and is an attempt to mislead this Hon'ble Court using the intricacies of law, to thwart further progress of the case. The Applicant has approached this Hon'ble Court with unclean hands, concealing material facts relevant for the adjudication of the Application, and as such, the Application is liable to be dismissed *in limine*.

2. That the Application is liable to be rejected on the sole ground of being alien to the procedure

established by law. It has been the categorical stand of the Applicant that the Application is not for bail but instead for release. It is most respectfully submitted that release as opposed to bail is not covered under the scheme of the CrPC during pendency of proceedings. Post remand of the accused to custody under Section 167 or Section 309 CrPC, it is only in terms of Chapter XXXIII CrPC that the accused can be released on bail. As such, the Application ought to be dismissed on this ground alone.

3. That further, the Applicant has raised certain issues, having no bearing on the adjudication of the Application, including those concerning the proceedings in the case by the Enforcement Directorate, and the same are liable to be discarded. The CBI is restricting the scope of the present Reply to the issues relevant for the adjudication of the Application and craves leave of this Hon'ble Court to file a detailed Reply at a later stage, if so deemed necessary, with the kind permission of this Hon'ble Court.

4. That adverting to the Applicant placing selective reliance on the Extradition Decree to seek his 'release', it is most respectfully submitted that the Applicant has played a fraud on this Hon'ble Court by placing selective reliance on document(s), altogether failing to bring to the kind attention of this Hon'ble Court the judgments dated 11.03.2022 and 07.02.2023 passed by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court on the same

issue, while also conveniently failing to disclose the previous order(s) passed by this Hon'ble Court. Such conduct disentitles the Applicant to seek any relief from this Hon'ble Court. Regardless, for the satisfaction of the judicial conscience of this Hon'ble Court, the CBI submits as under:

a. The Extradition Decree in the case takes note of the offences of misuse of occupation or position, fraud as well as conspiracy.

b. Such offences mean that the Extradition Decree covered Sections 420 and 120-B IPC as well as Section 13(1)(d) Prevention of Corruption Act, 1988. This Hon'ble Court, after applying its judicial mind, has taken cognizance of the offences herein.

c. The said offences entail an imprisonment of upto 7 years, and as such, the Applicant's submission of being extradited for offences entailing a maximum imprisonment of 5 years is liable to be discarded.

d. Further, vide First Supplementary charge sheet dated 17.09.2022 filed by the CBI, Section 467 IPC was invoked in the case, which entails an imprisonment of upto life. This Hon'ble Court, on the basis of the said charge sheet, has already issued process to the accused. In terms of Article 17 of the Extradition Treaty between India and the United Arab Emirates, as well as the judgment dated 11.03.2022 and 07.02.2023 passed by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court, there is no merit in the contention of the Applicant.

A copy of the judgment dated 11.03.2022 passed by

the Hon'ble High Court of Delhi is annexed herewith as Annexure R-1.

A copy of the judgment dated 07.02.2023 passed by the Hon'ble Supreme Court is annexed herewith as Annexure R-2.

5. The Application further raises certain issues, which already stand adjudicated by courts of law against the Applicant. Such issues ought not be re-adjudicated by this Hon'ble Court in terms of the doctrine of stare decisis as well as Section 362 CrPC. These include:

a. Non-cooperation by Applicant: Orders dated 22.12.2018, 18.04.2019, 07.09.2019, 18.06.2021 and 14.03.2023 passed by this Hon'ble Court, Order dated 06.04.2020 and Order/Judgment dated 06.04.2020 and 11.03.2022 passed by the Hon'ble High Court of Delhi.

b. Non-applicability of the Doctrine of Specialty: Order dated 14.03.2023 passed by this Hon'ble Court; Judgment dated 11.03.2022 passed by the Hon'ble High Court of Delhi, as affirmed by Judgment dated 07.02.2023 passed by the Hon'ble Supreme Court.

c. Hoax of Double Jeopardy and United Nations Convention against Transnational Organized Crime: Orders dated 22.12.2018, 18.04.2019, 07.09.2019, 18.06.2021 and 14.03.2023 passed by this Hon'ble Court, Judgment dated 07.03.2022 passed by the Hon'ble High Court of Delhi.

d. Alleged mistreatment and the findings of the UNWGAD: Order dated 18.06.2021 passed by this

**Hon'ble Court and judgment dated 11.03.2022
passed by the Hon'ble High Court of Delhi.**

Therefore, it is prayed that the above application of the applicant/accused Christian James Michel for release be dismissed.

4. Rejoinder has also been filed on behalf of the applicant / accused to the short reply filed by the CBI, in which the contents of the application have been reaffirmed and those made in the reply are stated to be incorrect.

5. I have heard Sh. D. P. Singh, Ld. SPP along with Sh. Manu Mishra and Ms. Shreya Dutt, Advocates for CBI and Shri Aljo K. Joseph, Ld. Counsel for accused No. 9, Christian Michel James and perused the record. I have also gone through the short note filed on behalf of the applicant / accused Christian James Michel.

6. Ld. Counsel for the applicant / accused has relied upon the following judgment(s) in support of his contentions :

- a) ***Daya Singh Lahoria Vs. Union of India and Others (2001) 4 Supreme Court Cases 516;***
- b) ***Vinay Mittal VS. Union of India & Ors. W.P.(CRL) 562/2019 & CRL.M.A. 3920/2019 decided on 18.08.2020.***

On the other hand, Ld. SPP for CBI has relied upon the following judgment(s) in support of his contentions :

- a) ***Commissioner of Customs, Bangalore Vs. G.M. Exports and Others (2016) 1 Supreme Court Cases 91.***

7. Regarding the applicability of Doctrine of Specialty (Section 21 of the Extradition Act), the said aspect has already been considered by the Hon'ble High Court while dealing with the application of this very accused in case titled as ***Christian Michel James Vs. Central Bureau of***

Investigation in Bail Appln. 2586/2021 & Crl. M.As. 16338/2021, 1069/2022, decided on 11.03.2022, in which in the following relevant para(s), it has been held as under :

18. *It may be expedient to also allude to the judgment dated 02.09.2018 passed by the Dubai Supreme Court in extradition proceedings where the applicant took the same defence, i.e. of having already been tried by the Italian Court. Learned SPP for CBI has pointed out that the Dubai Supreme Court disbelieved the applicant's contention and opined that the proceedings before the Italian Court were in respect of other accused persons and not the applicant. In light of the foregoing and on a prima facie view, this Court finds no merit in the submission made on behalf of the applicant.*

19. *The second preliminary submission made by the learned counsel for the applicant was that in view of [Section 21](#) of the Extradition Act, which adopts the „Doctrine of Specialty“, the applicant cannot be tried for offences other than for which he was extradited. In this regard, attention of this Court was drawn to the judgment passed by the Dubai Supreme Court and the decision of the Supreme Court of India in [Daya Singh Lahoria v. Union of India and Others](#) reported as (2001) 4 SCC 516.*

20. *In response, learned SPP for the CBI submitted that [Article 17](#) of the Extradition Treaty with UAE not only permits trial for offences in respect of which extradition of an accused person is sought, but also for the offences connected therewith. Emphasis was laid on the expression „is sought“ used in [Article 17](#) of the Treaty to submit that a reading of the extradition request, as noted in the judgment passed by the Dubai Supreme Court, would show that the applicant is being tried for offences in respect of which his extradition was „sought“. While distinguishing the decision of the Supreme Court in [Daya Singh Lahoria](#) (Supra), it was submitted that the Republic of India has entered into different treaties with different countries and the decision in [Daya Singh Lahoria](#) (Supra), interpreting [Section 21](#) of the Extradition Act, 1962, was with respect to the unique facts of the case and the Treaty applicable in the said case. The Treaty involved in the aforesaid case was much different from the Treaty entered into by the Republic of India with UAE, as the latter also permits trial of the person extradited for offences which are „connected“ with the offences in respect of which extradition is „sought“. To buttress his submission, learned SPP placed reliance on the decision in [Commissioner of Customs, Bangalore v. G.M. Exports and Others](#) reported as (2016) 1 SCC 91.*

21. *In relation to the above issue, it is deemed expedient to make reference to the judgment passed by the Dubai Supreme Court, an English translated copy of which has been placed on record, supported by an affidavit to the effect that the same was examined by Prof. Rizwanur Rahman, Chairperson, Centre of Arabic and African Studies, School of Language, Literature and Culture Studies, Jawaharlal Nehru University, New Delhi. Learned*

counsel for the applicant has raised no dispute regarding the translated copy or its contents. Relevant extract of the proceedings before the Dubai Supreme Court is reproduced hereunder:-

"Whereas the case is related to the extradition of Christian James Michael, British citizen, to the Indian authorities on charge of "misuse of occupation or position, money laundering, collusion, fraud, misappropriation and offering illegal SignatureNotVerified Digitally Signed By:SANGEETAANAND SigningDate:12.03.2022 15:23:18 gratification". Whereas the merits of the extradition request are briefed in that the Indian authorities requested the UAE to extradite Christian James Michael, British citizen, on charge of misuse of position or job, money laundering, collusion, fraud, misappropriation and offering illegal gratification within the territory of the requesting country. An arrest warrant was issued by the court in the requesting state."

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As such, and as there is extradition treaty between the UAE and the Republic of India in respect of the reciprocal legal assistance in criminal matters and extradition of criminals, the said treaty shall apply. Whereas [Article 2](#) of the said treaty states the following: (The following persons shall be extradited):

a. Persons accused of an offence punishable under the laws of both the signatory States by imprisonment for a period of at least one year or more.

b. Persons sentenced by the Courts of the requesting State with imprisonment for at least six months in respect of an offence mentioned in the Extradition Treaty.

Whereas the offences for which the above concerned person is wanted are of deceit and criminal conspiracy punishable by the laws of both the States. In India, the said offences are punishable by imprisonment or fine, or with both, by the provisions of articles 120B, 415 and 420 of the [Indian Penal Code](#). Article 120B {Punishment for Criminal Conspiracy} provides for the following:

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There are similar provisions in the UAE for offences of bribery, fraud and deceit in commercial transactions, and such offences are punishable under the provisions of [articles 237](#), 399 and 423 of the Federal Penal Law No. 2 of 1987 and its amendment of 2016 with imprisonment or fine, or with both...

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...It has been proved that the person requested to be extradited is wanted for standing trial for charge of misuse of position or job, money laundering, collusion, fraud, misappropriation and offering illegal gratification which constitute criminal offences. Therefore, such defense is baseless thus rejected."

(emphasis added)

22. Reference is also had of the Extradition Treaty signed between the Government of the Republic of India and the UAE at New Delhi on 25.10.1999, which was ratified on 29.05.2000. Article 17(1) of the Treaty reads as under:-

"1. The person to be extradited shall not be tried or punished in the requesting State except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition. If the characterization of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterization, permit extradition in conformity with the provisions of this Agreement."

(emphasis added)

23. Notably, the charge sheet against the applicant has been filed for offences under Section 120B read with Section 420 IPC and Sections 7/8/9/12/13(2) read with Section 13(1)(d) of the PC Act. On a plain reading of the judgment passed by the Dubai Supreme Court; the Extradition Treaty signed between UAE and the Republic of India; and the authorities cited on the issue by the parties, this Court, prima facie, finds no merit in the submission made on behalf of the applicant. Even otherwise, the said submission would be open to test at the time of framing of Charge/trial."

8. It is stated that the Extradition Decree passed by the Dubai Court dated 02.09.2018 was never available with the CBI. The Arabic version and the translation was supplied by the accused before the Hon'ble High Court, but the same was not produced by the prosecution till date before this Court.

9. In view of the said observations made by the Hon'ble Superior Courts, which are binding upon this Court at this stage for the purpose of deciding the present application, though it is contended by Ld. Counsel for the applicant / accused that it is written at the end of the order that nothing stated in the said order shall be considered to an expression on the merits of the case and shall have no bearing on the merits of the case.

10. No doubt, the same is written in para 59 of the said order, however, the same issue has been raked up by Ld. Counsel for the

accused, which has already been dealt with at length by the Hon'ble High Court and the same is, therefore, very much binding upon this Court for deciding the present application. In any case, once this issue has already been dealt with by the Hon'ble High Court while deciding the earlier bail application of the accused, the accused cannot raise the same ground before this Court i.e. the Trial Court again, as the same would be abuse of process of law. Therefore, the said contention has no force, the same is accordingly rejected.

11. Regarding the next argument of the Ld. Counsel for the applicant / accused that no offence u/S. 415, 120B IPC is made out or for that matter, no offence u/S. 8 of the PC Act is also made out from the filing of the third charge sheet. The said contention raised by Ld. Counsel for the applicant / accused cannot be examined at this stage, as the same can only be considered only at the stage of arguments on the point of charge(s), as at this stage, this Court cannot delve into the said issue and it is open for the Ld. Counsel for the accused to address the said arguments at the time of framing of charge(s) and not at this stage.

12. Regarding the next argument that illegal detention and deportation and custody of the applicant was assailed by the applicant before the United Nations human rights council Working Group on Arbitrary Detention (here in after called as UN HRC WGAD). The UN HRC WGAD passed its findings/ order/decision on its eighty-ninth session, held on 23-27 November 2020.

13. The said contention has also been dealt with at length by the Hon'ble High Court while deciding the above bail application in which in the following para(s), it has been held as under :

24. A third preliminary submission made by the learned counsel for the applicant was that the applicant was subject of rendition and kept in illegal custody by the CBI. In this regard, reliance was

placed on a finding recorded in favor of the applicant by the United Nations Human Rights Council Working Group on Arbitrary Detention (hereinafter, referred to as the „UNHRC WGAD“) in its 89th meeting.

25. On the other hand, learned SPP for CBI submitted that though the Government of India had sent its reply to the UNHRC WGAD, the finding of the Group is not binding on the Courts in India as the Group is not a judicial body. It was also submitted that the findings have been negated by the Ministry of External Affairs, Government of India in an official statement on 26.02.2021.

26. In connection with the issue, this Court notes that even though the UNHRC WGAD opinion relates to the present applicant, it was predominantly based on allegations and limited information received from an unidentified source. A response dated 26.06.2020 was sent by the Government of India pursuant to the Group's call for comments, wherein the circumstances surrounding the applicant's extradition were laid out and it was categorically stated that no procedural deficiencies had taken place in his extradition. It was also stated that the applicant's arrest and subsequent custody were in accordance with the judicial process established by law, and the issue of his custody and a request for interim bail had been considered by various Courts, including the Supreme Court of India.

27. Besides, the Special Court, which was seized of all developments, has dealt with the issue in the order dated 18.06.2021 and observed that the Group did not have complete material before it while forming opinion; it was also held that the opinion had neither binding nor persuasive value over the Special Court, which had jurisdiction over the case and was in possession of the charge sheet, the supplementary charge sheet, including the statements of witnesses, and the documents relied upon by the investigating agency. Suffice it to note, the Special Court has taken cognizance of the offence and the applicant is being tried by Court of competent jurisdiction in India. Accordingly, the submission made on behalf of the applicant does not weigh with this Court.

58 In closing, it may also be mentioned that after the arguments were concluded and while the order was being reserved in the present case, an unverified letter dated 07.02.2022 from one Mr. Edward Bossley, HM Consul to India, was shown on behalf of the applicant, in respect of the apprehension that if enlarged on bail, he may be issued travel documents which may ultimately lead to his fleeing from justice. Learned SPP for CBI raised a strong objection regarding the same. It was pointed out that a similar letter from Mr. Bossley was sent to the Special Court through e-mail at the time of adjudication of the applicant's bail application on which, the Special Court had observed that the letter having come from a third party was not permissible material. Under these circumstances, this Court finds the letter dated 07.02.2022 to be of no persuasive value and the reliance placed thereon unmerited.”

Once the same issue has already been dealt with and decided by the Hon'ble Superior Court, the applicant cannot be allowed to raise the same before the Trial Court, therefore, the said contention is also without any merit, the same is also rejected.

14. With regard to the last argument of the Ld. Counsel for the applicant / accused that the accused was extradited from Dubai on 04.12.2018 and has been in custody for more than five years and maximum sentence prescribed under those offences, as they originally stood before 2014 is only five years. Since the applicant / accused has completed the maximum sentence in terms of the charge sheet dated 31.08.2017 and 17.09.2020, therefore, he deserves to be released from custody.

15. The said argument of Ld. Counsel for the applicant is without any substance, as it appears that vide supplementary charge sheet filed by the CBI, Section 467 IPC was also invoked in this case, which entails imprisonment upto life and the applicant / accused had raised the issue of grant of bail u/S. 436A CrPC stating that he has completed half of the complete sentence, therefore, he was entitled to bail. However, it was held by the Hon'ble Supreme Court in the ***SLP (Crl) No(s) 4145/2022 in BA No. 2586/2021 titled as Christian Michel James Vs. Central Bureau of Investigation, dated 07.02.2023*** i.e. in the petition filed by the applicant as under :

1. Counsel appearing on behalf of the petitioner relied on the provisions of Section 436A of the Code of Criminal Procedure 1973 in aid of the submission that the petitioner has completed half of the maximum sentence and is, therefore, entitled to bail.

2. We are not inclined to accept the submission of the petitioner. The extradition decree in Dubai, on which the petitioner places reliance, provides as follows:

"Whereas the case is related to the extradition of Christian James Michael, British citizen, to the Indian authorities on charge of "misuse of occupation or position, money laundering, collusion, fraud. misappropriation and offering

illegal gratification". Whereas the merits of the extradition request are briefed in that the Indian authorities requested the UAE to extradite Christian James Michael, British citizen, on charge of misuse of position or job, money laundering, collusion, fraud, misappropriation and offering illegal gratification within the territory of the requesting country. An arrest warrant was issued by the court in the requesting state."

(emphasis supplied)

3. The purport of the decree is to cover several offences which have been highlighted above. Counsel appearing on behalf of the petitioner has placed reliance on the extract from the extradition decree which contains a reference to the provisions of Sections 415, 420 and 120B of the Indian Penal Code 1860 and Section 8 of the Prevention of Corruption Act 1988.

4. The submission of the petitioner is that the unamended provision of the PC Act provided for imprisonment for a term which shall not be less than six months, but which may extend to five years. The provisions of Section 8 were initially amended by Act 1 of 2014 and subsequently, substituted by Act 16 of 2018. It has been submitted that the maximum term of imprisonment for the offence under Section 420 IPC is seven years whereas under the unamended provisions of Section & of the PC Act, it was five years. Since the petitioner was arrested on 4 December 2018. It has been submitted that he has already undergone over four years and two months of under trial custody and bearing in mind the provisions of Section 436A of CrPC, he is entitled to be released on bail on completing half the maximum term of imprisonment.

5. Section 436A provides as follows:

"436A. Maximum period for which an undertrial prisoner can be detained. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence Under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

6. The first proviso to Section 436A stipulates that the Court may for reasons to be recorded in writing order the continued detention of the person for a period longer than one half of the maximum period of imprisonment specified for that offence or release him on bail instead of a personal bond with or without sureties.

7. Article 17 of the Extradition Treaty between India and the UAE contains the following provision:

"1 The person to be extradited shall not be tried or punished in the requesting State except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition, If the characterisation of the offence is modified during the proceedings taken against the person extradited, he shall not be charged or tried, unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Agreement.

2. If the person extradited had the liberty and means to leave the territory of the State to which he was extradited, and he did not leave within thirty days. subsequent to his final release or left during that period, but voluntarily returned, he may be tried for the other offences."

8. From the above extract, it is evident that the person to be extradited shall not be tried or punished in the requesting State except for the offences for which his extradition is sought or for offences connected therewith.

9. Section 21 of the Extradition Act 1962 is in the following terms:

"21. Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences. Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than-

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has

given its consent."

10. In the present case, the extradition offences in relation to which the petitioner was returned appears from the text of the extradition decree of the Dubai authorities, which has been extracted earlier. The extradition decree has to be read together with the provisions of Article 17 of the India-UAE Extradition Treaty.

11. The CBI initially registered a regular case on 12 March 2013. The charge-sheet was submitted on 31 August 2017. The CBI has filed a supplementary charge- sheet on 17 September 2020. Further investigation under Section 173(8) is stated to be in progress.

12. In the backdrop of the above discussion, it has emerged before the Court that the fundamental basis on which the petitioner has sought bail, namely, under the provisions of Section 436A, cannot be accepted as valid. Besides the provisions of Sections 415 and 420 read with Section 120B IPC and Section 8 of the PC Act, the petitioner is alleged to have committed offences under Section 467 IPC which is punishable with upto life imprisonment. In this backdrop, the provisions of Section 436A would not stand attracted in the present case."

16. The Hon'ble Supreme Court has held that the plea of the accused that he was entitled to bail u/S. 438 CrPC cannot be accepted, as besides the provisions of Sections 415 and 420 read with Section 120B IPC and Section 8 of the PC Act, the accused is alleged to have committed offences under Section 467 IPC, which is punishable upto life imprisonment.

17. By the same very reasoning, since Section 467 IPC has been invoked by the prosecuting agency by way of supplementary charge sheet, this plea that the accused has already undergone the maximum period of detention u/S. 415, 420 IPC as well as u/S. 8 of the PC Act is not tenable, as the prosecuting agency has also invoked Section 467 IPC, which entails punishment upto life.

18. Further it is not clear, under what provision of CrPC, the present application has been moved by the accused, as the accused could only be released on bail as per Chapter XXXIII CrPC and the Ld. Counsel for the applicant had contended during the course of arguments that the

present application is not for grant of bail, but for release of accused from custody, but he has failed to point out any provision of law under which the said application has been moved. Even otherwise this court being trial court is not a constitutional court clothed with powers of writ jurisdiction, therefore, relief of release sought by way of present application is even otherwise misconceived for this reason also.

19. Be that as it may. In view of the afore going discussion, the application of the applicant / accused Christian James Michel for release has no merits, same stands dismissed.

Nothing expressed hereinabove shall have any bearing on the merits of the case.

**Announced in the open
Court on this 23rd day of
February 2024.**

**(Sanjeev Aggarwal)
Special Judge (PC Act)(CBI)-10
Rouse Avenue District Court
New Delhi**