

IN THE COURT OF O.P. SAINI, DISTRICT & SESSIONS
JUDGE-CUM-SPECIAL JUDGE (CBI)/(ED), ROUSE AVENUE
DISTRICT COURT, NEW DELHI

ECIR No.: 05/DZ/2012
Karti P. Chidambaram
&
P. Chidambaram

Versus
Enforcement Directorate

05.09.2019

Present: Sh. K.M. Natraj, ASG with Ms. Sonia Mathur,
Sr. Advocate/SPP, Sh. N. K. Matta, Sh. Nitesh Rana;
Spl. PPs, Sh. A.R. Aditya, Sh. Rahul Kumar, Sh. Ali
Khan & Ms. Sanjana Rajput; Advocates & Sh. Amit
Dua, Joint Director, Sh. Mahesh Gupta, Dy.
Director, Sh. M.K. Sharma, Asstt. Director and Sh.
Sudhir Kumar, Assistant Director for ED.

Sh. Kapil Sibal, Dr. Abhishek Manu Singhvi &
Sh. Dayan Krishnan; Sr. Advocates with Sh.
Arshdeep Singh, Sh. Adit Pujari and Sh. Akshat
Gupta; Advocates for the applicants/accused.

ORDER

2. This order shall dispose of two applications for
grant of anticipatory bail, one filed by Sh. Karti P.
Chidambaram and the other filed by Sh. P. Chidambaram,

dated 23.03.2018 and 30.05.2018 respectively.

Background: What is Aircel-Maxis Case?

3. The brief facts of the case as culled out from the record are that one Sh. C. Sivasankaran, promoter of Siva group of companies, had been in telecom sector since 1994, when M/s Sterling Cellular Limited, promoted by him, was granted Cellular Mobile Telecom Services (CMTS) licence in Delhi service area. Sh. C. Sivasankaran had the controlling stake in Siva group of companies including the telecom companies, through his family members. He formed a holding company viz. M/s Aircel Tele Ventures Limited (ATVL) in 1997. M/s ATVL had 100% ownership of M/s Aircel Limited operating in Tamil Nadu service area, M/s Aircel Cellular Limited (ACL) operating in Chennai service area and also in M/s Dishnet DSL Limited (later on M/s Dishnet Wireless Limited), which later on applied for telecom licences in some service areas.

M/s Aircel Limited launched its operations in Tamil Nadu service area in April 1999.

In the year 2003, M/s ATVL also acquired M/s Aircel Cellular Limited, held by joint venture of RPG (RP Goenka group) and Vodafone (UK), which was the service provider in Chennai telecom circle.

4. Sh. C. Sivasankaran wanted to expand his GSM mobile business from these two service areas to other service areas through his company M/s Dishnet DSL Limited.

Accordingly, M/s Dishnet DSL Limited applied to DoT for grant of Unified Access Service Licences (UASLs) on 05.03.2004 in eight service areas, that is, Assam, North-East, West Bengal, Bihar, Orissa, MP, Himachal Pradesh and J&K. The Department of Telecommunications (DoT) issued Letters of Intent (LOI) on 6th April 2004 for these eight service areas. The company submitted compliance to the LOIs on 20.04.2004 for seven service areas.

For the remaining service area of Madhya Pradesh, the company sought some additional time for compliance.

This company also applied for grant of UASLs for two more service areas, that is, UP (West) and UP (East), on 21.04.2004.

5. The proposal for extension of time to comply with LOI for MP service area and issuance of LOIs for grant of new UASLs for UP(E) and UP(W) service areas were de-linked from the signing of licences for seven service areas and these seven licences were executed on 12.05.2004.

This company, that is, Dishnet Wireless Limited, also applied for grant of four UAS licences in Punjab, Haryana, Kerala and Kolkata service areas on 01.03.2005.

6. In May 2004, there was change of Government at Centre and Sh. Dayanidhi Maran took over as Minister of Communications and Information Technology (MOC&IT) on 26.05.2004. Sh. Dayanidhi Maran worked as MOC&IT,

Government of India, New Delhi, during the period from 26.05.2004 to 17.05.2007.

Late Dr. J. S. Sarma worked as Additional Secretary (Telecom) between October 2003 and November 2004. He again joined DoT as Special Secretary on 04.06.2005 and took over as Secretary (Telecom) on 01.07.2005 and held the office till 16.07.2006.

7. Sh. Kalanithi Maran, brother of Sh. Dayanidhi Maran and promoter of M/s Sun TV Networks Limited, Chennai, which is a broadcasting company, distributing and telecasting different TV channels in different languages since 2000, also promoted another company in the name of M/s Sun Direct TV (P) Limited in the month of February 2005 to provide Direct to Home broadcasting service in India.

Role of Maxis Communications of Malaysia and sale of three companies:

8. Sh. Ralph Marshall was Director of M/s Maxis Communications Bhd., Malaysia and M/s Astro All Asia Networks Plc. UK. Sh. T. Ananda Krishnan was having the majority shareholding in both companies.

9. In December 2005, these three companies, that is Aircel Limited, Aircel Cellular Limited and Dishnet Wireless Limited, were allegedly sold to Maxis Communications of Malaysia. It was alleged that the sale of these companies, held by Sh. C. Sivasankaran, to M/s Maxis Communications

(through its subsidiary M/s Global Communications and a joint venture company named M/s Deccan Digital Networks (P) Limited formed between Indian partner M/s Sindya Securities and M/s Global Communications) was with the intervention of Sh. Dayanidhi Maran and his brother Sh. Kalanithi Maran.

10. It was alleged that Sh. Dayanidhi Maran, the then MOC&IT, in abuse of his official position, deliberately delayed grant of UAS licences in seven service areas and other approvals/ permissions on various issues pending before Department of Telecommunications (DoT) related to Aircel Tele Ventures Limited on frivolous grounds with an intent to force its exit from telecom business by constricting its business environment.

11. It was alleged that after the change of ownership, the applications for issuance of licences and other requests/ approvals pending since long before the DoT were smoothly acceded to and after such transfer undue favour was given to these companies, for which alleged illegal gratification of about Rs.749/- crore was paid through the companies of Sh. Kalanithi Maran.

Registration of "Scheduled Offence" by CBI:

12. During monitoring of the investigation in CBI case No. RC-DAI-2009-A-0045 (2G Spectrum Case), Hon'ble Supreme Court of India vide order dated 16.12.2010, in case titled as Centre for Public Interest Litigation Vs. Union of India

and Others. (2011) 1 SCC 560), directed CBI to investigate the irregularities committed in the grant of licenses from 2001 to 2007, with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers. The relevant part of the order reads as under:

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“19. The reports produced before the Court show that CBI and the Enforcement Directorate have started investigation in the right direction. At the same time, keeping in view the statements made by the learned Solicitor General and the learned Senior Counsel representing CBI and with a view to ensure that in a serious matter like this, comprehensive and coordinated investigation is conducted by CBI and the Enforcement Directorate without any hindrance, we deem it proper to issue the following directions:

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(iii) CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers.....”

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Accordingly, in compliance to the said order, a

Preliminary Enquiry No. PE DAI-2011-A-0001 was registered on 04.01.2011 at CBI, ACB, New Delhi.

13. On conclusion of the said Preliminary Enquiry, a case bearing FIR No. RC-DAI-2011-A-0022 was registered against the following persons:

- i. Sh. Dayanidhi Maran, the then Minister of Communications and Information Technology, Government of India,
- ii. Sh. Kalanithi Maran, Director, M/s SUN Direct TV Private Limited, Chennai,
- iii. Sh. Ralph Marshall, Director of M/s Astro All Asia Networks Plc., U.K. and M/s Maxis Communications Bhd., Malaysia,
- iv. Sh. T. Ananda Krishnan, Chairman, M/s Usaha Tegas Sdn. Bhd., Malaysia,
- v. M/s SUN Direct TV Private Limited, Chennai,
- vi. M/s Astro All Asia Networks Plc., UK,
- vii. M/s Maxis Communications Bhd., Malaysia

and other unknown officials/persons under Section 120-B IPC read with Section 7, 12 and Section 13(2) read with 13(1)(d) of PC Act, 1988 on 09.10.2011, on the allegations that Sh. Dayanidhi Maran, the then MOC & IT, allegedly in abuse of official position, deliberately delayed grant of licenses in seven telecom circles and other approvals/permissions on various issues pending before Department of Telecommunication (DoT)

related to M/s Aircel Televentures Limited on frivolous grounds with an intent to force its exit from telecom business by constricting its business environment. It was also alleged that the sale of these companies held by Sh. C. Sivasankaran to M/s Maxis Communication (through its subsidiary M/s Global Communications and a joint venture company named M/s Deccan Digital Networks Private Limited formed between Indian partner M/s Sindya Securities and M/s Global Communications) was also with the intervention of Sh. Dayanidhi Maran and his brother Sh. Kalanithi Maran. However, after the change of ownership, the applications for issuance of licenses and other requests/approvals pending since long before the Department of Telecommunications were acceded to and undue favour was given to these companies after such transfer for which alleged illegal gratification was paid by M/s Astro All Asia Networks Plc. to M/s Sun Direct TV of Sh. Kalanithi Maran, in the garb of purchase of shares at a premium of Rs.69.57/- per share through its subsidiary M/s South Asia Entertainment Holdings Limited, while Smt. Kavery Maran, wife of Sh. Kalanithi Maran got shares of M/s Sun Direct TV Private Limited at the rate of Rs.10/- per share. It was alleged that the active intervention of Sh. Dayanidhi Maran and his brother in restricting the business environment for Siva Group, change of ownership to M/s Maxis Communications and undue favour post this change was for *mala fide* considerations.

An illegal gratification of Rs. 549,96,01,793/- was accepted as *quid pro quo* through his brother Sh. Kalanithi Maran in the garb of share premium invested in Sun Direct TV by South Asia Entertainment Holdings Limited (a fully owned subsidiary of Astro All Asia Networks Plc.)

14. The entire facts and circumstances as revealed in the investigation were detailed under the following four heads:

(A) Delay in grants of LOIs/UAS License and various other regulatory approvals by accused Sh. Dayanidhi Maran, the then MoC & IT.

(B) Acquisition of telecom companies of Sh. C. Sivasankaran by M/s Maxis Communications Bhd., Malaysia.

(C) Smooth approvals of LOIs and other approvals to M/s Aircel Limited when it was acquired by M/s Maxis Communications Bhd. Malaysia.

(D) Receiving of illegal gratification in the garb of share premium in M/s Sun Direct Private Limited promoted by accused Sh. Kalanithi Maran, brother of accused Sh. Dayanidhi Maran, the then MoC & IT from M/s South Asia Entertainment Holdings Limited, Mauritius (100% subsidiary of M/s Astro All Asia Networks of Plc., UK).

Acquisition of the three Companies of Sh. C. Sivasankaran by Maxis Communications and Grant of Approval by FIPB;

15. It was alleged that M/s Global Communications Services Holdings Limited, Mauritius (a 100% subsidiary of M/s

Maxis) had subscribed to 26% equity in M/s Aircel Limited on 5th January 2006 under automatic route for a consideration of US\$ 280 million into the company.

Upon receipt of FIPB approval, M/s GCSHL directly acquired further 39% equity stake in M/s Aircel Limited on 21.03.2006 from ATVL by paying consideration of US\$ 422 million (Rs. 1,881.02 crore) to ATVL.

M/s Deccan Digital Networks Private Limited, which was a joint venture between M/s Global Communication Services Holdings Limited, Mauritius and M/s Sindya Securities and Investments Private Limited (the Indian partner of M/s Maxis Communications Bhd., Malaysia) acquired 35% equity stake in M/s Aircel Limited on 21.03.2006 by paying a consideration of US \$ 378 million (Rs. 1,684.89 crores) to ATVL. The funding of the investment by M/s Deccan Digital Networks Private Limited in M/s Aircel Limited is given below:

- i) M/s Global Communication Services Private Limited - US\$ 2.57 million (towards 25.714% equity shares in M/s Deccan Digital Networks Private Limited, which indirectly gives 8.999% equity stake in M/s Aircel Ltd.)
- ii) M/s Sindya Securities & Investments Private Limited - US\$ 7.43 million (towards 74.286% equity shares in M/s Deccan Digital Networks Private Limited, which indirectly gives 26.001% equity stake in M/s Aircel Limited).
- iii) M/s South Asia Communication Private Limited (a 100%

subsidiary of M/s Global Communication Services Holdings Limited, Mauritius) – US\$ 368 million (towards subscription of non-convertible redeemable preference shares in M/s Deccan Digital Networks Private Limited).

This structure provides M/s Global Communication Services Holdings Limited, Mauritius an equity share of 73.999% in M/s Aircel Limited and an economic interest of 99.3% in M/s Aircel Limited.

Role of Sh. P. Chidambaram and other Accused in “Scheduled Offence”:

16. Sh. P. Chidambaram was the Finance Minister, Government from May 2004 to December 2008. FIPB approval was granted on 13.03.2006 by the then Finance Minister Sh. P. Chidambaram and a letter dated 20.03.2006 was sent to M/s Aircel Limited conveying the approval of the Govt. to M/s Global Communications Services Holdings Limited, Mauritius. It was alleged that Finance Minister was competent to accord approval on project proposals upto Rs.600 crore and beyond that it required the approval of Cabinet Committee on Economic Affairs (CCEA). In the instant case, the approval for FDI of 800 million USD was sought. Hence, CCEA was competent to grant approval. However, it was not obtained.

17. It was also alleged that M/s Aircel Cellular Limited and M/s Dishnet Wireless Limited (both wholly owned subsidiaries of M/s Aircel Limited) were also granted

confirmatory FIPB approval taking note of the aggregate FDI of 73.99% in Aircel Cellular Limited and in Dishnet Wireless Ltd. The approval was conveyed by letter dated 20.10.2006 of FIPB unit, Department of Economic Affairs, New Delhi.

Chargesheet against Dayanidhi Maran and Others in “Scheduled Offence” and Complaint Case under PMLA and disposal thereof:

18. A chargesheet titled as CBI Vs. Dayanidhi Maran and Others was filed by the CBI before this Court on 29.08.2014 in the 'Scheduled Offence'. Enforcement Directorate had also filed a complaint titled “ED Vs. Dayanidhi Maran and Others” before this Court on 08.01.2016. However, Sh. Dayanidhi Maran and some other accused were discharged by this Court vide orders dated 02.02.2017 in both the cases. Accused Sh. T. Ananda Krishnan and some other accused, who were based in Malaysia and other countries, could not be served in CBI case despite all efforts and their case was segregated from India based accused and has been adjourned *sine die* awaiting their appearance.

Allegations against Sh. P. Chidambaram and Sh. Karti P. Chidambaram in “Scheduled Offence”:

19. CBI had submitted to this court, at the time of filing of chargesheet against accused Dayanidhi Maran and others, that further investigation was going on relating to the grant of FIPB approval to the Maxis Communications for acquisition of

the three companies, stating that M/s Global Communication Services Holdings Limited, Mauritius had sought FIPB approval for 800 million USD, for which Cabinet Committee on Economic Affairs (CCEA) was competent to grant approval. However, the approval was granted by the then Finance Minister Sh. P. Chidambaram. Further investigation was being carried out by CBI into the circumstances of said FIPB approval granted by the then Finance Minister.

20. It is alleged by the CBI that applicant/accused Sh. P. Chidambaram was the Finance Minister, Government of India during the period from May 2004 to December 2008 and again From August 2012 to May 2014. As per the Office Memorandum, dated 18.02.2003, issued by the Department of Economic Affairs, Government of India, he was competent to consider and approve the proposals involving total investment of Rs.600/- crore or less. Hence, he was not competent to approve the proposal of M/s Global Communication Services Holding Limited, Mauritius as the applicant company had disclosed the total inflow of foreign exchange to the tune of 800 million US\$ (Rs.3560 approximately).

21. It is further alleged that applicant/accused Sh. P. Chidambaram illegally granted FIPB approval to M/s Global Communication Services Holdings Limited, Mauritius (a wholly owned subsidiary of M/s Maxis Communications Berhad, Malaysia) on 13.03.2006. It is also alleged that Sh. Karti P.

Chidambaram, son of Sh. P. Chidambaram, in lieu of the aforementioned illegal approval granted by Sh. P. Chidambaram, received a sum of Rs. 26,00,444/- as quid pro quo through a company called Advantage Strategic Consulting Private Limited (a company controlled by Sh. Karti P. Chidambaram) from Aircel Televentures Limited in the garb of providing management consultancy services. The said amount received was nothing but an illegal gratification in return of the approval so granted. It is also alleged that Sh. Karti P. Chidambaram had also received quid pro quo through a company called Chess Management Services Private Limited (a company promoted by Sh. Karti P. Chidambaram) from the associate companies of foreign investor, that is, M/s Maxis Communications Berhad, Malaysia. It is also alleged that accused company M/s Chess Management Services Private Limited received foreign remittances of US\$ 194831.99 (Rs.87,60,681/-) from associate companies of M/s Maxis Communications Berhad in the garb of providing electronic legal compliance management (eLCM) services during the period from 29.03.2007 to 27.01.2012. The said amount was transferred in close proximity in time with said irregular and illegal approval granted by Sh. P. Chidambaram. It is also alleged that this clearly establishes the direct nexus between the approval so granted and illegal gratification obtained in lieu of such approval. Thus, the allegation is that Sh. P.

Chidambaram illegally granted the FIPB approval to M/s Global Communication Services Holdings Limited and in lieu of that received a bribe of Rs.26,00,44/- and Rs.87,60,681/- respectively, totaling Rs. 1,13,61,125/- through the companies of his son Karti P. Chidambaram.

Allegations under PMLA against Sh. Karti P. Chidambaram and Sh. P. Chidambaram:

22. The allegations against the two accused are that they received proceeds of crime of Rs. 26,00,444/- and Rs.90,08,936/- respectively, generated from a criminal activity arising out of a 'Scheduled Offence' and, thereafter, laundered the same by claiming it to be untainted and thereby they committed an offence punishable under Section 4 of the Prevention of Money Laundering Act.

Submissions of the Parties:

23. I have heard the arguments at the bar on the anticipatory bail applications in detail and have carefully gone through the record.

24. It is submitted by Sh. Kapil Sibal, learned Senior Advocate for the applicants/accused that it is an old case relating to the years 2006-07. It is further submitted that the entire evidence is documentary in nature and is in possession of the prosecution and as such it cannot be tampered with. It is further submitted that investigation is already complete and a complaint has already been filed and presence of accused is no

longer required by the investigating agency. It is also submitted that applicant/accused Sh. P. Chidambaram was called by the Enforcement Directorate several times and he answered all the questions put to him. It is submitted that Sh. P. Chidambaram fully cooperated in the investigation.

For applicant/accused Sh. Karti P. Chidambaram, it is submitted that he has been called by Enforcement Directorate several times during the years 2017 and 2018 and he also answered all the questions put to him by the Enforcement Directorate. It is submitted that both applicants/accused are on interim bail for more than a year. It is further submitted that both of them have not been called by the Enforcement Directorate since long and this shows that they are no longer required for the purposes of investigation. It is also submitted that Enforcement Directorate has repeatedly sought adjournments in this matter and this shows that they do not have any case against the applicants/accused. It is further submitted that applicants/accused have roots in the society and there is no possibility of their fleeing from justice. It is also submitted that both applicants/accused are members of Parliament and enjoy high standing in the society and as such there is no possibility of their interfering with the course of justice or fleeing from the country. It is submitted that investigation is already complete and Enforcement Directorate had filed its complaint on 13.06.2018 and a supplementary

complaint on 25.10.2018. It is submitted that in view of the fact that entire evidence is documentary in nature and is in possession of the prosecution, investigation is already complete and applicants/accused have fully cooperated with the investigating agency and joined the investigation as and when called and are also availing the benefit of interim protection for more than a year, they may be granted the benefit of anticipatory bail. It is submitted that applicants/accused are ready and willing to abide by any condition that may be imposed upon them by this Court. My attention has been invited to the following case law:

- i. Court on its Own Motion Vs. CBI, 109 (2003) DLT 494,
- ii. Court on its Own Motion Vs. State, 243 (2017) DLT 373 (DB),
- iii. Court on its Own Motion Vs. State, Crl. Ref. No. 1/2018,
- iv. Nikesh Tarachand Shah Vs. Union of India and another (2017) SCC Online SC 1355,
- v. Chhagan Chandrakant Bhujbal Vs. Assistant Director, Directorate of Enforcement and others, Manu/MH/2444/2018,
- vi. Judgment dated 06.06.2018 of the Hon'ble High Court of Bombay in 'Sameer M. Bhujbal Vs. ED, Bail Application No. 286/2018,
- vii. Virendra Jain Vs. Enforcement Directorate, (2018) SCC OnLine Delhi 6762,
- viii. Judgment dated 16.01.2018 of the Hon'ble High Court of Delhi in Yogesh Mittal Vs. Enforcement Directorate, Bail Application No.1165/2017,
- ix. Santosh Vs. State of Maharashtra, (2017) 9 SCC 714,
- x. Court on its Own Motion Vs. State, (2010) SCC OnLine Delhi 4309,
- xi. Youth Bar Association of India Vs. Union of India and

- another, (2016) 9 SCC 473,
- xii. Madhu Limaye and others, 1969 (1) SCC 292,
- xiii. Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC 565,
- xiv. Siddharaman Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) 1 SCC 694, and
Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another, (2016) 1 SCC 152.

25. On the other hand, it is submitted by Sh. K.M. Natraj, learned ASG that allegations against the applicants/accused are very serious in nature. It is submitted that it is an economic offence committed with deep planning and affects the economy of the country. It is further submitted that applicants/accused are indulging in tampering with the evidence and if released on bail, they would further tamper with the evidence and may also influence the witnesses. It is further submitted that considering the nature of allegations against the applicants/accused, there is every possibility of the applicants/accused fleeing from justice. It is also submitted that investigation is not yet complete and is still going on, even in foreign countries and letters of rogatory have also been sent to different countries and the applicants/accused, being influential persons, may obstruct further investigation. It is further submitted that further investigation is a statutory right of an investigating agency and it should have full liberty for that including custodial interrogation of accused. It is further submitted that applicants/accused floated shell companies and

by using shell companies they obtained bribe by using circuitous and surreptitious route and indulged in money laundering. It is repeatedly submitted that applicants/accused did not cooperate with the investigation and did not join it as and when they were called by the investigating officers. It is submitted that applicants/accused are accused of committing a serious economic offence and in an economic offence, bail should not ordinarily be granted and such offenders are required to be dealt with an iron hand. It is repeatedly submitted that in the instant case custodial interrogation of the applicants/accused is a must as the efficacy of custodial interrogation is much greater than investigation in a case in which accused is protected by an order of the Court. It is repeatedly submitted that conduct of the applicants/accused has been thoroughly non-cooperative and they do not deserve any relief from this Court. It is repeatedly submitted that considering the nature of the allegations against the applicants/accused, their non-cooperative attitude, their possibility of tampering with the evidence and fleeing from justice, the anticipatory bail applications may be dismissed. My attention has been invited to the following case law:

- i. Pawan Karma Vs. State, 2019 SCC OnLine Del 8810,
- ii. Director of Enforcement Vs. P.V. Prabhakar Rao, 1998 2 SCC 105,
- iii. State Rep. by CBI Vs. Anil Sharma, 1997 (7) SCC 187,
- iv. Y.S. Jagan Mohan Reddy Vs. CBI, 2013 (7) SCC 439,
- v. State of Gujarat Vs. Mohanlal Porwal, 1987 2 SCC 364,

- vi. Rohit Tandon Vs. ED, 2018 11 SCC 46,
- vii. Dinesh Dalmia Vs. CBI, 2007 8 SCC 770,
- viii. R. Venkatkrishnan Vs. CBI, 2009 11 SCC 770,
- ix. State Rep. by CBI Vs. Anil Sharma, 1997 (7) SCC 187,
- x. K.K. Jerath Vs. U.T. Chandigarh, 1998 (4) SCC 80,
- xi. Sachin Narayan Sharma Vs. IT (WPC 5299/2019,
Karnataka High Court),
- xii. Union of India Vs. Padam Narain, 2008 13 SCC 305, and
- xiii. Union of India Vs. Hassan Ali Khan, 2011 10 SCC 235.

26. In rebuttal Sh. Kapil Sibal and Dr. Abhishek Manu Singhvi, learned Senior Advocates for the applicants/accused have again submitted that applicants/accused have fully cooperated in the investigation as they joined the investigation as and when they were called by Enforcement Directorate. It is further submitted that both the applicants/accused were called by the Enforcement Directorate several times for interrogation and are no longer required for any purpose. It is repeatedly submitted that entire evidence is documentary and the same is in possession of the prosecution and as such it is not susceptible to any tampering. It is further submitted that applicants/accused have roots in the society and there is no possibility of their fleeing from justice. It is submitted that both applicants/accused are members of Parliament. It is prayed that considering these facts, both applicants/accused may be granted the benefit of anticipatory bail.

27. I have carefully considered the submissions made at the bar in the light of material on record.

Law relating to Anticipatory bail:

28. Section 438 CrPC deals with the grant of bail to a person apprehending arrest in a non-bailable case. Clause 1 of this Section reads as under:

“Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

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29. Hon'ble Supreme Court, while dealing with the parameters of grant of anticipatory bail, in case titled Siddharaman Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) 1 SCC 694, observed in paragraphs 111 to 114 as under:

“111. No inflexible guidelines or straitjacket

formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia case* [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

to different accused in the same case violates the basic norm of our constitution that the state instrumentalities should always operate in a just, fair and reasonable manner.

In the end, considering the distance of time between commission of alleged crime and the filing of the instant applications, unexplained delay in investigation, there being no possibility of the applicants/accused tampering with the evidence or threatening any witness or fleeing from justice and there being no possibility also of applicants/accused committing a similar crime again and the law quoted above, I am satisfied that it is a fit case for grant of benefit of anticipatory bail. Accordingly, it is ordered that in the event of their arrest, both the applicants/accused namely Sh. Karti P. Chidambaram and Sh. P. Chidambaram shall be released on bail on their furnishing personal bond in the sum of Rs.1,00,000/- each with one surety in the like amount to the satisfaction of investigating officer/arresting officer/Duty Magistrate subject to the conditions that:

- a) Since, further investigation is still pending, applicants/accused shall join the investigation as and when called by the IO and shall cooperate with the same;
- b) They shall not contact, threaten or influence any witness or tamper with the evidence in any manner, whatsoever;
- c) They shall not leave the country without prior permission of this Court; and that

directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.....”

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(All underlining by me for supplying emphasis)

30. All these principles were also reiterated by the Hon'ble Supreme Court in an authority reported as Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and Another, (2018) 6 SCC 454.

Conclusion and Order on the Bail Applications:

31. It may be noted that Enforcement Directorate has filed its complaint in the instant case on 13.06.2018 and a

supplementary complaint on 25.10.2018. The matter is listed for consideration of cognizance but the Enforcement Directorate, instead of arguing on the point of cognizance, is seeking date after date since the filing of the complaint, on the pretext that further investigation is still going on. This conduct of the Enforcement Directorate speaks for itself and needs no elaboration. The investigation is even otherwise highly belated as almost entire material was in possession of the investigating agency since the very beginning.

32. In the instant case, the incident relates to the years 2006-07. The FIPB approval was granted by Sh. P. Chidambaram, the then Finance Minister, on 13.03.2006 and all the files relating to that have already been seized by the CBI and have also been filed in the Court. The alleged bribe of Rs.26,00,44/- and Rs.87,60,681/-, were also received by Sh. P. Chidambaram through banking channels in the companies managed by Sh. Karti P. Chidambaram. Thus, entire evidence relating to the commission of crime by the two accused is documentary in nature and is not liable to be tampered with by the applicants/accused. Both the applicants/accused are members of Parliament. Sh. P. Chidambaram is a member of Rajya Sabha while Sh. Karti P. Chidambaram is a member of Lok Sabha. Sh. P. Chidambaram is also a former Finance Minister and Home Minister of the country. Considering these factors, there is no apparent possibility of the

applicants/accused fleeing from justice. Prosecution has also not cited any appreciable reason for such apprehension. Also there is no possibility of the applicants/accused committing any similar crime again as they are not holding any official position in the government at present. The witnesses are also from Department of Telecommunications, Ministry of Finance and Banks and as such there is no foreseeable possibility of them being threatened or influenced by any of the accused. Investigation is already complete and a complaint has already been filed by the Enforcement Directorate in the Court on 13.06.2018 and a supplementary complaint on 25.10.2018. Even if further investigation is going on, there is no possibility of the applicants/accused tampering with the evidence, not yet seized by the investigating agency, and if there is any such possibility, the same can be taken care of by imposing appropriate conditions. Moreover, the allegations against the applicants/accused are also not of a grave magnitude as the amount of bribe/laundered money is only Rs. 1,13,61,125/-, which is paltry amount in comparison to the allegations against Sh. Dayanidhi Maran and others, where the bribe/laundered amount was Rs. 749 crore, but he was not arrested. An investigating agency should not discriminate between two similarly situated accused, as this is against rule of law. (See R. Vasudevan Vs. CBI, 2010 SCC OnLine Del 130). It may be noted that unwarranted discrimination in the treatment given

to different accused in the same case violates the basic norm of our constitution that the state instrumentalities should always operate in a just, fair and reasonable manner.

In the end, considering the distance of time between commission of alleged crime and the filing of the instant applications, unexplained delay in investigation, there being no possibility of the applicants/accused tampering with the evidence or threatening any witness or fleeing from justice and there being no possibility also of applicants/accused committing a similar crime again and the law quoted above, I am satisfied that it is a fit case for grant of benefit of anticipatory bail. Accordingly, it is ordered that in the event of their arrest, both the applicants/accused namely Sh. Karti P. Chidambaram and Sh. P. Chidambaram shall be released on bail on their furnishing personal bond in the sum of Rs.1,00,000/- each with one surety in the like amount to the satisfaction of investigating officer/arresting officer/Duty Magistrate subject to the conditions that:

- a) Since, further investigation is still pending, applicants/accused shall join the investigation as and when called by the IO and shall cooperate with the same;
- b) They shall not contact, threaten or influence any witness or tamper with the evidence in any manner, whatsoever;
- c) They shall not leave the country without prior permission of this Court; and that

d) They shall not commit a similar crime again.

33. Both applications stand disposed of. All other miscellaneous applications also stand disposed of.

34. A copy of this order be given to both parties free of cost immediately.

**Announced in open Court
today on 05.09.2019**

(O.P. Saini)

District & Sessions Judge-cum-Spl. Judge
(CBI)/Enforcement Directorate
Rouse Avenue District Court,
New Delhi