

Sh. ARVIND KUMAR  
Special Judge (PC Act), CBI-10  
Room No. 503, Rouse Avenue Court Complex,  
Deen Dayal Upadhyay Marg, New Delhi

IN THE COURT OF SH. ARVIND KUMAR, SPECIAL JUDGE,  
( PC ACT), CBI-10: ROUSE AVENUE COURT: NEW DELHI

CC No. 1/2015

ECIR No. : DLZO/15/2014/AD(VM)

U/S : 3 & 4 of PMLA Act

Enforcement Directorate Vs. Gautam Khaitan and others

**ORDER**

07.09.2019

1. Vide this order, I will dispose of an application filed by Christian Michel James for bail.

2. Briefly stating the prosecution case is that a case RC No. 217-2013-A-0003 was registered by CBI/ACU-II/New Delhi on 12.03.2013, U/S 120B r/w 420 IPC and Section 7, 8, 9, 12 & 13(2) r/w 13(1) (d) of P.C. Act, 1988 against ACM (Retd.) Shashinder Pal Tyagi and others. The charge-sheet was filed before this Court on 01.09.2017 against applicant /accused Christian Michel James and 11 others while further investigation has been kept open U/S 173 (8) CrPC and this Court has taken cognizance of the offences on 11.10.2017. Enforcement Directorate has registered an ECIR No. DLZO/15/2014/AD(VM) and initiated their investigation, which is still going on. The Enforcement Directorate has filed complaint case on 20.11.2014 against accused persons, and subsequently filed 5 supplementary complaints. Christian Michel James is arrayed as accused in 1<sup>st</sup> supplementary complaint for



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the offences under Section 3 & 4 of the Prevention of Money Laundering Act.

3. As per Enforcement Directorate a contract for supply of 12 VVIP/non VVIP helicopters was awarded to M/s Agusta Westland International Ltd., UK for an amount of Euro 556.262 million (Rs. 3726.96 crores) and an agreement to this effect was executed on 08.02.2010 between Ministry of Defence, Government of India and M/s Agusta Westland International Ltd. It is alleged that accused/applicant S.P.Tyagi, during his tenure as Chief of Air Staff, during the period 2005 to 2007, accorded approval and with his approval, Air force conceded to service ceiling for VVIP Helicopters to 4500 meters from its earlier stand of 6000 meters as mandatory operational requirements in order to allow M/s AgustaWestland International Ltd. into fray, though M/s AgustaWestland International Ltd., was disqualified in 2002 and since then it was making attempt to enter the competition.

4. Accused Christian Michel James was a consultant of M/s AgustaWestland and acted as a middleman who was negotiating on behalf of M/s AgustaWestland and during such negotiation he got crucial confidential information about the progress of procurement process of VVIP Helicopters of IAF and MOD through his sources and passed on the information to M/s AgustaWestland. It is alleged that undue favour was given to M/s AgustaWestland for awarding contract of procurement of VVIP Helicopters in his favour by accepting illegal gratification from it through middleman/relatives including Sanjeev Tyagi @ Julie Tyagi, Gautam Khaitan & Others by exercising influence through corrupt and illegal means and also using personal influence over the concerned



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public servant.

5. It is alleged that accused Christian Michel James had been paid huge bribe amount by M/s AgustaWestland which was paid to the officers of Indian Air Force, MOD, Bureaucrats, politicians and family in India for showing favour in VVIP Helicopter deal. Accused Christian Michel James entered into as many as 5 contracts (2 of them revised time and again) through his Companies i.e, M/s Gobal Trade & Commerce Ld., London and M/s Global Services FZE, Dubai, UAE with M/s Finmeccanica, M/s AgustaWestland, M/s Westland Helicopters to legitimise the illicit commission on the procurement of VVIP Helicopters by the Ministry of Defence. An amount of Euro 42.27 million was paid by M/s Westland Group Companies to the firms of accused Christian Michel James as kickbacks/bribes without undertaking any work against receipt of such amount. The accused has incorporated several structures across India, Dubai and Singapore through which kickbacks were routed. The accused Christian Michel James has been deeply involved in the said conspiracy and has paid bribe amount to different officials in the guise of contracts of availing services and consultancy from different Companies during the relevant period.

6. I have heard Ld. Counsel for the parties.

### **Contentions of Counsel for accused**

7. Ld. Counsel for accused submitted that accused was in custody during extradition proceedings in Dubai from 11.06.2018 to 30.07.2018 and from 20.09.2018 and was extradited on 04.12.2018 to



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India and is in custody till date. Ld. Counsel for accused submits that the accused has been interrogated by CBI after his arrest on 05.12.2018 and thereafter was interrogated by Enforcement Directorate from 22.12.2018 and has undergone almost 600 hours of custodial interrogation by both the agencies. It is submitted that total custody of accused is about 375 days including the period which he spent in Dubai Jail. It is submitted that investigation is still going on despite lapse of about 5 years.

8. It is submitted that Enforcement Directorate has filed fourth supplementary complaint on 04.04.2019 without any incriminating material except for certain tall claims. No new incriminating material was produced before this Court except statements u/s 50 of the PMLA and few bank statements, unconnected with the applicants. It is submitted that the entire allegations in the prosecution complaint dated 04.04.2019 is that the accused/applicant has received money from AgustaWestland without undertaking any work from the company. It is submitted that the work done by the accused for AgustaWestland has been categorically explained to the Enforcement Directorate. It is submitted that investigation qua accused/applicant is over and no useful purpose will be served by keeping the applicant in further incarceration. It is submitted that in complaint case there are total 40 documents and 146 witnesses are cited in the list of witness and 38 accused have been impleaded and the investigation is still going on and there is no justifiable basis for keeping the applicant incarcerated on the basis of the pendency of investigation against any other accused person.

9. It is submitted that evidence in the present case is primarily and predominantly documentary in nature and is in possession of this



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Court and further nothing is to be recovered from the accused/applicant.

10. It is submitted that accused is also entitled to be granted concession of bail on the ground of parity as most of the accused in the present matter have not been arrested or they had been granted bail. It is submitted that ever since the registration of FIR and ECIR the applicant expressed his willingness to cooperate in the investigation and that the applicant will be available to join investigation as and when required and has never tried to evade process of law. It is submitted that there is no likelihood accused tampering with evidence or influencing the witnesses.

11. Ld. Counsel for accused submitted that the Court of Busto Arsizio, Italy No. 1494/2014 of 10/9/2014 of 30<sup>th</sup> December, 2014 had acquitted the accused person who were facing proceedings in that case. It is submitted that in the said Italian proceedings, the request made on 14<sup>th</sup> July, 2014 was that the Prosecutor requested an application of police custody for Mr. Christian Michel James. It is submitted that Judge La Bianca, on 22.10.2014 had simultaneously withdrawn it as well as the European arrest warrant.

12. Ld. Counsel for applicant/accused submitted that in the said proceedings before the Italian Court No. R.G.TRIB.-N.357/13, R.G.N.R. 2246/13, at the hearing of 19<sup>th</sup> June, 2013, the Indian Ministry of Defence became a litigant party to it through the Declaration of the Constitution of the Civil Party, which gave to the Indian authorities the right to participate fully at the said proceedings.



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13. Ld. Counsel for accused submitted that at the second degree, before the Court of Appeal of Milan - Italy No.871/2017, at the hearing of 06.06.2017, the Ambassador of the Republic of India Mr. Anil Wadwa, reaffirmed to be party to the Italian proceedings requesting to convict the defendants and asking for a compensation of damages pecuniary and non-pecuniary resulting from the facts contested. It is submitted that Indian Ministry of Defence submitted note requesting Italian Court to convict the defendants and claimed damages Euro 8,35,0000. It is submitted that the Indian authorities have accepted the Italian jurisdiction and had renounced its own jurisdiction.

14. Ld. Counsel for accused submitted that the UAE extradited the accused to India to face a proceeding, with the same facts and the same accusations that the Italian Court had arrived at. It is submitted that even though the acquittal was relating to other accused, the Italian judgment was in relation to same transaction and it had analysed the role of the present accused also. It is submitted that acquittal order passed by the lower courts in Italy was accepted by the Apex Court and was confirmed by the order dated 22.05.2019. It is submitted that the accused/applicant is being tried on the same facts and evidences in India, as was done in Italian Courts.

15. Ld. Counsel for accused/applicant has submitted that the offence u/s 3 and 4 prescribes punishment not exceeding 7 years and thus, the judgment "Arnesh Kumar Vs. State of Bihar" reported in (2014) 8 SCC 273 squarely applies to the present case. It is also submitted that the twin conditions mentioned in Section 45 PMLA have no applicability any more in view of judgment passed by Hon'ble Supreme Court in



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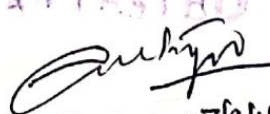
"Nikesh Tarachand Shah Vs. Union of India and others" reported in (2018) 11 SCC 1. Ld. Counsel for accused has also referred the judgment "Data Ram Singh vs. State of Uttar Pradesh" (2018) 3 SCC 22.

16. It is submitted that applicant suffers from high blood pressure and had suffered gastrointestinal infection while in custody. The applicant has no criminal antecedents and has deep roots in the society.

### Contentions of Counsel for Enforcement Directorate

17. On the other hand Ld. Counsel for Enforcement Directorate submitted that role of the accused was that of a middlemen who negotiated on behalf of M/s AgustaWestland and during such negotiation he was getting crucial confidential information about the progress of procurement process of VVIP Helicopters from IAF and MOD through his sources and passing on these informations to M/s Agusta Westland. It is also submitted that accused has committed offence of paying kickbacks/bribes to different persons including IAF personnel, bureaucrats and politicians to influence the procurement process and to swing the deal in favour of M/s Agusta Westland. The accused Christian Michel James had entered into as many as five contracts through two of his firms namely M/s Global Trade & Commerce Ltd., London and M/s Global Services FZE, Dubai, UAE with M/s Finmeccanica, M/s AgustaWestland, M/s Westland Helicopters, UK etc. to legitimate the illicit commission on the procurement of VVIP Helicopters by Ministry of Defence, India. An amount of Euro 42.27 million was paid by the Westland Group Companies to the firms of accused Christian Michel James as kickbacks/bribes without undertaking any work against the

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receipt of said amount.

18. Ld. Counsel for Enforcement Directorate submitted that as per an agreement dated 08.05.2011 recovered from the house of Haschke's mother, accused Christian Michel James had agreed to reduce the amount from Euro 42 million to Euro 30 million for the "Team" to honour the commission to the "Family" in full.

19. Ld. Counsel for Enforcement Directorate submitted that the investigation revealed that a payment sheet was recovered from the house of Haschke's mother at Lugano by Swiss Police. The said payment sheet was written in hand by Guido Ralph Haschke on the dictation of accused Christian Michel James in the beginning of 2008. As per the details given in said said payment sheet, an amount of Euro 30 million was paid/proposed to be paid to the officers of IAF, MoD, Bureaucrats, Politicians and Family in India for showing favour in the VVIP helicopter deal. Guido Ralph Haschke, during his deposition in court of Busto Arsizio, Italy stated that the said payment sheet was written by him on the dictation of accused Christian Michel James.

20. It is submitted that M/s Agusta Westland Holding Ltd had executed an agreement dated 01.03.2010 with M/s Global Services FZE, Dubai, a company of Mr. Christian Michel James inter alia for rendering assistance in commissioning of contract dated 08.02.2010 executed between the Govt. of India and M/s Agusta Westland International Ltd (AWIL) for supply of 12 VVIP Helicopters. For the same, an amount of Euro 275,000 per month for 22 months was agreed to be paid and subsequently, an amount of Euro 6.05 million was paid from April, 2010



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to December, 2011 to M/s Global Services FZE, Dubai against the said contract. It is germane to mention here that the applicant /accused was appointed as Consultant/Agent by M/s AWIL, UK, in violation of the provisions of Pre-contract Integrity Pact dated 03.10.2008 whereas M/s AWIL submitted a false declaration to the Ministry of Defence, Government of India that it is complying fully.

21. It is submitted that an Aircraft Purchase Order was placed by M/s Westland Helicopters Ltd ( WHL ) on M/s Global Trade & Commerce Ltd, London, a company of Mr. Christian Michel James, on 26.05.2010 for re-purchase of 14 WG-30 helicopters from M/s. Pawan Hans Ltd for an amount of Euro 18.2 million. However, the investigation revealed in India that Mr. Christian James Michel of M/s Global Services FZE, Dubai, M/s. Global Trade & Commerce, U. K. or M/s Westland Helicopters Ltd., UK never made any communication with Pawan Hans Ltd. or met any official of M/s Pawan Hans Ltd for the re-purchase/buy back official of M/s Pawan Hans Ltd. for the re-purchase/buy back of WG-30 Westland Helicopters. In fact, after 2000, M/s Pawan Hans Ltd. sold no WG-30 helicopter to any one.

22. Ld. Counsel for Enforcement Directorate submitted that accused Christian Michel James was a frequent visitor to India but ever since his role in the deal became public, he left India on 12.02.2013 and never returned thereafter. Co-accused Giuseppe Orsi was arrested by Italian Authorities on 12.02.2013. Accused Christian Michel James arrived New Delhi on 12.02.2013 and on coming to know about arrest of Giuseppe Orsi, left New Delhi on the same day i.e. on 12.02.2013. Preliminary Enquiry bearing No. PE 217-2013A-0002 was registered by

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CBI on 25.02.2013.

23. Ld. Counsel for Enforcement Directorate submitted that an open-ended non-bailable arrest warrant was issued against accused Christian Michel James on 24.09.2015 by this Court and on the basis of the said non-bailable arrest warrant, the National Central Bureau of India, Interpol got published a Red Notice bearing no. 201566103 1961102 Control No. A-9846/11-2015 against accused Christian Michel James on 25.11.2015 by Interpol Headquarters, Lyon, France and accused was arrested in Dubai & after much effort, extradited to India.

24. It is submitted that the reliance placed by the applicant on the judgment passed by Italian Court is misplaced as E.D. was not the party to the proceedings in Italy, Ministry of Defence was a civil party of such proceedings and there is nothing in the Declaration of the Constitution of the civil party dated 17.06.2013 that Indian authorities renounced their jurisdiction. It is submitted that present accused was not the party in the said proceedings and the accused herein has been charged with different offences under PMLA while the trial before the Italian Court was in relation to offences of international bribery and tax fraud pertaining to the years 2009-2010 and the proceedings in Italian Court got dismissed due to lack of evidence. It is submitted that collected adequate evidence through LRs as well as domestic investigation which clearly establish the offence committed by the accused.

25. It is submitted that the claimed parity with other accused persons is misplaced since the other accused namely Gautam Khaitan and Shivani Saxena are Indian citizens were granted bail at early stage



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of investigation while accused is a British National having no roots in India and his past conduct shows that he would evade the process of law, if release on bail. It is submitted that so far as bail granted to co-accused Sushen Mohan Gupta is concerned, the order granting bail has been challenged before Hon'ble High Court. It is also submitted that Enforcement Directorate has also filed an application for cancellation of bail of co accused Rajiv Saxena.

26. Ld. Counsel for Enforcement Directorate further submits that the twin conditions u/s 45 PMLA cannot be divested in the light of the amendments of 2018 and 2019 to the PMLA. It is further submitted that the investigation in the present case is at the very crucial stage.

27. It is submitted that there are sufficient incriminating evidence available against the accused to prove his complicity in the commission of offences. It is further submitted that accused did not cooperate during investigation. Ld counsel for submitted that If accused is released on bail, he may influence the potential witnesses to be examined and may destroy relevant documents yet to be collected. It is submitted that accused enjoys a close proximity and influence with highly placed persons. It is submitted that his release on bail would adversely effect the investigation to unearth the deep rooted multi layered conspiracy in the instant case. Ld. Counsel for Enforcement Directorate also submits that there are likelihood of accused absconding from India. It is submitted that in light of the past conduct of the applicant, there is a grave apprehension of his fleeing from justice and not being available for the trial/investigation. The applicant is a British National, having no roots in India. He deliberately left India and never joined investigation, be it in



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India or Italy. Pursuant to NBWs issued by this Court, he was extradited after rigorous legal process through diplomatic channels.

28. I have perused the material on record.

29. So far as the contention of Counsel for accused regarding judgment passed by Italian court is concerned, it is clear that the accused was not the party in the proceedings before Italy Court. The judgment of Italy Court is in respect of other accused persons and on some different issues i.e. international bribery and tax fraud committed in 2009-2010 while in case in hand accused is facing criminal proceedings for commission of offences under The Prevention of Money Laundering Act, 2002 hence the decision of Italy Court does not have any bearing on the proceedings of the present case. The alleged offences have been committed within the jurisdiction of this Court.

30. As per Enforcement Directorate, the investigation is at crucial stage on some aspects and accused, being highly linked may influence the witness to be examined and may tamper with evidence. The accused is a British National, having no roots in India. It is noted that NBWs were issued against accused on 24.09.2015 and the accused was arrested in Dubai and thereafter was extradited to India on 04.12.2018. It is not that the accused had himself joined investigation in India or appeared before this Court, of his own. The accused also did not join investigation in Italy. The accused cannot claim parity with other accused persons in view of his aforesaid conduct. So far as accused Rajiv Saxena, who was extradited to India, is concerned, is granted bail on medical grounds.



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RAJIV SAXENA



31. Here it will be relevant to reproduce the observations made by Hon'ble Supreme Court in the matter, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439. Hon'ble Supreme Court observed:-

*"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The 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.*

*35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*



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32. Thus considering the overall facts and circumstances, serious nature of accusations, gravity of offence, crucial stage of investigation and aforesaid conduct of the accused, I do not consider it to be a fit case for grant of bail. Application for bail filed by accused is, thus, dismissed.

33. Copy of the order be given dasti to the concerned parties and a copy be also sent to the Jail Authority.



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(Arvind Kumar)  
Spl. Judge (P.C.Act) CBI-10  
Rouse Avenue Courts  
New Delhi/07.09.2019

Special Judge (PC Act) CBI-10  
Room No. 503, Rouse Avenue Court Complex,  
Deen Dayal Upadhyay Marg, New Delhi



Sh. ARVIND KUMAR  
Special Judge (PC Act), CBI-10  
Room No. 503, Rouse Avenue Court Complex,  
Deen Dayal Upadhyay Marg, New Delhi

IN THE COURT OF SH. ARVIND KUMAR, SPECIAL JUDGE,  
( PC ACT), CBI-10: ROUSE AVENUE COURT: NEW DELHI

RC No. : 217-2013-A-0003  
Branch : CBI/AC-II/New Delhi  
U/S : 120B, r/w 420 IPC and Section  
7, 8, 9, 12 & 13(2) r/w 13(1) (d) of  
P.C. Act, 1988

CBI Vs. S.P. Tyagi & Ors.

**ORDER**  
07.09.2019

1. Vide this order, I will dispose of an application filed by **Christian Michel James** for bail.
2. Briefly stating the prosecution case is that a case RC No. 217-2013-A-0003 was registered by CBI/ACU-II/New Delhi on 12.03.2013, U/S 120B r/w 420 IPC and Section 7, 8, 9, 12 & 13(2) r/w 13(1) (d) of P.C. Act, 1988 against ACM (Retd.) Shashinder Pal Tyagi and others.
3. The charge-sheet was filed before this Court on 01.09.2017 against applicant /accused Christian Michel James and 11 others while further investigation has been kept open U/S 173 (8) Cr.P.C and this Court has taken cognizance of the offences on 11.10.2017.
4. As per CBI a contract for supply of 12 VVIP/non VVIP helicopters was awarded to M/s Agusta Westland International Ltd., UK for an amount of Euro 556.262 million (Rs. 3726.96 crores) and an agreement to this effect was executed on 08.02.2010 between Ministry of Defence, Government of India and M/s Agusta Westland International Ltd.



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It is submitted that present accused was not the party in the said proceedings and the accused herein has been charged with different offences under PC Act and IPC while the trial before the Italian Court was in relation to offences of international bribery and tax fraud pertaining to the years 2009-2010 and the proceedings in Italian Court got dismissed due to lack of evidence. It is submitted that the CBI collected adequate evidence through LRs as well as domestic investigation which clearly establish the offence committed by the accused.

28. It is submitted that the claimed parity with other accused persons is misplaced since the other accused namely S P Tyagi, Gautam Khaitan and Sanjeev Tyagi are Indian citizens were granted bail at early stage of investigation while accused is a British National having no roots in India and his past conduct shows that he would evade the process of law, if release on bail.

29. It is submitted that there are sufficient incriminating evidence available against the accused to prove his complicity in the commission of offences. It is further submitted that accused did not cooperate during investigation. It is submitted that if he is released on bail, he may influence the potential witnesses to be examined and may destroy relevant documents yet to be collected. It is submitted that accused enjoys a close proximity and influence with highly placed persons. It is submitted that his release on bail would adversely effect the investigation to unearth the deep rooted multi layered conspiracy in the instant case. Ld. Counsel for CBI also submits that there are likelihood of accused absconding from India considering his past conduct.

30. I have perused the material on record.

31.

So far as the contention of Counsel for accused regarding



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judgment passed by Italian court is concerned, it is clear that the accused was not the party in the proceedings before Italy Court. The judgment of Italy Court is in respect of other accused persons and on some different issues i.e. international bribery and tax fraud committed in 2009-2010 while in case in hand accused is facing criminal proceedings for commission of offences under The Prevention of Corruption Act, 1988 and IPC hence the decision of Italy Court does not have any bearing on the proceedings of the present case. The alleged offences have been committed within the jurisdiction of this Court.

32. As per CBI, the investigation is at crucial stage on some aspects and accused, being highly linked may influence the witness to be examined and may tamper with evidence. The accused is a British National, having no roots in India. It is noted that NBWs were issued against accused on 24.09.2015 and the accused was arrested in Dubai and thereafter was extradited to India on 04.12.2018. It is not that the accused had himself joined investigation in India or appeared before this Court, of his own. The accused also did not join investigation in Italy. The accused cannot claim parity with other accused persons in view of his aforesaid conduct.

33. Here it will be relevant to reproduce the observations made by Hon'ble Supreme Court in the matter, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439. Hon'ble Supreme Court observed:-

*"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The 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*



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as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

34. Thus considering the overall facts and circumstances, serious nature of accusations, gravity of offence, crucial stage of investigation and aforesaid conduct of the accused, I do not consider it to be a fit case for grant of bail. Application for bail filed by accused is, thus, dismissed.

35. Copy of the order be given dasti to the concerned parties.

36. A copy of this order be also sent to the Jail Authority.

Announced in open court today  
i.e. 07.09.2019

Sd/-  
(Arvind Kumar)  
Spl. Judge (P.C.Act) CBI-10  
Rouse Avenue Courts  
New Delhi/07.09.2019  
Special Judge (PC Act) CBI-10  
Room No. 503, Rouse Avenue Court Complex,  
Deen Dayal Upadhyay Marg, New Delhi



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