

***IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on :19.02.2020
Date of decision :20.02.2020

+ CRL.M.C. 870/2020 & CRL.M.A.No. 3517/2020

SANJEEV KUMAR CHAWLA Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with
Mr.Vineet Malhotra, Mr. Vishal
Gohri, Mr. Hemant Shah, Mr.
Shubhendu Kaushik, Mr. Vidushi
Nishank, Mr. Sumer Singh, Mr. Syed
Arham Masud, Mr. Ansh Kukreja, Mr.
Prashant Goswami, Mr.Shadman and
Mr.Varun Bhati, Advocates.

Versus

THE STATE Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Harish
Vaidyanathan Shankar (CGSC), Mr.
Ashray Behura, Mr. Sanjay Lao
(ASC) and Mr. Kewal Singh Ahuja,
APP for the State with Dr.G.Ram
Gopal Naik, DCP/Crime, Inspector
Keshav Mathur, Inspector Gagan
Bhaskar, Crime Branch.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Sanjeev Kumar Chawla, a citizen of the United Kingdom herein is arrayed as accused No.4 in the final report under Section 173 of the Cr.P.C., 1973 filed by Inspector, Crime Branch

dated 22.07.2013 in FIR No.111/2000, PS Chanakya Puri in the Court of the learned CMM, PHC, New Delhi for the alleged commission of the offences punishable under Sections 420/120-B of the Indian Penal Code, 1860 in relation to an alleged conspiracy to fix matches during the India-South Africa Cricket series played through February-March, 2000 in alleged connivance with Mr.Hansie Cronje, Captain of the South Africa Cricket Team (who has since expired on 01.06.2002 in an air crash and against whom the proceedings have abated), with allegations against the petitioner herein to the effect that qua the five one day matches and three test matches played in the said India-South Africa series with ODI Matches having been played at Cochin, Jamshedpur, Faridabad, Vadodara and Nagpur with three test matches played at Mumbai and Bangalore,- the petitioner herein was allegedly the main conduit in the said match fixings and whilst allegedly committing the said crime, stayed in the same hotels where the teams were staying and allegedly gave money, mobile phones and transferred money into the accounts of the accused Mr.Hansie Cronje (since deceased) and was in regular contact with the accused persons namely Rajesh Kalra @ Rajesh, Krishan Kumar, Sunil Dara @ Bittoo and Manmohan Khattar and Mr.Hansie Cronje (since deceased).

2. As per the averments made in the police report under Section 173 of the Cr.P.C., 1973, submitted by the Crime Branch, whereas the three accused persons i.e. Rajesh Kalra @ Rajesh, Krishan Kumar and Sunil Dara @ Bittoo were arrested, the present petitioner Sanjeev Chawla @ Sanjay and Manmohan Khattar allegedly absconded with

the present petitioner having left for the United Kingdom and the co-accused Manmohan Khattar having left for Canada/USA.

3. Vide order dated 23.07.2013, cognizance of the offence punishable under Sections 420/120B of the Indian Penal Code, 1860 was taken by the learned CMM, PHC, New Delhi in relation to FIR No.111/2000,PS Chanakya Puri which had been registered in relation to the aforementioned alleged conspiracy of match fixing of the matches of the India-South Africa Series in 2000 and summons to accused Nos.1, 2 & 3 i.e. Rajesh Kalra @ Rajesh, Krishan Kumar, Sunil Dara @ Bittoo were directed to be issued with directions to the Investigation Officer to take appropriate steps for securing the presence of the accused no.4 i.e. the present petitioner and the accused no.5 Manmohan Khattar who were stated to be absconding.

4. A submission had been made on 23.07.2013 by the Investigation Officer of the case that steps would be taken qua extradition proceedings qua the present petitioner as well as for Manmohan Khattar. The present petitioner has since been extradited to India from the United Kingdom and on 12.02.2020 at 8.30 PM GMT (02-00 hours of 13.02.2020 IST) and was handed over to the escort team comprising of Dr.G. Ram Gopal Naik, DCP/Crime STARS-I in STF, Inspector Keshav Mathur and Inspector Gagan Bhaskar by the Metropolitan Police London at Bay No.B-43, Heathrow Airport, London, U.K. and had been arrested in this case and reached on 13.02.2020 at 11.00 hours IST at the IGI Airport and was thereafter was got medically examined at the Safdarjang Hospital vide MLC

No.63117 at 15.08 hours and produced before the learned ACMM, PHC, New Delhi where the case is now pending trial.

5. An application was thereafter filed by the State seeking the grant of 14 days police custody of the petitioner herein for confronting him with the evidence allegedly collected against him and to unearth the conspiracy and to find out the details of the persons who were involved in order to give the petitioner herein a fair trial and to file the supplementary charge sheet against the accused as submitted on 19.02.2020 vide the status report filed by the State under the signatures of Mr. Manoj Dixit, Assistant Commissioner of Police, STARS-I, Sector-8, R.K. Puram.

6. Vide the impugned order dated 13.02.2020, the prayer made by the State seeking the police custody remand, was granted to the extent of remanding the petitioner to police custody for 12 days. The impugned order also indicates that the prayer made by the State seeking the police custody remand of the petitioner contended to the effect that the petitioner herein is the main person who was involved in match fixing cases regarding which the FIR No.111/2000, PS Chanakya Puri was lodged and that in as much as, whereas, the three other co-accused i.e. Rajesh Kalra @ Rajesh, Krishan Kumar, Sunil Dara @ Bittoo had been arrested, the present petitioner had fled to the United Kingdom and absconded at the time of the filing of the charge sheet and thus, he having been extradited from the United Kingdom and having been arrested and brought back to India, his police custody remand was required, in as much as, the present petitioner was required to be taken where he stayed at the places in the same hotels

where the teams stayed where the five one day matches and three test matches were played i.e. at Cochin, Jamshedpur, Faridabad, Vadodara, Nagpur, Mumbai and Bangalore and that the petitioner had also to be confronted with the places where the matches were held and that the money transfer from the said places had also to be verified.

7. The avowed contention raised on behalf of the petitioner herein urged before the learned Trial Court was to the effect that in terms of the Letters of Assurances of the Government of India, the petitioner had to be kept at the Tihar Jailcomplex, Delhi during the pre-trial detention and in the event of the prison sentence upon conviction also and that thus, the petitioner could not be remanded to police custody and that the charge sheet having been filed, the police could not investigate the matter without permission of the Court with it having also been submitted before the learned Trial Court on behalf of the petitioner that in as much as, the extradition proceedings had commenced earlier and bail had been granted to the petitioner at London and therefore, the period of 15 days from his arrest in London having expired, no police remand could be granted.

8. The learned Trial Court vide the impugned order observed to the effect that though, arrest warrants had been issued for the petitioner herein, he had been granted bail in the United Kingdom and was subsequently arrested on 12.02.2020 at 8.30 PM GMT at Bay No.B-43, Heathrow Airport, London, U.K. and had thus not remained in custody even for a single day and thus placing reliance on the verdict of the Hon'ble High Court of Bombay in "*Alim A. Patel Vs. State of Maharashtra*" 2011 (2) AIR BOM R 271, the accused could

be remanded to police custody even after 15 days excluding the period of bail, with it having been further observed to the effect that in any event, the present petitioner had been arrested on 12.02.2020 and there was no bar to the grant of the police custody remand.

9. The learned Trial Court also observed to the effect that as per the Letter of Assurance dated 22.09.2017, the Government of India had assured that the petitioner would be kept at the Tihar Jail complex, Delhi during the pre-trial detention and upon conviction by the Competent Court but that the stage of pre-trial did not include the stage of investigation and that the police custody remand sought, was thus held vide the impugned order to be not against the spirit of the letter of the Government of India dated 22.09.2017. The learned Trial Court further observed to the effect that it was settled law that the police did not require any permission from the Court for further investigation and in as much as, in the instant case, places at Cochin, Jamshedpur, Faridabad, Vadodara, Nagpur, Mumbai and Bangalore were to be visited by the police, the grant of 12 days police custody for the said investigation to be conducted further would suffice.

10. Vide the present petition, the petitioner has submitted that the learned Trial Court had failed to appreciate, consider and take into account the three Letters of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 of the Ministry of Home Affairs, Government of India whereby, the Government of India had given a solemn and sovereign assurance that at all times and during pre-trial custody, the petitioner would be lodged at the Tihar Jail complex, Delhi and that thus, no police remand could be granted and that the petitioner had been

extradited from the United Kingdom only to face trial and not for any investigation. Furthermore, it was submitted on behalf of the petitioner that the petitioner having been in custody since 2016 when he was first arrested and produced before the Magistrate pursuant to warrants of arrest issued by the ACMM in terms of Section 105A of the Cr.P.C., 1973, no police custody of the petitioner could be granted.

11. It was further submitted on behalf of the petitioner that in as much as, the charge sheet had been filed by the State, no leave of the Court having been taken by the State at the time of the filing of the charge sheet nor at the stage of taking the cognizance nor thereafter for further investigation, the prayer made by the State seeking the grant of the police custody remand could not have been granted.

12. The avowed contention reiterated on behalf of the petitioner by the learned senior counsel i.e. Mr. Vikas Pahwa, Sr. Advocate is that the extradition had been granted only on the basis that the petitioner was being extradited to face trial and not for any investigation and thus, no investigation could be carried out nor permitted and that the pre-trial detention of the petitioner could only mean detention at the Tihar Jail and nowhere else as had been stated by the Government of India. The petitioner thus submitted that the custody of the petitioner with the police authorities was wholly illegal and could not be permitted to continue and that the guidelines for extradition as issued by the Ministry of External Affairs, CPV Division (Extradition Section) and as per the manual of the CBI, had been wholly overlooked.

13. It was also submitted through the petition that Clauses 9 & 10 of the Guidelines for Extradition issued by the Ministry of External Affairs of India, which read to the effect:-

“9. Competent authority should countersign copy of charge sheet, which is enclosed with the documents.

10. A letter/order from the concerned Court justifying accused person’s committal for trial on the basis of evidence made available in the Charge Sheet, with a direction seeking accused person’s presence in court to stand trial in said court from the country of present stay.”

categorically spelt out that the extradition could be granted only for the trial on the basis of the evidence made available in the charge sheet and not for the purpose of any investigation and that even in the Court at London, the State had submitted that the charge sheet had been filed and that thus, the petitioner was being extradited to India only to face trial and not for any investigation purposes.

14. An extradition warrant as a warrant of arrest dated 27.02.2015 was issued by the learned CMM, PHC, New Delhi against the petitioner, which was to the effect:-

“Whereas SANJEEV KUMAR CHAWLA @ SANJEEV CHAWLA @ SANJAY CHAWLA @ SANJAY S/O SH. MELA RAM CHAWALA R/O 4, Monk Villa Avenue London NW110AH Also at 'East is East' Restaurant 230, Commercial Road, London E12NB (UNITED KINGDOM) stands charged with the offence u/s 420/120B Indian Penal Code vide Case FIR No 111/2000 Dt 06.04.2000 U/s 420/120B IPC Police Station Chanakyapuri, New Delhi. You are hereby directed to arrest the said SANJEEV KUMAR CHAWLA @ SANJEEV CHAWLA @ SANJAY CHAWLA @ SANJAY and produce him before me.”

15. The Letters of Assurances dated 28.02.2017 bearing F.No.25015/56/2016-LC, 22.09.2017 bearing No. 25015/56/2016-LC(Vol.II) & 11.06.2018 bearing No.25015/56/2016-LC (Vol.II) as issued by the Ministry of Home Affairs, Government of India, the Ministry of Home Affairs, Government of India sought extradition of the petitioner herein as under:-

(I)

“F.No.25015/56/2016-LC

dated 28.02.2017

The Ministry of Home Affairs, Government of India, New Delhi presents its compliments to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in United Kingdom.

2. The Government of India has sought extradition of Mr. Sanjeev Kumar Chawla @ Sanjeev Chawla @ Sanjay Chawla @ Sanjay from United Kingdom to face trial in India in Case FIR No. 111/2000, under section 420 (Cheating) and Section 120-B (Punishment of Criminal Conspiracy) of Indian Penal Code. It is learnt that extradition proceedings for surrender of Mr. Chawla have advanced before the first instance court; the Westminster Magistrates' Court.

3. Mr. Chawla is likely to be held at the Tihar jail complex in New Delhi, if extradited. In this regard it is stated that:

(a) As per Delhi Prison Rules, 1988 the prisoners are kept in a dormitory (barracks) or cell subject to the circumstances of the case and keeping in mind the safe custody, health and comfort of the prisoners.

(b) All the prisoners are supplied necessary blankets and bed sheet for the purpose of using it as mattress and bedding. In case there is medical requirement for a prisoner, mattress and

bedding is provided to him/her as per the recommendation of the Medical Officer.

(c) Every prisoner is provided with adequate quantity of clean potable drinking water to meet his daily requirement. It may be mentioned here that in Jail canteen bottled drinking water is also available for the prisoners on reasonable price.

(d) Every ward of Delhi Prisons has sufficient number of toilets to meet the daily requirement of the prisoners. Moreover, barracks / cell also have toilets to cater to the need at the time of lock-up.

(e) In Delhi Prisons almost every ward has sufficient space/yard attached therewith, where the prisoners can have benefit of sunlight, fresh air and other recreation activities.

(f) As per Delhi Prison Rules, every prisoner is provided three time meals/adequate food throughout his detention period. It may be mentioned here that only vegetarian food is provided to the prisoners. From the prison canteen inmate can purchase eatables, snacks etc.

4. If Mr. Sanjeev Chawla is extradited to India and his case is acceded for lodging in Delhi Prisons by the Competent Authority/Government, the Government of India, on the basis of information received from the Government of National Capital Territory of Delhi and Tihar Prisons Authorities, solemnly assures that all such facilities available in Delhi Prisons shall be provided to him without any discrimination as per lodging policy in vogue.

5. The Ministry of Home Affairs, Government of India, New Delhi, avails itself the opportunity to renew to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in United Kingdom the assurances of its highest consideration.”

(II)

“No. 25015/56/2016-LC(Vol.II) dated 22.09.2017

The Ministry of Home Affairs, Government of India, New Delhi presents its compliments to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in the United Kingdom,

2. The Government of India seeks the extradition of Mr. Sanjeev Kumar Chawla @Sanjeev Chawla @ Sanjay Chawla@ Sanjay from United Kingdom to face trial in India inCase FIR No.111/2000 under Section 420 (Cheating) and Section 120-B (Punishment of Criminal Conspiracy) of Indian Penal Code. Extradition proceedings for surrender of Mr.Chawla have advanced before the first instance court; the Westminster Magistrates' Court.

3. In relation to concerns on Mr. Chawla's prison conditions and minimum standards ofdetention, the Government of India solemnly provides the following assurances to the Britishauthorities.

4. The Government of India, in addition to earlier assurance dated 2802.2017, herebyassures the UK authorities that upon extradition to India, Mr. Chawla would be detained withinthe Tihar jail complex, New Delhi, India. This applies to any period of pre-trial detention and, inthe event of a prison sentence, upon conviction by a competent court.

5. Specific arrangements will be in place prior to Mr. Chawla's surrender to ensure hisdetention at all times (whether pre-trial or post-conviction) consistently with the principles set out below:

(i) (1) Jail No.1, Ward No.9; (2) Jail No.2, Werd No.5;and (3)Jail No.3, Ward N0.4 have been identified for lodgment of Mr. Chawla and photographs of the same are placed at

Annexures 'A', 'B' and 'C' respectively. The cells measuring approximately 21x8x11 feet in dimensions with adequate personal living space. Mr. Chawla will enjoy a minimum of 3 sq. meter of personal space as the proposed cells are in line with and fully meet the minimum space requirements of the CPT [Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment]. Additionally, access to natural light and ventilation sanitary facilities, outdoor exercises, sports & recreational activities, security surveillance through CCTV monitoring and other mechanisms, medical care and liberty to religious practice in a violence free environment will also be ensured.

(ii) Mr. Chawla will be locked up for the night at the time of sunset (usually at dusktime) and will be allowed to carry out physical exercise, yoga, meditation, to attend educational / vocational programs and sports etc. during the day. Mr. Chawla will get sufficient time for his activities under proper/adequately guarded security.

(iii) Mr. Chawla will be provided blanket and bed sheet for the purpose of using it as mattress and bedding. In case there is medical requirement, mattress and bedding will be provided to him as per the recommendations of the Medical Officer. The cells have provision for toilet and keeping personal belongings. In addition, each cell is having extension of 9x8 feet covered and lockable area. In Delhi Prisons almost every ward has sufficient space/yard attached therewith, where the prisoners can have benefit of sunlight, fresh air and other recreation activities.

(iv) Mr. Chawla will have sufficient access to clean drinking water, treated through the Reverse Osmosis process, each day. Mineral water bottles are also available through jail canteen. Additionally, mobile canteen are available in the wards for sale of eatables including biscuits, wafers, water bottles, etc.

(v) Mr. Chawla will have access to adequate toilet facilities and washing facilities each day: Moreover, barracks / cells also have toilets to cater to the need of Mr.Chawla at the time of lock-up.

(vi) Mr. Chawla will have adequate access to food throughout detention period. He will be provided with three meals per day namely (1) Breakfast and evening tea with snacks (2) Lunch and (3) Dinner. The main courses of meals have sufficient quantity and adequate nutritional value. The meals are daily inspected by the Duty Doctor as well as by the Duty Officer of the jail to check the quality of the food.

(vii) In relation to prison staff/guard numbers, the location of Mr. Chawla's cell and exercise areas are, and will remain, sufficiently staffed to provide appropriate and effective levels of security and protection for inmates. The prisoners are generally segregated and lodged in 3 categories; (i) General Ward; (ii) Special Security Ward; and (iii) High Security Ward and round the clock deployment is maintained in the jail including all wards. The staff prisoner ratio per prison is high in case of High Security Wards i.e. around 1:6 whereas the ratio for the guards per prisoner for rest of wards/jail is 1:12. Additionally, 1128 security personnel are deployed to ensure safety and security of prisoners and to prevent unauthorized movements and escape by prisoners.

(viii) In relation to medical facilities, should Mr. Chawla wish, or because of an emergency need, to see a medic, he will have speedy access to the prison medical facilities. All inmates (both under trial and convict) are provided round the clock medical attention in the jails. There is a fully equipped 120 bedded hospital in Central Jail No.3. Further, each prison has its well equipped Medical Inspection Rooms. The inmates requiring specialist intervention & treatment are referred to Specialty Hospitals. The referral hospital for Mandoli Jail Complex is Guru Teg Bahadur Hospital. 12 ambulances including

ambulance with Advance Life Support are available 24x7 with necessary medical staff and medical officer for any emergency. The Hon'ble High Court of Delhi has appreciated the medical facilities available to the prisoners lodged in Delhi Prisons. The main features of health facilities in Delhi prisons are as follows:

- *120 bedded hospital with medical, surgical; tuberculosis and psychiatric wards.*
- *80 bedded de-addiction centre functioning in Central Jail Hospital.*
- *De-addiction Centre (CJH): is ISO 9001-2008 certified.*
- *One integrated Counseling and Testing Centre for HIV, functioning in Central Jail Hospital.*
- *Special diet for HIV/AIDS, Tubercular and other deserving inmates.*
- *Cases of seriously sick inmates are taken up with the concerned courts for their bail /early disposal of case.*
- *DOTS centre for T.B.*
- *Complete Dental Unit in Central Jail Hospital, CJ-4, CJ-6 and Distt. Jail, Rohini.*
- *The prisoners suffering from various contagious diseases are kept separately.*
- *The prisoners are referred to various specialty and super specialty hospitals for providing required medical care and treatment.*
- *NGO's working with Tihar Prisons also contribute towards medical services.*
- *59 Doctors including specialists and 94 paramedical staff presently posted for prisons health care. 15 more doctors are likely to join soon.*
- *Round the clock casualty services in Central Jail Hospital.*
- *A minor O.T. in Central Jail Hospital.*
- *Investigation facility for Biochemistry, Pathology, X-Ray, ECG available.*

- *Round the clock dispensaries in all the Jails.*
- *Biomedical waste management is done as per rules of DPCC.*
- *Various specialists/Senior Residents in the fields of Medicine, Orthopedics, Skin, Psychiatry etc. are available in Delhi Prisons from the side of the referral hospital also.*
- *HIV + Prevention and Management of Drug Abusers.*

6. Should the UK authorities require any further specifics in relation to the above, in order to consider the application for Mr. Chawla's extradition, we are ready to supply such details.

7. The Government of India solemnly assures the UK authorities that the undertakings provided above shall be provided to Mr. Chawla if he is extradited to India.

8. The Ministry of Home Affairs, Government of India, New Delhi, avails itself the opportunity to renew to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in United Kingdom the assurances of its highest consideration.”

and (III)

“No.25015/56/2016-LC (Vol.II) dated 11.06.2018

The Ministry of Home Affairs, Government of India, New Delhi presents its compliments to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in the United Kingdom.

2. The Government of the Republic of India seeks the extradition of Mr. Sanjeev Kumar Chawla @ Sanjeev Chawla @ Sanjay Chawla @ Sanjay [Mr. Chawla] from United Kingdom to face trial in India in Case FIR No. 111/2000 under section 420 (Cheating) and Section 120-B (Punishment of Criminal Conspiracy) of Indian Penal Code. An appeal has been filed

before the Hon'ble High Court of Justice, London, United Kingdom by the Government of the Republic of India against the decision of District Judge (Magistrate's Court) dated 16th October, 2017 to discharge Mr. Chawla in respect of an extradition request from the Government of India.

3. In relation to concerns on Mr. Chawla's prison conditions and minimum standards of detention, the Government of India and relevant authorities have considered the judgment of the Hon'ble High Court of United Kingdom dated 4th May, 2018, in particular paragraphs 52 and 54-55. In order to address the specific points of concern identified, the Government of India re-iterates and re-confirms the previous assurances dated 28.02.2017 and dated 22.09.2017 in this case and now provides the following assurances in addition to the assurances previously provided:

A. General Standards:-

It is assured that the specific arrangements and treatment compliant with the requirements of Article 3 of the European Convention on Human Rights (ECHR) will be extended to Mr. Chawla whose inherent dignity will be given full regard and will be treated accordingly. It may be further added here that prevailing Delhi Prison Rules shall also be applicable to Mr. Chawla during his detention.

B. Existing assurances:-

It is re-iterated and re-confirmed that in order to address the specific points of concern identified previous two assurances as provided in this case will stand as it is and rest of the assurances provided are in addition to the previous assurances.

C. Applicability of assurances:-

It is stated that the assurances below and those contained in the prior assurances will apply to all periods of his detention/during his judicial custody in India in the said cases (including any pre-trial detention, detention during the trial phase and post-sentence in the event of conviction).

D. Personal space:-

It is assured that Mr. Chawla will be accommodated in a cell to be occupied exclusively by him only with proper safety and security. The cell to be allotted will be located in a Ward which is certainly not a High Security Ward. The ward where he will be lodged has inmates who have not violated any Prison Rules and are of satisfactory conduct.

Below, we guarantee Mr. Chawla will be lodged in one of four identified cells located in two different wards. The reason we identify more than one cell is to enable a degree of operational flexibility, should it be necessary. We make it clear that all of the identified cells comply with the personal space and hygiene requirements the court expects.

Ward 9 of Central Jail No.1

Mr. Chawla, if extradited, would be lodged with in Cell No.1 or Cell No.2 of Ward No.9 in Central Jail No.1. The size of each cell (excluding sanitary and toilet area) is 6 square feet occupied by toilets/sanitary facility (Photographs of Cell No.1 and Cell No.2 and Ward No.9 are enclosed). The sanitary facilities provided in the Cell No.1 & 2 duly meet the European standards as per Article 3 of ECHR and CPT norms. The Cells are provided with flush toilet and wash basin with adequate supply of water (photographs attached). As reflected in the photographs there is partition for the toilet area from the living area of the main cell for the privacy. In the bath room there is toilet/WC with flush facility, washbasin and a tap to meet the basic/daily requirement of an inmate. It may further be mentioned that the said Ward offers sufficient space to the Inmates to do indoor activities like chess, carom etc. as well as outdoor activities like daily physical exercise, Badminton, Volley Ball etc. Further, there is green open yard in front of the Cells. Such facilities are available to all the inmates lodged in the same ward.

Ward 4 of Central Jail No.3

Besides, Cell No. 6 or Cell No.7 of Ward No. 4 in Jail No.3 are also earmarked for Mr. Chawla. The dimension of each Cell is 6 square metres i.e. same as referred in above paragraphs (Photographs of Cell No. 6 and Cell No. 7 of Ward No.4 enclosed). The sanitary facilities provided in the Cell No.6 & 7 duly meet the European standards as per Article 3 of ECHR and CPT norms. The Cells are provided with flush toilet and wash basin with adequate supply of water (photographs attached). As reflected in the photographs, there is partition for the toilet area from the living area of the main cell for the privacy. In the bath room there is toilet/WC with flush facility, wash basin and a tap to meet the basic/daily requirement of an inmate. The Ward No.4 consists of 20 cells where the prisoners having satisfactory conduct are lodged /confined. All cells are built in a row with open yard in front of each cell.

Out of the available / proposed options for lodging of Mr. Chawla, as mentioned above Mr. Chawla would be lodged in Cell No.1 or Cell No. 2 of Ward No.9 at Central Jail No.1, Tihar or Cell No. 6 or No. 7 in Ward No.4 in Central Jail No.3.

Mr. Chawla will be provided single occupancy. It is assured that person living space in such cells fully meets with the minimum space requirements of the CPT where it is stated that each detainee will be guaranteed a minimum of 3 square metres. The size of the cell is 6 square meters approximately excluding toilet / sanitary area.

While the maximum occupancy of the each cell is of 3 persons, Mr. Chawla if extradited, will be lodged without cellmates. In such circumstances, the question of sharing the cell with other prisoners does not arise. The question of multiple occupancy in the case of Mr. Chawla, therefore, does not arise.

The toilet facility is available within the cell itself. Further, as toilet is available in the cell, Mr. Chawla will have exclusive access to the toilet facility at all times including 'Lock-up times' as per his requirement. In the present matter, Mr. Chawla will be confined individually in a cell as single occupancy cell and therefore question of sharing / access to such toilet facilities in the cell by other prisoners does not arise.

Other facilities:-

(a) All above mentioned cells are equipped with sink facility.

(b) Toilets are western style

(c) Toiletries / sanitary items would be provided to the inmate. The inmate shall be able to keep himself and his cell neat and clean.

(d) Toilets in all cells proposed for lodging of Mr. Chawla are well partitioned to ensure complete privacy.

E. Security from violence:-

It is clarified that the identified lodgment facilities (Jail No.1 Ward No.9 and Jail No. 3 Ward No.4) are not High Security Wards. Inmates having satisfactory conduct are lodged in these wards. Moreover, detention in High Security Wards is ruled out for Mr. Chawla in view of the Hon'ble UK Court's concerns and it is assured that Mr. Chawla will not be lodged in High Security Ward and in case he becomes a security risk he would be shifted to Ward No. 9 of Jail No. 1 if originally lodged in Ward No. 4 of Jail No. 3 and vice-versa. A special duty point would also be deployed in addition to existing security arrangements of the ordinary wards.

There is a high level of security provided at the entrance of Ward No.9 in Central Jail No.1 and similarly at Ward No.4 in Central Jail No.3, along with sufficient number of CCTV cameras which are monitored 24 x 7 from the control room. It is assured that the Ward and adjoining area of the cell in which Mr. Sanjeev Chawla will be kept will definitely be covered with CCTV surveillance. Pan Tilt Zoom [PTZ] CCTVs are also installed at the prominent locations in the jails to cover maximum area. The ratio for the guards per prisoner is 1:12. One guard, shall be available 24x7 in the ward where Mr. Chawla will be lodged. The official so deployed in the CCTV control room reports immediately not only for any untoward incident but also for any technical issues involving in CCTV surveillance. There is also an Annual Maintenance Contract [AMC] for getting repair/make in order the CCTV which are reported to be out of order. It may be further mentioned here that the inmates are allowed to socialize only in the area provided within the ward and are not allowed to visit other wards of the jail except when prior permission is sought and granted by

the Jail Authority, Therefore, security is not an issue in such ward.

It is assured that the lodging of prisoners in Delhi Prisons/Tihar is being done with proper care, segregating first time offenders and repeater / habitual offenders. Delhi Prison ensures that the first time offenders may not mix with, the habitual offenders and vice versa. The, prisoner is allowed to meet with their relatives and friends nominated by him twice a week for 30 minutes each. Lawyer meetings are also permitted twice a week. Apart from this, the inmate is also allowed to talk to his family/relatives through telephone for 05 minutes daily on the registered numbers. Video conferencing with trial courts is also available in the Tihar jails.

F. Medical care:-

There is sufficient medical, staff in the Delhi Prison. As on date, 86 medical officers, are available against 112 number of sanctioned posts. Medical facilities include 200 bed, hospital in Jail No.3 premises, Medical Inspection Room in all jails, special treatment facilities, Dental, X-ray etc. It is further mentioned that immediate treatment is extended to every needy inmate patient lodged in Tihar/Delhi Prisons. In addition referral hospitals located outside prison are available for specialized and specialty medical requirements. Regular medical visits by specialists are also carried out to ensure effective medical treatment. Mr.Chawla will be provided immediate medical attention if required, during his stay in Delhi Prisons. As necessary this will be provided within or in medical facilities outside the prison to ensure appropriate and attentive medical treatment.

There are certain other things which are necessary to be mentioned as follows:-

- 1. An outdoor (Open to sky) yard is available to the inmates who maintain proper discipline as per Delhi Prison Rules, from morning Lock-Out to 12 O'clock in the noon and from 1500 hrs to Lock-Up in the evening.*
- 2. Willing Inmates are allowed to participate In Yoga classes, Meditation courses; higher education courses*

available through Indira Gandhi National Open University, vocational courses etc. subject to maintaining good conduct inside prison.

3. There is also a Library in each jail for the use of inmates and they are also permitted to receive their reading material / books as available in the Library.

4. The inmates are also allowed to participate in various cultural programs organized within the jails.

5. The Inmates are also allowed to have daily newspaper in English or in Hindi as per their choice.

6. Selected T.V. channels are also available for the inmates in their Barracks/ Cells subject to maintaining good conduct as per Delhi Prison Rules.

4. Should the UK authorities require any further specifics in relation to the above. In order to consider the application for Mr. Chawla's extradition, we are ready to supply such details.

5. The Government of India solemnly assures the UK authorities that the undertakings mentioned above shall be provided to Mr. Chawla If he is extradited to India.

6. The Ministry of Home Affairs, Government of India, New Delhi, avails itself the opportunity to renew to the Home Office, Government of United Kingdom and the Competent Judicial Authorities in United Kingdom the assurances of its highest consideration.”

16. Vide order dated 14.02.2020, it was *inter alia* reiterated on behalf of the petitioner that the petitioner having been extradited from the United Kingdom in terms of the Letters of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 of the Ministry of Home Affairs, Government of India to face trial in India with it having been detailed in each of the said Letters of Assurances that he would be held at the Tihar Jail Complex, New Delhi, if extradited, the remand to police custody is erroneous. Time was sought on behalf of the State to

submit the status report and vide order dated 14.02.2020, the petitioner who at that time was in the custody of Inspector Gagan Bhaskar, STARS-I, Crime Branch, Sector-8, R.K. Puram, New Delhi was directed to be lodged at the Tihar Jail, Delhi in terms of the Letters of Assurances of the Ministry of Home Affairs, Government of India referred to hereinabove dated 28.02.2017, 22.09.2017 & 11.06.2018 till further directions of this Court.

17. It was also considered essential that the Union of India is heard in the matter, in as much as, the Letters of Assurances had been issued by the Ministry of Home Affairs, Government of India and Court notice was thus issued to the Standing Counsel for the Union of India to ensure presence and representation on behalf of the Union of India for their submissions for the date 19.02.2020 and the learned ASG for the Hon'ble Supreme Court of India, Mr. Sanjay Jain appeared thus for the Union of India.

18. Vide the status report submitted on 19.2.2020 on behalf of the Government of NCT of Delhi, by Sh.Kewal Singh Ahuja, learned APP, it has been submitted that during the investigation, it was found that the present petitioner had played the most vital role in the commission of the crime in as much as not only had he acted as the main conduit between the bookies but that he also fixed matches in connivance with the South African captain and left India on 15.3.2000, after providing a mobile phone connection bearing No. 9810294943 to the co-accused Hansie Cronje and that the statements of Hansie Cronje and Hamid Cassim before the Kings Commission allegedly clearly pointed to his deep rooted involvement in the case.

The extracts of the said statements of Hansie Cronje and Hamid Cassim were submitted along with the status report which read to the effect:

“Relevant contents of Hansie Cronje statement made before Kings Commission

Page No 12 para 36

At the beginning of February I travelled with the team to the Beverly Hills Intercontinental Hotel at Umhlanga Rocks. We were due to play the fourth one day International in the series, against Zimbabwe, in Durban on the 2nd of February. Hamid was at the hotel when we arrived. He introduced me to a man known to me only as Sanjay, who he said was from London. I was not told that he was a bookmaker and thought he was a punter.

Para 37

Hamid and Sanjay indicated that Sanjay wanted me to supply them with information but did not specify what information. They also said that I could make a lot of money if we would lose a match. I said that I was not prepared to do it unless we were assured of a place in the final of the triangular series. I was spinning them along as I do not think I had any real intention of throwing a match. Sanjay handed me a cell-phone box containing US dollars in case I changed my mind.

Para 38

I did not count the money, which was kept in a filing cabinet at home together with my prize money from the World Cup, the Kenya tour and left over sustenance allowances. It was subsequently counted (not by me) on 11 April when I confessed to receiving it, and I was told that it was about US \$ 10,000 but may have been US \$ 15,000.

Page No. 13 para 39

It is difficult to say with certainty which of the monies kept in the filing cabinet had come from Sanjay because that money was kept together with dollars derived from my winnings and allowances and advance payments I had received in respect of players signing on fees, deposits and travel allowances for what proved to be an abortive benefit tour to the sub-continent in April of this year.

Page 14 para 41

It was not initially my intention to throw any games or to fix results: driven by greed and stupidity and the lure of ease money, I thought that I could feed Sanjay information and keep the money without doing anything to influence matches. In fact there was no manipulation of games or results in South Africa and I supplied no information in respect of the matches in South Africa.

Para 42

I realize now that the purpose of the payment was to "hook" me for the Indian tour. As set out below, on the Indian tour in February and March 2000, I was increasingly pushed to manipulate results, and found that I had got into something from which it was very difficult to get out.

Page 14 para 43

In India I was contacted by Sanjay who gave me a local simcard so that he could call me for information and which would also be helpful for internet connectivity and e-mail. This was not compatible with my cell phone and could not be used. I later received a cell phone, sent up to my room, with which it was compatible.

Para 44

I initially had no intention of involving other players and thought that I could satisfy Sanjay by

accurately forecasting outcomes. Sanjay was not satisfied with this, and pressured me to speak to some of the other players to manipulate results. In the buildup to the test, the pressure on me increased. I received calls on a regular basis from Hamid and Sanjay. Even when the cell phone was switched off, calls would come through to my rooms as late as 2 and 3' 0 clock in the morning. I felt increasingly trapped. I had already taken money from Sanjay and it became increasingly difficult to resist his request to speak to other team members and manipulate result.

Page 15 para 46

I spoke to Pieter Strydom before the first test in India. His account of this discussion, contained in his written statement to the commission, is correct. At the time of speaking to him I was already racked with guilt, and his remarks about doing his best for South Africa shamed me and he in no way indicated that he was interested in receiving money. I did not speak to any other members of the team. Thereafter I tried to pass off the whole incident with Strydom as a joke.

Para 47

Under further pressure from Sanjay I subsequently made faint attempts to approach other players in respect of the second test. I spoke to Kallis, Boucher and Klusener. Their rebuffs were immediate, but I think they thought I was joking. I did not approach any other players in respect of the test matches and the results in the second and subsequent tests were not manipulated.

Para 48

I then told Sanjay that perhaps I could do something in the first one day international in

India, thinking that if we could get the match out of the way that might satisfy them. My intention was not to involve other players, but merely to forecast which way the match was going to go, looking at the pitch and condition. Sanjay was adamant, however, that this could not be done, so I suggested that I could speak to some of the other players, lying to him to get rid of him after the first match.

Page 16 para 49

I ignored Sanjay and Hamid the night before the first one day at Cochin but when I was phoned the next morning and urged to go ahead, I told them we could lose and that I had spoken to other players (which were untrue). We were supposed to lose the match but I couldn't go through with it I decided that I couldn't try and would give it my best shot. As it happened we got 301/03 and I got 19 off 20 balls, but India won quite comfortably after Hayward was injured. I honestly tried to win the match, even at that stage, and believe we would have done so if Hayward was not injured.

Page 16 para 50

When I got back to the hotel Sanjay was upset because we had scored too many runs, and I blamed the Indian wicket keeper for three chances that he missed, obviously not revealing that the South African players concerned had not been involved and in fact none of them knew anything about it. I did not receive any money for that match. I believe Sanjay lost money.

Para 51

Hamid kept phoning me and saying that I should speak to Sanjay, who was now worse off than before, that he needed to win some money, and that I would have to deliver something. So intense had that incessant nagging become that I was presumed to fabricate a story that the players were

angry with me for not getting their money. He said not to worry; he would make up for it during the rest of the One-Day series. However, no other players and none of the One-Day matches were involved, except for discussion with Gibbs and Williams in respect of the fifth one day international which I will deal within due course.

Page 17 para 52

During the second, third and fourth One Day games I was really only forecasting what I thought would happen, as I wanted to win the series. I received no money and tried my best throughout.

Para 53

The pressure on me to produce information and results was increasing. I was not only being repeatedly phoned by Hamid but also by Sanjay. I tried to deal with this by lying about having spoken to players and done things which I had not in fact done. I cannot recall all the names that I mentioned and I cannot remember all the figures and amounts.

Para 54

I cannot recall all the conversations, the times and dates, and what was said on each occasion. Also a great deal of what I told Sanjay was untruthful, particularly about the involvement of other players.

Para 54.1

Prior of the third one day international, I had, untruthfully told Sanjay that Boje, Strydom and Gibbs were involved. He therefore wanted to know if they would be playing in the third one day international and if further players could be involved. The first portion of Annexure BAW2 to Wilkinson-Lucks statement, if it is an accurate transcript, probably concerns this conversation.

Para 54.2

A discussion with Sanjay took place the night before the 5th one day international during which we discussed Gibbs's score, a total of 270 runs and William's bowling figures. If the result were as agreed, Sanjay was to pay \$14000 in to my Nat West Bank Account.

Para 54.3

Since playing for Leicestershire in 1995, I have had a bank account at Nat West Bank, Granby Street, Leicester. This was used for my foreign earning.

Page 18 para 55

None of the results, including the fifth one day international at Nagpur on 19 March 2000 dealt with below, were fixed. No money changed hands in respect of any of the matches in India, all of which were a true result. That applies also to the fifth one day game, despite the early agreement to manipulate the result.

Para 56

By the end of the tour I was under severe pressure to provide some results, and my attempts to string Sanjay along were no longer effective. He and Hamid had become increasingly upset by the fact that I had not delivered the required results, in consequence of which they had been losing more and more money.

Para 57

The morning of the fifth one day match at Nagpur, Sanjay phoned me and urged me to go ahead with fixing the match, and I gave in. I told him that I would go ahead. I was required to ensure that Gibbs would score less than 20 runs, that Williams would bowl poorly and go for more than 50 runs during his 10 overs, and that the total score should be no more than 270 runs. I was to be paid for doing this. I spoke to Herschelle Gibbs and

Henry Williams, as described by them in their testimony.

Page 19 para 60

I have not spoken to Sanjay since the Indian tour and – apart from the money I received from him in Durban-received no payments from him or Hamid.

Para 61

After the 2000 Indian tour, whilst I was in Dubai for the Sharjah Cup in March of this year, I was again contacted by Hamid. He indicated that Sanjay wished to resume contact with me, along the same lines as in India. I had by now developed sufficient resolve to put it all behind me and told him I was not interested. I thereafter had no contact with Hamid after the incident described above until 7 April, when I telephoned him and told him that news of what had happened in relation to the One-Day games in India had broken.

Relevant contents of Hamid Cassim statement made before the Kings Commission

Page 7 para 6.1

On many occasions when either the Indian cricket players or at times the Pakistani cricket players who I also met visited South Africa, I would spend some time with the cricket players and all the cricket players had my mobile number 0825745950.

Page 9 para 7.3

I became more friendly with Mr. Cronje in or about 1996 when I was invited to the Sharjah Cup which was being played in Dubai where South Africa were participating

Para 7.4

I had given Mr. Cronje my mobile number and he had also given me his mobile number.

Para 7.5

I would say that a lot of the South African cricket team had my mobile number and I also had their mobile numbers.

Page 11 Para 8.1

It was during the time period that the Triangular Series was taking place in South Africa between England, South Africa and Zimbabwe that I received a phone call from Sanjay Chawla. He told me that he had heard from people in India that I had a very good relationship with many of the international test cricketers and that I also knew a lot of the South African test cricketers.

Para 8.2

He told me that he was coming to South Africa for the triangular series and that he was a cricket enthusiast and that he followed test cricket world wide.

Para 8.3

He told me that he would be coming to South Africa and wanted to meet me and if possible, get introduced to some of the players.

Para 8.4

Sanjay phoned me and told me that he was coming to South Africa on a Sunday and asked me whether I could be prepared to fetch him at the airport to which I agreed.

Page 12 para 8.5

He arrived on Sunday morning and I fetched him at the airport.

Para 8.6

He is a young Indian male approximately between 30 and 35 years of age, tall and thin.

Para 8.7

I took him with me to my business premises in Fordsburg where he relaxed and had something to eat.

Para 8.8

In the time that he was in my company he told me that he had heard about me from a lot of people in India. He told me further that he had heard that I had an exceptionally good relationship with a lot of international cricket players. He told me that he himself was a cricket enthusiast who followed cricket worldwide and he also told me that he liked to gamble on cricket.

Para 8.9

In the time that I spent with him as well as the telephone calls that I had from him, I gathered the distinct impression that he was more interested in gambling on cricket and he was most definitely not what is commonly termed "a bookmaker".

Para 8.10

He enquired where the South African players were staying in Durban as he was going to Durban that evening and I told him that they usually stayed at the Beverley Hills Hotel in Umhlanga Rocks. He asked me to accompany him to Durban in order to introduce him to some of the cricketers and he especially wanted to be introduced to the captain, Mr. Hansie Cronje.

Page 13 para 8.11

I told him that I had a very good relationship with Mr. Cronje but was not able to go to Durban that evening as I had family commitments.

Para 8.12

I took Sanjay to the airport and he left for Durban that evening.

Para 8.13

He phoned me from Durban and told me that he was staying at the same hotels as the South African cricket players.

Para 8.14

It was eventually arranged that I would fly to Durban the following day and meet him at the

Beverley Hills Hotel. I flew to Durban and thereafter met Sanjay at the Beverley Hills Hotel. Sanjay told me that he in particular wanted to meet the captain of the South African cricket team, Hansie Cronje.

Para 8.15

I phoned Hansie Cronje who was with the South African team in Durban itself practicing for the one day international and he told me that he would be back at the hotel at approximately 05.30 p.m.

Para 8.16

Mr. Cronje then contacted me and told me that he was back from training and I went up to his room and told him that I had a friend who had come from London who wished to meet him.

Page 14 para 8.17

Mr. Cronje agreed to this and came down to Sanjay's room where I introduced him to Sanjay. In Sanjay's room I had previously been watching provincial game of cricket which was being shown on the television.

Para 8.18

Sanjay and Hansie Cronje thereafter had a conversation for approximately 10 minutes relating to cricket. They were talking, inter alia, about match forecasting, pitch conditions, team selection the conditions upon winning the toss. They were further discussing the number of runs in one day international cricket matches. I also heard them discussing team selection and who would be batting in which order and who would be bowling.

Para 8.19

I then saw Sanjay take envelope containing money and hand it to Mr. Cronje. Shortly thereafter Mr. Cronje left the room. Sanjay and Hansie then said that they would talk again.

Para 8.20

I thereafter told Sanjay that I would not be able to stay over in Durban for the one day international as I had other commitments. I left shortly thereafter for the airport and flew back to Johannesburg.

Para 8.21

Sanjay also gave me his telephone numbers in London and told me that whenever I was in London I was more than welcome to be his guest and he would reciprocate with hospitality. His telephone numbers are as follows 0944956459299 and 09447974352755

Page 15 para 8.22

After the cricket series was over, Sanjay left for London and we kept up telephonic contact on occasions and he thanked me for introducing him to Mr. Hansie Cronje

Para 8.23

I thereafter received a phone call from Sanjay when South Africa was playing in India and he informed me that he was now in India where he had gone to watch the test series between South Africa and India. I recall that he told me he was staying at the same hotel as the South African players when the first one day international against India was being played at Cochin.

Para 8.24

I wish to state further that save for the discussion at the Beverley Hills Hotels in Sanjay's room between himself and Mr. Cronje, I had no further meetings or any telephonic discussions with Mr. Cronje relating to what had transpired that day at the Beverley Hills Hotel.

Para 8.25

I wish to state further that I at no stage went to India when the test matches were being played.

Page 16 para 8.26

I did however receive phone call from Sanjay asking me if I could contact Mr. Cronje to phone him as he was not able to get through to him on his mobile phone. I thereafter contacted Hansie Cronje and told him that Sanjay was trying to get hold of him and I heard nothing further.

Para 9

At a later stage when South Africa went to Dubai to play in the Sharjah Cup, friends of mine told me they were going to watch the game and asked me whether or not I could try and arrange some tickets for the games. I thereafter contacted Mr. Cronje and asked him whether or not he was in a position to try and arrange some tickets for the series.”

19. *Inter alia*, through the status report, it was submitted that the petitioner having stayed at the same hotels where the South Africa team had stayed during the tour, the calls made from the hotel Taj Residency, Ernakulam, also showed that the petitioner was speaking to Hamid Cassim and that the call details of the petitioner from the United Kingdom also showed that he was in continuous touch with Hamid Cassim.

20. As per the said status report, it was *inter alia* submitted that whilst the petitioner was in India, he had used the mobile phone No. 9811058142 purchased in the name of his brother Rajeev Chawla which was seized from Rajeev Chawla during investigation and that the disclosure statement made by the co-accused Krishan Kumar indicated that the present petitioner Sanjeev Chawla was using his mobile phone No. 9810008411 whilst at Cochin, which was allegedly corroborated by the call details with it having been submitted that the

petitioner had refused to give his voice sample in the Letter Rogatory and had been evading joining the investigation. The status report dated 19.2.2020 submitted on behalf of the Government of NCT of Delhi, states to the effect that the petitioner herein so far has not joined the investigation and did not respond to the Letter Rogatory sent to the United Kingdom and that he had left India pursuant to the registration of the case and that it is for the first time that he is now before the Investigating Agency.

21. The said status report further states to the effect that the petitioner was aware of the proceedings being conducted in India but did not join the investigation and that on the grant of the police custody remand of the petitioner vide the impugned order, the petitioner was brought to the office of the ACP(STAR-I) Crime Branch, R.K.Puram with the escort team around 7:30/8 p.m. and that keeping in mind the assurances given by the Government of India, the petitioner was not lodged in any lockup of any police station and was kept in a room specially prepared for him and that all assurances given by the Government of India were strictly complied with in true spirit. The photographs of the room and conveniences provided to the petitioner have been placed on the record with the status report dated 19.2.2020.

22. Through the status report and submissions made by the learned ASG, it has been submitted that neither the Investigating Agency nor the Government of India, had given any assurances that on extradition no further investigation in the matter could be carried out and that for the purposes of a fair trial, the petitioner has to be confronted with the

evidence against him to unearth the whole conspiracy and to find out all the persons involved and that in order to file a supplementary chargesheet against the petitioner for trial and to place complete facts before the Court, further investigation is essentially to be conducted in terms of Section 173(8) of the Cr.P.C., 1973. It has been submitted through the said status report that in terms of the law of the land Section 173(8) of the Cr.P.C., 1973 provides for continuing investigation even after the filing of the police report under Section 173(2) of the Cr.P.C., 1973, and it has thus been reiterated on behalf of the Government of NCT of Delhi, vide the status report, that the police interrogation of the petitioner was very essential.

23. The status report of Government of NCT of Delhi, vide paragraph 20 states to the effect:

“ 20. That as per the assurances given by the Govt. of India, the accused Sanjeev Kumar Chawla will be lodged in Tihar Jail but, for the purpose of investigation permission will be sought from the concerned court for necessary interrogation. If any further follow up action will be required, the same will be put up before the concerned court for suitable orders.

In view of the submissions made above, it is prayed that appropriate orders for investigation with due permission of the trial court may be issued. It is assured that the assurances given by the Govt. of India will be meticulously complied with.”,

with it thus having been submitted that the petitioner herein in terms of the assurances given by the Government of India shall be lodged at the Tihar Jail but that for the purpose of investigation, permission

would be sought from the concerned Court for necessary interrogation and that if any further follow up action was required, the prayer would be made before the concerned Court for the suitable orders and it was thus prayed that the appropriate orders for investigation with due permission of the Trial Court may be granted.

24. The learned Additional Solicitor General, for the Hon'ble Supreme Court of India, Mr.Sanjay Jain, at the outset has categorically stated to the effect that the Government of India shall adhere to the Letter of Assurances given by the Ministry of Home Affairs dated 28.2.2017, 22.9.2017 and 11.6.2018 in letter and spirit and that the petitioner shall be held at the Tihar Jail Complex only and shall be lodged therein in accordance with the said Letters of Assurances.

25. It was however been submitted on behalf of the Union of India that the assurances given vide the Letters of Assurance dated 28.2.2017 and 22.9.2017 were reiterated and reconfirmed vide the Letters of Assurance provided in addition to the previous assurances and vide Clause 'C' of the Letter of Assurance dated 11.06.2018, it was stipulated to the effect:

“C. Applicability of assurances:

It is stated that the assurances below and those contained in the prior assurances will apply to all periods of his detention/during his judicial custody in India in the said cases (including any pre-trial detention, detention during the trial phase and post-sentence in the event of conviction).”

(emphasis supplied)

and that thus, the petitioner herein had to continue to remain lodged at the Tihar Jail Complex in conformity with the terms of the **Letters of Assurance** issued by the Ministry of Home Affairs for any pre-trial detention during the trial faced and post-sentence in the event of the conviction. It was further submitted on behalf of the Union of India that the final report under Section 173 of the Cr.P.C., 1973, dated 22.7.2013 had clearly spelt out that the present petitioner arrayed as accused No.4 as per column 11 (xv) was shown to have been not arrested and vide clause 11 (xxi) was shown to be absconding. It was further submitted that the said charges vide paragraph 32 thereof had categorically spelt out **‘that the evidence that had been collected from the investigation conducted so far’** had brought forth the complicity of the petitioner herein with Hansie Cronje, Krishan Kumar, Rajesh Kalra, Sunil Dara @ Bittoo and Manmohan Khattar for fixing the cricket matches played between India and South Africa from 16.2.2000 to 20.3.2000. Paragraph 32 of the charge sheet reads to the effect:

“That from the investigation conducted so far, there is sufficient evidence to prove that the accused persons namely Sanjeev Chawla, Hansie Cronje, Krishan Kumar, Rajesh Kalra, Sunil Dara @ Bittoo and Manmohan Khatter mentioned in Column No 11 of the chargesheet had entered into a criminal conspiracy to fix the cricket matches played between India and South Africa from 16.02.2000 to 20.03.2000 in India. In furtherance of this conspiracy, the 1st Test Match at Mumbai and the 1st One Day International at Cochin were

fixed and the same resulted in wrongful gain to the accused and wrongful loss in general to the public at large, who had gone believing that they would witness truly competitive matches in which each player would perform optimally. The accused persons have thus committed offences punishable u/s 420/120B of IPC.”
(emphasis supplied)

26. It was further submitted on behalf of the Union of India that vide paragraph 33 of the charge sheet it had been further specified to the effect that the petitioner herein arrayed as the accused at Serial No.4 and the accused at Serial No. 5 Manmohan Khattar were absconding.

27. It was further submitted on behalf of the Union of India that in the statements that have been made in the learned Westminster Magistrates' Court in the request made by India for the extradition of the petitioner herein through its Judicial Authority in order to prosecute the petitioner for his role in the fixing of cricket matches played between India and South Africa during the tour of the South African cricket team to India under the captainship of Hansie Cronje from February to March, 2000 for the Requested Person to be given, it was submitted that the observations in paragraph 15 of the said verdict of the Westminster Magistrates' Court dated 16.10.2017 were categorical to indicate that the Union of India had submitted that the petitioner herein, i.e., the Requested Person was not engaged with the Indian Authorities and was thus a fugitive and that a warrant had been

issued and that the aspect of the grant of the prayer of extradition had essentially to be considered on a case to case basis.

28. The observations in paragraph 15 of the verdict dated 16.10.2017 of the learned District Judge MC of the Westminster Magistrates' Court are to the effect

“The JA submits that the RP is a fugitive and cannot rely on the passage of time. In the case of Wisniewski & Others v. Poland [2016] EWHC 386 (Admin), at para 59, the court said that ‘ where a person has knowingly placed himself beyond the reach of a legal process he cannot invoke the passage of time resulting from such conduct on his part to support the existence of a statutory bar to extradition. Rather than seeking to provide a comprehensive definition of a fugitive for this purpose, it is likely to be more fruitful to consider the applicability of this principle on a case by case basis.’ The JA submits that the RP knew of the ongoing investigation and that a warrant had been issued and has not engaged with the Indian authorities so is a fugitive.”

(emphasis supplied)

29. Further reliance was placed on behalf of the Union of India on the extradition treaty dated 22.09.1992 and the instruments of ratification exchanged at New Delhi on 15.11.1993 between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland as published in the Gazette of India (Extraordinary) dated 30.12.1993 submitting to the effect that the vide Articles 11 & 13 thereof it was provided to the effect:

“ARTICLE 11 : Extradition Procedures

- (1) Subject to the provisions of Article 22 of this Treaty, the request for extradition shall be made through the diplomatic channel.*
- (2) The request shall be accompanied by:
 - (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence;*
 - (b) a statement of the facts of the offence for which extradition is requested, and*
 - (c) the text, if any, of the law:
 - (i) defining that offence ; and*
 - (ii) prescribing the maximum punishment for that offence.***
- (3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as, according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.*
- (4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:
 - (a) by a certificate of the conviction and sentence;*
 - (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.**

- (5) *In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence of which he was convicted.*
- (6) *If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.*

ARTICLE 13: Rule of Speciality

- (1) *Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:*
- (a) *the offence in respect of which he was returned;*
 - (b) *any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or*
 - (c) *any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.*
- (2) *The period referred to in paragraph (1) of this Article is the period beginning with the*

day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.

(3) The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.

(4) A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days to his final discharge, or has returned to that territory after having left it.”

30. It was thus submitted on behalf of the Union of India that the Rules of Specialty in Article 13 of the Extradition Treaty provided for the **Requesting State** to deal with the **Requested Person** returned to the territory of the **Requesting State** under the Treaty in respect of any offence committed before the **Requested Person** was returned to the **Requesting State** specifying therein that the Requested Person would not be dealt with by the **Requesting State** in respect of any offence for which he was not returned to the Requesting State nor for any graver offence other than that for which he was extradited nor for any other offence for which he had been extradited except with the consent of the requesting State. It was further submitted that the extradition made by any person pursuant to the Extradition Treaty has to be in terms of Article 13 i.e., the **Rule of Speciality** which however

is essentially to be governed by the law of the **Requesting State** and that thus in as much as in terms of Section 173(8) of the Cr.P.C., 1973, the **Requesting State** i.e., India and its Investigating Agency could not be precluded from conducting any further investigation qua the petitioner who has not even been interrogated by the Investigating Agency in as much as he was absconding.

31. Reliance was thus placed on behalf of the Union of India on the provisions of Section 21 of the Extradition Act, 1962 which read to the effect:

“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.”

to submit that the said provisions relate to both an accused or a convicted person and thus in relation to the petitioner herein who is

accused of the alleged commission of the offence punishable under Section 420 read with Section 120B of the Indian Penal Code, 1860, it was sought to be submitted on behalf of the Union of India that the Investigating Agency could thus not be precluded from conducting further investigation which is its right in terms of Section 173(8) of the Cr.P.C., 1973.

32. Reliance was thus placed on behalf of the Union of India on the verdict of the Hon'ble Supreme Court in ***CBI vs. Rathin Dandapat and Ors.*** with ***CBI Vs. Chandi Karan*** with ***CBI Vs. Anuj Pandey 2016) 1 SCC 507***, a verdict dated 21.08.2015 to submit to the effect that after cognizance is taken of an offence, the police has power to investigate into it further which can be exercised only in accordance with Chapter XII of the Cr.PC, 1973 and that further, in terms of Section 309(2) of the Cr.PC, 1973 which empowers remand of an accused who was before the Court when cognizance was taken or when inquiry or trial was being held, he can be remanded only to judicial custody. Reliance was thus placed on observations in paras 7, 8, 9, 10, 11, 12, 13 & 14 of the said verdict, which read to the effect:

“7. Before further discussion, we think it just and proper to quote the relevant provisions of law.

8. Proviso to Sub-section (2) of Section 167 Code of Criminal Procedure, which empowers a Magistrate to authorize detention of an accused in the custody of police, reads as under:

“Provided that-

(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied

that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

9. Sub-section (8) of Section 173, under which investigating agency has power to further investigate the matter in which the report/charge sheet has already been filed, is reproduced hereunder:

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report Under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the

Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded Under Sub-section (2).

10. Relevant provision of Sub-section (2) of Section 309 Code of Criminal Procedure, empowering remand of an accused, provides as under:

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Explanation 1.-If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

11. In State through CBI v. Dawood Ibrahim Kaskar and Ors. MANU/SC/0643/1997 : (2000) 10 SCC 438, a three judge bench of this Court has laid down the law on the issue relating to grant of police custody of a person arrested during further investigation. In paragraph 11 of said case, this Court has held as follows:

11. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above Sub-section are different from detention in custody Under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a

*power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted--as has been interpreted by the Bombay High Court in Mohd. Ahmed Yasin Mansuri v. State of Maharashtra MANU/MH/0130/1994 : 1994 Cri. L J 1854 (Bom),- to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody Under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. **That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.***

(emphasis supplied)

12. *The case of Dinesh Dalmia v. CBI MANU/SC/7924/2007 : (2007) 8 CC 770, which is relied upon by the High Court, relates to granting of bail Under*

Section 167(2) Code of Criminal Procedure. In said case, the accused/absconder (Dinesh Dalmia) after his arrest was produced before the Magistrate, and on the request of CBI police custody was granted on 14.2.2006 till 24.2.2006, whereafter on another application further police custody was granted till 8.3.2006. Said accused was remanded to judicial custody, and the accused sought statutory bail Under Sub-section (2) of Section 167 Code of Criminal Procedure as no charge sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge sheet, and the remand of the accused to judicial custody was Under Section 309 Code of Criminal Procedure, after police remand came to an end, granted Under Section 167(2) Code of Criminal Procedure. The High Court upheld said order and this Court also affirmed the view taken by the High Court.

13. In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of Dinesh Dalmia (supra) in upholding refusal of remand in police custody by the Magistrate, on the ground that accused stood in custody after his arrest Under Section 309 Code of Criminal Procedure. We have already noted above the principle of law laid down by the three judge bench of this Court in State v. Dawood Ibrahim Kaskar (supra) that police remand can be sought Under Section 167(2) Code of Criminal Procedure in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression 'accused in custody' in Section 309(2) Code of Criminal Procedure does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

14. For the reasons, as discussed above, we find that the refusal of police remand in the present case is against the

settled principle of law laid down by this Court. Therefore, the impugned orders passed by the High Court, affirming the orders of the Additional Chief Judicial Magistrate, Jhargram, are liable to be set aside. Accordingly, the impugned orders passed by the High Court and the orders passed by the Magistrate, declining the police remand, are set aside. The Magistrate is directed to pass fresh orders on the applications made by the Appellant before it relating to granting of police remand of the Respondents in accordance with law.”

33. It was further submitted on behalf of the Union of India that the petitioner falls within the category of a ‘*fugitive criminal*’ as defined in terms of Section 2(f) of the Extradition Act, 1962, which provides as follows:

“(f) “fugitive criminal” means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.”

and that thus the trial for which the petitioner has been extradited to India in relation to the FIR No.111/2000, PS Chanakyapuri qua the alleged commission of the offence punishable under Sections 420/120 of the Indian Penal Code, 1860 has essentially to be conducted in accordance with law which would thus thereby not preclude the Investigating Agency from invocation of the powers of investigation in terms of Section 173 (8) of the Cr.PC, 1973.

34. The verdict of the Hon’ble Supreme Court in ***Vinubhai Haribhai Malaviya and Ors. vs. State of Gujarat and Anr. 2019 SCC***

OnLine SC 1346, a verdict dated 16.10.2019 stipulates vide paras 22, 30, 31, 32, 33, 35 thereof, which read to the effect:

“22. With the introduction of Section 173(8) in the Code of Criminal Procedure, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him Under Section 173.

...
...

30. Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Code of Criminal Procedure defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Code of Criminal Procedure with this difference-that "investigation" after the 1973 Code has come into force will now include all the proceedings under the Code of Criminal Procedure for collection of evidence conducted by a police officer. "All" would clearly include proceedings Under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered Under Section 190 may order "such an investigation", such Magistrate may also order further investigation Under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h).

31. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power Under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which

begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy (supra) cannot be relied upon.

32. Ram Lal Narang v. State (Delhi Administration) MANU/SC/0216/1979 : (1979) 2 SCC 322, is an early judgment which deals with the power contained in Section 173(8) after a charge-sheet is filed. This Court adverted to the Law Commission Report and to a number of judgments which recognised the right of the police to make repeated investigations under the Code of Criminal Procedure, 1898. It then quoted the early Supreme Court judgment in H.N. Rishbud v. State of Delhi MANU/SC/0049/1954 : AIR 1955 SC 196 case as follows:

17. In H.N. Rishbud v. State of Delhi [MANU/SC/0049/1954 : AIR 1955 SC 196 : (1955) 1 SCR 1150 : 1955 Cri. L J 526] this Court contemplated the possibility of further investigation even after a Court had taken cognizance of the case. While noticing that a police report resulting from an investigation was provided in Section 190 Code of Criminal Procedure as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed:

It does not follow that the invalidity of the investigation is to be completely ignored by a Court

during trial. When the breach of such mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for. This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it.

33. The Court then went on to hold:

20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously Accused or absolve persons already Accused. When it comes to the notice of the investigating agency that a person already Accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already Accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon

the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the Accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved Accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173

nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted Under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

(emphasis supplied)

...

...

35. *Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors.* MANU/SC/0302/2004; (2004) 5 SCC 347 is an important judgment which deals with the necessity for further investigation being balanced with the delaying of a criminal proceeding. If there is a necessity for further investigation when fresh facts come to light, then the interest of justice is paramount and trumps the need to avoid any delay being caused to the proceeding. The Court therefore held:

11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to

conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

(emphasis supplied)

13. In Ram Lal Narang v. State (Delhi Admn.) [MANU/SC/0216/1979 : (1979) 2 SCC 322 : 1979 SCC (Cri.) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.”

thus making it apparent that Sub-section (8) of Section 173 of the Cr.PC, 1973 permits further investigation by the Investigating Agency

even *de hors* any direction from the Court as it is open to the police to conduct proper investigation even after the Court takes cognizance of any offence on the strength of the police report earlier submitted and that it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. Furthermore, as laid down in ***Vinubhai Haribhai Malaviya and Ors. (supra)***, the Magistrate is not denuded of the power to order further investigation at the post-cognizance stage.

35. On behalf of the petitioner it was contended that the provisions of Section 173(8) of the Cr.PC, 1973 cannot be brought into play in the instant case to grant the prayer made by the Union of India and the Government of NCT of Delhi to conduct any interrogation of the petitioner as sought to be made even within the premises of the Tihar Jail, Delhi in terms of the Letters of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018, in as much as the petitioner herein was not extradited for the purpose of investigation and was extradited only to face trial.

36. Undoubtedly, trial commences only after the framing of charges as laid down by the Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab and Ors. (2014) 3 SCC 92*** as observed vide paras 27, 28, 29, 35, 36 and 47 of the said verdict, which read to the effect:

“27. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of

Section 2(g) Code of Criminal Procedure, which defines an inquiry as follows:

2(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

28. In State of U.P. v. Lakshmi Brahman and Anr. MANU/SC/0169/1983: AIR 1983 SC 439, this Court held that from the stage of filing of charge-sheet to ensuring the compliance of provision of Section 207 Code of Criminal Procedure, the court is only at the stage of inquiry and no trial can be said to have commenced. The above view has been held to be per incurium in Raj Kishore Prasad v. State of Bihar and Anr. MANU/SC/0480/1996 : AIR 1996 SC 1931, wherein this Court while observing that Section 319(1) Code of Criminal Procedure operates in an ongoing inquiry into, or trial of, an offence, held that at the stage of Section 209 Code of Criminal Procedure, the court is neither at the stage of inquiry nor at the stage of trial. Even at the stage of ensuring compliance of Sections 207 and 208 Code of Criminal Procedure, it cannot be said that the court is at the stage of inquiry because there is no judicial application of mind and all that the Magistrate is required to do is to make the case ready to be heard by the Court of Sessions.

*29. Trial is distinct from an inquiry and must necessarily succeed it. The purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led in this behalf. In Moly and Anr. v. State of Kerala MANU/SC/0259/2004 : AIR 2004 SC 1890, this Court observed that though the word 'trial' is not defined in the Code, it is clearly distinguishable from inquiry. **Inquiry must always be a forerunner to the trial.***

...

...

35. In Raj Kishore Prasad (Supra), this Court said that as soon as the prosecutor is present before the court and that court hears the parties on framing of charges and

discharge, trial is said to have commenced and that there is no intermediate stage between committal of case and framing of charge.

36. In In Re: Narayanaswamy Naidu v. Unknown MANU/TN/0256/1909 : 1 Ind. Cas 228, a Full Bench of the Madras High Court held that "Trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged.

...

...

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) Code of Criminal Procedure can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207 /208 Code of Criminal Procedure, committal etc., which is only a pre-trial stage, intended to put the process into motion."

(emphasis supplied)

In this context, it is essential to observe that as laid down by the Hon'ble High Court of Calcutta in *Pawan Kumar Ruia Vs. The State of West Bengal and Ors. 1998 (2) CLJ 310*, the pre-trial stage includes the stage of filing of the FIR and **the stage of investigation** as observed vide para 26 of the said verdict, which read to the effect:

"26. Sri Balai Ch. Roy, appearing on behalf of the petitioner on the other hand submitted that the direction as contained in the order of the Supreme Court is not only to raise all legal and factual pleas available but to raise the same at any appropriate stage and in particular at the pre-trial stage. Pre-trial stage means the stage before framing

*of charge and includes the initial stage of lodging of F.I.R. or filing complaint and an accused can very well raise the question of quashing the said complaint of F.I.R. at its initial stage i.e., immediately after it is lodged or instituted. An accused may come before the High Court for its quashing or for quashing the investigation if it had begun during the pre-trial stage. According to Sri Balai Ch. Roy at any appropriate stage means at any stage of investigation or proceeding which the accused considers appropriate from the time of institution of the F.I.R. or lodging of the complaint to any stage including the stage of appeal or revision. He also submitted that the Supreme Court has held that the law laid down in the decision of the State of Haryana v. Bhajanlal, MANU/SC/0115/1992 : AIR 1992 SC 604 has been correctly laid down. In view of the above decision it is apparent that the F.I.R. or the charge sheet if considered in its entirety and accepted to be true do not make out an offence, further investigation of cognizance upon the result of such investigation as the case may be should be quashed as it is the requirement of the ends of Justice. Sri Balai Ch. Roy also submitted that a Court proceeding ought not be permitted to degenerate into a weapon of harassment or persecution and in a lame prosecution it would be justified in quashing the proceeding in the interest of Justice. I do not see any reason to disagree with his submissions made above. **The accused has been given the right by the Hon'ble Supreme Court to raise all legal and factual pleas available to him at the appropriate stage of the proceedings and in particular at the pre-trial stage and accordingly such pleas are being taken at this stage of quashing the proceedings and the investigations and nothing is wrong in it.** It appears to me that the accused is within his right to raise his pleas available to him at this stage in the light of the order passed by the Hon'ble Supreme Court on 17.3.98. It was also rightly contended by Sri Balai Ch. Roy appearing on behalf of the petitioner that the Special Bench Judgment of Pawan Kumar Ruia v. S.P.C.B.I.*

reported in 1995 C. Cr. L.R. (Cal) 1, has no binding effect in view of the order of the Supreme Court that the petitioner is entitled to raise all the questions of fact and law at the pre-trial stage which includes the stage of filing the F.I.R. and the stage of investigation. He further submitted that on such leave the petitioner moved at this pre-trial stage and even points decided earlier by this Hon'ble Court is subject to the observations of the Supreme Court, permitting all questions of fact and law to be urged at the pre-trial stage and accordingly the petitioner has done so and also raised other points which were not available to him earlier.”

(emphasis supplied)

37. The verdict of this Court in ***Aman Vyas vs. Union of India 2019 SCC OnLine Del 9168*** categorically observed to the effect that the Extradition Act, 1962 does not contemplate that a person against whom a charge sheet has been filed **only** can be extradited in as much as Section 2(f) of the said enactment is a generic word and would include a person who is a suspect and accused of the commission of an offence.

38. On behalf of the petitioner it was submitted that the facts of the present case are distinguishable from that in the case of ***Aman Vyas vs. Union of India (supra)***. The same is undoubtedly true. However, the observations in the said verdict which categorically observe vide para 28 thereof to the effect:

“28. Article 11(3) of the Extradition Treaty states that "If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of requesting state and by such evidence as, according to the law of the requested state, would justify his committal for

trial if the offence had been committed in the territory of the requested state, including evidence that the person requested is the person to whom the warrant of arrest refers. Thus even as per Article 11(3) of the Extradition Treaty the requirement is not that a chargesheet has been filed, but the material placed is sufficient to justify committal for trial i.e. there is prima facie material to satisfy the requested state that the fugitive is involved in the offence/ offences,”

(emphasis supplied)

make it apparent that in terms of Article 11 Sub-clause 3 of the Extradition Treaty between the United Kingdom and India, it is not necessary that the extradition can be made only when a charge sheet has been filed but if the material placed is sufficient to justify committal for trial to indicate that there is prima facie material to satisfy the **Requested State** that the fugitive is involved in the offence/ offences, the same would suffice to grant the prayer for extradition. It is essential to observe that the SLP (Crl.) No.6558-6559/2019 filed against the *Aman Vyas vs. Union of India (supra)* has been dismissed by the Hon'ble Supreme Court vide order dated 12.09.2019.

39. It has been submitted on behalf of the petitioner that in the instant case if the Investigating Agency sought to investigate the matter further, it ought to have made it express and clear through the submissions that have been made before the Westminster Magistrates' Court as well as to the Divisional Court of the North Queen's Bench Division before the Hon'ble England and Wales High Court and the same having not been so done, the '**Rule of Speciality**' in terms of the

Extradition Treaty ratified on 15.11.1993 between the Government of Republic of India and the Government of the United Kingdom of Great Britain and Northern Island vide Article 13 thereof are a complete embargo to the conducting of any investigation by the **Requesting State** i.e. India and that in the event of the **Requesting State** i.e. India submitting to the effect that the investigation and interrogation of the petitioner can be conducted despite the factum that the affidavit sworn by the Deputy Commissioner of Police, Crime Branch, Delhi dated 18.05.2015 sworn before the CMM, New Delhi and submitted as the affidavit in the matter of the extradition request of the Government of the Republic of India for the extradition of the petitioner herein as per provisions of the Extradition Treaty between the Government of the Republic of India and the Government of United Kingdom of Great Britain and Northern Island, made it express vide para 3 thereof to the effect:

*“That the case is not time barred as envisaged under Section 468 of the Criminal Procedure Code, 1973 of India. Further the Hon’ble court of Chief Metropolitan Magistrate, Patiala House Courts, New Delhi has already taken **cognizance** of the offences committed”*,

and that thus it had been stated categorically that cognizance of the offences committed had already been taken and vide the timeline of finalization of the case and filing of the final report/ charge sheet and seeking extradition of the petitioner, it had been submitted to the effect:

“8. Below mentioned are the reasons due to which the extradition request is being sent now;

- (i) That the case was registered in the year 2000 and the voice samples of arrested accused persons namely Rajesh Kalra, Krishan Kumar and Sunil Dara @ Bittoo was also obtained in the year 2000.
- (ii) The voice sample of the main conspirators namely Sanjeev Kumar Chawla and Hansie Cronje was not therewith the investigating agency,
- (iii) Accordingly, requests were sent to South African and United Kingdom authorities through Letter Rogatory in the year 2000 and it was also requested to provide the voice sample of accused Sanjeev Kumar Chawla and Hansie Cronje.
- (iv) The United Kingdom authorities in their reply sent in Letter Rogatory (Annexure U) informed that the subject Sanjeev Kumar Chawla had refused to give his voice sample.
- (v) The South African authorities in the year 2003 informed that consequent upon the death of Hansie Cronje in a plane crash, they had closed the investigations and did not provided his voice sample. They provided a copy of the statements recorded by the Kings Commission of Enquiry.
- (vi) In the year 2003 the voice sample of Hansie Cronje was obtained in the form his TV interview given to ESPN.
- (vii) In the year 2004 Red Corner notice of the subject Sanjeev Kumar Chawla was got opened.
- (viii) In the year 2004 open non bailable warrants against subject Sanjeev Chawla were obtained from the court.
- (ix) Repeated efforts were made by sending various correspondences to the South African authorities to give detail reply as sought in the letter Rogatory.
- (x) In the year 2009 the voice samples of accused persons namely Rajesh Kalra, Krishan Kumar, Sunil Dara @ Bittoo and Hansie Cronje were sent to Central Forensic Science Laboratory, New Delhi for comparison with the recorded conversations.
- (xi) The Central Forensic Science Laboratory, New Delhi gave its report in the month of January 2013 and opined that the voice sample of all the four alleged Rajesh Kalra,

Krishan Kumar, Sunil Dara @ Bittoo and Hansie Cronje matches with the voices in the recorded conversations.

(xii) Consequent upon the receipt of the Central Forensic Science Laboratory report, the voluminous records were again gone through and final report in the form of chargesheet was prepared under section 173 of Criminal Procedure Code and filed in the competent court in July 2013.

(xiii) Subject Sanjeev Kumar Chawla has also been named as one of the accused in the report.

(xiv) That the offences for which accused Sanjeev Kumar Chawla has been charged are not time barred and the Hon'ble trial court has taken cognizance of the offences and has sought the extradition of subject Sanjeev Kumar Chawla (Annexure E).”

with it having been submitted categorically vide para 10 of the said affidavit to the effect:

*“10. That the offences for which the accused **Sanjeev Kumar Chawla**, the subject, is to be extradited are punishable with imprisonment for a maximum term of 7 years. It is, therefore, necessary in the interest of justice that accused **Sanjeev Kumar Chawla**, the subject, be extradited from United Kingdom of Great Britain and Northern Ireland to India to **face trial** in the competent court, in this Case.”*

and that thus the State had merely sought the extradition of the petitioner to face trial in the competent Court in this case and not beyond and that nothing had prevented the Union of India to seek the extradition of the petitioner for further investigation in the matter if it was so required and that the petitioner can thus not be put to any prejudice in relation thereto and no investigation can be conducted anymore, nor can the petitioner be allowed to be interrogated.

40. The learned ASG in response to this contention submitted that the said affidavit sworn by the Deputy Commissioner of Police, Crime Branch for the purpose of extradition proceedings as attested by the CMM, New Delhi specifically stated vide its conclusion to the effect that Sub-clause (1) to the effect:

“(i) On the basis of the investigation conducted so far, statements of witnesses recorded during investigation, conversations recorded between he accused in the seized audio and video cassettes, CFSL report and other documentary and oral evidence, it can be safely concluded that some of the matches were fixed and in some matches, an attempt was made to fix them, as explained in subsequent paragraphs.”

and vide Sub-clause (3) to the effect:

“(iii) That from the investigation conducted so far there is sufficient evidence to prove that the accused persons namely Sanjeev Kumar Chawla, Hansie Cronje, Krishan Kumar, Rajesh Kalra, Sunil Dara @ Bittoo and Manmohan Khatter had entered into a criminal conspiracy to fix the cricket matches played between India and South Africa from 16.02.2000 to 20.03.2000 in India. In furtherance of this conspiracy, the 1st Test Match at Mumbai and the 1st One Day International at Cochin were fixed and the same resulted in wrongful gain to the accused and wrongful loss in general to the public at large, who had gone believing that they would witness truly competitive matches in which each player would perform optimally. The accused persons have thus committed offences punishable u/s 420/120B of IPC.”

and vide para 7 thereof it was observed to the effect:

“7. That on the basis of the above investigations a Final report under section 173 of the Criminal Procedure Code

was filed in the court of Chief Metropolitan Magistrate, New Delhi on 22.07.2013 (Annexure D). That accused Sanjeev Kumar Chawla, the subject was not available for investigation since the registration of case on 06.04.2000. Open Non-Bailable warrant of arrest against him was issued by the court of Metropolitan Magistrate, Delhi on 02.09.2004. Certified copy of the Non Bailable Warrant is placed at (Annexure G). He held Indian passport No.A-1615336, which has since been cancelled by the Indian High Commission in London (U.K.) Thereafter a reference was made to Assistant Director, Interpol India for issue of Red Corner Notice against accused Sanjeev Kumar Chawla. This reference was forwarded by Interpol Delhi to Interpol Secretariat General for issuance of Red Corner Notice against accused Sanjeev Kumar Chawla, and for circulation to member countries. Thereafter, Interpol Secretariat General vide control No. A-1526/ 11-2004 dated 09.11.2004 issued Red Corner Notice against accused Sanjeev Kumar Chawla and circulated the same to its member countries. Copy of the Red Corner Notice is placed at (Annexure G). The Red Corner Notice seeks the arrest of the subject with a view to his subsequent extradition and such notice is issued only after (a) a wanted person has committed offence under ordinary criminal law of the country (b) the warrant has been issued for his arrest and (c) Extradition of the person will be, requested consequent to his arrest.”

that the petitioner herein was not available for investigation since registration of the case on 06.04.2000 and that the final report under Section 173 of the Cr.P.C., 1973, on which cognizance had been taken was only to the extent of investigation conducted till then.

41. It was submitted on behalf of the petitioner that vide clause 15 of the said affidavit of the DCP, Crime Branch, it had been sworn to the effect:

“That accused Sanjeev Kumar Chawla will be tried in India only for the offences for which, this extradition is being sought or for lesser offences disclosed by the facts.”

and that thus what had been stated therein was that the petitioner would be tried in India only for the offences for which extradition was being sought or for lesser offences disclosed by the facts and that it had not been stipulated that there would be any further investigation conducted.

In relation to this aspect, it is essential to observe that vide verdict dated 23.01.2020 of the Divisional Court of the Hon’ble Queen’s Bench (2020) EWHC 102 (Admin) reference was made to para 54 & 55 of the first judgment of the Divisional Court pursuant to proceedings in the Westminster Magistrates’ Court and it was observed vide paras 54 & 55 of the said verdict of the Divisional Court as well as adverted to paras 54 & 55 of the first judgment of the Divisional Court in relation to the petitioner to the effect:

*“54. In these circumstances if matters remain as they are the appeal will be dismissed. However, it is apparent that it will be possible to meet the real risk of article 3 treatment by offering a suitable assurance that Mr. Chawla will be kept in article 3 compliant conditions in Tihar prison **before**, during trial and, in the event of conviction and sentence of imprisonment, after trial. Such an assurance will need to: address the personal space available to Mr Chawla in Tihar prisons; the toilet facilities available to him; identify the ways in which Mr Chawla will be kept free from the risk of intra-prisoner violence in the High Security wards; and repeat the guarantee of medical treatment for Mr Chawla.*

55. Therefore, following the approach set out in Georgiev at paragraph 8(ix) and (x), we stay the appeal to give the Government an opportunity to provide further assurances. We require a response from the CPS within 42 days of the date of the handing down of this judgment. We give permission to apply to both parties as regards the wording of any further assurances, the timing for their production, and the final disposal of this appeal.”

making it thus apparent that the aspect of the petitioner being extradited to India even for the stage prior to trial was within the contours of knowledge of the **Requested State**. The same is also brought forth through observations in para 52 of the verdict dated 23.01.2020 of the Divisional Court vide which the permission sought by the petitioner herein seeking to leave to appeal against the Westminster Magistrates’ Court sending case to the Secretary of State for his decision on whether the petitioner be extradited to India, was declined. The said observations in para 52 of the said verdict reads to the effect:

“52 Mr Powles also seeks to contend that there is a real risk that the police would seek to rely on evidence obtained by torture. The basis of this allegation is that three of Mr Chawla’s co-accused have made confessions which implicate Mr Chawla. One of these, Mr Kalra, made an application to the Delhi Magistrates’ Court in April 2000 contending that he had been the subject of high-handed treatment by the police and that they had forcibly extracted his signature on a blank piece of paper. The application was said to be an application for directions to the police. Mr Powles confirmed in oral submissions that there was no evidence before this court as to what happened to this application. Mr Kalra subsequently made a written confession implicating Mr Chawla. Mr Powles does not

suggest that there is any evidence that the confession was written by police on the blank piece of paper that MrKalra was allegedly forced to sign. There is no evidence before this court indicating that MrKalra's confession, or that of the other two co-accused were extracted by torture or improper means. Mr Powles invites us to infer that that may be the case as the three co-accused have, it seems, maintained their pleas of not guilty and have not yet been tried. There is simply no realistic basis upon which the fact that an application was made in 2000 alleging police high-handedness or the forcible extraction of a signature on a blank sheet of paper could give rise to any real risk that Mr Chawla would not have a fair trial because the authorities would rely on evidence obtained by torture. The suggestion, on the limited evidence available, is speculative in the extreme."

and thus spells out clearly the aspect of investigation being implicitly falling within the ambit of the scope of the purpose for which the extradition of the petitioner was granted.

CONCLUSION

42. In the circumstances, thus where the learned Additional Solicitor General for the Hon'ble Supreme Court, Mr. Sanjay Jain on behalf of the Union of India has expressly stated to the effect that the terms of the Letter of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 would be followed in letter and spirit and that the petitioner would not be taken out of the Tihar Jail complex except with permission, if any, granted by the Court, in terms of Section 173(8) of the Cr.PC, 1973 in as much as the petitioner herein has never joined the investigation since so far and the submission made on behalf of the State that it seeks to conduct an interrogation of the

petitioner to confront him with the aspects of the investigation conducted previously to unearth the conspiracy in relation to the match fixing in question, coupled with the express submission made by the learned ASG for the Union of India that no investigation nor interrogation in relation to any offence other than that punishable under Sections 420/120B of the Indian Penal Code, 1860 or a lesser offence than that for which he has been extradited or any other offence qua which consent had been taken or would be taken from the **Requested State**, would be conducted, which this Court accepts as being the solemn assurance and undertaking of the Union of India, the petition is disposed of with directions to the effect that the impugned order dated 13.02.2020 of the learned trial Court granting police custody remand of 12 days of the petitioner, is modified to the effect that the petitioner during the entire stage of pre-trial detention, trial and conviction, if any, in terms of the Letter of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 would continue to be lodged at the Tihar Jail complex in adherence with the terms of the said Letter of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 and cannot be allowed to be taken out of the Tihar Jail complex for the purpose of investigation or interrogation in police custody, though the Investigating Agency in the matter is permitted to conduct the interrogation of the petitioner at the Tihar Jail complex **only** in terms of the timeline stipulated in terms of Section 167 (2) of the Cr.PC, 1973, which reads to the effect:

“(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not

jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) 1 the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. 1

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused

person may be proved by his signature on the order authorising detention.]”,

that is to the extent of the period of a term not exceeding 15 days from the date of arrest of the petitioner herein i.e. not exceeding a period of 15 days from the date and time of the arrest of the petitioner i.e. 13.02.2020 at 2:00 hours IST, which period would thus end on 28.02.2020 at 2 am, whereafter, no further interrogation of the petitioner in relation to the FIR No.111/2000, PS Chanakyapuri can be granted nor is granted. The Investigating Agency may utilize the technology of video conferencing as submitted by the learned ASG for conducting the investigation and interrogation to the extent as prayed in the application of the State dated 13.02.2020 submitted before the learned trial Court. As regards any follow up action required for the investigation and interrogation to the extent permitted hereinabove, the State may seek the permission of the Trial Court seized of the matter.

43. This is so in as much as, as laid down by the Hon’ble Supreme Court in *Central Bureau of Investigation vs. Anupam J. Kulkarni (1992) 3 SCC 141* vide para 13 thereof to the effect:

*“13. Whenever any person is arrested under Section 57 Cr. PC he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e., **either police or judicial from time to time but the total period of***

detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate alongwith the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation - can only be in judicial custody. There can not be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier - case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in

Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.”

(emphasis supplied)

vide which verdict, the Hon’ble Supreme Court approved the view laid down by the Division Bench of this Court in *State(Delhi Administration) vs. Dharam Pal and Others. 1981 SCC Online Del 368* vide para 24 thereof to the effect:

“24. We have already set out the provisions of the Section and also the interpretation to be given to the Section. We must keep in view that the object of the Section is to facilitate investigation into an offence. We completely agree with Hardy J., in coming to the conclusion that the Magistrate has to find out whether there is a good case for grant of police custody. There is no sign in the Section that the nature of the custody cannot be altered. In fact, experience would show that investigation would be hampered and made more difficult if the nature of the custody was not capable of alteration in the first 15 days. It might be necessary to send the accused to a hospital for examination, or to produce him before a Magistrate for recording a confession, in such cases, a useful precaution to take is to send the accused to judicial custody so that the confession might be free and without pressure. Another example is provided on the facts of this case for enabling an identification parade to be held in the jail. Another possibility is that the police may not require the prisoner immediately for lack of material which might be forthcoming later. In such a case the period of police custody might be shortened by remanding the prisoner to judicial custody while the police is collecting the necessary material for further investigation. There can be many examples of this type dependent on the circumstances of the case.”

as adhered to by this Court in *Rajiv Jain vs. State & Another 2017 SCC OnLine Del 10354* vide observations in para 2 of the said verdict, this Court is respectfully unable to accept the reliance placed vide the impugned order of the learned trial Court on the observations of the High Court of Bombay in “*Alim A. Patel vs. State of Maharashtra*”2011 (2) AIR BOM R 271 that an accused could be remanded to police custody even after 15 days excluding the period of bail where an accused has never remained in custody for even a single day.

44. *The Investigating Agency shall however take care to ensure that the petitioner is treated with dignity during the investigation and interrogation conducted.*

45. *Furthermore, the Superintendent Jail shall adhere to the Letter of Assurances dated 28.02.2017, 22.09.2017 and 11.06.2018 as issued by the Ministry of Home Affairs, Government of India in letter and spirit.*

46. Copy of this order be supplied to either side and be sent to the Superintendent, Tihar Jail, Delhi for compliance.

ANU MALHOTRA, J.

FEBRUARY 20th, 2020

'Neha Chopra'/SV/vm