

IN THE COURT OF SH. AJAY KUMAR KUCHAR,
SPECIAL JUDGE, CBI – 09 (PC ACT),
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.

ECIR/HQ/19/2017

U/S 3, 4 PMLA, 2002

Deepak Talwar and Oth. Vs. Directorate of Enforcement

01/05/2020

Presence:

(Through Cisco Webex Meeting App)

Sh. Hariharan, Ld. Senior Advocate with Tanveer Ahmed Mir,
Advocate, Counsel for applicant / accused Deepak Talwar.

Ld. Senior Counsel Sh. Amit Mahajan and Sh. Nitesh Rana, Ld.
Special Public Prosecutor for ED

**ORDER ON SECOND BAIL APPLICATION U/S 439 Cr.P.C.
SEEKING REGULAR BAIL TO THE APPLICANT / ACCUSED
DEEPAK TALWAR.**

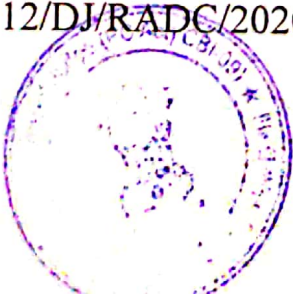
1. This regular bail application has been assigned to this court by the order of Ms. Sujata Kohli Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi dated 20.04.2020 and in terms of said order, it has been taken up for hearing. It may be mentioned at the outset that after the Bail application was assigned for hearing on 07/04/2020, the Enforcement Directorate(here in after referred as ED) had moved an application on 08/04/2020 for recalling of the Administrative order of listing the bail application for hearing and further the ED had also moved an application dated 16/04/2020, before





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Ms. Sujata Kohli, Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi, for listing the application for hearing after regular court work is resumed. However, I was informed by Mr. Vivek P A to the Ld. District Judge and also by Ld. Counsel for ED that both the request were declined by the Ld. District & Sessions Judge-cum-Special Judge (PC Act). The bail application moved by applicant on 12/03/2020 was listed on 23/03/2020 and 26/03/2020. In view of "Closure" of Courts on account of spread of Coronavirus Pandemic and direction for entertaining only urgent matters for hearing, the applicant pressed for hearing his application on Medical grounds. The bail application was marked to Ld. Special Judge on Duty on 26/03/2020 for hearing. The Ld. Special Judge on Duty after hearing dismissed the bail application vide his order dated 26/03/2020. The applicant /accused moved application before the Ld. District & Sessions Judge-cum-Special Judge (PC Act) for listing the application for hearing on merits which request was allowed and Bail Application was directed to be listed as Regular bail application on 07/04/2020 before Sh. Chandra Shekhar Ld. Special Judge, CBI. Later on vide order dated 20/04/2020 the Ld. District & Sessions Judge-cum-Special Judge (PC Act) RADDC assigned this application to this court. In the background of these facts the second regular Bail Application of accused Deepak Talwar under Section 439 Cr.P.C. was taken up for hearing.

2. As per the direction of Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi, in the Orders passed on 07.04.2020 and 20/04/2020 and Modified Protocol No. 12/DJ/RADC/2020 dated 19/04/2020 and further Modified Protocol




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No13/DJ/RADC/2020 dated 21/04/2020 issued by Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi bail application has been heard through Video Conference facilitated by Computer Branch attached to the office of the Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi through Cisco Webex Meeting App, due to spreading of Corona Virus (COVID-19) and special measures taken by the Govt. to prevent it by ordering an nationwide lockdown up to 03/05/2020 and consequent instructions issued by Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi to work from home in order to maintain social distancing.

3. I have received through E-mail the copy of the bail application and reply of the Enforcement Directorate and some miscellaneous orders passed in this case along with some annexure through the office of Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi. The Ld. Counsel for the applicant /accused also forwarded scanned Copy of Complaint with list of witnesses and documents relied upon by the Enforcement Directorate. As per direction issued on 24/04/2020 both the parties have also filed the Written Synopsis of arguments in concise form.

4. I have gone through the Bail application, reply thereto and scanned copy of complaint and other documents received on my E-mail through the Office of Ld. District and Sessions Judge, RADC. Before proceeding

Further facts of the case, in brief, may be considered.





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5. M/s Advantage India is registered Society which is also registered under the Foreign Contribution (Regulation) Act, 2010 for carrying out the educational and social activities. It had received foreign contribution during the Financial Year 2012-2013 to 2015-2016 to the tune of Rs. 90.72 Cr. from M/s Airbus S.A.S Paris, France and M/s MBDA, England, UK, which Companies are engaged in Aeronautics and Missile manufacturing respectively. Both the companies' separately entered into an Agreement with M/s Advantage India to provide donation. The applicant /accused being the then President of the Society signed the agreements. This fund was received under Corporate Social Responsibility scheme (CSR).The Foreign Receipts and Monitoring Unit (FRMU) of Ministry of Home Affairs, however, found that funds so received by M/s Advantage India were utilized not for the mandated purposes that is towards the promotion of aims and objectives of the Society, for which it was received but for the purposes contrary to the mandate in the Memorandum of Association. A Complaint was accordingly made to CBI. This led to registration of the FIR vide No. RC-DAI-2 017-A-A0036 dated 16/11/2017 by Central Bureau of Investigation, ACB, New Delhi for violation of provision of Sections 33,35 and 37 of Foreign Contribution(Regulation)Act,2010 and Sections 120B,199,468,471 and 511 read with Section 417 of Indian Penal Code (IPC) for the offence of criminal conspiracy, making false statement before authority, use of forged documents as genuine and attempt to cheat.

6. The Offences under the Section 120 B, 417 and 471 of IPC are the Scheduled Offences under the Schedule attached to the Prevention of




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Money Laundering Act, 2002(PML Act). Thus, on the basis of FIR registered by CBI for Offences including Scheduled Offences under PML Act, the Directorate of Enforcement recorded ECIR/HQ/19/2017 on 04/12/2017 to investigate the matter under PML Act to find the trail of the Proceed of Crime (POC).

7. After investigation ED filed Complaint in Court which is premised on the allegations that accused Deepak Talwar, who controlled M/s Advantage India had hatched a criminal conspiracy to divert the funds received through foreign donors for non-mandated purposes by booking expenditure in the Books of Account of the Society on the basis of forged documents. The payments made through banking channels on the basis of documents forged ostensibly for mandated purposes of the Society were received back in cash by Deepak Talwar, founder of Society, after routing the same through a chain of entities. He roped in other accused as well to execute his plan.
8. The investigation by the ED has revealed that bogus bills were prepared and documents were forged to show false expenses. It is the case of ED that a sum of 26.96 cr. was shown in the books of M/s Advantage India under the heading 'medicines' purchased through M/S Astha Pharma and M/S Hind Pharma for FY 2013-14;2014-15 and 2015-16. The proprietors of these firms namely Smt. Kusum Juneja and Sh.Ramesh Kumar in their statements under section 50 of PML Act denied having made any sale to M/s Advantage India and the Drug License number mentioned in the Bills does not belong to them. Allegedly bank accounts in the name these Pharma firms were opened on the basis of forged documents. The accused Jatin Wadhwa provided assistance to book



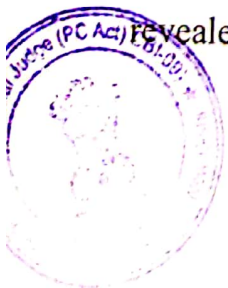
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bogus expenses through M/S Astha Pharma and M/S Hind Pharma to generate cash by transferring RTGS to these entities.

9. It is the case of the ED that out of the total receipt of about 90 Cr. M/s Advantage India paid about 42 cr. to M/s Accordis Healthcare for alleged purchase of Mobile Medical Units and associated services. Raman Kapoor, owner of M/s Accordis Healthcare, in his statement under section 50 of PML Act that on the instructions of Deepak Talwar he had booked bogus expenses and handed over cash of Rs. 29 Cr. to him in lieu of bank transfer received from M/s Advantage India. The M/s Accordis Healthcare made payments to various vendors and made expenses for medical equipments and thus booked bogus expenses as mentioned in Para 6 of the complaint. During investigation summons were issued to those vendors but summons received with remarks either address not found or addressee not at the address. Thus proceed of crime has been generated through sham transactions, as expenditure was booked by M/s Accordis Healthcare without there being any actual transaction. M/s Accordis Healthcare also booked bogus expenses under the head professional fees and commissions, which is evident from the statements of persons to whom such fees and commission was ostensibly paid.

10. It is further case of the ED that M/s. T. Kapoor was paid more than one crore as consultant fees in the year 2013-14 and 2014-15 which was a mis-utilization of foreign contribution as M/s T. Kapoor was providing consultancy to M/s Wave Impex(P)Ltd and Wave Hospitality(P)Ltd.

11. It is further alleged that M/s Wave Impex is a family concern of accused Deepak Talwar and is beneficially controlled by him. Investigation has revealed that in the FY 2013-14 M/s Wave Impex has received 1.65 Cr.



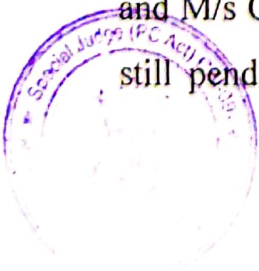

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from two Kolkata based companies namely M/s SnehBarter (P) Ltd. and M/s Planar Distributors (P) Ltd. Investigation has revealed that these are shell companies and provided accommodation entries into M/s Wave Impex in lieu of cash. Thus, the accused has layered the Proceeds of crime generated by him by showing bogus expenditure from M/s Advantage India.

12. It is also the case of the ED that miscellaneous expenses were shown in the book of M/s Advantage India under the heads of salary, professional charges which are for non-mandated purpose and for personal benefit of accused Deepak Talwar; that in the year 2015-16 more than Rs.30 lakh was spent on foreign travel of accused and M/s Advantage India utilized funds for business activities of the accused ; that more than Rs. 79 lakh was paid to the accused during the period 2013 to December 2015, as rent.

13. It is further found during investigation that Rs. 6.65 cr. was transferred from M/s Advantage India to M/s Capital Impex and M/s Capital Print Processes (P) Ltd for huge quantity of stationary but in fact no goods were supplied and only book entries were made to cover up the formalities.

14. In the written synopsis submitted by the ED it is mentioned that Rs. 3.01 cr. was transferred to M/s Ayka Trading (P)Ltd from M/s Advantage India but in fact no goods were supplied rather vendors exchanged cash for RTGS after charging commission. It was submitted during course of argument that investigation with regard to transaction M/s Capital Impex and M/s Capital Print Processes (P) Ltd and M/s Ayka Trading (P)Ltd is still pending the owners there of namely Sukrit Sud and Ms. Yasmin




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Kapoor respectively have already been granted anticipatory bail. As stated in the Complaint investigation in respect of properties of the accused acquired by him is still pending and is at crucial stage.

15.I have heard arguments from Sh. Hariharan Senior Advocate with Sh.Tanveer Ahmed Mir appearing for the applicant/accused and Sh. Amit Mahajan senior counsel and Sh. Nitesh Rana for the ED, at length and perused the document supplied through Office of Ld. District and Sessions Judge.

16.Ld.Consel for the accused has raised multifold arguments. Firstly, it was argued that all transactions of M/s Advantage India have taken place through bank accounts and payments in the form foreign donation have been received pursuant to the agreements with M/sAirbus France and M/s MBDA, England. These foreign donors have monitored the expenses incurred to their satisfaction and have made no complaint. Thus, no offence of cheating is made out. There is no evidence that amount received as foreign donation has been siphoned of by accused .In the absence of complaint how can it be said that cheating has taken place. It is argued that no recovery has been made from the accused. The ED has based its case on the statement of Raman Kapoor under section 50 of PML Act which has no evidentiary value because firstly he himself is an accused in the case; secondly admissibility of the statement of co-accused has to be considered at the trial. The second limb of this argument is that since offence of cheating is not made out and offences under FCRA, 2010 not being 'Scheduled offence' the provisions of PML Act, 2002 are not attracted and investigation is non est.




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17. It was argued that filing of complaint by the ED show that investigation qua the applicant is complete and therefore his further custody is not required. Further there is noting on the record to suggest that applicant can temper with evidence as the case is based on documents which the ED has already seized. There is no material to suggest that he can influence witnesses as their statements already recorded by the ED.

18. It was submitted that none of the co-accused namely Raman Kapoor, Jatin Wadhera, Tarun Kapoor, Sanjeev Sharma and Manish Garg allegedly equally partner in crime, has been arrested by the ED and further they have been granted interim bail by the court on their first appearance in the court on 16/03/2020. It is further argued that one Sukrit Sud and Ms. Yasmin Kapoor against whom the ED says investigation is pending and are not made accused in the Complaint filed in the court, have already been granted anticipatory bail. The ED has not explained why this partisan attitude has been adopted against the applicant /accused. It was further argued that the applicant has been granted bail in other connected cases.

19. It was further argued that the maximum punishment provide for offences alleged in the Complaint is 7 years. It was argued that the gravity of an offence is judged by the quantum of sentence provided for the offence. It was argued that amount allegedly involved in the present case is 90 cr. while the coordinate bench of this court has granted bail in case of Ratul Puri vs. Enforcement Directorate and Sanjay Singhal vs. Enforcement Directorate on 2/12/2019 and 24/01/2020 respectively where amount involved runs into thousand of crore of rupees. Moreover gravity or





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seriousness of the offence is not the only parameter on the basis of which bail can be denied to an accused.

20. It was further argued that law with regard to bail has been well settled and courts have to see if the applicant for bail qualify the triple test i.e. firstly, he is not a flight risk; secondly, he will not temper with evidence and influence witnesses and thirdly, he will make himself available all the time for further investigation if required and trial. It is submitted that evidence is documentary and the ED has not explained how it can be tempered. If further investigation is pending how the continued custody of the accused will help in the same. He has already joined investigation and also suffered police custody remand. He was arrested in some other case in January 2019 which was in the knowledge of the ED but was arrested in the case only in December 2019. Further the officials of M/s Advantage India have joined investigation more than hundred times and documents in bulk have been supplied which have been seized by ED. So far as flight risk is concerned the accused has roots in India and further suitable conditions can be imposed upon him.

21. Ld. Counsel for the applicant /accused has relied upon following case law in support of his arguments. P.Chidambaram vs. CBI, (2019) SCC Online Del 1380; P.Chidambaram vs. Enforcement Directorate 2019 SCC Online Del 1549; Nikesh Tarachand Shah vs Union of India (2018)11 SCC 1; Sameer Bhujbal vs. Enforcement Directorate Bail Application no.286 of 2018 decided on 06/06/2018; Upender Rai vs. Enforcement Directorate(2019) 262 DLT 382; D.K.Shivakumar vs. Enforcement Directorate (2019) 264 DLT 586; Enforcement Directorate vs D.K.Shivakumar SLP(Crl.)10164/2019 decided on 15/11/2019;




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Asst. Director ED (2017) SCC Online Delhi 8676; Gaurav Gupta vs. ED 2015 Cri.LJ 3871; Savitri Agarwal vs. State of Maharashtra (2009) 8 SCC 325; Sanjay Chandra vs. CBI (2012) 1 SCC 40 and Amit Mahajan vs. Commissioner of Customs (2000) Cri.LJ 2094.

22. The Ld. Counsel for the ED has opposed the bail application vehemently.

He argued that case of ED is not based only on the statements of witnesses examined during investigation but there is corroborative documentary evidence to prove that accused has entered into criminal conspiracy of forging documents and siphoning off the amount of foreign donation for his personal use. It is argued that accused has acted as a lobbyist for the donors and there was no occasion for foreign donation to M/s Advantage India as it does not have any proven track record of charitable activities.

23. It was argued that applicant can not claim parity with other accused who were not arrested during investigation as case against him is more serious he being the main beneficiary. He is brain behind the crime. It is argued that in each crime there are different categories of accused and case of each such accused has to be considered on its own merits. It was also argued that huge amount of money has been siphoned off and used by the accused for creation of private assets. The accused has made base in foreign country which is evident from the fact that he run away from investigating agencies and did not join investigation initially. His son Aditya Talwar has not joined investigation till date. It was argued that gravity of offence is not solely dependent on the quantum of sentence it has also to be judged from the impact of the crime on the society. It was




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also argued that length of incarceration not criteria for bail and the antecedents of accused are also to be considered. The nature of offence is also important criteria and especially in economic offences court must take a strict view. Economic offences are classified as different class which has deep rooted conspiracies. The economic offences affect entire community and ruin economy of State.

24. It was argued that M/s Astha Pharma and M/s Hind Pharma to which Rs.26.96 Cr. have been paid found to be fake. Their bank accounts have been opened on forged documents and fake Drug License. The records of M/s Accordis Healthcare, to which 42cr. was transferred on account of Mobile Medical Unit and other medical equipments, shows that payment has been made to sham companies and entities. The accused Raman Kapoor has admitted in his statement that on the instructions of Deepak Talwar he had booked bogus expenses and handed over cash to him.

25. In support of arguments reliance has been placed on following case law. State of Bihar vs. Amit Kumar (2017) 13 SCC 751; Nimmagadda Parsad vs. CBI (2013) 7 SCC 466; CBI vs. Ramendu Chattopadhyay Criminal Appeal no. 1711 of 2019; Serious Fraud Investigation Office vs. Nittin Johari (2019)9SCC 165; Y.S.Jagan Mohan Reddy vs. CBI (2013) 7 SCC 439; State of Gujrat vs. Mohanlal Jitamalji Porwal (1987)2 SCC 364; Anil Kumar Yadav vs. State (NCT of Delhi) (2018) 12 SCC 129; Kalyan Chandra Sarkar vs. Rajesh Ranjan (2004)7 SCC 528; Gautam Kundu vs. Directorate of Enforcement (2015) 16 SCC 1 and Sunil Dahiya vs. State (Govt of NCT of Delhi) 2016 SCC Online Del 5566.

26. Having considered the arguments from both sides and the case law relied upon I am of the view that there is no straight-jacket formula for grant or




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rejection of bail and each case to be considered on its own facts and merit. Important factors at the time of consideration of bail application, *inter alia*, would be nature of offence; gravity of offence; nature of evidence; antecedents of accused; circumstances peculiar to accused; apprehension of tempering with evidence; possibility of influencing witnesses; securing the presence of accused and the larger interest of the society and impact of the offence.

27. The main thrust of the argument of Ld. Counsel for accused is that the Complaint has been filed which signifies that investigation qua accused is complete and further that none of the co-accused was ever arrested by the ED during investigation; entire case of the ED is based on documents and statements recorded under section 50 of PML Act including those of co-accused the admissibility of which is to be tested at the trial. It is also emphasized that applicant /accused has been granted bail in other matters investigated by CBI and ED where in the co-ordinate bench of this court have considered all the aspects. The main ground of opposing the bail is that the applicant is the mastermind behind the crime and also main beneficiary; therefore, his case can not be treated at par with other co-accused persons who were not arrested during investigation.

28. The Ld. Counsel for ED has argued that accused can temper with evidence which may thwart the investigation which is still pending qua the dealings of Ms/Advantage India with M/s Capital Print Processes Pvt.Ltd, M/s Capital Impex Pvt.Ltd. and M/s Ayka Trading Pvt Ltd. The gravity of offence is another ground taken to oppose the bail. It was argued that it being an economic offence serious view need to be taken especially in the light of observations made in the case of Nimmagadda





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Parsad(supra); State of Bihar vs Amit Kumar(supra) and Nitin Johri's case (supra). The Ld. Counsel for accused has drawn attention of the court to the observation of Hon'ble Supreme Court in the case of P.Chidambaram vs. ED (supra) where in above mentioned cases were referred and reference was also made to principles of law as laid down by the Constitution Bench in Gurbax Singh Sibbia vs. State of Punjab (1980)2 SCC 565. It was held that gravity of offence has to be gathered from facts and circumstances of each case and one of the circumstances to consider gravity of offence is the term of sentence prescribed for the offence allegedly committed by the accused. In the present case maximum sentence that can be awarded is seven years.

29. The court could not be convinced how the further incarceration of the accused will help further investigation. So far as 'flight risk' is concerned the apprehension is without any substance moreover fetters can be put on his liberty by depositing his passport, by issuing a Look- Out Notice etc thus, putting a restriction on his travel abroad and his activities can be monitored. The ED has not been able to show any reasonable ground to say that he will tamper with evidence, moreover evidence collected is documentary. The ED has not brought any material on record that accused will influence witnesses. Most of the witnesses have been examined and their statements are on record.

30. The ED is conducting further investigation and has reserved its right to file supplementary complaint. Without making any comment on the right of ED to file supplementary complaint, I would say no time limit can be put on such investigation and it would be highly unreasonable to confine the applicant behind bars till ED complete further investigation, more so




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when investigation qua accused has been completed as the Complaint against him has already been filed.

31. The ED has opposed the bail on the ground that accused has not cooperated in the investigation and his son Aditya Talwar has not joined investigation. The Ld. Counsel for the accused, however, submitted that Aditya Talwar is not an accused in the case and he is availing legal remedy before court of law and further Annexure P-5 attached with bail application shows that office bearer and employees of M/s Advantage India have joined investigation with ED for more than 100 times. So far as accused is concerned he was interrogated on police remand. It was submitted on behalf of ED that despite summons applicant did not join investigation and run away to a foreign country. Disputing this submission Ld. Counsel for accused argued that applicant was arrested in January 2019 and it was in the knowledge of the ED thus he was available for investigation but the ED did not examine him till October 2019 and arrested him in December 2019.

32. Having considered the facts and circumstances of the case, submissions of the Ld. Counsels for both the parties and case law cited and relied upon I am of the view that further custody of accused will not serve any purpose. The Complaint has already been filed; co-accused who were never arrested are on interim regular bail; case of the ED is documents based ; there is no material on record to suggest that he ever tried to temper with evidence or influence witnesses; he has been granted bail in other related cases; there is no certainty when further investigation would end. **There fore, the applicant /accused Deepak Talwar is admitted to**



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bail under section 439 Cr.P.C. in the present case ECIR/19/HQ/2017 on the following conditions:-


1. The applicant/accused shall furnish personal Bond of Rs. 5, 00,000 (five lakh) with one Surety Bond of the like amount.
2. He shall not leave the territory of NCT of Delhi without intimating the Investigation Officer of the case.
3. He shall not leave the country without due permission of the Court.
4. He shall deposit his passport with the I.O. or the Court if not deposited already.
5. He shall furnish the address of his residence, if it is different from the one available with I.O. and shall not change the address without intimating the I.O. and the Court.
6. He shall furnish his active mobile phone number and e-mail ID to the I.O. and shall be available if his personal appearance is required for the purpose of any enquiry or investigation pertaining to the case.
7. He shall not do any act which will give a reasonable ground to assume that he is trying to temper with evidence or trying to influence, threaten or win over witnesses examined or likely to be examined in the case.

33. The bail application stands disposed off in above terms.

34. A copy of this order is being sent through Whats App to Sh. Vivek P.A. to Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi with a direction to him to upload the same on official website of Delhi District Courts at the earliest and



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supply copy of the order to the applicant and the ED. Copy of this order be also sent to the Superintendent, Central Jail, Tihar for necessary action. A signed hard copy of the order shall be sent to the concerned court and be kept in the judicial file of the case as soon as work is resumed from the Court premises of Rouse Avenue District Courts, New Delhi.



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