IN THE HIGH COURT OF ORISSA, CUTTACK

BLAPL No. 5622 Of 2020

An application under section 439 of the Code of Criminal Procedure in connection with R.C. Case No. 39/S/2014-Kol corresponding to SPE Case No. 34 of 2014 pending on the file of Special C.J.M. (C.B.I.), Bhubaneswar.

Shrikant Mohta	……..	Petitioner
	-Versus-	
Republic of India	……..	Opp. Party
For Petitioner:	-	Mr. Kapil Sibal (Senior Advocate) Mr. Milan Kanungo (Senior Advocate)
For Opp. Party (C.B.I.)	-	Mr. Sarthak Nayak

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 17.11.2020 Date of Order: 01.12.2020

S. K. SAHOO, J. This is the third successive bail application of the petitioner Shrikant Mohta before this Court. The first bail application in BLAPL No.1983 of 2019 was rejected on 13.05.2019 and the second one in BLAPL No.5450 of 2019 was rejected on 02.01.2020. The petitioner approached the Hon'ble Supreme Court against the rejection order dated 02.01.2020 by preferring petition for Special Leave to Appeal (Crl.) No.839 of 2020 which was also dismissed on 10.02.2020. After the dismissal of the Special Leave Petition, the petitioner without preferring any application for bail before the learned trial Court, has approached this Court directly and filed the present bail application on 17.08.2020.

The petitioner is an accused in R.C. Case No. 39/S/2014-Kol corresponding to SPE Case No. 34 of 2014 pending on the file of Special C.J.M. (C.B.I.), Bhubaneswar for commission of offences punishable under sections 420, 409 read with section 120-B of the Indian Penal Code and sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereafter '1978 Act').

2. The present case was instituted by clubbing three first information reports of three different cases i.e. Buguda P.S. Case No.75 of 2013, Jeypore Town P.S. Case No.71 of 2013 and Nuapada P.S. Case No.82 of 2013 in pursuance of the order dated 09.05.2014 of the Hon'ble Supreme Court of India passed in W.P. (Civil) No.401 of 2013 filed by Shri Subrata Chattoraj and W.P. (Civil) No.413 of 2013 filed by Shri Alok Jena.

The factual matrix of the prosecution case is that Rose Valley Group of Companies (hereafter for short 'Rose Valley') collected huge amount of money from public enticing them with false promise of paying higher rates of interest although Rose Valley was not having any authorization from the Reserve Bank of India (hereafter for short 'RBI') or the Securities and Exchange Board of India (hereafter for short 'SEBI') for carrying out such activities and therefore, the company cheated the public.

Investigation revealed that 'Rose Valley Resorts and Plantations Limited, Kolkata' was founded in the year 1997 and in the year 2002, SEBI imposed ban on the teak based investment schemes which the company was carrying out, for which the schemes floated were stopped. The company was renamed as 'Rose Valley Hotel and Entertainment Limited' in the year 1999. Two more companies in the name of 'Rose Valley Real Estates Constructions Limited' and 'Real Estate and Landbank India Ltd.' were founded subsequently in the year 1999 and 2001 which were registered with the Registrar of Companies (hereafter for short 'ROC'). Rose Valley started expanding its spheres and a lot of new companies were formed in between 1997 to 2012. The accused persons, namely Gautam

Kundu, Chairman of Rose Valley, Shibamoy Dutta, Managing Director, Ashok Kumar Saha and Ram Lal Goswami, Directors of Rose Valley in furtherance of criminal conspiracy by establishing branches of the companies in different parts of India, collected money from the public through multi-level agent network system. They cheated the investors/depositors by way of camouflaged schemes and false assurance about legal sanctity and false promise of higher rates of interest. The accused persons also cheated the depositors as well as the agents by making false assurance that the accused companies were legally empowered to collect money from the public. They were running ponzi schemes and circulating the money collected from the depositors which was not disclosed to the depositors and agents. The accused persons made false propaganda that Rose Valley is having a big business empire and diversified business. They fraudulently claimed that the money collected from the depositors would be invested in those businesses and with the help of high returns from those companies, they would be able to pay back to the depositors their invested money with interest on maturity. The accused persons deceived the depositors and deliberately induced them to invest their hard-earned money in the accused companies. It further revealed from the scrutiny of the balance sheet of all the companies of Rose Valley that almost all the companies were making loss and old depositors were paid by using money of the new depositors since there was no income generated by the companies from any source. It further revealed that the total business model of Rose Valley was commercially unrealistic/unviable and it was not in a position to pay to its depositors the promised higher rates of interest and therefore, it was just rotating the money. Rose Valley not only collected thousand of crores of rupees illegally from the depositors by cheating them but they did not utilize the same for the purpose for which the money was invested. The accused persons did not return the money of lakh of depositors and thereby committed criminal breach of trust. The total money collection of Rose Valley according to the database up to the financial year 2012-13 was Rs.1471,18,81724/- (rupees fourteen hundred seventy one crores eighteen lakhs eighty one thousand seven hundred twenty four only).

On 06.01.2016 first charge sheet was submitted against accused Gautam Kundu, Shibamoy Dutta, Ashok Kumar Saha, Ram Lal Goswami and three Rose Valley Companies under sections 420, 408, 409, 120-B/34 of the Indian Penal Code and sections 4, 5 and 6 of 1978 Act keeping the further investigation open under section 173(8) of Cr.P.C. for ascertaining the role of regulatory agencies like SEBI, ROC and RBI and other agencies and also other influential persons involved in it and for probing the larger criminal conspiracy and money trailing.

During course of further investigation, the roles of Tapas Paul and Shri Sudeep Bandyopadhyay, both Members of Parliament were examined and it was found that both the accused allowed their stature to be used to allure the investors, agents and in return, they also gained wrongfully. In order to promote the illegal money collection business of Rose Valley, they grossly abused their respective official positions and overtly certified the business of Rose Valley and their presence with the company bestowed confidence in the minds of agents and investors about the credential of the company. Thus, the two accused M.Ps. also deceived the investors to deposit money in the Rose Valley, cheated them and misappropriated the money in conspiracy with other accused persons.

On 26.04.2017 second charge sheet was submitted under sections 420 and 409 read with section 120-B of the Indian Penal Code and sections 4 and 6 of 1978 Act and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 against the M.Ps. Tapas Paul and Shri Sudeep

Bandyopadhyay and others keeping the further investigation open to look into the role of the regulatory authorities, larger criminal conspiracy and money trailing.

During course of further investigation, materials were found against accused Ramesh Gandhi, who was the Managing Director of M/s. Rainbow Productions Limited. It was found that having full knowledge that Rose Valley was collecting money from the general public in an illegal manner and their activities were under the scanner of law enforcement agencies, accused Ramesh Gandhi, who was a producer of T.V. programmes and was in electronic media business entered into business relation with accused Gautam Kundu and an agreement was executed to protect illegal money collection business of Rose Valley and to gain wrongfully. The said accused Ramesh Gandhi projected himself to be keeping control over the media channels/ newspapers of Assam for protecting the business of Rose Valley. Huge amount was paid to M/s. Rainbow Productions Ltd. towards the release of advertisements of the company from the account of Rose Valley.

On 15.05.2018 third charge sheet was submitted against accused Ramesh Gandhi, M/s. Rainbow Productions Ltd. and M/s. Aarambh Advertising and Marketing Ltd. under section

120-B read with sections 420 and 409 of the Indian Penal Code and sections 4 and 6 of 1978 Act keeping the further investigation open.

During course of further investigation, it was found that the petitioner is the Founder Director of M/s. Shree Venkatesh Films Private Limited (hereafter 'SVFPL'). SVFPL entered into an agreement with a sister concern of Rose Valley, namely, M/s. Brand Value Communication Ltd. (hereafter 'BVCL') on 07.04.2010 for supplying the telecast rights of seventy Bengali films for an amount of Rs.25 crores to be broadcasted through the satellite channel of BVCL namely 'Rupashi Bangla'. During telecast of Bengali films, publicity of Rose Valley was made in the T.V. channel owned by Rose Valley for alluring the investors to make investment which reflected the real purpose behind the agreement for supply of seventy Bengali films to BVCL. Nineteen films supplied by SVFPL to BVCL amounting to Rs.6.84 crores were found to be technically not viable and as such those films were returned to SVFPL but the amount of Rs.6.84 crores was not returned back by SVFPL to BVCL.

Investigation further revealed that BVCL lodged a first information report against SVFPL and its employees on 16.11.2011 at Baguiati Police Station, Kolkata in which charge sheet was submitted against all the F.I.R. named accused persons including the petitioner. The said charge sheet was challenged by the petitioner and other accused persons before the Hon'ble Calcutta High Court and the Hon'ble Court quashed the charge sheet. BVCL challenged the matter before the Hon'ble Supreme Court which upheld the decision of the Hon'ble Calcutta High Court. Finally, as it was found that the SVFPL had not supplied nineteen technically feasible films to BVCL, in an arbitration proceeding, the learned Arbitrator vide order dated 13.06.2018 awarded a payment of Rs.6.84 crores by SVFPL to BVCL. The award amount of Rs.6.84 crores passed by the learned Arbitrator was not paid by SVFPL. Investigation further revealed that the petitioner and accused Gautam Kundu, Chairman of Rose Valley entered into a criminal conspiracy amongst themselves to misappropriate the public fund illegally collected by the Rose Valley on the garb of an agreement for telecast right of films to the BVCL. The illegal financial business activities of the Rose Valley Group of companies namely Rose Valley Real Estates & Constructions Ltd., Rose Valley Resorts & Plantations Ltd. (subsequently renamed as 'Rose Valley Hotels and entertainments Ltd.'), Real Estates & Landbank India Ltd. were banned by SEBI by its orders in the year 2002 and during

2010-11 respectively. The same was widely publicised through media. The petitioner having full knowledge of banning of the activities of Rose Valley by the regulatory authority SEBI, entered into an agreement with BVCL. The petitioner through his company SVFPL purchased paintings from an exhibition held in Kolkata during 2011-13 for a declared amount of Rs.15 lakhs from 'Jago Bangla'. According to the prosecution, the amount which was received by SVFPL from BVCL was the money collected by the Rose Valley Group of companies from the depositors by deceiving them with assurance of getting higher returns without the permission of RBI. The money so collected was diverted by the Rose Valley to its sister concern BVCL which was further diverted to the accounts of SVFPL. It is the case of the prosecution that the petitioner belonged to the community of media and he was supposed to have the knowledge of the banning of the activities of the Rose Valley by the regulatory authority SEBI and in spite of that the petitioner's company SVFPL entered into an illegal agreement with BVCL. During course of investigation, as the petitioner did not cooperate with the investigation and prima facie case relating to his involvement in the crime was made out, he was arrested and forwarded to Court on 25.01.2019.

After rejection of the first bail application of the petitioner by this Court in BLAPL No.1983 of 2019, fourth charge sheet was submitted against the petitioner on 22.05.2019 under sections 420, 409 read with section 120-B of the Indian Penal Code and sections 4, 5 and 6 of the 1978 Act. In the said charge sheet, it is mentioned that SVFPL was registered with Registrar of Companies (ROC), Kolkata, West Bengal. The company was renamed as M/s. SVF Entertainment Private Ltd. (hereafter 'SVEPL') on 16.03.2017. The Directors of the company were the petitioner, Sri Mahendra Suni, Shri Bishnukanta Mohta and Sri Jeeban Das Mohta. The main object of the company was to carry out the business of exhibition, distribution of cinema TV, video films and production of cinema TV, Video cassettes etc. Investigation revealed that since the company M/s Rose Valley Resort and Plantation was indulged in illegal deposit collection business, SEBI had banned the collection of deposits in the name of M/s. Rose Valley Resorts & Plantation Ltd. vide order dated 24.02.2002. SEBI had also directed the M/s. Rose Valley Resorts and Plantation Ltd. to refund the money collected under the schemes within one month from the date of the order. The order passed by the SEBI was uploaded in the public domain. In compliance with the order of the SEBI dated 24.02.2002, M/s.

Rose Valley Resorts and Plantation Ltd. wind up the CIS Scheme and repaid money to the investors. Subsequently during an enquiry by SEBI started from 08.01.2010, the company M/s. Rose Valley Real Estate and Construction Ltd. was also found to be engaged in running "Collective Investment Scheme" and soliciting money from the public in the name of plot selling without having any permission from the SEBI. In order to prevent the activities of M/s Rose Valley Real Estate and Constructions Ltd, SEBI banned the business of the company vide order dated 03.01.2011 and the said order was also uploaded in public domain and published in the newspaper "The Times of India" dated 19.05.2013 for the awareness of general public. Investigation further revealed that though SEBI had banned the company M/s. Rose Valley Resort and Plantation Limited, accused Gautam Kundu, Chairman of M/s. Rose Valley Group continued with illegal deposit collection business with an intention to cheat the public by changing the name of the company M/s. Rose Valley Resorts and Plantation Ltd. to M/s. Rose Valley Hotels and Entertainment Ltd. in the year 2007. In addition to that, with an intention to promote the illegal chit fund business of M/s. Rose Valley Group and to divert the money received from public, accused Gautam Kundu set up media business in the name of M/s. Rose Valley Films Ltd. and BVCL. To carry on the media business with the ulterior motive to promote illegal chit fund business, accused Gautam Kundu wanted to purchase some good films and telecast those films through 'Rupashi Bangla' Channel of BVCL. Investigation further revealed that the petitioner was the chief promoter of SVFEPL which was engaged in production and distribution in the field of media, music, digital cinema, exhibition since 1996. Though Shri Mahendra Soni, Jeewan Das Mohta and Shri Vishnukant Mohta were also the directors of SVFEPL, all the decisions were taken by the petitioner since he was the main director of the company. Despite being in the world of media, the petitioner was closely associated with the Managing Director of M/s. Rose Valley Group who was none else than accused Gautam Kundu and despite having knowledge about the illegal business activities of the Rose Valley Group, he entered into the business alliance which was in the nature of criminal conspiracy to divert the ill-gotten money in the guise of commercial ties.

Investigation further revealed that before entering into an agreement with BVCL, the petitioner and Mahendra Soni, both directors of SVFEPL company had joined in a meeting with accused Gautam Kundu, Shri Satyajit Saha, Director and Shri

Kranti Kumar, staff of BVCL at Hotel Taj on 26.01.2010 and in the said meeting, accused Gautam Kundu on behalf of Rose Valley Group and the petitioner on behalf of SVFEPL discussed to promote the actual business i.e Chit fund business of M/s Rose Valley in the garb of business opportunity. In the said meeting, accused Gautam Kundu disclosed about his actual chit fund business in the name of M/s Rose Valley to the petitioner. He further requested the petitioner to promote his media business by supplying good films produced by SVFPL since during the relevant period of time TRP of SVFPL was very high in comparison to other production houses. Accused Gautam Kundu disclosed that his company's actual source of income was deposit collection from the public and he wanted to invest the said money in the media business for branding and promotion of his chit fund business. The petitioner knowing the facts that accused Gautam Kundu was doing illegal chit fund business by collecting the deposits from the public in the name of M/s. Rose Valley agreed to enter into an agreement and other business alliance with accused Gautam Kundu and finally both agreed mutually and decided the agenda vide item numbers 1, 2 & 3 of the minutes of the meeting which was sent by Mahendra Soni on behalf of SVFPL. In a said meeting, Shri Satyajit Saha, Shri

Kranti Kumar of BVCL and Mahendra Soni were present. Investigation further revealed that agenda item no. 1 was the film deal i.e. M/s. Rose Valley principally agreed to acquire satellite right of seventy films from SVFPL for a period of three years. Agenda item no.2 was the fiction show i.e. SVFPL agreed to produce one fiction show for M/s. Rose Valley for 9 p.m. slot. Rose Valley had suggested launching the show by the end week of February. Further, M/s. Rose Valley approved the concept given by SVFPL and for the said fiction show, M/s. Rose Valley would provide the shooting floor. Agenda item no.3 was the film distribution and M/s. Rose Valley had asked SVFPL to distribute all their upcoming films and Shri Kranti Kumar was to further coordinate with SVFPL on the way forward.

Investigation further revealed that the petitioner as Director of SVFPL had entered into a criminal conspiracy with accused Gautam Kundu to promote the illegal chit fund business in the garb of business transaction with BVCL in spite of knowing the facts that M/s. Rose Valley Group was indulged in an illegal business activities i.e deposit collection from the public which was already banned by the SEBI in the year 2002 and in furtherance of that, an agreement dated 07.04.2010 was signed by Shri Mahendra Soni, Director on behalf of SVFPL and Shri

Satyajit Saha, Director on behalf of BVCL for films assignment of sole and exclusive satellite television broadcasting rights in respect of seventy films through its channel 'Rupashi Bangla' at mutually agreed consideration amount of twenty five crores.

Investigation further revealed that as soon as the agreement was signed, total consideration amount of rupees twenty five crores after deducting a sum of Rs.2.5 crores on account of Tax Deducted at source (TDS) i.e Rs 22.50 crores was paid by accused Gautam Kundu to the petitioner by issuing cheques under his own signatures. The total amount of Rs 22.50 crores was debited from the account of BVCL. The said amount was diverted by accused Gautam Kundu in the account of BVCL from M/s. Rose Valley Real Estate & Constructions Ltd. During the relevant period of transaction i.e. 03.04.2010 to 01.07.2010, the major amount credited into the account of BVCL was from M/s. Rose Valley Real Estate & Construction Ltd. (Group Company of M/s. Rose Valley). The Rose Valley Real Estate & Constructions Ltd. was collecting investment from the public in an illegal manner for which the company was banned by the SEBI vide order dated 03.01.2011 and later on 06.01.2016 this company was charge sheeted by C.B.I. in this case. Investigation established that the amount received by SVFPL was actually the ill-gotten money invested to Rose Valley Real Estate & Constructions Ltd. which was transferred to BVCL by accused Gautam Kundu. Investigation further revealed that an amount of rupees nine crores was paid by BVCL by way of a cheque credited on 28.06.2010 in the account of SVFPL (TV & Studio Division). Another cheque for rupees nine crores was credited on 24.04.2010 in the account of SVFPL and another cheque for Rs 4.5 crores was credited on 05.05.2010 in the OD account of SVFPL.

Investigation further revealed that the petitioner did not supply films in spite of full payment received for supply of the films. Out of the seventy films, SVFPL finally supplied only fifty one films and the remaining nineteen films remained unsupplied which showed the actual attitude and intent of the said Company. The petitioner intended to receive the ill-gotton money in the garb of a genuine business deal/agreement but investigation established that by entering into a criminal conspiracy in the form of a business deal with accused Gautam Kundu, the petitioner conspired to cheat the general public since the amount received by him on the guise of the business transaction was the public money.

Investigation further revealed that apart from the film assignment agreement, to promote the chit fund business of M/s Rose Valley Group, SVFPL and BVCL had also entered into another agreement on 23.05.2010 to produce TV Serial "Suhashini" by SVFPL for BVCL @ Rs.1,45,000/- + Service Tax per episode and the said TV Serial was telecasted from 'Rupashi Bangla' channel of BVCL. Further, BVCL also provided shooting floor to SVFPL for the shooting of said TV serial.

Investigation further revealed that in order to bring more and more advertisers for telecasting their advertisements during the intervals of movies of SVFPL, one brochure was designed by using SVF logo and 'Rupashi Bangla' logo so that the advertisers might know that the films of SVFPL, a reputed production house which was known for production of quality films would be shown in the television channel of BVCL. The brochure was shown to the intending advertisers so that they could subscribe their advertisements during the programme which would increase the revenue and prestige of BVCL. Further, in the 'Rupashi Bangla' channel of BVCL, the advertisement of Rose Valley was used to be shown on a regular basis. By such agreement, SVFPL helped BVCL to enhance their revenue generation and also their prestige.

Investigation further revealed that some differences between BVCL and SVFPL culminated into registration of F.I.R. No.689 of 2011. Finally, SVFPL and its inmate along with two employees of BVCL were charge sheeted. However, the said proceeding was quashed by the Hon'ble Calcutta High Court. Investigation further disclosed that in respect of alleged amount of said agreement dated 07.04.2010 which was the subject matter of the said proceeding, it was not surfaced at that time that the said amount was actually the misappropriated property of the general public invested with M/s. Rose Valley Real Estate & Constructions Ltd. Accordingly, C.B.I. while tracing the trail of money ascertained that SVFPL and its directors had conspired to misappropriate the fund of ill-gotten money. Though in the Baguiati P.S. case, the aggrieved party was BVCL but in the instant case, the aggrieved parties are poor and gullible investors and the public at large. In Baguiati P.S. case, whether the money involved was actually the money invested by poor investors or not, was never investigated.

Investigation further revealed that till 2010-11, the M/s. Rose Valley Group of companies had already raised funds to the tune of Rs.5357,92,82,699/- illegally. The payments made to SVFPL by BVCL was nothing but the investments made by gullible investors illegally collected by M/s. Rose Valley Group. The petitioner despite being a high profile person in the world of media, maintained his relationship with the Managing Director of M/s. Rose Valley Group and entered into business alliance with him, in spite of having fine knowledge about the illegal business activities of the M/s. Rose Valley Group. It is further stated that the illegal act of the companies, conspiracy angle for promoting the chit fund business under the guise of film supply, production of TV Serial, all these factual criminal angles were not placed before the Hon'ble High Court and instead of that, only agreement part was highlighted for treating the matter as civil in nature.

Investigation further revealed that a Divisional Bench of Calcutta High Court appointed an Arbitrator to decide the dispute between BVCL and SVFPL. During the arbitral proceedings, the learned Arbitrator compensated BVCL for the loss of title rights to telecast nineteen films for which it had paid and accordingly, taking average valuation of each film, compensation was awarded to the tune of Rs.6.84 crores to be paid by SVFPL to BVCL along with an interest @ 8% per annum w.e.f. 06.08.2013 to 13.06.2018 and further interest of 9% was directed to be levied on the awarded amount plus the interest amount from 14.06.2013 till the date of actual payment which was to be paid by SVFPL.

3. The first bail application of the petitioner in BLAPL No.1983 of 2019 was rejected by this Court on 13.05.2019 considering the nature and gravity of the accusation, strong prima facie case available against the petitioner to show his involvement in the economic offence committed by Rose Valley, likelihood of tampering with the evidence when the investigation was at a crucial stage and several bank accounts of the petitioner and his company were under scrutiny to trace out any further money transactions with Rose Valley and above all in the larger interest of society.

The second bail application of the petitioner in BLAPL No.5450 of 2019 was rejected by this Court on 02.01.2020 on the ground that the petitioner's key role in the commission of economic offence by Rose Valley is prima facie apparent and that there is deep rooted criminal conspiracy to cheat the public with an eye on personal profit and that large number of innocent depositors have been duped of their hard-earned money and that there was cool calculation and deliberate design by the accused persons to flourish the illegal chit fund business activities of Rose Valley and further taking into account the crucial stage of investigation and that the release of the petitioner who is a very influential person having close contacts with high level personalities and politicians of West Bengal is likely hamper such investigation.

The Hon'ble Supreme Court in the Special Leave Petition filed by the petitioner challenging the order dated 02.01.2020 of this Court, on perusal of the available materials on record was also not inclined to consider the bail application at that stage and dismissed the same on 10.02.2020.

4. In the present bail application which was filed on 17.08.2020, mainly the following grounds have been taken:

(i) Daily examination of the petitioner by doctors of AMRI Hospital is being done and periodic medical updates are also sent to the jail authorities. The petitioner was admitted with hemorrhagic stroke, and that the petitioner is also suffering from comorbidities such as hypertension, diabetes mellitus. The petitioner was attended by multiple specialist doctors like endocrinologist, cardiologist, ophthalmologist, orthopaedic surgeon etc. as well as by psychiatrist and psychologist for depression and anxiety.

(ii) The state of health of the petitioner is extremely critical and is deteriorating at a very fast pace as evident from the medical reports/examinations. The ailment of the petitioner is also taking a heavy toll on his mental framework. The petitioner has already suffered two massive strokes, which has left him susceptible to various kinds of other ailments. Due to the state of health of the petitioner, he is presently at AMRI, Bhubaneswar. The petitioner's state of health is in a precarious condition and in view of the situation arising out of COVID-19, it would be safer for the petitioner to be in his house with twenty four hours medical supervision. With each passing moment, the petitioner is at risk of coming in contact with the deadly virus. The petitioner's suffering due to his health condition is of a severe nature. Since the charge sheet has been submitted by the investigating agency, there is no further use of keeping the petitioner in detention. The recent medical reports indicate that the petitioner is suffering from hypertension, T2DM, Old CVA (ICH) with acute depression.

(iii) Taking the allegations in its entirety, no criminal case is made out against the petitioner inasmuch as the money transaction between the petitioner and the principal accused Sri Kundu is out and out civil in nature arising out of commercial transaction between the parties and by no stretch of imagination, it attracts the ingredients of any of the offences alleged. By no figment of imagination, complicity of the petitioner can be established vis-a-vis the offences alleged. The petitioner is in no way connected with the alleged offences and there is no evidence available on record to show his complicity in such offences. The facts have been deliberately twisted to somehow rope in the petitioner without any basis.

(iv) The petitioner has cooperated with the investigation as and when so directed and his statement has also been recorded by the I.O. on 29.08.2018 and 06.12.2018 and there is no scope for the petitioner either to influence or to interfere with the investigation.

(v) The attempt made by the investigating agency in accomplishing arrest of the petitioner is nothing but a gross misuse of criminal process against the petitioner for putting him under pressure in civil disputes between SVF and BVC.

(vi) The petitioner is a victim of non-adherence of contractual terms by the Brand Value Communication Ltd. owned by Shri Goutam Kundu. The dispute between the parties is now pending for arbitration, yet to add insult to injury, the petitioner was arrested on the accusation that the principal accused had parked huge money with the petitioner which supposedly makes the petitioner liable. There is no basis to make such wild allegations vis-a-vis the petitioner and it goes to establish that the authorities are on a witch-hunt and the petitioner has become an easy target being in public domain as an entrepreneur in the entertainment industry and he has been made a scapegoat.

(vii) Co-accused Ramesh Gandhi preferred a petition before the Hon'ble Apex Court, being registered as Special Leave to Appeal (Criminal) No.2274 of 2020 and vide order dated 04.05.2020, he was released on bail. Another accused Suman Chatopadhy has also been granted bail by the Hon'ble Apex Court on health grounds.

(viii) Mr. Tapas Pal, who is the Director of the Rose Valley Group, which was actively involved in collecting money, and Mr. Sudip Bandhopadhyay, who is accused of directly propagating and advertising the chit fund schemes have been released on bail. Both the accused persons are elected members of the Parliament and highly influential, despite which they have been granted bail.

(ix) The charge sheet upon a closer scrutiny reveals false and perverse imagination of the prosecution without in any manner disclosing any offence allegedly committed by the petitioner. Bundle of lies, contradictions, sheer dishonesty are the foundation on which the charge sheet is structured and laid.

(x) M/s. Rose Valley was doing its alleged business of chit fund without any assistance from the petitioner or for that matter from the SVF. There is no iota of evidence that the petitioner was involved in any form of conspiracy. The petitioner's company came into being much earlier to that of Rose Valley.

(xi) The petitioner has roots in the society and there cannot be any allegation of fleeing from justice and non-cooperation in the trial.

5. Learned counsel for the petitioner filed an additional affidavit on dated 07.09.2020 which was sworn by the wife of the petitioner indicating therein that the petitioner was admitted to AMRI Hospital, Bhubaneswar for treatment of his ailment and while he was under treatment in the said hospital, he came into contact with the deadly virus COVID-19, after which he was shifted to COVID Isolation Ward of the said hospital. It is further

stated in the affidavit that the state of health of the petitioner was critical and deteriorating at a very fast pace which became worst after being infected with the deadly virus and that the ailment of the petitioner was taking a heavy toll on his mental condition and that he is required to be shifted to an isolated place after recovering from COVID-19 and it would be safer for the petitioner to be in his house with 24 x 7 medical supervision.

Learned counsel for the C.B.I. filed his reply to the additional affidavit on 25.09.2020 indicating therein that except the old ailments, the only new fact which revealed from the additional affidavit was about the infection of the petitioner from COVID-19 and his treatment for such infection. As regards the suffering of the petitioner from COVID-19, it was intimated by the AMRI Hospital authorities, Bhubaneswar vide letter dated 24.09.2020 that as per treatment guidelines, the petitioner was provided with necessary treatment and that in a day or two, he would be shifted to non-COVID Ward. No medical reports were filed by the petitioner along with the bail application to show that there was rapid deterioration of his health condition. It is stated that there is no change in the circumstances after rejection of the earlier bail application to reconsider the same on merit. It is further stated that the further investigation of the case is under progress and at this stage, the release of the petitioner on bail is likely to jeopardize such investigation. It is further stated in the reply that the offences alleged against the petitioner have serious social ramifications and there is segment of larger conspiracy and money trailing. Investigation revealed that the petitioner was in regular contact with many influential persons and he would threaten/allure the witnesses by using his influence and money power and tamper with the evidence. There is strong apprehension that the defrauded amount which is yet to be traced out would be utilized by the petitioner to influence the witnesses or further divert the ill-gotten money to different influential persons for different purposes. There is every chance that the petitioner would abscond and he would not cooperate with the investigation. There is possibility of examining some of employees of the petitioner in course of further investigation along with other witnesses and if the petitioner is enlarged on bail, his employees would not come forward to divulge the truth and thereby there would be derailing of the ongoing investigation. In the past, the petitioner did not cooperate with the investigating agency (C.B.I.) and even tried to derail the investigation by alluring one of the employees of C.B.I. with monetary benefit. Even on the day of the arrest, the

Investigating Officer of the case came to the office of the petitioner and requested him to join the investigation by visiting C.B.I. Office, however, instead of cooperating with C.B.I., by using his influence, the petitioner lodged a false case before local police that some unknown persons visited his office being fully aware that those persons are C.B.I. Officers. The interest of the society at large is of paramount importance. The conduct of the petitioner was very much questionable which can be inferred from the facts and circumstances of the case. Certain documents relating to status of the case and stage of investigation etc. were submitted in a sealed cover on 28.09.2020 by the learned counsel for the C.B.I. keeping in view the secrecy of the investigation.

6. Learned counsel for the petitioner filed one interim application on 06.11.2020 seeking for interim bail of the petitioner for a period of six months which was registered as I.A. No.1093 of 2020, wherein grounds were taken about his precarious medical condition and that his brother-in-law (husband of the sister) expired on 10.10.2020 and that the petitioner was kept in the COVID Ward of AMRI Hospital from 04.09.2020 to 25.09.2020 and that there is every chance of coming in contact with the deadly virus again and that even

though further investigation of the case is continuing since 22.05.2019, no supplementary charge sheet has been filed. Further ground has been taken that trial of the case has been stayed by this Court in CRLMC No.3407 of 2019 vide order dated 12.03.2020. Reliance was placed on the medical reports of AMRI Hospital which were called for by this Court as per order dated 15.09.2020 and 07.10.2020.

7. On 09.11.2020, a rejoinder affidavit was filed on behalf of the petitioner to the reply filed by the C.B.I. which was sworn by the wife of the petitioner wherein it is stated that in spite of lapse of more than six years after registration of the F.I.R. in the year 2014, the C.B.I. has not completed the investigation and that the employees of the petitioner have been summoned and they have appeared for more than fourteen occasions and supplied all the documents which have been requisitioned by the C.B.I. In the rejoinder affidavit, objection was raised on the perusal of the status report as well as report relating to the stage of investigation which was filed by the C.B.I. in a sealed cover. Reliance was placed in the case of **P. Chidambaram -Vrs.- Directorate of Enforcement reported in (2020)77 Orissa Criminal Reports (SC) 383**. It is stated therein that not a single application has been filed by the

prosecution seeking extension of the judicial custody of the petitioner after filing of the charge sheet asserting that remand was required for collection of further evidence but orders have been passed by the learned Court below extending custody of the petitioner as a matter of course which was per se illegal and unwarranted and the same is not inconsonance with section 309 of Cr.P.C. Reliance was placed in the case of **C.B.I. -Vrs.- Anupam J. Kulkarni reported in (1992)3 Supreme Court Cases 141** and **Manubhai Ratilal Patel -Vrs.- State of Gujarat reported in (2012)53 Orissa Criminal Reports (SC) 875**. The order sheet of the learned trial Court from 22.05.2019 to 21.11.2019 and some other orders were relied upon to substantiate such point. It is further stated that no order was obtained from the learned Special C.J.M. to conduct further investigation which is a mandatory requirement and in that regard, reliance was placed in the case of **Vinay Tyagi -Vrs.- Irshad Ali reported in (2013)54 Orissa Criminal Reports (SC) 561**. It is further stated that the delay in completion of further investigation is no way attributable to the petitioner as he is in judicial custody since 24.01.2019.

Another additional affidavit was filed on behalf of the petitioner on 11.11.2020 which was sworn by his wife wherein it is stated that some of the undertrial prisoners in the chit fund scam cases have died which was reported in the media and in case the petitioner is not released on interim bail, it would cause irreparable loss and injury to his life and liberty.

8. Mr. Kapil Sibal, learned Senior Advocate along with Mr. Milan Kanungo, learned Senior Advocate appearing for the petitioner contended that the petitioner is in judicial custody for twenty two months and after submission of third supplementary charge sheet on 22.05.2019, there has been no interrogation of the petitioner and therefore, no useful purpose would be served in detaining the petitioner further on the ground that the further investigation is under progress. He further contended that as and when necessary, the petitioner will appear before the C.B.I. authorities at the place of interrogation and he will also cooperate with the same and in case he fails to appear or does not cooperate, condition can be put to cancel the bail order, however taking the plea of continuance of further investigation, the petitioner cannot be detained for an indefinite period. It is further argued that some of the co-accused persons have already been enlarged on bail and the health condition of the petitioner is very much critical which would be evident from the medical documents called for from the AMRI Hospital. It is

further argued that in view of the order passed in CRLMC No.3407 of 2019, at this stage there cannot be any progress in the proceeding in the Court below. The learned counsel urged that no reliance should be placed on the documents which were filed by the C.B.I. authorities in the sealed cover for adjudicating this bail application. He placed some parts of the rejoinder affidavit where some other grounds have been taken for grant of bail.

Mr. Sarthak Nayak, learned counsel appearing for the C.B.I., on the other hand, vehemently opposed the prayer for bail and contended that mere long detention period cannot be a ground to release the petitioner on bail as economic offences are required to be visited with a different approach as those are grave offences affecting the economy of country as a whole. He argued that when all the medical facilities are being provided to the petitioner for his treatment for different ailments in AMRI Hospital which would be evident from the medical documents, there is no necessity to release him on bail particularly when the case relates to chit fund scam of rupees seventeen thousand crores and none of the principal accused has been enlarged on bail and the petitioner has played a very vital role in the commission of economic offence. It is further submitted that when the bail application of the petitioner was last time rejected by this Court on 02.01.2020 which was also confirmed by the Hon'ble Supreme Court and there is no change in the circumstances, grant of bail would amount to review the earlier order which is not permissible and the so-called changes as pointed out in the petition are cosmetic changes and not real one. It is further argued that necessary permission has been taken for further investigation from the learned Special C.J.M. and therefore, there is no illegality in the continuance of further investigation. Reliance was placed in the cases of **State of Madhya Pradesh -Vrs.- Kajad reported in (2001)21 Orissa Criminal Reports (SC) 507**, **State of Maharashtra -Vrs.- Captain Buddhikota Subha Rao reported in A.I.R. 1989 S.C. 2292** and **K.K. Jerath -Vrs.- Union Territory reported in (1999)16 Orissa Criminal Reports (SC) 178**.

Direct approach to this Court for bail:

9. When the petitioner approached this Court for the second time for bail in BLAPL No.5450 of 2019 and the same was rejected on 02.01.2020 and thereafter the petitioner approached the Hon'ble Supreme Court against the rejection order in a Special Leave Petition which was also dismissed on 10.02.2020, in the event of any change in the circumstances, he should have

approached the learned Special C.J.M. (C.B.I.), Bhubaneswar seeking for bail where the case is subjudiced and then in the event of rejection, he could have approached this Court. The petitioner was not justified in approaching this Court directly without preferring any application for bail before the learned Court below. In a judicial hierarchy, whenever any application is tenable in law before the lower Court, then the applicant should always approach the lower forum first, so that after exhausting the said remedy, if the applicant is still aggrieved, he can approach the higher forum. In that event, the higher forum will have an advantage of going through the judgment/order of the lower Court both on the point of facts and law. In a judicial hierarchy, instead of approaching directly higher forum, if law permits, always matter should be filed in the lower forum. Where two forums have concurrent jurisdiction, the lower one should be approached at the first instance, unless the party concerned gives special reasons for a direct approach to the higher one. In the case of **Gurcharan Singh and Ors. -Vrs.- State (Delhi Administration) reported in A.I.R. 1978 S.C. 179**, it is held that section 439(1) of Cr.P.C. confers special powers on the High Court or the Court of Session in respect of bail. Unlike under section 437(1), there is no ban imposed under section 439(1) of

Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life, it is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused *only after* he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused.

Law is well settled that even if the higher Court has rejected the bail application in a given circumstances, the applicant can approach the lower Court in the change of circumstances and in that event, the lower Court has to consider the same in accordance with law and not to reject the application holding the same to be not maintainable. The reason given by the petitioner in the bail application to approach this Court directly that it was an unprecedented situation arising out of outbreak of the deadly virus COVID-19, is not at all convincing particularly when the Court of learned Special C.J.M. was functioning as per the guidelines issued by this Court and taking up bail matters through virtual mode during the period the petitioner approached this Court directly. However, since the application for bail was filed on 17.08.2020 and the learned counsel for the C.B.I. raised no objection to the hearing of the application before this Court, in the interest of justice, I thought it proper not to direct the petitioner to approach the Court below first and then come to this Court seeking for bail.

<u>Whether Magistrate's nod for further investigation taken</u>:

10. There is no dispute that while submitting the fourth chargesheet (i.e. third supplementary charge sheet) on 22.05.2019 against the petitioner, it is mentioned therein that further investigation of the case as per the provision under section 173(8) of Cr.P.C. is continuing in respect of charge sheeted accused persons as well as commissions/omissions on the part of regulatory authorities, larger conspiracy angle and money trailing and also against other persons whose complicity might be found in course of further investigation. The order sheet of the learned Special C.J.M., C.B.I., Bhubaneswar filed by the learned counsel for the petitioner with the rejoinder affidavit indicates that the said charge sheet was placed before the Court on 23.05.2019 along with a petition filed by the Investigating Officer through the learned Public Prosecutor with a prayer to retain the case diary and the documents of the case in C.B.I. Malkhana as further investigation was continuing. The petition was allowed and the I.O. was directed to produce the documents as and when required. The Court also after perusing the F.I.R.,

charge sheet, statements of witnesses and other connected documents submitted by the Investigating Officer, took cognizance of offences under which charge sheet was placed. The Court also took notice of the detention of the petitioner in judicial custody at Special Jail, Bhubaneswar and fixed the date for supply of police papers to the UTPs.

In the case of **Vinay Tyagi** (supra), it is held as follows:

> "15. 'Further investigation' is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as 'further investigation'. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted

by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation', there has to be a definite order of the Court….

xx xx xx xx xx

38. Now, we may examine another significant aspect which is how the provisions of section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of section 173(8) of the Code to conduct 'further investigation' or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal

practice to seek permission of the courts to conduct 'further investigation' and file 'supplementary report' with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct 'further investigation' and/or to file a 'supplementary report' will have to be read into, and is a necessary implication of the provisions of section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

39. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the

> ends of justice and also provide adequate safeguard against a suspect/accused."

In the case of **Vinubhai Haribhai Malaviya -Vrs.- The State of Gujarat reported in A.I.R. 2019 S.C. 5233**, it is held that Article 21 of the Constitution demands no less than a fair and just investigation. To say that, a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, *to the Magistrate's nod* under section 173(8) of the Cr.P.C. to further investigate an offence till charges are framed.

In view of the aforesaid decisions of the Hon'ble Supreme Court, it becomes clear that the power lies with police for further investigation of a case under section 173(8) of Cr.P.C. after submission of a report under sub-section (2) of section 173 of Cr.P.C., but for that there is requirement of seeking prior leave of the Magistrate to conduct further investigation and after taking Magistrate's nod, further investigation can be conducted and supplementary report/chargesheet can be filed.

The order sheet of the learned trial Court clearly indicates that while submitting third supplementary charge sheet on 22.05.2019, it was brought to the notice of the Court on which aspect the further investigation is continuing and petition was filed by the I.O. through the learned Public Prosecutor to retain the case diary and other documents for such investigation, which was allowed and other orders were passed. Each time while submitting charge sheet, it was brought to the notice of the Court on which aspect the further investigation is under progress and the learned Court has taken judicial notice of the same and passed necessary order on receipt of such charge sheet. Therefore, the continuance of further investigation was within the knowledge of the Court and the Court has passed orders on the same from time to time. The Magistrate's nod for further investigation is apparent. Therefore, the point raised in the rejoinder affidavit that no order for further investigation has been obtained from the learned Special C.J.M. has no legal basis.

Whether remand order passed from time to time was legal:

11. Let me now deal with the point raised in the rejoinder affidavit relating to non-filing of a single application by the prosecution seeking extension of judicial custody of the petitioner and therefore, the extension of judicial custody is illegal and unwarranted in view of section 309 of Cr.P.C.

In the case of **Anupam J. Kulkarni** (supra) upon which reliance was placed by the learned counsel for the petitioner, the question that arose for consideration was whether a person arrested and produced before the nearest Magistrate as required under section 167(1) of Cr.P.C. can still be remanded to police custody after the expiry of the initial period of fifteen days. The Hon'ble Supreme Court while deciding such point has been pleased to hold that remand under section 309 Cr.P.C. can only be to judicial custody in terms mentioned therein and section 309 Cr.P.C. comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same. The Hon'ble Supreme Court relied upon the case of **Natabar Parida -Vrs.- State of Orissa reported in A.I.R. 1975 S.C. 1465**.

In the case of **Manubhai Ratilal Patel** (supra) upon which reliance was placed by the learned counsel for the petitioner, it was held that there are two provisions in the Code which provide for remand, i.e., sections 167 and 309. While dealing with remand of an accused under section 167 of Cr.P.C., it was held that the Magistrate has the authority under section 167(2) of the Code to direct for detention of the accused in such custody, i.e. police or judicial, if he thinks that further detention is necessary. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under section 167 Cr.P.C. is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

In the case of **Pradeep Ram -Vrs.- The State of Jharkhand reported in A.I.R. 2019 S.C. 3193**, while discussing the relevant provisions of section 167(2) and section

309 of Cr.P.C., it is held that the accused can be remanded under section 167(2) Code of Criminal Procedure during investigation till cognizance has not been taken by the Court. Even after taking cognizance when an accused is subsequently arrested during further investigation, the accused can be remanded under section 167(2) of Code of Criminal Procedure. When cognizance has been taken and the accused was in custody at the time of taking cognizance or when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under section 309(2) of Code of Criminal Procedure.

The part of the order sheet of the learned Special C.J.M. annexed to the rejoinder affidavit indicates about the remand of the petitioner from time to time to judicial custody after taking cognizance of offences on third supplementary charge sheet, inter alia, after noticing the status of other co-accused and adjourning the case recording reasons. The remand order of the petitioner has been passed purportedly under section 309(2) of Cr.P.C. which law requires for a reasonable cause and not automatic or as a matter of course. When the learned Special C.J.M. on submission of chargesheet against the petitioner, on being satisfied about existence of prima facie materials has taken cognizance of offences and was also appraised by the prosecution from time to time about the further investigation of the case on some important aspects and accordingly passed the remand order while adjourning the case which was obviously for postponing the commencement of the trial in the case, it cannot be said that there is any illegality in the remand order merely in absence of any application filed by the prosecution seeking extension of judicial custody of the petitioner on each occasion. Section 309(2) of Cr.P.C. does not indicate about filing of any application by the prosecution for extending the remand period of the accused, but the discretion lies with the Court in passing the order though the Court has to assign reasons for postponing the commencement of any inquiry or trial or adjourning any inquiry or trial and has to grant reasonable time and while doing so, the Court has got power to remand the accused if in custody. Therefore, the point raised on this score is also not sustainable.

Change in the circumstances for reconsidering bail:

12. Mr. Kapil Sibal, learned Senior Advocate without pointing out any substantial change in the circumstances after rejection of the bail application of the petitioner in BLAPL No.5450 of 2019 on 02.01.2020 which was confirmed by the Hon'ble Supreme Court on 10.02.2020 on dismissal of the

Special Leave Petition, urged that the Hon'ble Supreme Court has mentioned in the dismissal order 'at this stage', therefore, there cannot be any bar in considering the bail application afresh.

In the case of **Kajad** (supra), it is held that successive bail applications are permissible under the changed circumstances, but without the change in the circumstances, the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law. In the case of **Captain Buddhikota Subha Rao** (supra), it is held that once the bail application is rejected, there is no question of granting similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation and the change means a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. In the case of **Kalyan Chandra Sarkar and Ors. -Vrs.- Rajesh Ranjan reported in (2005)30 Orissa Criminal Reports (SC) 455**, it is held that even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the *limited area* in which an accused who has been denied bail earlier, can move a subsequent application.

Thus an accused has a right to make successive applications for grant of bail under the changed circumstances and such change must be substantial one having direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail applications were rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier applications. There must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which the application for bail of an accused that has been rejected earlier can be reconsidered.

In view of settled position of law, without any substantial change in the circumstances, it is very difficult to take a contrary view from the one taken earlier.

Period of detention for bail:

13. Mr. Sibal, learned Senior Advocate emphasised on the period of detention of the petitioner in judicial custody which is twenty two months. Mr. Nayak opposed to the same.

Needless to mention here that the accusation is commission of economic offence which prima facie appears to have been committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community and it involves deep rooted conspiracies and further investigation is at crucial stage. I have already held while rejecting the last bail application of the petitioner that the case involves public interest at large as they are the real sufferers and there is accusation of criminal conspiracy between the accused Gautam Kundu and the petitioner to expand the chit fund business activities of Rose Valley and the petitioner has played his part whereby the illegal object of huge investment by innocent people was fulfilled. There is accusation that the petitioner entered into the business alliance with the co-accused

Gautam Kundu which was in the nature of criminal conspiracy to divert the ill-gotten money of Rose Valley in the guise of commercial ties. In the case of **State of Gujarat -Vrs.- Mohanlal Jitamalji Porwal reported in A.I.R. 1987 S.C. 1321**, it is held as follows:-

> 5......The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the Court have become a part of life and the order of the day......The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books……A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

Therefore, in my humble view, in the facts and circumstances, the period of detention cannot be the sole criteria for grant of bail to the petitioner.

Physical ailment ground for bail:

14. Mr. Sibal, learned Senior Advocate then emphasised on the physical ailment of the petitioner which was also taken in the last bail application as a ground for his release on bail. Since the petitioner was shifted to AIIMS, Bhubaneswar and S.C.B. Medical College & Hospital, Cuttack whenever there was necessity and there was no negligence on the part of the jail authorities in providing proper treatment to the petitioner, I did not consider as a ground to release him on bail, however, I directed that such facility would be provided to the petitioner in the Specialised Government Hospital in future at the time of need.

The health condition report and the nature of treatment provided to the petitioner in AMRI Hospital, Bhubaneswar was sought for by this Court and the Medical Superintendent of AMRI Hospital has submitted his report dated 09.10.2020 which indicates that the petitioner who is aged about 46 years is hospitalised under him since 18.12.2019. It is mentioned therein for what diseases, the treatment was provided to the petitioner and what medicines were given to him. It is further mentioned that at present the petitioner is suffering from severe depression, fluctuating blood sugar level and hypertension and that he is undergoing stretching and spinal mobilization physiotherapy daily. It is further stated that the Medical Superintendent of the hospital is looking after all patient related issues of the petitioner. Therefore, I am convinced that there is no negligence on the part of the jail authorities in providing proper treatment to the petitioner in a specialised hospital for his ailment.

Release of co-accused on bail:

15. The release of some of the co-accused was also taken as a ground in the previous bail application but this Court held that the petitioner has played a key role in ensuring huge investment of public money in Rose Valley and he cannot claim parity with others. The same ground has been reiterated during argument by Mr. Sibal, learned Senior Advocate.

Parity cannot be the sole ground for grant of bail. It is one of the grounds for consideration of the question of bail. There is no absolute hidebound rule that bail must necessarily be granted to an accused, where another co-accused has been granted bail. It transpires that the case of the petitioner is not identically similar to the co-accused persons who have been bailed out. The grant of bail is not a mechanical act nor can the power of the Court be fettered to act against conscience.

No further interrogation, no requirement of detention:

16. Though it was urged by Mr. Sibal, learned Senior Advocate that after submission of third supplementary charge sheet on 26.05.2019, there has been no interrogation of the petitioner and therefore, the detention of the petitioner for the further investigation is not necessary but it is within the domain of the investigating officer when and how to interrogate an accused but the interrogation should be fair and impartial. A fair, impartial, truthful and independent investigation is crucial to the preservation of the rule of law and in the ultimate analysis to liberty itself.

The documents produced by the C.B.I. in the sealed cover were perused by me keeping in view the observations the Hon'ble Supreme Court in the case of **P. Chidambaram** (supra) to satisfy my conscience as to whether the investigation is proceeding in the right lines. I am satisfied from the huge number of important documents seized and statements of witnesses collected even after the rejection of the last bail application of the petitioner by this Court that the investigation is proceeding in the right lines. In my humble view, it would not be proper to discuss about those documents and statements collected regarding unearthing of further role played of the petitioner's company SVFPL in the illegal financial business of Rose Valley.

The other grounds taken in the bail application and rejoinder affidavit, though not urged during argument but it seems that those were dealt with in the earlier rejection orders of this Court for which it is not necessary to deal with the same once again.

17. It seems that the petitioner has approached this Court under section 482 of Cr.P.C. in CRLMC No.3407 of 2019, inter alia, to quash the charge sheet filed against him and an order was passed on 05.02.2020 that since the case was posted for framing of charge, if a petition is filed by the petitioner before the Court below on the date fixed for an adjournment of the case, the Court concerned shall do well to adjourn the matter for a month. Similar order was passed on 12.03.2020 and it was directed to the concerned Court to adjourn the matter to a date after 25th March 2020. It is stated at the Bar that thereafter on account of situation arising out of COVID-19 pandemic, the matter has not been listed for final disposal and the case is

adjourned from time to time in the Court below awaiting further order of this Court. Merely because of the interim order passed by this Court, the framing of charge has been delayed, in my humble view that cannot be a ground for grant of bail to the petitioner. The parties concerned in the said CRLMC application can take step for early listing of the case in view of the urgency involved and the importance of the matter.

18. In the case of **K.K. Jerath** (supra), the Hon'ble Supreme Court held that in considering a petition for grant of bail, necessarily, if public interest requires detention of citizen in custody for the purposes of investigation, the same could be considered and bail application is to be rejected, as otherwise there could be hurdles in the investigation even resulting in tampering of evidence.

The case record indicates as to how the petitioner being a Director of SVFPL entered into criminal conspiracy with accused Gautam Kundu, Chairman of Rose Valley and others to misappropriate the public fund illegally collected by Rose Valley in the garb of an agreement for the sake of production and supply of telecast rights of Bengali feature films to be broadcasted through the satellite channel of BVCL namely 'Rupashi Bangla', a sister concern of Rose Valley and after execution of the agreement, ill-gotten money was diverted from BVCL to SVFPL in the guise of commercial ties. The Hon'ble Supreme Court passed order on 09.05.2014 in the aforesaid two writ petitions to investigate the money trailing aspect and accordingly during investigation of the case, it came to light that there has been money trailing from Rose Valley to BVCL and then from BVCL to SVFPL and public money collected illegally by Rose Valley was utilised in an illegal way. The telecast of Bengali feature films had also an illegal purpose to promote chit fund business activities of Rose Valley Group. The role played by the petitioner in flourishing the business activities of Rose Valley was very crucial inasmuch as by such telecast of films in the 'Rupashi Bangla' channel and the advertisements of Rose Valley shown during the telecast, the investors were allured to make huge investment that increased the collection of deposits from general public which was the real purpose behind the telecast. It appears that the total collection of Rose Valley Group since beginning till 2010-11 was Rs. 5357,92,82,699/- only but during the year 2011-12, the total collection raised to Rs. 3322,67,60,290/- in a single year and raised further in the year 2012-13 and ultimately Rose Valley Group has been accused of duping investors of about Rs. 17,000 crores in different states. Further investigation which is continuing in respect of the charge sheeted accused persons, commission/omissions on the part of the regulatory authorities, larger conspiracy angle and money trailing aspect is likely to take time when high officials and some politicians of the State of West Bengal are allegedly involved in the scam as per case records. I have already held while rejecting the last bail application of the petitioner that Rose Valley's lucrative offer and mirage of huge outturn on investments as projected successfully during telecast of Bengali feature films produced by the petitioner's company in satellite channel 'Rupashi Bangla" mesmerised the gullible investors and they could not realise that all that glitters is not gold. For collecting pearl of high interest, they drowned themselves in the sea of treachery. Before they could wake up from their deep slumber, they had already been trapped and squeezed and were left only with tears in their eyes which never dried up. The incomprehensible pain and sufferings of those hundreds and thousands of investors are apparent and nobody knows when and how they would get back their money. Business tycoons have played the game with people's money very cunningly with active support of some of the high level politicians, police officials and film personalities. It was bed of roses for them but bed of thorns for the investors.

Now, it appears that many of the so-called important personalities have played pivotal role in the multi crores scam very cunningly and after being caught one after another, they are taking the plea of ignorance of nature of business activities of Rose Valley Group. Cat closing its eyes while drinking milk thinks nobody is watching it. An economic offence is a well manipulated offence. It is a white collared crime which disturbs economic equilibrium in the society and the weaker section is victimised. Liberty of an individual cannot outweigh the interest of the society. An economic offence has to be viewed from a serious perspective and no lenient view can be taken. A murderer takes away the life of a person but a person committing economic offence leaves a living person dead.

19. In view of the foregoing discussions, in absence of any such substantial change in the circumstances after rejection of the last bail application of the petitioner by this Court on 02.01.2020 and dismissal of the Special Leave Petition against that order by the Hon'ble Supreme Court on 10.02.2020 and when further investigation of the case is at a crucial stage and huge number of documents have been seized and statements of witnesses have been collected against the petitioner even after the rejection of the last bail application of the petitioner by this

Court relating to his involvement in the Rs.17,000 crores scam committed by Rose Valley Group and there is no negligence on the part of the jail authorities in providing proper treatment to the petitioner in a specialised hospital for his ailment, at this juncture, when the petitioner's key role in the commission of economic offence by Rose Valley is prima facie apparent, there is deep rooted criminal conspiracy to cheat the public with an eye on personal profit, large number of innocent depositors have been duped of their hard-earned money, there was cool calculation and deliberate design by the accused persons to flourish the illegal chit fund business activities of Rose Valley and the release of the petitioner who is a very influential person having close contacts with high level personalities and politicians of West Bengal is likely hamper such investigation, in the larger interest of public and State, I am not inclined to reconsider the prayer for bail and direct his release on bail. Accordingly, the bail application of the petitioner sans merit and hence stands rejected. Consequently, I.A. No.1093 of 2020 also stands rejected.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.

Urgent certified copy of this order be granted on proper application.

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S. K. Sahoo, J.

Orissa High Court, Cuttack
The 1st December 2020/Pravakar