

180
training software development including various sub-modules designed for high end software for advanced manufacturing CAD/CAM. They have also admitted that the Skillar has directly supplied the same to the skill development centers in Andhra Pradesh. So in view of the above said complaint, there are no allegations that the petitioner has not acted as per the MoU. In fact as per the MoU, the petitioner and the Skillar has supplied both hardware and software and they have established six clusters as per the MoU and they have also imparted training both to the faculty and students. It is not the case of the complainant that the petitioner has not supplied the software and hardware as per the MoU.

23. Learned senior counsel further submitted that the petitioner is still continuing and the project is ongoing even as on today. They have been providing software, hardware and conducting clusters and imparting training to both faculty and students. Hence the question of siphoning of funds of the department would not arise. It is not their case they have not supplied hardware or software as per the MoU. In the complaint also they have based on the AGGST the Skillar has established certain companies and supplied the material and raised fake invoices is only matter of GST and which is nothing to do with the implementation of the project or diversion of the funds of the State Government. In fact, learned senior counsel has specifically stated in their grounds that they have raised six clusters as individual tripartite agreement has set up four years back and each cluster contains one center of excellence (COE) and 5 to 6 technical skill development institutions (TSDI) which are popularly called as skill development centers. Accordingly at about 40 skill development centers which includes six centers of excellence established across the State and as many as 2,15,000 students are already benefitted through the training imparted by these centers. The said records are available with Siemens centers software as well as APSSDC.

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24. Learned Senior counsel further submitted that in fact the petitioner has extended his full cooperation to the investigating authorities even according to the letter dated 12.10.2021, the petitioner has furnished all the details which requested by the respondents. It shows that since three months, the petitioner is cooperating with the investigation and whatever the request made by them, the petitioner has submitted and the same was established in the order passed by the Special Judge for SPE & ACB Cases, Vijayawada vide its order dated 22.12.2021. Further the Court has considered that the CID had conducted searches in the residence and office of the petitioner and seized laptop, cell phone and some documents and the court has also observed that the respondent/A8 was served with questionnaire by the petitioner/CID to which he answered and it is not disputed by the petitioner/CID. Observing the same, the said application was dismissed.

25. Finally learned senior counsel has relied on the medical reports annexed along with the bail application. Further submitted that the petitioner is 65 years old and he has medical ailments even according to the report annexed along with the petitioner, the petitioner is suffering from change of voice, breathlessness, bilateral abductor palsy and swelling due to infection or inflammation. In view of the same, the petitioner would cooperate with the investigating agency and prayed to consider the bail application.

26. Learned Additional Advocate General appeared on behalf of the respondents/State. After notice Sri M.Dhanunjayudu, IO, DSP, EOW-II, CID, Head Quarters, Mangalagiri, Andhra Pradesh had filed counter affidavit on behalf of the respondents. The averments in the counter is that the Government has issued an order vide G.O.Ms.No.4 dated 30.6.2015, wherein the Government accorded permission to APSSDC to enter into MoU with Siemens Industry Software India Pvt. Limited (in short SISW) an entity of Siemens and DesignTech, Pune for setting up of skill development centers named as clusters. Each cluster comprising one center of excellence and six

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technical skill development centers across the State of Andhra Pradesh in selected educational institutions. The name of the project is called as APSSDC-SIEMENS project. As per the cost of each cluster is Rs.546,84,18,908/- and the Siemens and Designtech contribute 90% of the project cost as grant in aid and the remaining 10% has to be contributed by the Government of A.P. and 10% contribution comes to Rs.370,78,80,000/- including taxes. Basing on the said G.O. the APSSDC entered into an agreement without any date and without mentioning nature of grant in aid percentage of contribution of grant in aid by SIEMENS and DesignTech. More particularly it can be seen that the sanction terms of disbursement of the financial assistance was kept intentionally blank to accommodate the disbursement of monies. As per the above said agreement, the SISW shall provide the PLM software and further act as technology partner to actively collaborate and assist DesignTech in running various skill development centers in the State of Andhra Pradesh. The DesignTech(A4) shall act as proposer, implementer and system integrator for overall project in active collaboration and assistance with SISW. It shall set up CoEs, t-SDIs and SDCs by supplying, installing and system integrating the hardware, software and courseware from SISW and other suppliers in the State of Andhra Pradesh. But DesignTech purchased certain items from suppliers outside the State of A.P. Before entering into the agreement, the A1 made e-mail correspondence since March 2015 with A-6 and A-8 and others in preparing the draft agreement. Later the Government vide G.O.Ms.No.5 dated 25.4.2016 selected 6 educational institutions as CoEs and 36 educational institutions as t-SDIs for setting up skill development centers.

27. Subsequent to the agreement with APSSDC and SISW, the DesignTech, in turn, entered into a sub-contract with (A-5) i.e. PVSP IT Skills Pvt., Ltd., later name changed to M/s Skillar enterprise India Pvt. Ltd which was incorporated on 30.7.2015 just one month after the execution of the APSSDC-

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SIEMENS project agreement and issued purchase order to the tune of Rs.241crores for the supply of material for the project. The A5 skillar does not have any previous experience for the supply or huge value of material as it was incorporated just one month after the execution of the agreement. A5 PVSP/Skillar in turn issued purchase orders to A27 allied computers international (Asia) Ltd. which was declared as a shell company by Central Government Agencies. A27 was a defunct company and was being used only to issue bogus invoices without the supply of any material or providing any services only to accommodate entries. Similarly, the A5 also issued purchase orders to other shell companies namely M/s. Patrick Info Services Pvt. Ltd., IT Smith Solutions Pvt., Ltd., Inweb Services Pvt. Ltd. The said shell companies issued fake invoices and routed back the amount to PVSP/Skillar (A5) and A4 through associated shell companies by layering the funds after deducting commission for raising bogus invoices.

28. The officials of Directorate General, GST Intelligence Unit, Pune, registered a case under the provisions of GST Act and Finance Act and conducted a detailed investigation in the year 2018. According to the said investigation it is established that the APSSDC funds, which were released to DesignTech(A4) and it was transferred to others through Hawala transactions with the help of shell companies by raising fake invoices for layering the funds.

29. After commencement of GST investigation, the Siemens Global Team conducted an internal investigation separately and concluded that A6 Soumyadri Shekhar Bose in connivance with A8 Vikas Vinayak Khandelkar, MD of DesignTech(A4), Mukul Chandra Agarwal (A10), and his project team members had used the above shell companies as a mechanism to obtain illegal benefits through the use of invoices issued by the shell companies for diversion of APSSDC funds. Even before filing the complaint with APCID, the APSSDC officials got conducted a forensic audit on the Siemens Project and

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the forensic auditor in his report concluded that M/s. DesignTech and M/s. SISW diverted the APSSDC funds to the tune of Rs.241,78,61,508/- through various associate shell companies by raising fake/bogus invoices out of Rs.371 crores released by APSSDC to DesignTech. The said report also revealed that M/s DesignTech and M/s Siemens have utilized and invested only a meager amount towards the project out of the Government contribution of Rs.370.78crores (10%) and diverted a significant amount without investing a single rupee towards their contribution of 90% grant-in-aid by violating the terms and references proposed in G.O.Ms.No.4 dated 30.6.2015.

30. Reply to the petition filed by A10 in Crl.P.No.7265 of 2021 stated that the APSSDC entered into an agreement with SISW and DesignTech for establishing skill development centers pursuing G.O.Ms.No.4 dated 30.6.2015. As contended by the petitioner that a tender was quoted, and SISW and A-4/DesignTech has success in securing the tender is false. The SISW and A-4/DesignTech entered into a tripartite agreement with APSSDC without calling for tenders. As contended by A10, that SISW and A4 have only selected the vendors (shell companies) is not true because of A8, MD of A4 and A6, MD of SISW and the petitioner had earlier worked together in different companies and they are close associates since long back. The petitioner in connivance with A6 and A8; with fraudulent and dishonest intention in pursuance of a conspiracy, hatched a plan among themselves to create a company to divert the APSSDC funds. In pursuance of their conspiracy, the petitioner, A6, A8 incorporated a company namely A5 PVSP IT later changed to Skillar enterprises Pvt. Ltd. On 30.8.2015 after entering into the agreement. The petitioner has complete knowledge about the creation of the new company. As such the contention of the petitioner that A5 was only a project management company and it was operated as per the directions of A4 and SISW.

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31. As contended by the petitioner that he was only appointed as financial adviser and later as chief operating officer of the A-5/Skillar Enterprises is false. The petitioner in connivance with other accused incorporated the company exclusively to divert the APSSDC funds by raising fake/bogus invoices through various associated shell companies.
32. Considering the above said aspects FIR was registered after considering the findings of the DGGST investigation, SIEMENS Internal investigation, and Forensic audit report. In all the reports it is conclusively established that the petitioner in connivance with the other accused played an active role in getting fake invoices and in routing the diverted amount back to the DesignTech and others assigned by it. Finally considering all the aforesaid facts and circumstances and huge magnitude of the fraud running into several crores of rupees, the IO is still in the process of securing various incriminating documents/records from various Central and State Government Agencies including Income Tax Authorities, GST officials, ROC authorities, Bank officials to correlate and verify the nature and quantum of fraud and modus operandi adopted for incorporating shell companies, raising of fake invoices, routing back the amount through various associated shell companies. Hence petitioner, does not deserve for bail. With the identical allegations the counters were filed in all the three criminal petitions.
33. Learned Additional Advocate General after hearing the elaborate arguments advanced by all the three senior counsel, on instructions, has submitted that without going into the merits of the case, he requested couple of weeks time. In the meanwhile, the respondent investigating agency would complete the investigation and hence remand of the petitioners would not require further.
34. Learned Additional Advocate General has further submitted that on perusal of the tripartite agreement entered in is vague and the clauses of the said agreement are more beneficial to the petitioners and no proper care has

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taken while entering into the said agreement. Further he has also submitted that on perusal of the reports of DGGST, forensic audit report and the internal report it clearly establishes that the involvement of the petitioners in the above said crime. The petitioners with a fraudulent intention have created shell companies and by raising fake invoices, they have swallowed almost 270 crores of the APSSDC funds.

35. Considering the submissions made by all the senior counsel and Additional Advocate General, as contended by the petitioners there are no specific allegations against the petitioners either in the F.I.R or in the remand report and there is no basis in the said documents the involvement of the petitioners in the alleged offences. Even there are no indications of personal involvement of beneficiaries in the said offences by the petitioners.

36. The object of bail is to secure appearance of the accused person at his trial by a reasonable amount of bail. Unless it can be required to ensure that an accused person will stand his trial where called upon. As observed by the Hon'ble Apex Court in catena of judgments, the basic principle of our criminal justice system is bail, not jail.

37. Considering the specific contentions of the learned Additional Advocate General that the investigating agency requires couple of weeks to conclude the investigation and after that there is no necessity of judicial custody of the petitioners and also in view of the rejection of the petition filed by the CID in the Court below for police custody of the petitioners herein and the same was unchallenged by the respondents. The Special Judge for SPE & ACB Cases, Vijayawada in its order categorically stated that prior to the arrest and during the course of searches, the respondents herein interrogated the petitioners and the material was also seized from the possession of the petitioners. Hence there is no necessity to grant of police custody of the petitioners. Considering the above, this Court is inclined to enlarge the petitioners on bail, but with some conditions.

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38. In the result, all the three criminal petitions are allowed and the petitioners/A10, A6 and A8 shall be enlarged on bail in connection with Crime No.29/2021 of CID, Economic Offence Wing-II, CID, Andhra Pradesh at Mangalagiri, Guntur District on their executing self bond for a sum of Rs.10,00,000/- (Rupees ten lakhs only) each with two sureties for a like sum each to the satisfaction of the III Additional Sessions Judge-cum-Special Judge for SPE & ACB Cases, Vijayawada. The petitioners/A10, A6 and A8 shall appear before the investigating officer twice in a week i.e. on every Tuesday and Saturday from 10 a.m. to 1 p.m. The petitioners shall not leave India without prior permission from the investigating authority and they shall cooperate with the investigation.

As a sequel, all the pending miscellaneous applications shall stand closed.

Sd/-M.Suryanadha Reddy
ASSISTANT REGISTRAR

//TRUE COPY//

F SECTION OFFICER

To,

1. The III Addl. Sessions Judge-cum-Spl Judge for SPE & ACB Cases, Vijayawada, Andhra Pradesh
2. The Superintendent, Sub-Jail, Vijayawada, Krishna District
3. The Station House Officer, Investigation Department (CID), Economic Offence Wing-II, CID, Andhra Pradesh, at Mangalagiri.
4. The Dy. Superintendent of Police, Crime Investigation Department (CID), CID, Economics Offices Wing-II, Andhra Pradesh at Mangalagiri,
5. One CC to M/s Devi Subhashini Anne Advocate [OPUC]
6. One CC to M/s Jyothi Anumolu, Advocate (OPUC)
7. One CC to Sri V. Nitesh, Advocate (OPUC)
8. Two Sri T.M.K. Chaitanya, Spl. SC for CID, High Court of A.P., at Amaravati (OPUC)
9. One spare copy

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HIGH COURT

DR,J

DATED:17/01/2022

ORDER

**CRLP.Nos.7265, 7339 of 2021 &
31 of 2022**

DIRECTON

18 JAN 2022

189- P-6

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY TWO

:PRESENT:

THE HONOURABLE SRI JUSTICE D RAMESH
CRIMINAL PETITION NO: 151 OF 2022



Between:

Shri. Shirish Chandrakant Shah, S/o Chandrakant bhogilal Shah, age 56 years,
Business stock Market, resident of Flat No. 21, 4th Floor, Meghadoot Building,
Netaji Shubhashchandra Road, Mumbai-400002, Maharashtra State.

.... Petitioner/Accused No-13

AND

State, CID, represented by its Deputy Superintendent of Police Crime
Investigation Department, Economic Offences Wing-I1, Andra Pradesh,
Mangalagiri.

Respondent/Complainant

Petition under Sections 437 & 439 of Cr.P.C, praying that in the circumstances
stated in the grounds filed in support of the Criminal Petition, the High Court may be
pleased to enlarge the petitioner/A13 on regular bail in FIR No 29/2021 on the file of PS,
CID A.P. at Amaravathi, Mangalagiri for the offences U/s 166, 167, 418, 420, 465, 468,
471, 409, 201, 109 R/w 120 (B) IPC, and Section 13(2) r/w 13(1) (c) and (d) of
Prevention of Corruption Act, 1988.

The petition coming on for hearing, upon perusing the Petition and the grounds
filed in support thereof and upon hearing the arguments of Sri BONDILI RAVIKIRAN
SINGH Advocate for the Petitioner, SC cum Spl. PP, CID Advocate for the Respondent,
the Court made the following.

ORDER:

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THE HONOURABLE SRI JUSTICE D.RAMESH

CRIMINAL PETITION NO.151 of 2022

ORDER:-

This petition is filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail to the petitioner/A13 in connection with Crime No.29 of 2021 on the file of Crime Investigation Department (CID), Economic Offence Wing-II, CID, Andhra Pradesh, at Mangalagiri, Guntur District, wherein the petitioner is alleged to have committed the offences punishable under Sections 120-B, 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 r/w 34 & 37 IPC and sections 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988.

2. Heard learned Senior Counsel appearing on behalf of the petitioner and learned standing counsel for CID -cum- Special Public Prosecutor, for the respondent-State.

3. Learned Senior Counsel has submitted that as per the allegations made in the FIR as well as in the remand report, there are no specific overt acts against the petitioner and in fact the respondent-Police, themselves have admitted that A27/company was previously started by A12 and subsequently in the year, 2013-14 A27/company was acquired in the names of some other persons. It is submitted that no material is placed on record to show that the petitioner has acquired A27/company.

4. Learned standing counsel appearing on behalf of the respondent has submitted that in view of the bail granted by this

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Court in respect of A6, A8 and A10, by order, dated 17.01.2022 passed in CrI.P.Nos. 7265, 7339 of 2021 and CrI.P.No.31 of 2022, the petitioner's case may be considered for grant of bail on the same conditions.

5. Considering the submissions made by learned counsel on either side and as A6, A8 and A10 were already granted bail, this Court deems it appropriate to grant bail to the petitioner.

6. Accordingly, this Criminal Petition is allowed. The petitioner/A13 shall be enlarged on bail in connection with Crime No.29 of 2021 on the file of Crime Investigation Department (CID), Economic Offence Wing-II, CID, Andhra Pradesh, at Mangalagiri, Guntur District on execution of self bond for Rs.10,00,000/- (Rupees ten lakhs only) with two sureties for a like sum each to the satisfaction of the III Chief Metropolitan Sessions Judge-cum-Special Judge for SPE & ACB Cases, Vijayawada. The petitioner/A13 shall appear before the investigating officer twice in a week i.e. on every Tuesday and Saturday from 10 a.m. to 1 p.m. The petitioner shall not leave India without prior permission from the investigating authority and he shall cooperate with the investigation.

Consequently, miscellaneous applications pending, if any, shall stand closed.

SD/- M.SURYANADHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The III Chief Metropolitan Session Judge-Cum-Special Judge for SPE & ACB Cases Vijayawada, Andhra Pradesh.
2. The Station House Officer, CID A.P. at Amaravathi, Mangalagiri.
3. The Superintendent, Sub Jail, Vijayawada.
4. One CC to Sri. Bondili Ravikiran Singh, Advocate [OPUC]
5. Two CC's to SRI. SC cum Spl. PP, CID ,High Court of A.P. [OPUC]
6. One spare copy

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HIGH COURT

DRJ

DATED:19/01/2022

ORDER

CRLP.No.151 of 2022

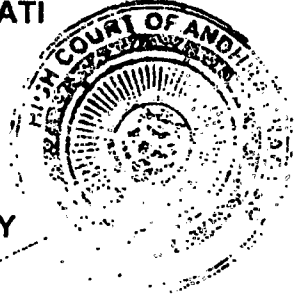
ALLOWED



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
WEDNESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

:PRESENT:

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY
CRIMINAL PETITION NO: 8558 OF 2022



Between:

Vipin Kumar Sharma, S/o Prem Chand Sharma, Aged about 40 years, Occ.
Chartered Accountant CA Firm M/s Vipin Sharma & Associates, R/o Flat No.144,
Tower - N, DLF Capital Greens, New Delhi

...Petitioner/Accused NO.25

AND

The State of Andhra Pradesh, Crime Investigation Department C.I.D Economic
Offences Wing-II, Mangalagiri, Andhra Pradesh, Rep. by its Special Public
Prosecutor, High Court at Andhra Pradesh, At Amaravati.

....Respondent/Complainant

Petition filed under Sections 437 & 439 of Cr.P.C, praying that in the
circumstances stated in the memorandum of grounds filed in support of the Criminal
Petition, the High Court may be pleased to release the Petitioner on bail in Crime
No.29 of 2021 dated 09-12-2021 on the file of Economic Offences Police Station,
CID, PS, A.P., Amaravathi, Mangalagiri, Guntur District., in the interest of Justice.

The petition coming on for hearing, upon perusing the Criminal Petition and
the memorandum of grounds filed in support thereof and upon hearing the
arguments of Sri P. Vamsheedhar Reddy, Advocate for the Petitioner, and of Smt. Y
L Siva Kalpana Reddy(SC CUM SPL PP,CID) for the Respondent-State, the Court
made the following;

ORDER

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THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION NO.8558 OF 2022

ORDER :

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short "CrPC"), is filed seeking to release the petitioner/A.25 on bail in crime No.29 of 2021 of CID Economic Offences Wing-II, CID, A.P., Mangalagiri.

It is alleged that an MoA was entered into between A.P. State Skill Development Corporation and SIEMENS to impart Hi-end technology to the trainers. A tax investigation by the Additional Director General, GST, Intelligence, Pune in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises India Private Limited led to unearthing a huge financial scam involving crores of rupees by M/s. SEIMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited, and the funds relating to APSSDC, and M/s.

Allied Computers International (Asia) Limited, Mumbai

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and other companies, including M/s. Inweb Infor Services Private Limited, New Delhi are shell/defunct companies and they were issuing invoices without providing any services. All the above companies formed into a Cartel to siphoning public funds tuning to crores of rupees and no services were delivered by Skillar to Design Tech in their invoices depicting training in software development including various sub-modules and royalty and subscription thereof. M/s. Sharath and Associates, Chartered Accountants, Forensic Audit Firm conducted an enquiry and submitted a report, noticing various irregularities by the team of Auditors. M/s. SEIMENS and Design Tech had to oversee the functions of clusters and their maintenance, but instead of doing so, both of them swindled crores of rupees in dubious manner and their acts affected marrows of economic health of the State. Upon the report lodged by the Managing Director of APSSDC, the present case came to be registered.

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Learned counsel for the petitioner submits that the petitioner has been in judicial custody since 23.08.2022 and there are no specific allegations against him that he swallowed the amounts of APSSDC and that the prime accused are released on bail, and that all the other offences, except the offence punishable under Section 409 IPC, are punishable with imprisonment of less than 7 years and that the offence punishable under Section 409 IPC does not attract as against the petitioner, and hence, he prays to enlarge the petitioner on bail.

Learned Special Public Prosecutor for C.I.D. contends that there are serious allegations as against the petitioner and that investigation is in progress in the subject crime and if the petitioner is granted bail, he may tamper with the evidence.

The petitioner is A.25. He has been in judicial custody since 23.08.2022. According to the petitioner's counsel, A.1, A.6, A.8, A.10, A.13, A.20 and A.21 were released on bail. Considering the facts and

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circumstances of the case, this Court is inclined to consider the request of the petitioner for grant of bail, but on conditions.

Therefore, the petitioner shall be released on his executing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for the like sum each, to the satisfaction of the learned Special Judge for SPE and ACB Cases-cum-Additional Metropolitan Sessions Judge, Vijayawada. The petitioner shall cooperate with the investigation in the crime and shall attend before the investigating officer once in a fortnight, preferably on Monday between 10.00 AM and 1.00 PM.

The petitioner shall not directly or indirectly contact or threaten the witnesses under any circumstances and any such attempt shall be construed as an attempt of influencing the witnesses and shall not tamper with evidence.

It is made clear that the petitioner shall scrupulously comply with the above conditions and

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breach of any of the above conditions will be viewed seriously and prosecution is at liberty to move an application for cancellation of the bail.

Accordingly, the Criminal Petition is allowed.

As a sequel thereto, miscellaneous applications, if any pending shall stand closed.

Sd/- P. VINOD KUMAR
ASSISTANT REGISTRAR


SECTION OFFICER

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The Special Judge for SPE and ACB Cases-Cum-Additional Metropolitan Sessions Judge, Vijayawada, Krishna District.
2. The Station House Officer/Investigating Officer, Economic Offences Police Station, CID, PS. A.P., Amaravathi, Mangalagiri, Guntur District.
3. The Superintendent, District Jail, Vijayawada, Krishna District.
4. One CC to Sri. P. Vamsheedhar Reddy, Advocate [OPUC]
5. One CC to Smt Y.L. Siva Kalpana Reddy(SC CUM SPL PP, CID) [OPUC]
6. One spare copy

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HIGH COURT

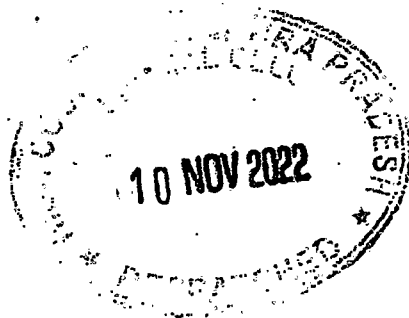
SRK,J

DATED:09/11/2022

BAIL ORDER

CRLP.No.8558 of 2022

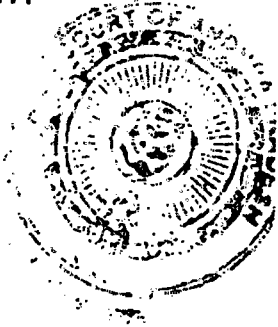
ALLOWED



200 -
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
WEDNESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

:PRESENT:

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY
CRIMINAL PETITION NO: 8555 OF 2022



Between:

Mrs. Neelam Sharma, W/o Vipin Kumar Sharma, Aged about 37 years, Occ
Housewife, R/o Flat No.144, Tower - N, DLF Capital Greens, New Delhi

....Petitioner/Accused No.28

AND

The State of Andhra Pradesh, Crime Investigation Department C.I.D Economic
Offences Wing-II, Mangalagiri, Andhra Pradesh, Rep. by its Special Public
Prosecutor, High Court at Andhra Pradesh, At Amaravati.

...Respondent/Complainant

Petition filed under Sections 437 & 439 of Cr.P.C, praying that in the
circumstances stated in the memorandum of grounds filed in support of the Criminal
Petition, the High Court may be pleased to release the Petitioner on bail in Crime
No.29 of 2021 dated 09-12-2021 on the file of Economic Offences Police Station,
CID, PS, A.P., Amaravathi, Mangalagiri, Guntur District., in the interest of Justice.

The petition coming on for hearing, upon perusing the Criminal Petition and
the memorandum of grounds filed in support thereof and upon hearing the
arguments of P. Vamsheedhar Reddy, Advocate for the Petitioner, and of Smt. Y L
SIVA KALPANA REDDY(SC CUM SPL PP, CID) for the Respondent-State, the Court
made the following;

ORDER

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THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION NO.8555 OF 2022

ORDER :

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short "CrPC"), is filed seeking to release the petitioner/A.28 on bail in crime No.29 of 2021 of CID Economic Offences Wing-II, CID, A.P., Mangalagiri.

It is alleged that an MoA was entered into between A.P. State Skill Development Corporation and SIEMENS to impart Hi-end technology to the trainers. A tax investigation by the Additional Director General, GST, Intelligence, Pune in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises India Private Limited led to unearthing a huge financial scam involving crores of rupees by M/s. SEIMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited, and the funds relating to APSSDC, and M/s. Allied Computers International (Asia) Limited, Mumbai

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and other companies, including M/s. Inweb Infor Services Private Limited, New Delhi are shell/defunct companies and they were issuing invoices without providing any services. All the above companies formed into a Cartel to shphoning public funds tuning to crores of rupees and no services were delivered by Skillar to Design Tech in their invoices depicting training in software development including various sub-modules and royalty and subscription thereof. M/s. Sharath and Associates, Chartered Accountants, Forensic Audit Firm conducted an enquiry and submitted a report, noticing various irregularities by the team of Auditors. M/s. SEIMENS and Design Tech had to oversee the functions of clusters and their maintenance, but instead of doing so, both of them swindled crores of rupees in dubious manner and their acts affected marrows of economic health of the State. Upon the report lodged by the Managing Director of APSSDC, the present case came to be registered.

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Learned counsel for the petitioner submits that the petitioner is a woman and has been in judicial custody since 23.08.2022 and there are no specific allegations against her that she swallowed the amounts of APSSDC and that the prime accused are released on bail, and that all the other offences, except the offence punishable under Section 409 IPC, are punishable with imprisonment of less than 7 years and that the offence punishable under Section 409 IPC does not attract as against the petitioner, and hence, he prays to enlarge the petitioner on bail.

Learned Special Public Prosecutor for C.I.D. contends that there are serious allegations as against the petitioner and that investigation is in progress in the subject crime and if the petitioner is granted bail, she may tamper with the evidence.

The petitioner is A.28. She has been in judicial custody since 23.08.2022. She was implicated basing on the confessional statement of A.25. According to the petitioner's counsel, A.1, A.6, A.8, A.10, A.13, A.20 and

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A.21 were released on bail. Considering the facts and circumstances of the case, this Court is inclined to consider the request of the petitioner for grant of bail, but on conditions.

Therefore, the petitioner shall be released on her executing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for the like sum each, to the satisfaction of the learned Special Judge for SPE and ACB Cases-cum-Additional Metropolitan Sessions Judge, Vijayawada. The petitioner shall cooperate with the investigation in the crime and shall attend before the investigating officer once in a month, preferably on Monday between 10.00 AM and 1.00 PM.

The petitioner shall not directly or indirectly contact or threaten the witnesses under any circumstances and any such attempt shall be construed as an attempt of influencing the witnesses and shall not tamper with evidence.

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It is made clear that the petitioner shall scrupulously comply with the above conditions and breach of any of the above conditions will be viewed seriously and prosecution is at liberty to move an application for cancellation of the bail.

Accordingly, the Criminal Petition is allowed.

As a sequel thereto, miscellaneous applications, if any pending shall stand closed.

Sd/- P. VINOD KUMAR
ASSISTANT REGISTRAR

///TRUE COPY///


SECTION OFFICER

For ASSISTANT REGISTRAR

To,

1. The Special Judge for SPE & ACB Cases-Cum-Additional Metropolitan Sessions Judge, Vijayawada, Krishna District.
2. The Station House Officer/Investigating Officer, CID Economic Offences, Wing-II, CID, A.P., Mangalagiri.
3. The Superintendent, District Jail, Vijayawada, Krishna District.
4. One CC to Sri. P. Vamsheedhar Reddy, Advocate [OPUC]
5. One CC to Smt Y.L. SIVAKALPANA REDDY(SC CUM SPL PP,CID) [OPUC]
6. One spare copy

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HIGH COURT

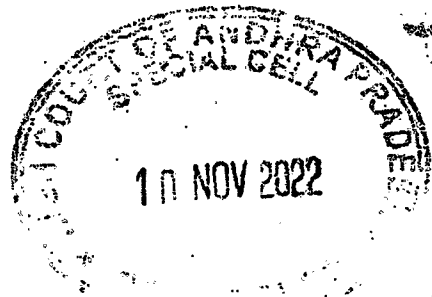
SRK,J

DATED:09/11/2022

BAIL ORDER

CRLP.No.8555 of 2022

ALLOWED



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IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE SRI JUSTICE K. SURESH REDDY

CRIMINAL PETITION No.3013 of 2023

ORAL ORDER:

The petitioner herein, who is arrayed as accused No.35 in Crime No.29 of 2021 on the file of CID Police Station, Andhra Pradesh, Mangalagiri, filed the present petition under Section 438 Cr.P.C., seeking pre-arrest bail.

2. The above crime was registered for the offences punishable under Sections 120-B, 166, 167, 418, 420, 465, 468, 471, 409, 201 & 109 read with Sections 34 & 37 I.P.C. and Sections 13(2) read with 13(1)(c)&(d) of Prevention of Corruption Act, 1988. The complaint lodged by the Chairman of Andhra Pradesh State Skill Development Corporation (for short, 'the Corporation') on 07.09.2021 is the basis for registration of the present crime.

3. The averments of the complaint, in brief, are thus:

(i) The Corporation was incorporated by virtue of G.O.Ms.No.47 (HE) (EC.A2) Department, dated 13.12.2014. The corporation deputed a team to visit SIEMENS Centers of Excellence, which were already established in Gujarat and to submit report. SIEMENS offers training program in collaboration with various State governments. During negotiations, State Government agreed to establish SIEMENS Center of Excellence, Technical Skill Development Institutions and Skill Development Centers in different clusters. Six clusters have been formed at the inception at the cost of Rs.546,84,18,908/- with SIEMENS and Design Tech providing a grant-in-aid

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of Rs.491,84,18,908/- i.e. 90% and the Government share thereof is 10% i.e. Rs.55,00,00,000/-. A Memorandum of Understanding was entered into between the Corporation on one hand and SIEMENS on the other.

(ii) The tax investigation by Additional Director General, GST, Intelligence, Pune, in respect of claims of availing of CENVAT credit by M/s. Design Tech Systems Private Limited and M/s. Skillar Enterprises India Private Limited led to unearthing a huge financial scam involving crores of rupees by M/s. SIEMENS Industry Software India Private Limited and M/s. Design Tech Systems Private Limited. The funds relate to the Corporation/APSSDC.

(iii) As per the Memorandum of Agreement, Design Tech has to provide training software development including various sub-modules designed for high end software for advance manufacturing CAD/CAM. Memorandum of Agreement does not contemplate sub-contract. However, SIEMENS and Design Tech sub-contracted a large part of its work to M/s. Skillar Enterprises Private Limited, New Delhi with self centric Solomon's Wisdom. The claim of Design Tech is that Skillar Enterprises Private Limited provided training software development including various sub-modules designed for high end software for advance manufacturing of CAD/CAM. M/s. Skillar has directly supplied the same to the Skill Development Centers in Andhra Pradesh. Design Tech further claims that royalty and subscription were paid to Skillar since they have developed the software.

(iv) When the tax authorities confronted Skillar, Skillar claimed that no technical work has been sub-contracted and the training software

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development including various sub-modules provided are technical material and royalty and subscription have been wrongly mentioned in the invoices. Additional D.G.G.I., Pune concluded that both service provider and service receiver took contradictory stands regarding nature of service. An in-depth scrutiny into the records by A.D.G.G.I. revealed that training software development including various sub-modules shown as supplied by Skillar to Design Tech were purchased by Skillar from 1) M/s. Allied Computers International (Asia) Ltd. Mumbai (for short 'ACI'), 2) M/s. Patrick Info Services Private Limited, M/s. I.T. Smith Solutions Private Limited, 3) M/s. Inweb Info Services Private Limited all based at New Delhi, 4) M/s. Arihanth Traders, New Delhi and 5) M/s. G.A. Sales Private Limited, New Delhi.

(v) The companies referred to supra are Shell/Defunct companies and they were issuing invoices without providing any services. All these companies formed into a cartel for siphoning public funds tuning to crores of rupees. The Managing Director of M/s. Design Tech admitted before the Assistant Director General that he has no evidence to show that services have been received from these companies. After surfacing of financial irregularities, directions were given to the Corporation to conduct Forensic Audit and to furnish a copy of the report for taking further action. Accordingly, work order was assigned to M/s. Sharat and Associates, Chartered Accountants, Forensic Audit Firm. The audit firm conducted enquiry and submitted report pointing out the flaws in policies, flaws in systems and utilization of funds and analysis of various spending practices and to find out

irregularities, misstatements, governance procedures, internal policies evaluation for the financial years 2014-15 to 2018-19. M/s SIEMENS and Design Tech have to oversee the work of the clusters and their maintenance. However, both of them swindled crores of rupees in dubious manner. Basing on the complaint, CID registered the above crime on 09.12.2021.

(vi) By filing Memo dated 06.03.2023, the petitioner herein has been added as accused No.35 in the present crime and it is alleged that the petitioner, having colluded with Suman Bose (accused No.6), prepared false cost estimation with an intention to divert the funds of the Corporation and that he played key role in making changes to the draft agreement proposed to have been entered with the Corporation and removed the Bank Guarantee of Money and Performance clauses from the draft agreement in collusion with accused Nos.6 and 8, and that he has also shared the draft agreement to his wife before her inter-state cadre deputation to Andhra Pradesh and posting as Deputy CEO of the Corporation.

4. It may be noted that initially, the petitioner was arrested on 08.03.2023 in Noida, Uttar Pradesh, and after obtaining transit warrant from the Court of Additional Chief Judicial Magistrate-II, Surajpur, Noida, Uttar Pradesh, the police produced him before the Court of Special Judge for SPE & ACB Cases-cum-III Additional District & Sessions Judge, Vijayawada, on 09.03.2023, seeking his remand to judicial custody. However, the Court has rejected to remand the petitioner to judicial custody and set him at liberty.

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Questioning the same, the prosecution has filed Criminal Revision Case No.203 of 2023 before this Court. Vide order dated 16.03.2023, this Court set aside the order impugned and directed the Court below to proceed afresh as per law, if a request is made by the investigating authority for remand of the petitioner to judicial custody. Subsequently, the petitioner filed a petition under Section 438 Cr.P.C., in Crl.M.P.No.318 of 2023, before the learned Special Judge for SPE & ACB Cases, Vijayawada, seeking anticipatory bail. The said petition was dismissed by order dated 29.03.2023. Thereafter, the petitioner has filed the present petition before this Court for grant of pre-arrest bail.

5. At the outset, learned Additional Advocate General appearing for the State has taken a preliminary objection stating that the present application under Section 438 Cr.P.C. is not maintainable as the petitioner was already arrested at Noida, Uttar Pradesh, and after obtaining transit warrant from the Court at Surajpur, Noida, he was produced before the jurisdictional court at Andhra Pradesh.

6. It is to be noted that the above objection was taken before the Court of Special Judge for SPE & ACB Cases, Vijayawada, also, when the petitioner earlier filed Crl.M.P.No.318 of 2023 before the said Court for grant of anticipatory bail. Perusal of the order dated 29.03.2023 passed by the Court below in the said application would show that the Court below, having elaborately dealt with the said preliminary objection raised by the

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prosecution, overruled the said objection and held that the petition for anticipatory bail is maintainable. Be that as it may, it is brought to the notice of this Court that as against the order passed by this Court in Crl.R.C.No.203 of 2023, setting aside the order of refusal to remand and directing the Court below to proceed afresh as per law, the petitioner has preferred a Special Leave Petition in SLP (Crl.) Diary No.13156 of 2023 before the Hon'ble Supreme Court. Thus, this Court is not inclined to go into the issue of maintainability of anticipatory bail application in the backdrop of his arrest and subsequent refusal by the Court to remand him to judicial custody, which is *sub-judice* before the Hon'ble Supreme Court. Hence, without going into the preliminary objection raised with regard to maintainability of the present application, this Court would like to decide the application on merits.

7. Sri C.V. Mohan Reddy, learned senior counsel assisted by Mr. C. Prakash Reddy, learned counsel for the petitioner, argued that the petitioner has no role in the costing of men and material and he has to only collate and integrate the information provided and communicate it to the management and, thus, he was involved in the project only in a limited capacity at the instance of his employer. It is further contended that the petitioner was only marked with various correspondences from other team members and the entire exercise was based on the project model decided by the Managing Director and other members. Further, the petitioner was never involved in deliberations for fixing either profit margins or project estimation and his

opinion was never solicited before finalization. So far as the allegation of dropping critical clauses of bank guarantee from the MOU for supply and performance is concerned, it is contended that the petitioner had no role in it and it was the Managing Director and Sales Head, who corresponded in that regard and the MOU clauses were deliberated by various team members of SIEMENS India. It is further contended that the petitioner did not pursue with the State Government of Andhra Pradesh for posting of his wife (A-36) in any capacity and even otherwise, the petitioner's wife is not holding any responsibilities financial or otherwise in Siemens Project. In the circumstances, it is prayed that the petitioner may be granted pre-arrest bail in connection with the subject crime.

8. On the other hand, learned Additional Advocate General appearing for the State would contend that the petitioner conspired with other accused and played prominent role in getting the MOU prepared by inflating the project cost and removing bank guarantee clause. It is also contended that at the instance of the petitioner, his wife/A-36 was deputed as Deputy CEO of the Corporation. The petitioner, being privy to the conspiracy, which resulted in misappropriation of huge public funds of about Rs.371 crores through various shell companies, is not entitled for grant of anticipatory bail. He further submits that the SIEMENS has also taken up internal investigation in the matter, which revealed that the ex-CEO of SIEMENS, Mr. Bose, and his team, played an active role in a scheme with the purpose of misusing public funds.

Learned Additional Advocate General further submits that the investigation is still in progress and further evidence has to be collected in the matter to trace the track of misappropriated funds and, therefore, prays for dismissal of the present application.

9. This Court has considered the matter and perused the entire material available on record. The allegation levelled against the petitioner is that he, being the Project Head, involved in inflation of valuation, manipulation of MOU/agreement entered into between the State Government and SISW and Design Tech Private Limited, and thereby played a prominent role in misappropriation of huge public funds to a tune of about Rs.371 crores. As can be seen from the record, the prosecution has collected various e-mails exchanged amongst the present petitioner, accused Nos.6, 8 & 9 and the assistants of Mr. Bose, Ex-CEO of SISW.

10. In **P. Chidambaram v. Directorate of Enforcement** reported in **(2019) 9 SCC 24**, the Hon'ble Supreme Court has held that granting of anticipatory bail at the stage of investigation will frustrate the investigating agency in interrogating the accused and in collecting useful information and materials which might have been concealed and grant of anticipatory bail in economic offences would definitely hamper the effective investigation. Further, in **State of Bihar v. Amit Kumar alias Bachcha Rai** reported in **(2017) 13 SCC 751**, the Hon'ble Supreme Court held that socio-economic

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offences constitute a class apart and need to be visited with a different approach in the matter of bail.

11. In the circumstances, keeping in view the allegations levelled against the petitioner attributing prominent role to him in the offence and the offence being a socio-economic offence pertaining to a big conspiracy allegedly designed to misappropriate huge amount of public funds to a tune of about Rs.371 crores, this Court is of the opinion that it is not a fit case for grant of anticipatory bail to the petitioner at this stage.

12. Accordingly, this criminal petition is dismissed.

K. SURESH REDDY, J

Dt: 31.07.2023
IBL

10.

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KSR,J
Cri.P.No.3013 of 2023

HON'BLE SRI JUSTICE K. SURESH REDDY

CRIMINAL PETITION No.3013 of 2023

Ramesh Kandula

Dt: 31.07.2023

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connection with the loan transactions as a part of on-going annual exercise undertaken by the lending Bank. If that be so, Saharas would do well to obtain a confirmation from Bank of China to the effect that the valuation reports prepared in respect of the three properties mentioned above by CBRE and JLL, have been prepared at the instance of Bank of China and that the said valuation reports have been accepted by the Bank to be correct. This could lend reassurance to the Court that the value/stakes held by the Saharas in these properties are sought to be transferred on the basis of the true market value of the said assets. Needful shall be done expeditiously, but not later than one week from today.

Court Masters

(2014) 8 Supreme Court Cases 768

(BEFORE T.S. THAKUR AND C. NAGAPPAN, JJ.)

Writ Petitions (C) No. 401 of 2013[†] with No. 402 of 2013 and TP (C) No. 445 of 2014

SUBRATA CHATTORAJ

Petitioner;

Versus

UNION OF INDIA AND OTHERS

Respondents.

With

Writ Petitions (C) No. 413 of 2013 with No. 324 of 2014

ALOK JENA

Petitioner;

Versus

UNION OF INDIA AND OTHERS

Respondents.

Writ Petitions (C) No. 401 of 2013 with Nos. 402 and 413 of 2013, 324 of 2014 and TP (C) No. 445 of 2014, decided on May 9, 2014

A. Public Accountability, Vigilance and Prevention of Corruption — Scams — Saradha Chit Fund Scam — Fraudulent/Illegal multi-State investment scam involving Rs 10,000 crores, affecting lakhs of depositors (especially weaker/poorer sections) — CBI investigation directed

— Need for competent, effective, comprehensive and credible investigation to unearth larger conspiracy angle and other important aspects by CBI, which State investigating agencies of Bihar, W.B. and Odisha in spite of their efforts, failed to do and generally fail to inspire such confidence — All cases, therefore, transferred to CBI (States of Assam and Tripura already had transferred the investigation to CBI) — Clarified that proceedings pending before Inquiry Commissions (that is Sen Commission in W.B. and Patra Commission in Odisha) shall not be stalled and shall not affect process of attachment, recovery and payment to depositors initiated by said Commissions — State Police agencies currently investigating the case directed to provide fullest cooperation/assistance to CBI to conduct and complete the investigation expeditiously — Penal Code, 1860— S. 120-B — Constitution of India — Arts. 32 and 226 — Debt, Financial and Monetary

[†] Under Article 32 of the Constitution of India

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Laws — Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/
Financial leasing — Fraudulent/Fictitious Financial Establishments/Deposit
a Schemes (FFEs)

B. Constitution of India — Arts. 32 and 226 — CBI investigation directed — Monitoring Team for monitoring progress of investigation — Option of such Monitoring Team kept open, but not resorted to immediately

**C. Constitution of India — Arts. 32 and 226 — Scope of transferring case to CBI — Power of Supreme Court to direct CBI to take up
b investigation — Principles summarised**

— Some situations in which such direction can be issued — CBI investigation can be directed: (a) where it is necessary to discover the truth or to meet the ends of justice or to examine complex issues [like in present case role and involvement, if any, of regulatory authorities like SEBI, Registrar of Companies (RoC) and RBI were required to be found out and State
c investigation having failed to explain the huge gap between the amount collected and investments made], (b) where the case involves national or international ramifications (like in present case international money laundering dimensions were required to be investigated), or (c) where people holding high positions of power and influence or political clout are involved
d (like in present case larger conspiracy angle was required to be unearthed and also the alleged involvement of political/influential persons like MPs, etc.) — What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection, the Supreme Court has more often than not directed transfer of cases where the fact situations so demand — Public Accountability, Vigilance and Prevention of Corruption — People in Power/Politically Influential Personalities/MPs/MLAs/Ministers — Criminal
e Procedure Code, 1973, Ss. 155 to 159

D. Public Accountability, Vigilance and Prevention of Corruption — Scams — Saradha Chit Fund Scam — Fraudulent/Illegal multi-State investment scam involving Rs 10,000 crores, affecting lakhs of depositors (especially weaker/poorer sections) — Type and nature of fraud as revealed from reports

f — Judicial notice taken of and its effect considered to decide the issue as to whether matter should be transferred to CBI: (a) investors were lured by promise of very high returns, (b) brokers were tempted to collect as much as possible by giving high brokerage of about 30%. etc., (c) reports pointed out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on part of statutory auditors, (d)
g companies had no real intention of doing any legitimate/meaningful business (money collected were either spent or siphoned off) and investments that matured were paid out of cash collected from new members and not from profits earned (opposed to normal business norms), (e) there was allegation of involvement of regulatory bodies like SEBI, Registrar of Companies (RoC) and RBI, etc., and (f) allegedly, reports pointed out violation of the
h Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961 —

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Effect — Constitution of India — Arts. 32 and 226 — Debt, Financial and Monetary Laws — Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial leasing — Fraudulent/Fictitious Financial Establishments/Deposit Schemes (FFEes) a

Allowing the transfer of investigation to CBI, the Supreme Court

Held :

Writ petitions seeking transfer of investigation from the State Agencies to CBI is by no means uncommon in the High Courts. Judicial review is a basic feature of the Constitution. Thus, writ courts can issue appropriate writ, directions and orders to protect the fundamental rights of the citizens. CBI investigation can be directed where (a) it is necessary to discover the truth or to meet the ends of justice or to examine complex issues, or (b) the case involves national or international ramifications, or (c) people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection, the Supreme Court has more often than not directed transfer of cases where the fact situations so demand. b

(Paras 1 and 9)
State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401; *Inder Singh v. State of Punjab*, (1994) 6 SCC 275 : 1994 SCC (Cri) 1653; *R.S. Sodhi v. State of U.P.*, 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248; *State of Punjab v. CBI*, (2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666; *Advocates Assn. v. Union of India*, (2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355, *relied on* c

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389, *cited* d

The present case, nicknamed “Chit Fund Scam” affected lakhs of depositors across several States involving several companies. The alleged companies evolved newer and more ingenious ways of tantalising gullible public to make deposits in their fraudulent (Ponzi) schemes such as land allotment schemes, flat allotment schemes and tours and travel schemes, etc. For instance, Saradha Group of Companies which is a major player in the field, floated as many as 160 companies although four out of them were the front-runners in this sordid affair. (Para 10) e

Reports suggest that the investors were promised very high returns ranging from 10% to 18% interest. And that Saradha Realty India Ltd. had 2,21,000 agents who were paid an unreasonably high brokerage of 30% of the instrument and this became the driving force for said agents to go that extra mile to collect as much as possible. And that investments that matured were paid out of the cash collected from new members as opposed to normal business norm of paying such maturity sums from profits. And that books of accounts and bank accounts did not accurately show the cash collections. And that the company had no real intention of doing any legitimate business. Money collected was either spent away or siphoned off. No major revenue was seen to be generated by any group company. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States, the companies had as many as 347 bank accounts in 15 banks in the name of the group companies. The Report also points out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. It also points out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on the part of the statutory auditors. The Report estimates the collection made by Saradha Group of Companies at Rs 2459 crores. f

(Paras 11 to 14) g

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Interim forensic audit report submitted to SEBI by Sarath & Associate, Chartered Accountants on 27 ? 2014, referred to

- a Failure of the group companies to refund the deposits led to a public outcry against the scam. Majority of the affected persons appear to be from the middle class, lower middle class or poorer sections of the society. The Government of West Bengal set up a Commission of Inquiry headed by Mr Justice Shyamal Kumar Sen vide Notification dated 24-4-2013. The Commission was empowered to receive all individual and public complaints and to forward such complaints to the authorities concerned including the Special Investigation Team for launching prosecution. The Commission was also authorised to send directives to the Special Investigation Team, identify the key persons responsible for the present situation, quantify the estimated amount of money involved in the alleged transactions, assess the assets and liabilities of the group of companies and to recommend ways and means for providing succour to those who had lost their savings. The Commission was also authorised to recommend remedial action and measures to the State Government so that such situations do not recur. By
- c another Notification dated 27-8-2013 the Government, relying upon the directions issued by the High Court of Calcutta in *Basabi Rai Chowdhury*, WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal) empowered the Commission of Inquiry to dispose of all the assets belonging to Saradha Group of Companies and/or their agents and/or their benamidars and to adopt an appropriate mode of recovery of debts on behalf of Saradha Group from its debtors and add the proceeds to the fund to be created for that purpose. The
- d Commission was also clothed with the power to attach the bank accounts belonging to Saradha Group of Companies and the personal bank accounts of the Directors apart from restraining the banks concerned from allowing anyone to operate such accounts unless authorised by the Commission. Pursuant to the above notifications the Commission has received nearly 18 lakh complaints and claim petitions demanding refund of the amount deposited under such Ponzi
- e schemes. (Paras 16 to 18)
Basabi Rai Chowdhury v. Union of India, WP No. 12163 (W) of 2013, decided on 19-6-2013 (Cal), referred to
- f The State of Bihar stated that it has announced a sum of Rs 500 crores for the aggrieved depositors apart from the money that may be raised from selling off the assets of the companies including Saradha Group of Companies. And that as per directions of the Commission over one lakh beneficiaries have been paid compensation, while another 1,66,456 have been identified for such payment. And that as per the directions of the High Court of Calcutta in terms of the Notification dated 27-8-2013 as many as 224 immovable properties and 54 vehicles have been identified for attachment and possible sale and recovery of the amount due from the companies. And that one MP was arrested by the police and another was interrogated by Serious Fraud Investigation Office (SFIO). And
- g that the Special Investigating Team (SIT) and the police authorities are extending full support and cooperation to the Central Agencies like Enforcement Directorate and SFIO, etc. The State of Bihar, has in that view, opposed the prayer of the petitioner for transfer of the investigation from the State Police to CBI. (Para 19)
- h A significant discrepancy exists between investigation based estimated purchase value of the properties on the one hand and that which emerged from the software seized from the companies. The Government of West Bengal further submitted that the discrepancy could be on account of the fact that a large

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number of properties referred to in the affidavit have been acquired by the companies on the basis of powers of attorney which do not indicate the value of the property covered by such deeds and transactions. Be that as it may, a huge gap between the amount collected and the investments made in real estate itself calls for effective investigation as to the trail of money collected by the group of companies. The investigation by the State Police has not unfortunately made any significant headway in this regard. (Para 21)

A perusal of the sample copies of charge-sheets furnished shows that the same relate only to individual deposits leaving untouched the larger conspiracy angle that needs to be addressed. Though the Investigation Team has named the persons involved in larger conspiracy (in a list prepared by it, the basis on which said list was prepared was not set out in the list or elsewhere). A perusal of the synopsis subsequently furnished and the names included in the list makes it abundantly clear that several important individuals wielding considerable influence within the system at the State and the national level have been identified by the investigating agency for interrogation. Investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others. (Paras 22 to 24)

The investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of these regulating authorities. The regulatory authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny. There was dispute as to whether SEBI had any role to play or not in Chit Fund Scam. Therefore, there is a need for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future. (Paras 25 to 27)

Looking to the nature of the scam and its inter-State ramifications, cases registered in the State of Tripura have been transferred to CBI for investigation at the request of the State Government. A similar request has been made by the Government of Assam which has been accepted by the Central Government who is shortly issuing a notification under which cases concerning the scam registered in the State of Assam shall stand transferred to CBI. (Para 28)

The writ petitioners seek to transfer cases registered in the State of Odisha to CBI on the analogy of what was done in relation to Tripura and Assam keeping in view the magnitude of the scam as also those involved, in the same. The number of companies involved in scam in the State of Odisha is 44 as per reports earlier furnished by the State and the appellants. (Paras 29 and 32)

An affidavit filed by the State of Odisha shows that 163 companies were involved in the Chit Fund Scam in the State of Odisha who have collected Rs 4565 crores approximately from the public out of which a sum of Rs 2904 crores has been collected by 43 companies mentioned in the list referred to earlier excluding M/s Nabadiganta Capital Services Ltd. against which no criminal case have been registered so far. And that 7,45,293 envelopes containing

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a claim petitions have been received from the depositors by Justice R.K. Patra Commission. The affidavit also gives details of the properties of the companies seized/sealed in the course of the on-going investigation. The affidavit also refers to payment of Rs 24,17,65,866 allegedly made to 18,596 investors by M/s Prayag Infotech High Rise Ltd., Kolkata and the willingness expressed by M/s Rose Valley Hotels and Entertainment Ltd. to pay back the investors. Larger conspiracy angle is according to the affidavit being examined in three cases (as indicated). It was submitted that while charge-sheets have been submitted in the said three cases mentioned above within the period of limitation, investigation b has been kept open under Section 173(8) CrPC to investigate the larger conspiracy angle. The affidavit also refers to certain legislations enacted in the State of Odisha to protect the interest of depositors. It also refers to certain interim orders passed by the Government for attachment of the properties of the defaulting companies. (Para 33)

c The State of Odisha submitted that while the Supreme Court may transfer the cases to CBI for further investigation, any such transfer should not hamper the attachment or recovery process otherwise initiated by the State in terms of the measures taken by it. And that the Public Prosecutors appointed by CBI would be assisted by the State Police Officials so that the efficacy of the investigation and prosecution are both taken care of by the joint efforts that the Central and the State police authorities may make. (Para 34)

d The factual narrative given in the foregoing paragraphs clearly establishes the following: that the financial scam nicknamed Chit Fund Scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs 10,000 crores (approx.) from the general public especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam. That investigation so far conducted suggests that the collection of money from the e depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors. That more than 25 lakh claims have so far been received by the Commissions of Inquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies. That the companies f indulge in Ponzi schemes have their tentacles in different States giving the scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police g Agency which may have to be taken to its logical conclusion by an effective and independent investigation. (Paras 35 and 35.1 to 35.6)

Each one of the aspects set out calls for investigation by an independent agency like CBI. It is necessary to ensure credibility of such investigation in the public perception. (Para 36)

h The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not

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whether the State Police has faltered. However, what is done by the State Police is not sufficient to inspire confidence of those who are aggrieved. Although the State Police have done all that it ought to have done, the money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter-State ramifications, which the investigating agencies need to examine but are handicapped in examining. (Paras 37 and 38)

There is no basis of the apprehension expressed by the State Governments and some investors and interveners about credibility of CBI. It is true that a lot can be said about the independence of CBI as a premier investigating agency but so long as there is nothing substantial affecting its credibility it remains a premier investigating agency. Those not satisfied with the performance of the State Police more often than not demand investigation by CBI for it inspires their confidence. The Supreme Court cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with the scam or those likely to be affected by the investigation. (Para 40)

Sanjiv Kumar v. State of Haryana, (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235, *relied on*

All the writ petitions are allowed and the stated cases registered in the various police stations of States of West Bengal and Odisha are directed to be transferred to CBI. The Joint Director, CBI, in charge of the States of West Bengal and Odisha is being given liberty to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam. (Paras 42 and 43)

Subrata Chatteraj v. Union of India, (2014) 8 SCC 795; *Subrata Chatteraj v. Union of India*, (2014) 8 SCC 796, *referred to*

Transfer of investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Inquiry established by the State Government or stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously. The Enforcement Directorate shall, in the meantime, expedite the investigation initiated by it into the scam and institute appropriate proceedings based on the same in accordance with law. (Paras 44 and 45)

Nothing said in this order, shall be taken as a final opinion as to the complicity of those being investigated or others who may be investigated, questioned or interrogated in relation to the scam. (Para 46)

For the present it is not necessary to constitute a Monitoring Team to monitor the progress of the investigation into the scam. But, the exercise of that option is left open for the future. The writ petitions and TP (C) No. 445 of 2014 are disposed of in terms of the above directions. No costs. (Paras 47 and 48)

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- b Das, D.S. Mahra, Ramesh Babu M.R., Ms Swati Setia, Shadman Ali, Ashok Dhamija, Bhargava V. Desai, Shreyas Mehrotra, Prateek Jalan, Siddharth Bhatnagar, Prasenjit Keswani, Ms Sonia Dube, S. Chakraborty (for M/s Legal Options), Samir Ali Khan, Ms Kirti Renu Mishra, Ms Apurva Upmanyu, Ms Gaurikaruna Das Mohanti, Shibashish Misra, Ms Liz Mathew, Vybhav Ramesh, Mahesh Thakur, Snehashish Mukherjee, Ajit Kr. Roy, Govind Manoharan, Ms Shruti Iyer, Senthil Jagadeesan, Sajith P., Amandeep Singh, Sumit Kumar, Subhajit Bal, Abhishek Shaw, Shamba Nandy and Vikramjit Banerjee, Advocates) for the appearing parties.
- c

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| 2. (2014) 8 SCC 795, <i>Subrata Chatteraj v. Union of India</i> | 788b |
| 3. (2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355, <i>Advocates Assn. v. Union of India</i> | 781c |
| d 4. WP No. 12,163 (W) of 2013, decided on 19-6-2013 (Cal), <i>Basabi Rai Chowdhury v. Union of India</i> | 786b-c |
| 5. (2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666, <i>State of Punjab v. CBI</i> | 781a-b |
| 6. (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401, <i>State of W.B. v. Committee for Protection of Democratic Rights</i> | 775g-h, 777a-b, 779b, 781f-g |
| 7. (2005) 5 SCC 517 : (2006) 1 SCC (Cri) 235, <i>Sanjiv Kumar v. State of Haryana</i> | 793c-d |
| e 8. (1994) 6 SCC 275 : 1994 SCC (Cri) 1653, <i>Inder Singh v. State of Punjab</i> | 779f |
| 9. 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248, <i>R.S. Sodhi v. State of U.P.</i> | 780b-c |
| 10. (1984) 3 SCC 161 : 1984 SCC (L&S) 389, <i>Bandhua Mukti Morcha v. Union of India</i> | 777a |

The Judgment of the Court was delivered by

- f T.S. THAKUR, J.— Writ petitions seeking transfer of investigation from the State Agencies to the Central Bureau of Investigation (CBI) under the Delhi Special Police Establishment Act, is by no means uncommon in the High Courts in this country. Some, if not most of such cases in due course travel to this Court also, where, issues touching the powers of the High Courts and at times the power of this Court to direct such transfers are raised
- g by the parties. The jurisdictional aspect is, however, no longer *res integra*, the same having been answered authoritatively by a Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*¹. This Court in that case was examining whether the federal structure and the principles of separation of powers, made it impermissible for the superior courts to direct transfer of investigation from the State Police to CBI.
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¹ (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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Rejecting the contention, this Court held that the power of judicial review itself being a basic feature of the Constitution, the writ courts could issue appropriate writ, directions and orders to protect the fundamental rights of the citizens. This Court observed: (SCC pp. 593-94, paras 51-53) a

“51. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr B.R. Ambedkar described Article 32 as the very soul of the Constitution—the very heart of it—the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution. b
c

52. It is manifest from the language of Article 245 of the Constitution that all legislative powers of Parliament or the State Legislatures are expressly made subject to other provisions of the Constitution, which obviously would include the rights conferred in Part III of the Constitution. Whether there is a contravention of any of the rights so conferred, is to be decided only by the constitutional courts, which are empowered not only to declare a law as unconstitutional but also to enforce fundamental rights by issuing directions or orders or writs of or ‘in the nature of’ mandamus, certiorari, habeas corpus, prohibition and quo warranto for this purpose. d
e

53. It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision. Moreover, it is also plain from the expression ‘in the nature of’ employed in clause (2) of Article 32 that the power conferred by the said clause is in the widest terms and is not confined to issuing the high prerogative writs specified in the said clause but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of the fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, this Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it f
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for judicial redress (per P.N. Bhagwati, J. in *Bandhua Mukti Morcha v. Union of India*²).

- a 2. This Court summed up the conclusions in the following words: (*Committee for Protection of Democratic Rights case*¹, SCC pp. 600-02, paras 68-69)

“68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

- b (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

- c (ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. *The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.* In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

- d (iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. *Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of 'the principles of*

h 2 (1984) 3 SCC 161 : 1984 SCC (L&S) 389

1 *State of W.B. v. Committee for Protection of Democratic Rights*. (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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separation of powers, the rule of law, the principle of constitutionality and the reach of judicial review'.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. *In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.*

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Schedule VII List II Entry 2 on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, *there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers.* In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, *the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.*

69. In the final analysis, our answer to the question referred to is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a *cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of*

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a *the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.* (emphasis supplied)

b 3. Having said that this Court sounded a note of caution against transfer of cases to CBI for mere asking and observed: (*Committee for Protection of Democratic Rights case*¹, SCC p. 602, para 70)

c “70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. *Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.*” (emphasis supplied)

e 4. We may at this stage refer to a few cases in which this Court has either directed transfer of investigation to CBI or upheld orders passed by the High Court directing such transfer.

f 5. In *Inder Singh v. State of Punjab*³ this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director General of Police (Crime). Instead his PA had marked the same to the IG (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of

h ¹ *State of W.B. v. Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

³ (1994) 6 SCC 275 : 1994 SCC (Cri) 1653

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the Superintendent of Police recommended registration of a case against the officials concerned under Section 364 IPC. Despite the said recommendation no case was registered on one pretext or the other against the police officer concerned till 23-3-1994. It was at this stage that a writ petition was filed before this Court under Article 32 of the Constitution of India for a fair, independent and effective investigation into the episode. Allowing the petition this Court directed an independent investigation to be conducted by CBI into the circumstances of the abduction of seven persons, their present whereabouts or the circumstances of their liquidation. An inquiry was also directed into the delay on the part of the State Police in taking action between 25-1-1992 when the complaint was first lodged and 23-3-1994 when the case was finally registered.

6. In *R.S. Sodhi v. State of U.P.*⁴ this Court was dealing with a petition under Article 32 of the Constitution of India seeking an independent investigation by CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by CBI into what was according to the petitioner a fake encounter, was perfectly justified. This Court held that however faithfully the police may carry out the investigation, the same will lack "credibility" since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter, thereby lending credibility to the outcome of the investigation. This Court observed: (SCC pp. 144-45, para 2)

"2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of

⁴ 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248

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a either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.” (emphasis supplied)

b 7. A reference may also be made to *State of Punjab v. CBI*⁵ where the High Court of Punjab and Haryana transferred an investigation from the State Police to CBI in relation to what was known as “Moga sex scandal” case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal counsellors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by CBI.

c 8. More recently, this Court in *Advocates Assn. v. Union of India*⁶ had an occasion to deal with the question of transfer of an investigation from the State Police to CBI in the context of an ugly incident involving advocates, police and media persons within the Bangalore City Civil Court Complex. On a complaint filed by the Advocates’ Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed the Director General of Police, CID, Special Unit and Economic Offences as an inquiry officer to conduct an in-house inquiry into the matter. The Advocates’ Association at the same time filed a complaint with jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of the City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr R.K. Raghvan, a retired Director CBI, as its Chairman and others. The Advocates’ Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like CBI. Relying upon the decision of this Court in *State of W.B. v. Committee for Protection of Democratic Rights*¹ this Court directed transfer of investigation to CBI holding that the nature of the incident and the delay in setting up of SIT was sufficient to warrant such a transfer.

g 9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and

h 5 (2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666
6 (2013) 10 SCC 611 : (2014) 1 SCC (Cri) 355
1 (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401

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to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand. a

10. We are in the case at hand dealing with a major financial scam nicknamed "Chit Fund Scam" affecting lakhs of depositors across several States in the eastern parts of this country. Affidavits and status reports filed in these proceedings reveal that several companies were engaged in the business of receiving deposits from the public at large. The modus operandi of the companies involved in such Ponzi schemes was in no way different from the ordinary except that they appear to have evolved newer and more ingenious ways of tantalising gullible public to make deposits and, thereby fall prey to temptation and the designs of those promoting such companies. For instance, Saradha Group of Companies which is a major player in the field, had floated several schemes to allure the depositors to collect from the market a sizeable amount on the promise of the depositors getting attractive rewards and returns. These fraudulent (Ponzi) schemes included land allotment schemes, flat allotment schemes, and tours and travel schemes. The group had floated as many as 160 companies although four out of them were the front runners in this sordid affair. b
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d

11. An interim forensic audit report submitted to SEBI by Sarath & Associate, Chartered Accountants on 27-2-2014 sums up in the following words, the background in which the schemes are floated and the public defrauded: e

"The company M/s Saradha Realty India Ltd. was involved in financial fraud involving in an attempt to deliberately mislead the general public by announcing dubious money multiplier schemes. It has also indulged in misleading the financial status of the group companies by incorrect disclosures in the financial statements in an attempt to deceive financial statement users and regulatory authorities. f

The investors lured to extraordinary returns is typically attributed to something that sounds impressive but is intentionally vague, such as hedge fund in land, resorts, tours and travel plans, high yield investment programmes.

Typical to the Ponzi schemes the investors who are economically very poor have invested relatively small amounts such as Rs 100 and wait to see if the promised returns are paid. After one month the investor received maturity amounts, so the investor truly believes she has earned the promised return. What the investor doesn't realise is that Rs 100 was a RETURN OF THE INVESTMENT AND NOT A RETURN ON THE INVESTMENT. In other words, the Rs 100 return came from the Rs 100 principal initially invested or from a newly-recruited investor, rather than from any g
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a profits generated by the investment opportunity. After a second month yields another Rs 100 payment, the investor is 'hooked' and typically will invest larger amounts in the scheme and will enthusiastically inform friends and family members about this 'fantastic' investment opportunity.

Since these early investors have actually received the promised returns, their promotion of the investment comes across as genuine and instils an almost irresistible urge in friends and family members to invest as well.

b If pressed by sceptical investors for more detail, the promoters typically evade answering the question and instead talk about how recently recruited investors have been receiving the promised returns.

c Since little of the victims' funds are actually invested into a legitimate profit-generating activity, the scheme continued for only as long as the cash inflows to existing investors. However, as the number of investors grown rapidly, the pool of new investors unavoidably shrinks. At one point, the cash flow situation collapsed resulting in four possible outcomes: (1) the investment promoters disappear, taking remaining investment money with them; (2) the scheme collapsed of its own weight, and the promoters have problems paying out the promised returns and, as the word spread, more people start asking for their money, creating a run-on-the-bank situation; (3) the investment promoters turn themselves in and confess."

d 12. The Report suggests that the investors were promised very high returns by way of interest rate ranging from 10% to 18%. The said returns promised to the depositors were, according to the Report, too good to be true. The Report also suggests that a very large number of "agents base" was created by the companies to extend the reach of these companies. For Saradha Realty India Ltd. itself as many as 2,21,000 agents were working, who were paid an unreasonably high brokerage of 30% of the instrument which became the driving force for the agents to go that extra mile to collect as much as possible. The Report indicates that investments that matured for payment were paid out of the cash collected from new members which was opposed to the normal business norms in which returns ought to be paid out of profits earned in the business. Besides, the cash collections were neither accurately shown in the books of accounts, nor did the bank accounts reveal the details of such cash collections.

e 13. The Report states that the company had no real intention of doing any legitimate business activity and the money collected from the public was spread over 160 companies and spent away or siphoned off. No major revenue was seen to be generated by any group company. The companies had opened too many bank accounts for round tripping transactions for the monies collected by them. Apart from as many as 218 branches spread over several States including West Bengal, Odisha, Bihar, Assam and other States
f
g
h the companies had as many as 347 bank accounts in 15 banks in the name of the Group Companies. The bank accounts were opened at the location of

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branches enabling deposit of the cash into accounts. The daily cash collected less expenses, was deposited at branch account and the money pooled and transferred to other accounts as per CMD's instructions and utilised to issue the cheques. a

14. The Report also points out violation of the Securities and the Exchange Board of India Act, 1992, the Companies Act, 1956, the Reserve Bank of India Act, 1934 and the Income Tax Act, 1961. It also points out fraudulent certification, non-compliance with accounting standards, material misstatement of facts and gross negligence on the part of the statutory auditors. b

15. The Interim Report eventually draws up the following conclusions:

"Saradha Reality India Ltd. and its other 3 group companies has collected money from the open market, reaching out to the general public by employing huge number of agents, in form of investment under different schemes viz. fixed deposits, monthly investment scheme, recurring deposits. SRIL has in pretext of land developers, construction of flats, running tours and travels, travel packages and resorts collected around Rs 2459 crores over a period of 5 years. c

SRIL has no valid registration under the SEBI Act for 'collective investment scheme' nor has been licensed under the RBI Act for Nidhi/Chit fund/NBFC. Its MoA also does not permit the company to collect monies in the form of deposits. SEBI had passed a winding-up order in view of the collection of monies under one of the company's schemes as collective investment scheme on 23-4-2013. d

Company management, with fraudulent intent, has designed several investment schemes wherein the depositors invested in expectation of high return. It has also misrepresented its business in writing to Income Tax Department, SEBI, and to its depositors. The depositors are promised fixed interest returns but management has promised tours, travel packages, land purchases, flat advances, etc. on the receipts which in reality is not intended to be given to the depositors. e

SRIL did not comply with the KYC norms while collecting the deposits, all the deposits are identified by names and addresses, but the ID or address proofs are not obtained. The authenticity of the investors is difficult to prove as the deposits are not KYC complied. f

The agents are main part of the entire operations of the company, in evolving the new schemes, explaining the public and collecting the deposits. The agents are operated as a tree (chain) and each agent in the chain will get commission on each deposit. These commissions are paid in priority from the business cash collected (almost 30% of collections) and the balance money is used for meeting company expenses and the rest is either deposited at the bank in the location of the branch or sent to the head office. The cheques collected are directly deposited in the bank. Other than Commission the agents are awarded field allowance, prizes. g h

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and performance bonuses forming around 30% of the total deposits collected.

a SRIL has expanded rapidly its business, takeovers in a very short span of five years. The Company has never utilised money so collected from investors for carrying out any legitimate business to earn returns to payback the investors. It has utilised the monies so collected in these takeovers, and venturing into a new company for running the loss making businesses like media channels, newspapers, magazines, manufacturing automobiles. The group has incorporated 160 companies and the share capital monies, furniture and fixtures, plant and machines, huge staff salaries, fleet of cars on rent, buses, 320 branch premises' rents, daily expenses, maintenance are all met through the deposits collected from the investors.

c One of the companies—Saradha Exports had announced that it is expanding to international markets by exporting business and opening a branch in Madrid, Spain, on its website.

d All the group companies are debt-free companies; the loans standing in the financial statements are partly of investors, other group company loans and advances. The audited financial statements are misrepresenting the facts and statutory auditor is grossly negligent in discharging his duty to present the true and fair view of the state of affairs of the companies. Most of the group company's auditor is common.

e Since the deposits collected are not utilised for generating income, the monies are spent off and the Company soon has failed to return back the monies to depositors on their maturity. Cash rotation cycle of the depositors broke and has severe cash crunch and let the company to fall off."

The Report estimates the collection made by Saradha Group of Companies at Rs 2459 crores.

f 16. Failure of the group companies to refund the deposits made with them was bound to as it indeed has led to a public outcry against the scam on account of the huge amount that was collected by these companies by defrauding a very large section of the public majority of whom appear to be from middle class, lower middle class or poorer sections of the society. The Government of West Bengal acted in response to the protests and the public anguish over a fraud of such colossal magnitude and set up a Commission of Inquiry headed by Mr Justice Shyamal Kumar Sen, retired Chief Justice, Allahabad High Court with four others to be nominated by the Government to inquire into the matters set out in a Notification dated 24-4-2013 issued in that regard.

g 17. The Commission was empowered to receive all individual and public complaints regarding Saradha Group of Companies and other similar companies involved in the scam and to forward such complaints to the authorities concerned including the Special Investigation Team for launching

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prosecution. The Commission was also authorised to send directives to the Special Investigation Team, identify the key persons responsible for the present situation, quantify the estimated amount of money involved in the alleged transactions, assess the assets and liabilities of the group of companies and to recommend ways and means for providing succour to those who had lost their savings. The Commission was also authorised to recommend remedial action and measures to the State Government so that such situations do not recur. a

18. By another Notification dated 27-8-2013 the Government, relying upon the directions issued by the High Court of Calcutta in *Basabi Rai Chowdhury v. Union of India*¹ empowered the Commission of Inquiry to dispose of all the assets belonging to Saradha Group of Companies and/or their agents and/or their benamidars and to adopt an appropriate mode of recovery of debts on behalf of Saradha Group from its debtors and add the proceeds to the fund to be created for that purpose. The Commission was also clothed with the power to attach the bank accounts belonging to Saradha Group of Companies and the personal bank accounts of the Directors apart from restraining the banks concerned from allowing anyone to operate such accounts unless authorised by the Commission. Pursuant to the above notifications the Commission has received nearly 18 lakh complaints and claim petitions demanding refund of the amount deposited under such Ponzi schemes. b c d

19. In the counter-affidavit filed on behalf of the State of Bihar it is, inter alia, stated that the State Government has announced a sum of Rs 500 crores for payment to the aggrieved depositors apart from money that may be raised from selling off the assets of the companies including Saradha Group of Companies. The affidavit further states that the Commission has passed orders for payment of compensation to the investors in Saradha Group of Companies and that over one lakh beneficiaries have been paid while another 1,66,456 identified for such payment. The affidavit also states that as per the directions issued by the High Court of Calcutta in terms of the notification mentioned above as many as 224 immovable properties and 54 vehicles have been identified for attachment and possible sale and recovery of the amount due from the companies. The affidavit goes on to say that one Kunal Kumar Ghosh, Member of Parliament, Rajya Sabha, was arrested on 23-11-2013 in connection with the case registered in Bidhannagar South Police Station after being interrogated on several occasions. The said Kunal Kumar Ghosh was the media CEO of Saradha Group of Companies. In addition one Srinjoy Bose, Member of Parliament was also interrogated by Serious Fraud Investigation Office in relation to Saradha Group of Companies and that the Special Investigating Team and the police authorities are extending full support and cooperation to the Central Agencies like Enforcement Directorate, Serious Fraud Investigation Office, etc. for effective e f g

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investigation of the scam. The State has in that view opposed the prayer of the petitioner for transfer of the investigation from the State Police to CBI.

- a 20. When this case came up before us on 4-3-2013 our attention was drawn by Mr C.S. Vaidyanathan, Senior Counsel appearing for the State of West Bengal to a statement appearing at p. 474 of the said surrejoinder filed by the State which according to the learned counsel summarised the investments made by Saradha Group of Companies from out of the money collected by it from the depositors. These details were sketchy and unsatisfactory especially when the trail of money collected remained obscure no matter it was one of the important, if not the single most important, angle to be investigated for unravelling facts leading to the scam and identifying those who had aided and/or abetted the same. Mr Vaidyanathan was, therefore, granted ten days' time to file a comprehensive statement as to the amount collected by the said group of companies and the expenditure incurred/investments made over a period of time.

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- c 21. An affidavit was accordingly filed by the State of West Bengal in which the purchase value of the property acquired by Saradha Group of Companies was estimated at Rs 40 crores only as against a total collection of Rs 2460 crores made by the said companies. Mr Vaidyanathan argued that the investment in real estate could go up to Rs 110 crores on the basis of the information gathered from the software that was seized from the companies concerned. Even if that were so, a significant discrepancy existed between investigation based estimated purchase value of the properties on the one hand and what could according to Mr Vaidyanathan emerge from the software seized from the companies. Mr Vaidyanathan argued that the discrepancy could be on account of the fact that a large number of properties referred to in the affidavit have been acquired by the companies on the basis of powers of attorney which do not indicate the value of the property covered by such deeds and transactions. Be that as it may, a huge gap between the amount collected and the investments made in real estate itself calls for effective investigation as to the trail of money collected by the group of companies. The investigation by the State Police has not unfortunately made any significant headway in this regard.

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- g 22. More importantly, the question whether the scam was confined only to those who actively managed and participated in the affairs of the companies or the same flourished on account of the support and patronage of others is an issue that has bothered us all through the hearing of this case. We had, therefore, directed the State to file a sample copy of the charge-sheets said to have been submitted before the jurisdictional courts. A perusal of the copies so furnished shows that the same relate only to individual deposits leaving untouched the larger conspiracy angle that needs to be addressed. It was argued by Mr Bhattacharya that the investigating agency was deliberately avoiding to investigate that vital aspect. Mr Vaidyanathan, however, contended that the larger conspiracy angle was being investigated
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separately in an FIR registered with Bidhannagar Police Station. He sought and was given time to file an affidavit setting out the particulars of the FIR in which the larger conspiracy angle was being examined and the progress so far made in that regard. a

23. An additional affidavit was accordingly filed by Mr Vaidyanathan in which it is, inter alia, stated that the larger conspiracy angle is being investigated in Crime No. 102 registered in Bidhannagar Police Station (North) on 6-5-2013 under Sections 406, 409, 420, 120-B IPC. At the hearing of the case on 9-4-2014⁸ Mr Vaidyanathan passed on to us a sealed cover containing a list of persons who according to the learned counsel need to be questioned in view of the disclosures made and the evidence collected so far by the investigating agency. The basis on which the Investigation Team has named the persons in the list was not set out in the list or elsewhere. Mr Vaidyanathan, therefore, offered to file a synopsis of the evidence on the basis whereof the names mentioned in the list had been included in the said list and the evidence which incriminates them calling for further investigation into their role and conduct. b c

24. An affidavit giving the synopsis was pursuant to the said order filed by Mr Vaidyanathan indicating briefly the basis on which the persons named in the list were sought to be interrogated in connection with the scam. A perusal of the synopsis furnished and the names included in the list makes it abundantly clear to us that several important individuals wielding considerable influence within the system at the State and the national level have been identified by the investigating agency for interrogation. We do not consider it necessary to reveal at this stage the names of the individuals who are included in the list on the basis of which the investigating agency proposes to interrogate them or the material so far collected to justify such interrogation. All that we need point out is that investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others who need to be questioned about their role in the sequence and unfolding of events that has caused ripples on several fronts. d e

25. There is yet another aspect to which we must advert at this stage. This relates to the role of the regulatory authorities. The investigation conducted so far puts a question mark on the role of regulatory authorities like SEBI, Registrar of Companies and officials of RBI within whose respective jurisdictions and areas of operation the scam not only took birth but flourished unhindered. The synopsis filed by Mr Vaidyanathan names some of the officials belonging to these authorities and give reasons why their role needs to be investigated. The synopsis goes to the extent of suggesting that regular payments towards bribe were paid through middleman to some of those who were supposed to keep an eye on such Ponzi companies. The regulatory authorities, it is common ground, exercise their powers and jurisdiction under Central legislations. Possible connivance f g h

⁸ *Subrata Chatteraj v. Union of India*. (2014) 8 SCC 795

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a of those who were charged with the duty of preventing the scams of such nature in breach of the law, therefore, needs to be closely examined and effectively dealt with. Investigation into the larger conspiracy angle will, thus, inevitably bring such statutory regulators also under scrutiny.

b 26. It was at one stage argued on behalf of SEBI that the companies involved in the scam were doing chit fund business and since chit-funds were not within its jurisdiction it could not have taken cognizance of the same. Our attention was, however, drawn to at least two orders passed by SEBI directing winding up of such Ponzi schemes and refund of the amounts received by the companies concerned to the depositors. It was submitted by the learned counsel for the petitioner that SEBI having examined the issue, taken cognizance of the violation, no matter belatedly and issued directions for winding up of the schemes and refund of the amount, it was no longer open to it to argue that it had no role to play in the matter.

c 27. We are not in these proceedings required to authoritatively pronounce upon the question whether SEBI had the jurisdiction to act in the matter. What is important is that if upon investigation it is found that SEBI did have the jurisdiction to act in the matter but failed to do so then such failure may tantamount to connivance and call for action against those who failed to act diligently in the matter. Suffice it to say, that the scam of this magnitude going on for years unnoticed and unchecked, is suggestive of a deep-rooted apathy if not criminal neglect on the part of the regulators who ought to do everything necessary to prevent such fraud and public loot. Depending upon whether the investigation reveals any criminal conspiracy among those promoting the companies that flourished at the cost of the common man and those who were supposed to prevent such fraud calls for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future.

f 28. There is yet another dimension of the scam which cannot be neglected. That the Ponzi companies operated across State borders is evident not only from the pleadings on record but also from the submissions urged in the course of the arguments before us. What is significant is that these companies and such other similar companies indulged in similar fraudulent activities in the States of Assam and Tripura also apart from Orissa where the depositors have suffered. Looking to the nature of the scam and its inter-State ramifications, cases registered in the State of Tripura have since been transferred to CBI for investigation at the request of the State Government. A similar request has been made by the Government of Assam which has, according to Mr Sidharth Luthra, learned Additional Solicitor General, been accepted by the Central Government who is shortly issuing a notification under which cases concerning the scam registered in the State of Assam shall stand transferred to CBI.

g 29. That leaves us with the State of Odisha where too Saradha Group of Companies and a host of similar other companies appear to have indulged in similar activities giving rise to considerable public resentment against the

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authorities for not preventing such companies from defrauding the innocent public. Writ Petitions (C) Nos. 413 of 2013 and 324 of 2014 seek transfer of such cases registered in the State of Odisha to CBI on the analogy of what was done in relation to Tripura and Assam keeping in view the magnitude of the scam as also those involved, in the same. a

30. In Writ Petition (C) No. 413 of 2013 we had by our order dated 26-3-2014⁹ confined the proceedings to 44 companies mentioned in two lists, one filed by Mr Alok Jena, the petitioner in the petition and the other by the counsel for the State Government. The involvement of these companies in the scam had inter-State ramifications besides the fact that their collections had exceeded over Rs 500 crores each. b

31. It was submitted by the counsel for the parties that looking to the large number of cases that had been registered, transfer of each and every case may work as an impediment in the effective investigation of the cases by CBI. For all intents and purposes, therefore, proceedings in these two writ petitions were confined to a prayer for transfer of cases registered against 44 companies named in the lists filed by the counsel for the parties. c

32. Since certain aspects of the information considered relevant for the transfer of the cases was not forthcoming, we had directed the State Government to file an affidavit providing the said information. The information related primarily to the number of companies involved in the scam in the State of Odisha. The total amount allegedly collected by 44 companies referred to in the lists furnished by the State counsel and the counsel for the petitioner. The total number of claims made by the depositors before Justice R.K. Patra Commission set up with the State Government as also the total number of properties, seized in regard to the 44 companies referred to above. The total amount so far paid to the investors under the orders of the Commission or otherwise and the total number of charge-sheets so far filed. Investments made in real estate or otherwise by the 44 companies were also demanded from the State who was asked to disclose whether the larger conspiracy angle was being investigated and, if so, furnish the particulars of the FIR in which that was being done. d e f

33. An affidavit has been filed by the State of Odisha pursuant to the said directions in which the FIRs where the State investigating agency is examining the larger conspiracy angle, have been identified. A perusal of the affidavit, further shows that 163 companies were involved in the chit fund scam in the State of Odisha who have collected Rs 4565 crores approximately from the public out of which a sum of Rs 2904 crores has been collected by 43 companies mentioned in the list referred to earlier excluding M/s Nabadiganta Capital Services Ltd. against which no criminal case has been registered so far. The affidavit also states that 7,45,293 envelopes containing claim petitions have been received from the depositors by Justice R.K. Patra Commission. The affidavit also gives details of the g h

⁹ *Subrata Chatteraj v. Union of India*, (2014) 8 SCC 796

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properties of the companies seized/sealed in the course of the on-going investigation. The affidavit also refers to payment of Rs 24,17,65,866 allegedly made to 18,596 investors by M/s Prayag Infotech High Rise Ltd., Kolkata and the willingness expressed by M/s Rose Valley Hotels and Entertainment Ltd. to pay back the investors. Larger conspiracy angle is according to the affidavit being examined in three cases. These are: (i) CID PS Case No. 39 dated 18-7-2012 under Sections 420/120-B IPC read with Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 registered against M/s Seashore Group of Companies, (ii) Case No. 44 dated 7-2-2013 under the same provisions registered in Kharavelnagar Police Station (Bhubaneswar Urban Police District) against M/s Artha Tatwa Group of Companies, and (iii) EOW PS Case No. 19 dated 6-6-2013 registered against M/s Astha International Ltd. It was submitted that while charge-sheets have been submitted in three cases mentioned above within the period of limitation, investigation has been kept open under Section 173(8) CrPC to investigate the larger conspiracy angle. The affidavit also refers to certain legislations enacted in the State of Odisha to protect the interest of depositors. It also refers to certain interim orders passed by the Government for attachment of the properties of the defaulting companies.

34. Appearing for the State of Odisha, Mr Gopal Subramaniam, learned Senior Counsel argued that while this Court may transfer for further investigation into the cases registered against 44 companies referred to above, any such transfer should not hamper the attachment or recovery process otherwise initiated by the State in terms of the measures taken by it. It was also contended by Mr Subramaniam that the Public Prosecutors appointed by CBI would be assisted by the State Police Officials so that the efficacy of the investigation and prosecution are both taken care of by the joint efforts that the Central and the State police authorities may make.

35. The factual narrative given in the foregoing paragraphs clearly establishes the following:

35.1. That financial scam nicknamed chit fund scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs 10,000 crores (approx.) from the general public, especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam.

35.2. That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors.

35.3. That more than 25 lakh claims have so far been received by the Commissions of Enquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies.

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35.4. That the companies which indulge in Ponzi schemes have their tentacles in different States giving the scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated. a

35.5. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence.

35.6. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation. b

36. The question is whether the above features call for transfer of the ongoing investigation from the State Police to CBI. Our answer is in the affirmative. Each one of the aspects set out above in our view calls for investigation by an independent agency like the Central Bureau of Investigation (CBI). That is because apart from the sensitivity of the issues involved, especially inter-State ramifications of the scam under investigation, transfer of cases from the State Police have been ordered by this Court also with a view to ensure credibility of such investigation in the public perception. Transfers have been ordered by this Court even in cases where the family members of the victim killed in a firing incident had expressed apprehensions about the fairness of the investigation and prayed for entrusting the matter to a credible and effective agency like CBI. c d

37. Investigation by the State Police in a scam that involves thousands of crores collected from the public allegedly because of the patronage of people occupying high positions in the system will hardly carry conviction especially when even the regulators who were expected to prevent or check such a scam appear to have turned a blind eye to what was going on. The State Police Agency has done well in making seizures, in registering cases, in completing investigations in most of the cases and filing charge-sheets and bringing those who are responsible to book. The question, however, is not whether the State Police has faltered. The question is whether what is done by the State Police is sufficient to inspire confidence of those who are aggrieved. e f

38. While we do not consider it necessary to go into the question whether the State Police have done all that it ought to have done, we need to point out that money trail has not yet been traced. The collections made from the public far exceed the visible investment that the investigating agencies have till now identified. So also the larger conspiracy angle in the States of Assam, Odisha and West Bengal although under investigation has not made much headway partly because of the inter-State ramifications, which the investigating agencies need to examine but are handicapped in examining. g h

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a 39. M/s Vaidyanathan and Gopal Subramaniam, learned counsel for the States of West Bengal and Odisha respectively argued that CBI itself has in a great measure lost its credibility and is no longer as effective and independent as it may have been in the past. Similar sentiments were expressed by Mr P.V. Shetty appearing on behalf of some of the investors and some other intervenors, who followed suit to pursue a similar line of argument.

b 40. There is, in our opinion, no basis of the apprehension expressed by the State Governments. It is true that a lot can be said about the independence of CBI as a premier investigating agency but so long as there is nothing substantial affecting its credibility it remains a premier investigating agency. Those not satisfied with the performance of the State Police more often than not demand investigation by CBI for it inspires their confidence. We cannot, therefore, decline transfer of the cases only because of certain stray observations or misplaced apprehensions expressed by those connected with c the scam or those likely to be affected by the investigation.

d 41. We may in this regard gainfully extract the following passage from the decision of this Court in *Sanjiv Kumar v. State of Haryana*¹⁰, wherein this Court has lauded CBI as an independent agency that is not only capable of but actually shows results: (SCC p. 523, para 15)

e "15. In the peculiar facts and circumstances of the case, looking at the nature of the allegations made and the mighty people who are alleged to be involved, we are of the opinion, that the better option of the two is to entrust the matter to investigation by CBI. We are well aware, as was also told to us during the course of hearing, that the hands of CBI are full and the present one would be an additional load on their head to carry. Yet, the fact remains that CBI as a Central investigating agency enjoys independence and confidence of the people. It can fix its priorities and programme the progress of investigation suitably so as to see that any inevitable delay does not prejudice the investigation of the present case. They can think of acting fast for the purpose of collecting such vital evidence, oral and documentary, which runs the risk of being obliterated by lapse of time. The rest can afford to wait for a while. We hope that the investigation would be entrusted by the Director, CBI to an officer of unquestioned independence and then monitored so as to reach a successful conclusion; the truth is discovered and the guilty dragged into the net of law. Little people of this country, have high hopes from CBI, the prime investigating agency which works and gives results. We hope and trust the sentinels in CBI would justify the confidence of the people and this Court reposed in them."

g 42. In the circumstances, we are inclined to allow all these petitions and direct transfer of the following cases registered in different police stations in the State of West Bengal and Odisha from the State Police Agency to the Central Bureau of Investigation (CBI):

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A. State of West Bengal

42.1. All cases registered in different police stations of the State against Saradha Group of Companies including Crime No. 102 registered in Bidhannagar Police Station, Kolkata (North) on 6-5-2013 for the offences punishable under Sections 406, 409, 420 and 120-B IPC. a

42.2. All cases in which the investigation is yet to be completed registered against any other company up to the date of this order.

42.3. CBI shall be free to conduct further investigation in terms of Section 173(8) CrPC in relation to any case where a charge-sheet has already been presented before the jurisdictional court against the companies involved in any chit fund scam. b

B. State of Odisha

42.4. All cases registered against the 44 companies mentioned in our order dated 26-3-2014 passed in *Subrata Chattoraj v. Union of India*⁹. CBI is also permitted to conduct further investigations into all such cases in which charge-sheets have already been filed. c

43. We reserve liberty for the Joint Director, CBI, Incharge of the States of West Bengal and Odisha to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam. d

44. Transfer of investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Enquiry established by the State Government or stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously. e

45. The Enforcement Directorate shall, in the meantime, expedite the investigation initiated by it into the scam and institute appropriate proceedings based on the same in accordance with law. f

46. We make it clear that nothing said in this order, shall be taken as a final opinion as to the complicity of those being investigated or others who may be investigated, questioned or interrogated in relation to the scam.

47. We do not for the present consider it necessary to constitute a Monitoring Team to monitor the progress of the investigation into the scam. But, we leave the exercise of that option open for the future. g

48. The writ petitions and TP (C) No. 445 of 2014 are disposed of in terms of the above directions. No costs. h.

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WP(PIL).NO.

OF 2023

BETWEEN:

1. Vundavalli Aruna Kumar
Aged about 70 years Occ. Advocate
S/o. Vundavalli Venkata Subba Rao
74-6-51, Sravanthi Buildings
Rajahmundry, East Godavari – 533 101
Andhra Pradesh
Aadhar No. 241517672901
Contact No. 9492176747
PAN Card No. ADUPV 5773A
Account No. 10912807403
State Bank of India, Rajamundry

..... Petitioner

AND

1. The Union of India
Represented by its Secretary,
Ministry of Home Affairs
New Delhi – 110 001
2. The Central Bureau of Investigation rep
By its Director, CGO Complex, Lodhi Road
New Delhi – 110 003
3. The Directorate of Enforcement rep by its
Director, Pravarthan Bhavan, New Delhi – 110 011
4. The State of A.P. rep. by its Principal Secretary
Home Department, Secretariat Buildings,
Amaravati, Guntur, Andhra Pradesh
5. The State of A.P. rep by its Director,
Crime Investigation Department, Mangalagiri
A.P.
6. Ghanta Subba Rao, S/o Venkata Ramaiah, 62 yrs., R/o Dhyana hita
High School Compound, Shabad (V) & (M), Ranga Reddy Dist.,
Telangana State
7. Dr. Kodidela Lakshmi Narayana, S/o K.L.Narayana, aged 70 years,
r/o Plot No.108, Road No.71, Behind Jubilee Hills School, Nava
Nirman Nagar, Shaikpet, Jubilee Hills, Hyderabad

8. **Nimmagadda Venkata Krishna Prasad, S/o Jagannadha Sharma, 64 years, Occ: Retd Employee, R/o. Flat No.209/A, Road No-4, Phase - III, Prasanthi Hills, Saroornagar, Meerpet, Rangareddy District.**
9. **Design Tech Systems Pvt Ltd, 6, Commerce Centre, Rambaug Colony, Paud Road, Pune, Maharashtra, 411 038.**
10. **Skillar Enterprises India Pvt.Ltd (formerly known as PVSP IT Skills Projects Pvt.Ltd. M/s Allied Computers International (Asia) Ltd., Mumbai (ACI).**
11. **Soumyadri Shekhar Bose @ Suman Bose, S/o Neeladri Sekhar Bose, R/o MA-2/2, 3B, Garden Estate, Gurgaon-102002. the then Managing Director, M/s SIEMENS Industry Software (India) Pvt.Ltd.**
12. **Pratap Kumar Kar, Chief Financial Officer, AP State Skill Development Corporation.**
13. **Vikas Vinayak Khanvelkar, s/o Vinayak, Age: 65 yrs, R/o "Kaivalya" 464, Mahatma Co-operating Housing Society, Kothrud, Pune, Managing Director of Design Tech Systems Limited, Pune.**
14. **Sanjay Daga, President of DesignTech Systems Limited, Pune.**
15. **Mukul Chandra Agarwal S/o Dinesh Chandra, Age 53 Years, Occ: Cadence Partner LLP, previous worked as COO, PVSP IT Skills Projects Pvt Ltd later Changed to M/s Skillar Enterprises Pvt. Ltd., Resident of Minifarm-10, Chattarpur Mandir Road, Chattarpur, New Delhi. Chief Operating Officer, Skillar Enterprises India Pvt. Ltd.**
16. **Saurabh Garg, Managing Director, Skillar Enterprises India Pvt. Ltd (formerly known as PVSP IT Skills Projects Pvt. Ltd.)**
17. **Hirji Kanji Patel, Managing Director, M/s Allied Computers International (Asia) Ltd., Mumbai (ACI)**
18. **Shirish Chandrakant Shah S/o Chandrakant Bhogilal Shah, age 56 years, Business Stock Broking, resident of Flat No. 21, 4th Floor, Meghadoot Building, Netaji Shubhashchandra Road, Mumbai-400002, Maharastra State, Director of M/s Allied Computers International (Asia) Ltd., Mumbai (ACI), (Arrested on 14/12/2021 at Mumbai)**
19. **Directors of M/s Patrik Info Services Pvt.Ltd.**
20. **Directors of M/s IT Smith Solutions Pvt.Ltd.**
21. **Directors of M/s M/s. Inweb Services Pvt. Ltd.**
22. **Project Team Members associated with Mr.SoumyadriShekhar Bose @ Suman Bose's SIEMENS.**
23. **Directors of Knowledge Podium.**
24. **Directors of TalentEdge (Arrina Education Services Pvt. Ltd.,)**
25. **Suresh Goyal, S/o S.R. Goyal, 60 yrs, Residing at P-80, 1st**

- Floor, South Extension Part-II, Andrews Ganj, South Delhi,
Occ: Chartered Accountant.
26. Manoj Kumar Jain, S/o Tulsi Ram, 58 yrs, Occ: Chartered Accountant, R/o C-34, South Extension, Part-II, New Delhi.
 27. Yogesh Gupta, S/o Prem Babu Gupta (late), 49 yrs, Occ: Shares Trading Business, R/o H.No.1/9904, Street No.1, Near Babapur Road, Near Hanuman Mandir, West Gorak Park, Shahadra, Delhi
 28. Sita Ram Arora, S/o Ram Kishan Arora, 51 yrs, No.10/355, First Floor, Sunder Vihar, Paschim Vihar, West Delhi, New Delhi-110087 (Expired on 26/04/2021)
 29. Saurabh Gupta, S/o Satheesh Kumar Gupta, Age 37 yrs, r/o D9, Rajouri Garden, and Office situated at Z1A, Rajouri Garden, New Delhi-
 30. Vipin Kumar Sharma, S/o Prem Chand Sharma, Age 40 years, Chartered Accountant, CA firm M/s Vipin Sharma & Associates, R/o. Flat No: 144, Tower - N, DLF Capital Greens, New Delhi
 31. Sawan Kumar Tolaram Jajoo, S/o Tolaram Jajoo, 41 years, Occ: Shares Trading Business, R/o. Flat No.501, Salasar Gokul Co-operative Housing society, Salasar Brij Bhoomi, Opp. Maxus Mall, Bhayander West, Thane, near Mumbai, Maharashtra State
 32. M/s. Allied Computers International (Asia) Ltd., Mumbai (ACI)
 33. Smt. Neelam Sharma, W/o Vipin Kumar Sharma, Age 37 years, Director, M/s. Inweb Services Pvt., Ltd., R/o Flat No. N-144, DLF Capital City Greens, Moti Nagar, New Delhi.
 34. M/s Bharatiya Global Infomedia Limited, New Delhi;
 35. Rakesh Bhatia, Managing Director, M/s Bharatiya Global Infomedia Limited, New Delhi.
 36. Ms. Shafali Agarwal, W/o Mukul Chandra Agarwal, Minifarm-10, Chattarpur Mandir Road, Chattarpur, New Delhi. Director of M/s ETA Greens, Knowledge Podium, SM Professional and Cadence Partners LLP.
 37. M/s Cadence Partners Firm (Cadence Partners LLP company), Unit No.1, Ground Floor, Building No. 7, 619/4, Opposite Tivoli Garden, Chhattarpur New Delhi-110074; Represented by its Director and Authorized Signatory Mukul Chandra Agarwal (A.10)
 38. M/s ETA Greens Buildtech Pvt. Ltd., 602, Naurang Bhawan, 21 K.G. Marg, New Delhi-110001, Represented by its Director Ms. Shafali Agarwal (A.31)
 39. M/s Polaris Softech Pvt. Ltd., 602, Naurang Bhawan, 21, Kasturba Gandhi Marg, New Delhi-110001, Represented by its shareholder Mukul Chandra Agarwal (A.10)
 40. Ganti Venkata Satya Bhaskar Prasad, S/o Seshagiri Rao, 49

- yrs, APSSDC Project and other projects Team Head, M/s SISW, Gurgaon, R/o No.3361, Alok Vihar, F-3, Sector-50, Noida, Uttar Pradesh.
41. Aparna Upadhyayula IAS, former Deputy CEO of APSSDC, now Secretary Health Department, MD, NHM, Lucknow, Uttar Pradesh State, R/o H.No.3361, Alok Vihar, F-3, Sector-15, Noida, Uttar Pradesh.
 42. Sri Nara Chandra Babu Naidu, S/o Nara Kharjura Naidu, Age:73 years, former Chief Minister of Andhra Pradesh, presently MLA, Kuppam Assembly Constituency, Chittoor District, R/o Undavalli, Tadepalli Mandal, Guntur District.
 43. Sri Kinjarapu Atchannaaidu, S/o late Dalinaidu, former Minister for Labour, Employment & Training, Factories, Youth & Sports, Skill Development and Entrepreneurship & Innovation Department. Presently MLA, Tekkali Assembly Constituency, Srikakulam Dist.
 44. The A.P. State Skill Development Corporation, 3rd floor, Infosight building, Near Patharu Road Junction, Tadepalli, Guntur - 522 501

Respondents

For reasons stated in the affidavit filed in support of the above Writ Petition, it is therefore prayed that this Hon'ble Court may be pleased to direct the 2nd respondent to take over the investigation of the subject matter in Cr. No. 29/2021, dt. 29.12.2021 on the file of the respondent No. 5 pending disposal of the instant writ petition and pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AMARAVATI
DATE: .2023

Counsel for the Petitioner

gp

EAST GODAVARI : DISTRICT

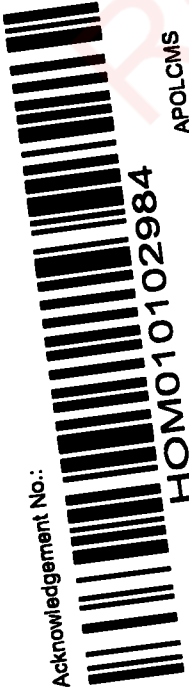
HIGH COURT OF ANDHRA PRADESH AT
AMARAVATI

I.A.NO. OF 2023

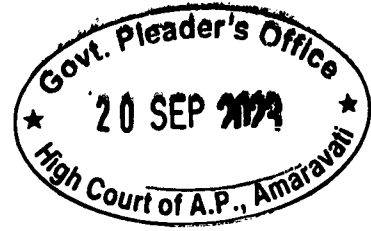
IN

WP(PIL). NO. OF 2023

Home.

DIRECTION PETITION

Wednesday, Sep 20, 2023 10:39:24 AM

Filed By:
TAGORE YADAV YARAGORLA (24645)
ADVOCATES

COUNSELS FOR PETITIONER

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