

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**M.Cr.C. No. 19371/2014**

**Sudhir Sharma** .....Applicant

Versus

**State of M.P. and others** ....Respondents

**M.Cr.C. No.19373/2014**

**Sudhir Sharma** .....Applicant

Versus

**State of M.P. and others** ....Respondents

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**Coram:**

**Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice**  
**Hon'ble Shri Justice Sanjay Yadav, J.**

**Whether approved for reporting : Yes**

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Shri Harin P. Raval, Senior Advocate and Shri Rajendra Tiwari, Senior Advocate with Shri Ajay Gupta, Advocate, Shri Shiv Mangal Sharma, Advocate, Shri Anando Mukherjee, Advocate and Shri Akshat Anand, Advocate for the applicant.

Shri P.K.Kaurav, Additional Advocate General with Shri Prakash Gupta, learned Panel Lawyer for the respondent/State.

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**Reserved On : 16.12.2014**

**Date of Decision : 18.12.2014**

**ORDER**  
**{18<sup>th</sup> December, 2014}**

**Per: A.M. Khanwilkar, Chief Justice:**

These applications for grant of regular bail have been filed on 3<sup>rd</sup> December, 2014, in Crime No.17/2013 and Crime No.18/2013 registered with S.T.F. Police Station, Bhopal respectively, in connection with offences commonly known as VYAPAM examination scam cases.

2. These applications were listed before the Court for the first time on 11.12.2014. On that day, the counsel for the applicant pointed out the order passed by the Supreme Court dated 01.12.2014 in S.L.P. (Crl.) Nos.8154-8156/2014. In the context of the time frame given by the Hon'ble Supreme Court, the Court noted that the applicant after filing of the applications should have taken steps for listing of the matters immediately, but was content with its listing on the 5<sup>th</sup> Court working day after removal of office objections, as per the date assigned by CMIS. The Court acceded to the request of the counsel for the

prosecution to give time to get complete instructions. As a result, the matters were ordered to be listed on 15.12.2014. On that day when the matter was called out in the first round, it was kept back due to non-availability of the counsel. The matter, however, reached at the end of the day, when the arguments commenced. The argument of the counsel for the applicant remained inconclusive as a result of which the same was ordered to be listed on the next day to be proceeded as overnight part-heard case. The request of the applicant's counsel for taking up the matter on 18.12.2014 was turned down, in view of the limited time frame. Accordingly, the matter was notified as Item No.1 on 16.12.2014. The arguments were heard at length and then deferred for pronouncement of order on 18.12.2014.

**3.** As aforesaid, these two bail applications are filed in respect of separate crimes in which the applicant has been named as an accused. However, we are disposing of both these applications together by this common order considering the overlapping arguments canvassed by the parties.

**4.** In view of the liberty granted to the parties in terms of order dated 11.12.2014, the applicant has filed interim

applications for taking additional documents on record, which are part of the charge-sheet already filed against the applicant in Crime No.18/2013. These applications are allowed.

5. Reverting to the argument of the applicant, the thrust of the argument was that the Investigating Agency was indulging in protracting the custody of the applicant by citing one or the other reason. The conduct of the Investigating Agency was nothing short of hoodwinking and red herring to somehow keep the applicant in jail in connection with the alleged offences.

6. Shri Raval, learned Senior Advocate took us through the chronology of events and also the documents reflecting the stand taken by the Investigating Agency from time to time. He pointed out that the offences registered as Crime No.17/2013 and Crime No.18/2013 have been registered on 23.11.2013 for offences punishable under Sections 420, 467, 468, 471, 120-B of I.P.C., Sections 65 and 66 of the Information Technology Act and Section 3 (d) (1), 2/4 of M.P. Manayataprapt Pariksha Adhinyam, 1937, in connection with the irregularities in examination for selection of Police Sub-Inspector/Subedar/Platoon Commander conducted by VYAPAM. The applicant

had joined the investigation and in fact was interrogated for almost 4 hours on 23.12.2013. Once again, applicant appeared before the Investigating Officer and was interrogated for almost 10 hours on 13.3.2014. In spite of this grueling enquiry, nothing incriminatory was found against the applicant and, therefore, he was not arrested.

**7.** The applicant, however, apprehending his arrest in connection with the aforesaid two crimes, moved applications for grant of anticipatory bail under Section 438 of Cr.P.C. before the Sessions Judge, Bhopal on 21.06.2014. These applications were opposed by the prosecution and resultantly the same were dismissed on 26.06.2014.

**8.** Thereafter, the applicant approached this Court by way of anticipatory bail applications under Section 438 of the Code, being M.Cr.C.Nos.9567/2014 and 9568/2014. However, both these applications were rejected by this Court on 09.07.2014 by a speaking order.

**9.** The applicant has relied on the stand taken by the prosecution to oppose the anticipatory bail applications, to buttress his argument that misleading pleas were taken by the

Investigating Agency to oppose the same.

**10.** The applicant thereafter approached the Supreme Court by way of S.L.P.(Crl.) Nos.5435/2014 and 5372/2014 and questioned the order dated 09.07.2014 passed by the High Court for rejecting his anticipatory bail applications. Those Special Leave Petitions were dismissed on 22.07.2014. It is stated that in the said proceedings, the Investigating Agency represented to the Supreme Court that custodial interrogation of the applicant was imperative.

**11.** After rejection of the Special Leave Petitions by the Supreme Court, the applicant immediately surrendered before the Chief Judicial Magistrate, Bhopal on 25.07.2014 by taking out applications to take him in custody in connection with both the crimes (i.e. Crime Nos.17/2013 and 18/2013). The Investigating Agency, however, in the reply to oppose these applications, took a specific stand that Crime No.17/2013 was still under investigation and only after collection of sufficient evidence appropriate action can be taken against the applicant. According to the applicant, the surrender by the applicant ought to have been reckoned in respect of both the crimes but the

applicant was shown arrested only in connection with Crime No.18/2013. The Trial Court finally rejected the application preferred by the applicant to take him in custody even in respect of Crime No.17/2013 vide order dated 26.07.2014.

**12.** The applicant thereafter on 25.08.2014 moved an application for regular bail under Section 439 of Cr.P.C. in Crime No.17/2013 before the Trial Court. That application was rejected on the ground that the applicant was yet to be arrested in connection with Crime No.17/2013 and that his custody in Crime No.18/2013 cannot be related to Crime No.17/2013.

**13.** After that order, the applicant moved another application before the Trial Court on 02.09.2014 for grant of anticipatory bail under Section 438 of Cr.P.C. in Crime No.17/2013 and more particularly in the context of the stand taken by the Investigating Agency while opposing the earlier application that his custody was not required in the said crime. In response, the S.T.F. objected to the grant of anticipatory bail on the grounds stated in the report submitted to the Trial Court on 08.09.2014. *Inter-alia*, on the ground that applicant is a proclaimed offender. According to the applicant, no judicial order to declare the

applicant as proclaimed offender was in force much less passed by any Court of competent jurisdiction. That anticipatory bail application filed by the applicant in Crime No.17/2013 was, however, rejected on 10.09.2014, by the Trial Court. One of the reason, weighed with the Trial Court was that the anticipatory bail application was rejected by the High Court as well as by the Supreme Court.

**14.** Being dissatisfied, the applicant directly approached the Supreme Court by way of S.L.P. (Crl.) No.8154-56/2014 challenging the three orders passed by the Trial Court dated 26.07.2014 (rejecting application for taking into custody in Crime No.17/2013), 25.08.2014 (rejecting regular bail in Crime No.17/2013) and lastly, 10.09.2014 (rejecting another anticipatory bail application in Crime No.17/2013). That Special Leave Petition is still pending.

**15.** The applicant also moved regular bail application before the Trial Court in Crime No.18/2013 on 13<sup>th</sup> September, 2014. That application was resisted by the prosecution by filing report on 15<sup>th</sup> September, 2014. It was, *inter alia*, contended that the investigation of subject crime was underway. The said



application for regular bail in Crime No.18/2013 was rejected on 15<sup>th</sup> September, 2014 by the Sessions Judge, Bhopal. Since the applicant's Special Leave Petitions referred to above challenging the three orders passed in Crime No.17/2013 were pending, the applicant was advised to directly file Special Leave Petition in the Supreme Court against the order rejecting regular bail by the Trial Court in Crime No.18/2013. That Special Leave Petition is registered as SLP (Criminal) No.8158/2014.

**16.** The aforesaid Special Leave Petitions were initially listed on 17.10.2014 when notice was issued to the respondent/State. The notice was served on the standing counsel for the respondent/State on 18.10.2014. The applicant apprehending his arrest in Crime No.17/2013 moved an application before the Supreme Court on 28.10.2014. According to the applicant, the Investigating Agency to render the appeals filed by the applicant against the three orders passed by the Trial Court infructuous, was hastening the process to arrest him in connection with Crime No.17/2013. As apprehended by the applicant, on 29.10.2014, S.T.F. moved an application before the Trial Court in Crime No.17/2013 to permit formal arrest of the

applicant in connection with that crime. On the same day, the Trial Court granted that permission. Notwithstanding the permission, no arrest was effected in relation to that crime till 06.11.2014. The Investigating Agency for the reasons best known to it chose to formally arrest the applicant only on 06.11.2014 and more so when it had full knowledge that the matter before the Supreme Court was slated to be heard on 07.11.2014. This action of the Investigating Agency smacks of lack of bonafides and of having attempted to hoodwink even the highest Court of the land. The matter did not end at that but the applicant was shown as formally arrested in connection with Crime No.17/2013 and his police custody was taken from the Court only on 12.11.2014 upto 17.11.2014. Till 17.11.2014 no attempt to interrogate the applicant was made by the Investigating Officer and he was merely made to sit in the office of the Investigating Officer for six days. The applicant was not even confronted with any other accused or co-accused. On the other hand, in the reply filed to oppose the Special Leave Petitions filed by the applicant, the Investigating Agency raised objection about entertaining the Special Leave Petition directly

against the order of the Trial Court and by-passing the High Court and also that the Special Leave Petitions filed by the applicant have become infructuous. Notwithstanding these objections, the Supreme Court on 01.12.2014 deferred the hearing of the said Special Leave Petitions and passed the following order which reads thus :-

**“SLP (Crl.) No (s).8154-8156/2014 and SLP (Crl) No.8158/2014**

**We defer these matters for two weeks to facilitate the petitioner(s) to approach the High Court seeking anticipatory bail/regular bail. If such an application is filed, the High Court shall consider the same on its merits, uninfluenced by any observation made in the earlier orders, and dispose of the same within two weeks of filing the application.**

**List these matters after two weeks.”**

**17.** As per the liberty granted by the Supreme Court, the applicant has once again approached this Court for grant of regular bail under Section 439 in both the crimes (i.e. Crime Nos.17/2013 and 18/2013). As aforesaid, the thrust of the argument of the applicant is that the Investigating Agency was playing foul not only with the applicant for the reasons best known to them but also attempting to overreach the Court.

**18.** With reference to Crime No.17/2013, on merits, he submits that, there is no legal evidence to indicate complicity of

the applicant in the commission of the alleged offence. Primarily, reliance is placed on the charge-sheet filed against co-accused in the said crime to buttress this submission. For, no charge-sheet has been filed against the applicant in Crime No.17/2013. The applicant has been arrested in connection with that crime only on 06.11.2014 and the investigation qua him was still in progress - as has been stated by the counsel for the prosecution. However, the applicant asserts that his custody since 25.07.2014 should be reckoned even for Crime No.17/2013 and as such the Investigating Agency must explain as to what prevented them from filing charge-sheet against the applicant thus far in the said crime, much less within the statutory period. It is submitted that the plea of the Investigating Agency, that the investigation is still incomplete and no charge-sheet has been filed against the applicant should not come in the way for granting bail to the applicant. Further, there is hardly any legal evidence forthcoming to disclose the role of the applicant in the commission of alleged crime registered as Crime No.17/2013.

**19.** With reference to Crime No.18/2013, relying on the

material appended to the charge-sheet, it was argued that the statement given by the concerned persons who have been named as co-accused and purportedly recorded under Section 27 of the Evidence Act, even if it is accepted as it is, does not disclose the involvement of the applicant in the commission of the said crime. In that, Dr. Pankaj Trivedi refers to the roll numbers of six candidates allegedly given by the applicant for increasing the marks to secure place in the list of successful candidates. The name of one of those candidates is Sudhir Kumar Sharma (Roll No.143848). Whereas, in the statement of Nitin Mohindra, he refers to the fact of Dr. Pankaj Trivedi having given him offer of big amount for committing the fraud. Further, there was no money transaction in connection with the names given by his friend Bharat Mishra as those candidates were poor. The statement also refers to the role of the applicant having given the names and Roll numbers of candidates as spoken by Dr. Pankaj Trivedi, with a note that he (Nitin Mohindra) did not get money from those persons also. He has further stated that he did not know the applicant (Sudhir Sharma). It is in this backdrop the Investigating Agency is trying to rope in the applicant in the

alleged offence in particular, being one of the conspirator in fraudulently getting the students passed in Constable Recruitment Examination, 2012. It is submitted that the statement of the co-accused under Section 27, even if taken at its face value cannot be the basis to proceed against the co-accused, not being admissible in evidence. There is no other admissible evidence to indicate complicity of the applicant.

**20.** It is then submitted that bail is a rule and jail an exception, more so, because the applicant comes from a respectable background and that he is willing to abide by any strict conditions that may be imposed by this Court, including not to enter the State of M.P. It is submitted that the prosecution has not produced any tangible material to indicate that the applicant is likely to flee from the ends of the justice or for that matter, influence the prosecution witnesses in any manner. The role of the applicant at best is only that of a facilitator and having recommended the names of stated candidates to Dr. Pankaj Trivedi. The material accompanying the charge-sheet by no standards or even remotely suggest that the applicant is the kingpin or racketeer. It is submitted that even after filing of the

charge-sheet against the applicant in Crime No.18/2013, the prosecution cannot be heard to say that investigation against the applicant is still not complete or take that as a plea to deny bail to the applicant. It is submitted that there is no evidence that any money transaction took place in which the applicant was involved. If it is so, the matter may have to be viewed very differently qua the applicant. The applicant is questioning the bonafides of the Investigating Agency for having taken a stand that the investigation is not complete even in respect of Crime No.18/2013 qua the applicant. The counsel for the applicant explained the circumstances in which the applicant was advised to directly approach the Supreme Court as the Trial Court was bound by the order of rejection of bail by the High Court and at the same time the Trial Court as well as this Court would be bound by the earlier orders rejecting applicant's prayer for bail and also because the applicant had already filed Special Leave Petitions against the three orders passed in Crime No.17/2013 and that appeal was still pending. In other words, the applicant directly approached the Supreme Court on legal advise. To buttress the above submissions the applicant has relied on the

decisions of the Apex Court in **Sanjay Chandra Vs. C.B.I.**<sup>1</sup>, **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others**<sup>2</sup> and **Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni**<sup>3</sup>.

21. Per contra, the learned counsel for the respondent/State submits that both the bail applications filed by the applicant deserve to be dismissed. According to the prosecution, he submits that the role of the applicant in the commission of the two crimes is that of a racketeer and not of middleman or facilitator as is sought to be contended. He submits that the investigation of Crime No.17/2013 is at an advance stage and in all probability charge-sheet will be filed against the applicant in that case by the first week of January, 2015. Even with regard to Crime No.18/2013, further investigation against the applicant is in progress and the Investigating Officer is inclined to file supplementary charge-sheet against the applicant in connection with Crime No.18/2013 by the first week of January, 2015. The reason why supplementary charge-sheet will be necessary in Crime No. 18/2013 has been brought to our

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<sup>1</sup> 2012 (1) SCC 14  
<sup>2</sup> 2011 (1) SCC 694  
<sup>3</sup> (1992) 3 SCC 141



notice by way of a compilation of the materials gathered during the further investigation and likely to be made part of the supplementary charge-sheet. It is stated that the Investigating Officer has reason to believe that very shortly one of the co-accused would come forward to give his statement under Section 164 of the Cr.P.C. If bail is granted to the applicant that opportunity may be lost as the possibility of applicant influencing such person(s) cannot be completely ruled out. Because, the applicant is a resourceful person. It would have been a different matter, if final charge-sheet is already filed against the applicant in both the crimes, only then it would be open to the applicant to urge that the investigation having been completed, no fruitful purpose would be served by keeping him in jail. Only after the investigation is complete in all respects, it will be possible for the Investigating Agency to establish the link of the applicant and other co-accused involved in the large scale conspiracy. Regarding the grievance made by the applicant that the Investigating Agency is playing foul with the applicant has been rubbished by the counsel for the prosecution. It is

submitted that the said argument is founded on complete misreading of replies/reports filed by the prosecution before the Trial Court or for that matter before the High Court and the Supreme Court. The stand of the Investigating Agency has always been consistent that the arrest of the applicant in connection with Crime No.17/2013 would be meaningful and legally permissible only after gathering sufficient evidence in that behalf keeping in mind the mandate of Section 41 and recently inserted Section 41B of Cr.P.C. There was no attempt whatsoever to mislead the Court as projected by the applicant.

**22.** As regards Crime No.17/2013, admittedly, charge-sheet is yet to be filed against the applicant and that the argument of the applicant founded on the charge-sheet filed against other accused cannot be the basis to examine the case of the applicant. On the other hand, there was enough material already gathered by the Investigating Agency indicating the complicity of the applicant in commission of the alleged offences registered as Crime No.17/2013. The Investigating Agency was still in the process of gathering further evidence to establish the link of the applicant, whose role according to the prosecution is one of the

racketeer and not as middleman or facilitator. One of the candidate recently arrested has divulged the link of co-accused, who had interacted with the applicant. To buttress this submission, reliance was placed by the counsel for the prosecution on the materials given in the form of compilation with reference to Crime No.17/2013 as well as Crime No.18/2013, in sealed envelope for perusal of the Court. That, however, does not form part of the charge-sheet already filed against the applicant in Crime No.18/2013. It is stated that the Investigating Agency is still in the process of verification of information received from the candidates and also analyzing the documentary evidence. The learned counsel for the prosecution has relied on a note handed over to the Court in sealed cover to explain the circumstances, which delayed the arrest of the applicant in connection with Crime No.17/2013. It is submitted that taking any view of the matter, the prayer for bail in Crime No.17/2013 ought not to be entertained, as that would affect the further investigation of that case and especially because even preliminary charge-sheet is yet to be filed against the applicant, which will be presented by the Investigating Officer by the first

week of January, 2015.

**23.** As regards Crime No.18/2013, learned counsel for the prosecution has countered the argument of the applicant that the material gathered by the Investigating Agency and presented along with the charge-sheet already filed against the applicant on 15.10.2014 does not indicate complicity of the applicant in the said crime. It is submitted that the prosecution is not only relying on the statements of the co-accused recorded under Section 27 of the Evidence Act but other material in the form of information collected from the computer hard disk recovered from Nitin Mohindra, mapping valuation sheet of VYAPAM, analyses of OMR sheet, matching mobile call details of the applicant with the accused Ramshesh Sharma etc. The involvement of the applicant will no doubt have to be established on the basis of admissible evidence to be produced before the Court during the trial but material already produced discloses complicity of the applicant and that further material will be produced along with the supplementary charge-sheet to be filed against the applicant in connection with Crime No.18/2013 by the first week of January, 2015.

24. It is submitted that the investigation has become complex because of multiple actors in the commission of the offence both in Crime Nos.17/2013 and 18/2013. Further, it is not a case of no evidence against the applicant at all and more importantly because if the charge against the applicant is established, it will be punishable with life sentence. The role of the applicant being that of a racketeer and that the applicant and other co-accused being involved in huge money transactions including the applicant having sponsored candidates and the applicant having been found involved in more than one crime of similar type and is likely to be named as accused in atleast two more criminal cases, as has been discerned from the investigation done in connection with those cases and more particularly the investigation of the two cases on hand is of large scale conspiracy which is still incomplete. Taking overall view of the matter it may not be just and proper to release the applicant on bail at this stage, more so, because the applicant is a resourceful person. In support, the prosecution has placed reliance on the decision of this Court in the case of **Dr. Vinod Bhandari Vs. State of M.P.**<sup>4</sup> decided on 11.08.2014, who is also involved in

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<sup>4</sup> 2014 (4) MPHT 103 (DB)

the commission of similar offences and whose role is somewhat similar to the role of the applicant. Counsel for the prosecution, in all fairness, stated that the said decision is subject matter of appeal before the Supreme Court, which he believes is still pending.

25. Before we proceed to analyze the rival submissions, we deem it useful to reproduce paragraph 32 of the reported decision in the case of **Dipak Subhashchandra Mehta vs. CBI & another**<sup>5</sup>, which is as under :-

“The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding *why bail was being granted*, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider among other circumstances, the factors such as (a) *the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the Court in supported of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of*

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<sup>5</sup> (2012) 4 SCC 134

*the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.”*

*(emphasis supplied)”*

**26.** The legal position expounded in this decision has consistently been followed. We shall advert to the decisions relied upon by the counsel for the applicant, a little later. Suffice it to observe that the Court is expected to exercise its discretion in a judicious manner and not as a matter of course while considering prayer for bail. Although the thrust of the argument of the applicant is that the Investigating Agency has throughout played foul with the applicant, however, we may examine that plea at the appropriate stage only after recording our satisfaction on relevant materials to be reckoned for considering prayer for bail.

**27.** First dealing with the bail application in respect of Crime No.17/2013, it is indisputable that no charge-sheet has been filed, as of now. The applicant has been arrested in connection with the said case only on 6<sup>th</sup> November, 2014. The Investigating Agency has assured the Court that appropriate Police Report under Section 173 of Cr.P.C. will be filed against

the applicant in connection with that crime by first week of January, 2015. The question is : what is the role ascribed to the applicant in the said crime. According to the prosecution, the applicant is a racketeer. He had sponsored candidates and those candidates appeared in the concerned examination conducted by VYAPAM. They were selected because of the marks secured by them in the said examination. Since no charge-sheet has been filed against the applicant, so far, in this crime, it may not be appropriate to analyze the material, which has already been gathered by the Investigating Agency indicating complicity of the applicant as being party to the conspiracy. That material has been placed before us in the form of compilation tendered in a sealed cover for our perusal. It is undeniable that the investigation in this crime is a complex one; and, more particularly, becomes challenging on account of charge of conspiracy, which will have to be established on the basis of evidence, which may not be necessarily direct evidence. We have been informed that the Investigating Agency is in the process of recording statement under Section 164 of the Code of one of the co-accused. Considering the complexity of the



investigation because of the multiple players involved in the commission of offence, in our opinion, it may not be just and proper to release the applicant on bail by adverting to the material filed along with the charge sheet filed against the co-accused. For, the nature of accusation against the applicant is of having acted as a racketeer. The offence, if proved, against the applicant will visit him with life sentence. The supporting evidence for establishing the guilt of the applicant, as aforesaid, has been gathered in part and the process of gathering further evidence and including verification of the evidence and the material already gathered is in progress. Although one of the factor to be borne in mind by the Court is whether there is likelihood of accused fleeing from the ends of justice and tampering with the prosecution witnesses. In a matter of such serious offence, granting bail would, inevitably, slow down the investigation and may entail in denying a fair opportunity to the Investigating Agency of recording statement of co-accused under Section 164 of the Code. That evidence would certainly be admissible and help the prosecution in establishing the guilt of the concerned accused, who were members of the conspiracy.

The role ascribed to the applicant is not of an ordinary beneficiary or facilitator having acted as conduit between the beneficiary and the middleman. According to the prosecution, the applicant is one of the kingpin and not only involved in Crime No.17/2013, but, has already been named as accused in another Crime No.18/2013, which is of the same type. As per the confidential note presented to us, it seems that the applicant is likely to be named as accused, at least, in two more offences of the same type after due verification of his role from the material gathered in the said crimes. For all these reasons, we are more than satisfied that the applicant cannot be released on bail, at least, until filing of the charge-sheet in Crime No.17/2013.

**28.** Reverting to bail application filed in Crime No.18/2013, the argument on merits, essentially, was relying on the statement of co-accused recorded under Section 27 of the Code. However, that does not appear to be the correct approach in analyzing the role of the applicant. The role of the applicant is, no doubt, mentioned by the co-accused – Dr. Pankaj Trivedi, who was Controller In-charge in VYAPAM at the relevant time. He has

disclosed the names of six candidates sponsored by the applicant for increasing their marks to secure place in the list of successful candidates. Those candidates have also been proceeded against by the Investigating Agency. Another co-accused – Nitin Mohindra has also confirmed about the role of the applicant and has disclosed the names of candidates sponsored by the applicant, as has been indicated by co-accused – Dr. Pankaj Trivedi. Co-accused – Nitin Mohindra was working as Programmer, at the relevant time, in M.P. Professional Examination Board at Bhopal. He has stated that the names were given to him through one Sanjeev Saxena. The fact that this co-accused does not personally know the applicant, cannot extricate the applicant if other materials filed along with the charge-sheet against the applicant were to be accepted as it is. The applicant has been named as one of the conspirators and having helped the stated candidates in fraudulently passing the Constable Recruitment Examination 2012. The charge-sheet already filed against the applicant in this crime on 15<sup>th</sup> October, 2014, not only discloses the role of the applicant, but, also refers to the material, which will be relied by the prosecution during

the trial. The allegations against the applicant in the charge-sheet reads thus :-

“नाम आरोपी : – सुधीर कुमार शर्मा पिता श्री विशम्भर दयाल शर्मा उम्र- 26 वर्ष निवासी ग्राम पाली थाना फूप जिला भिन्ड (म0प्र0)

**आरोपी का कृत्य :-** आरोपी ने आरक्षक भर्ती परीक्षा 2012 का ऑनलाइन फार्म भरा था आरोपी ने उक्त फार्म में अपना मो0नं0 756687334 लेख किया था। परीक्षा में उसका रोल नं0-143848 था। इस लिखित परीक्षा में आरोपी को 82 अंक दिये गये थे, जिससे आरोपी लिखित परीक्षा उत्तीर्ण हुआ था। आरोपी की व्यापम से जप्त शुदा ओएमआर शीट एवं उसकी मैपिंग तथा प्रश्नास्पद प्रलेख शाखा पुलिस मुख्यालय भोपाल से परीक्षण उपरान्त प्राप्त रिपोर्ट तथा नमूना ओ0एम0आर0 शीट पर विश्लेषण अनुसार अभ्यर्थी आरोपी द्वारा ओ0एम0आर0 शीट में सेट ए में एक ही इंक से विभिन्न क्रमों में गोले भरे गये हैं। एवं सेट ऐ से भिन्न रिक्त खाली गोलों को सेट बी में दूसरी इंक से भरा गया है। जो कि सेट बी के सभी गोले सही होना पाये गये हैं। इसी प्रकार ओ0एम0आर0 शीट में दर्ज अलग अलग इंक्स (स्याही) के उत्तरो के क्रमों को देखने पर भी यह स्पष्ट होता है कि आरोपी द्वारा अपने पेन से भरे गये प्रश्नों के उत्तरों के बीच-बीच में जो उत्तर छोड़ दिये गये थे । उनको व्यापम के अधिकारी आरोपीगणों द्वारा भरा गया है। यह आरोपीगणों के अपराध करने का तरीका भी स्पष्ट करता है। तथा इस तथ्य की पुष्टि भी करता है कि व्यापम के अधिकारी आरोपीगणों द्वारा अभ्यर्थियों को दलाल आरोपीगणों के माध्यम से यह संदेश भिजवाया गया था, कि जितने प्रश्नों के उत्तर बनें उतने ही करना बाकी प्रश्न खाली छोड़ देना। उपलब्ध मैपिंग काल डिटेल अन्य आरोपियों के मैमोरेन्डम व डी0एफ0एस गुजरात से प्राप्त रिट्रीव डाटा की एक्सल शीट में दर्ज प्रविष्टी से भी आरोपी का कृत्य स्पष्ट होता है। इस प्रकार आरोपी द्वारा अपने दलाल आरोपी पंकज त्रिवेदी के माध्यम से व्यापम के अन्य अधिकारी आरोपीगणों के साथ मिलकर एक सलाह होकर एक चैन के रूप में सुनियोजित तरीके से षडयंत्र पूर्वक अपनी ओएमआर शीट में अवैध तरीके से कूटरचना करवाकर एक संगठित गिरोह के सदस्य के रूप में कार्य कर लिखित परीक्षा उत्तीर्ण कर अन्तिम रूप से चयनित होकर अवैध लाभ अर्जित करके अपराधिक कृत्य निष्पादित किया गया है। जिससे अन्य

योग्य उम्मीदवार चयन से वंचित हो गये है।

**आरोपी के विरुद्ध उपलब्ध साक्ष्य:—**

- 1— आरोपी का स्वयं का मेमोरेण्डम।
- 2— आरोपी नितिन मोहिन्द्रा के कम्प्यूटर की जप्त हार्डडिस्क के रिट्रिव डाटा की शीट जिसमें आरोपी, बिचौलिये एवं प्राप्त राशि का उल्लेख है।
- 3— व्यापम की मैपिंग वैल्यूएशन शीट।
- 4— अन्य आरोपियों के मेमोरेण्डम।
- 5— नमूना ओ0 एम0 आर0 शीट पर विश्लेषण।
- 6— आरोपी सुधीर कुमार शर्मा से आरोपी रामशेष शर्मा की मैचिंग काल डिटेल्।
- 7— साक्षीगणों के कथन।”

**29.** From the above, it is noticed that besides the memorandum under Section 27 of the co-accused, the prosecution will be relying on hard-disk data recovered from co-accused Nitin Mohindra, mapping valuation sheet, analysis of OMR sheet, matching telephone calls of the applicant with that of co-accused Ramshesh Sharma etc. This material, itself, is sufficient to indicate the complicity of the applicant in the commission of Crime No.18/2013, if proved. The question of admissibility of this evidence will have to be tested at the trial. But, this material is certainly relevant for recording *prima facie* satisfaction about the involvement of the applicant in the alleged crime. Further, it has been stated across the Bar that after filing of the charge-sheet on 15<sup>th</sup> October, 2014, against the applicant in Crime No.18/2013, further investigation has been done and the

Investigating Agency has been able to unravel additional material establishing complicity of the applicant in the commission of that crime. That material has been placed before us in a sealed cover for our perusal. Since it is yet to be placed on record along with the supplementary charge-sheet, we do not deem it appropriate to dilate on that material - as that may prejudice the investigation and also, inevitably, result in disclosure of the further material gathered by the Investigating Agency. That must be eschewed. The fact that there is some doubt about the money transactions in respect of some of the candidates would make no difference at this stage. Suffice it to mention that additional material will form part of the supplementary charge-sheet/Police Report to be filed before the concerned Court against the applicant in Crime No.18/2013 by first week of January, 2015. Considering the role of the applicant, being a racketeer in the commission of the alleged offence, which is a serious offence and would entail in punishment of life sentence and because of the complexity of the investigation, the prayer for grant of bail even in Crime No.18/2013 cannot be entertained at this stage.

**30.** As noted earlier, the applicant is a resourceful person and that very shortly the Investigating Agency is likely to record statement of co-accused under Section 164 of Cr.P.C. Therefore, it may not be advisable to release the applicant on bail, at this stage, which, inevitably, would impair the quality of further investigation.

**31.** The argument of the applicant that there is no material produced by the prosecution to even remotely suggest that the applicant is likely to flee from the ends of justice or to tamper with the prosecution witnesses, cannot be the sole basis to grant bail. The Court has to consider the totality of the circumstances and if, *prima facie*, satisfied about the involvement of the accused in the commission of the alleged crime and the role of the accused, which is a serious offence, it would be appropriate to accede to the request of the Investigating Agency to reject the prayer for bail, at least, until filing of the final charge-sheet against the applicant in the stated crime, more particularly keeping in mind the background and the standing of the accused in the society having potential to influence the investigation of the crime.

32. Learned counsel for the applicant relied on the decision of the Apex Court in the case of **Sanjay Chandra (supra)**. He read out that judgment extensively from paragraph 14 onwards up to paragraph 43. In the first place, this decision does not take a view different from the settled legal position expounded in the case of **Dipak Subhashchandra Mehta (supra)**. Secondly, the observations on which emphasis has been placed have been made in the context of the factual position of that case. In that case, investigation was not only complete in all respects, but, the Trial Court had also framed charge against the accused, as can be discerned from the statement of facts recorded in paragraph 19 of the said judgment. In that backdrop, the Court examined the argument of the accused that now that the charge has been framed against the accused, he was entitled for grant of bail; whereas the Trial Court and the High Court rejected his application merely on the finding of seriousness of the charge; the nature of the evidence in support of the charge; the likely sentence to be imposed upon conviction; the possibility of interference with the witnesses; the objection of the prosecuting authorities and the possibility of absconding from justice. The



argument of the appellant in that case was the prosecution had not placed any material in support of the allegation that there was possibility of the appellant attempting to tamper with the witnesses. Indeed, in this judgment, reference is made to several other decisions including the judgment in the case of **Gurucharan Singh vs. State (Delhi Admn.)**<sup>6</sup>, wherein the Apex Court has noted that unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person, who is not accused of an offence punishable with death or imprisonment for life. In the present case, we have already recorded our satisfaction that the offence is not only punishable with life, but, have also referred to the fact that further investigation in Crime No.18/2013 is in progress and charge-sheet is yet to be filed in Crime No.17/2013 against the applicant, as of now; moreover, the Investigating Agency is in the process of recording statement of one of the co-accused under Section 164 of Cr.P.C. Thus, release of the applicant at such a crucial stage of the investigation may defeat the process of proper and fair investigation.

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<sup>6</sup> (1978) 1 SCC 118

**33.** In the reported judgment relied by the applicant, in paragraph 43, the Court has noted that seriousness of the charge, no doubt, is one of the relevant considerations for considering prayer for bail, but, that is not the only test or the factor. For, the other factors also require the Court to examine as to the extent of punishment that could be imposed after trial and conviction, under the relevant penal laws. In that case, the accused was arrested and was in jail for quite some time until the framing of the charge and in that context in paragraph 39 of the decision, the Court analyzed the justness of the two grounds, which had weighed with the Trial Court and the High Court to refuse bail to the appellant. The primary ground was that the offence was a serious one involving deep-rooted planning in which, huge financial loss is caused to the State exchequer. The second ground was that of the possibility of the accused persons tampering with the witnesses, whereas the charge framed against the appellant was of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document and the punishment for that offence was imprisonment for a term which may extend to

seven years only. In the present case, however, the investigation of both the crimes is still incomplete leave alone framing of charge against the applicant. Moreover, if the applicant is convicted, may suffer punishment of imprisonment of life sentence.

**34.** The next decision relied by the counsel for the applicant - **Siddharam Satlingappa Mhetre (supra)**, is also inapposite to the fact situation of the present case. In that case, the core issue was regarding the principles to be borne in mind while considering prayer for grant of anticipatory bail. In the present case, we are considering the prayer for regular bail.

**35.** Learned counsel for the applicant has then relied on the decision in the case of **Anupam J. Kulkarni (supra)**. This judgment deals with the principle to be borne in mind while considering the application of Section 167 of Cr.P.C. Emphasis was placed on paragraphs 10 and 11 of this decision. This decision will be of no avail to the applicant in the fact situation of the present case. In the first place, the situation referred to in Paragraph 11 of the reported judgment is in connection with the same accused committing several offences in one occurrence

and his arrest is shown in connection with only one or two offences therefrom. In the present case, the Trial Court in its order dated 25-08-2014 has opined that applicant is proceeded for two separate occurrences resulting in the commission of offences in Crime No.17/2013 and Crime No.18/2013.

**36.** Be that as it may, this decision has been pressed into service at the end of the argument by way of rejoinder. It was argued that it is well established position that when the accused appears before the Court and applies for surrender, in law, the accused is in judicial custody and once he is in judicial custody, the provisions of Section 167 must come into play. This argument is in the context of the applicant having made a formal application on 25.07.2014 to permit him to surrender in Crime No.17/2013. That application was, however, rejected by the Trial Court for the reasons recorded in the order dated 26.07.2014. Where after, the applicant moved application for grant of anticipatory bail in Crime No.17/2013. After rejection of that application, the applicant applied for grant of regular bail in Crime No.17/2013 on 25.08.2014, which was rejected by the Trial Court on 25.08.2014 itself. The applicant thereafter moved

an application for grant of anticipatory bail in Crime No.17/2013 on 02.09.2014 which came to be rejected on 10.09.2014. The applicant, no doubt, has challenged these orders before the Supreme Court by way of SLP (CrI.) Nos.8154-56/2014 and it is still pending. The present application, however, is simplicitor for grant of regular bail under Section 439 of Cr.P.C. on the basis of his arrest in connection with Crime No.17/2013 on 06.11.2014. The Investigating Agency has offered justification as to why the formal arrest was effected on 06.11.2014, pursuant to the order passed by the Trial Court on 29.10.2014. Notably, the formal arrest of the applicant was made only on 06.11.2014 and the police custody of the applicant was given between 12.11.2014 till 17.11.2014 pursuant to the order passed by the Trial Court in that behalf.

**37.** The correctness of the orders dated 26.07.2014, 25.08.2014 and 10.09.2014 is a matter pending before the Supreme Court. Therefore, it is not open for this Court to assume that the applicant be deemed to be in custody even in connection with Crime No.17/2013 w.e.f. 25.07.2014.

**38.** While considering the regular bail application as has been filed before us, we will have to proceed on the assumption that the arrest of the applicant has been effected only on 06.11.2014 in connection with Crime No.17/2013; and the period for filing of the charge-sheet in Crime No.17/2013 would commence from that date. In view of the liberty given by the Supreme Court vide order dated 01.12.2014, the applicant has now advisedly approached this Court with a prayer for grant of regular bail under Section 439 of Cr.P.C. We have, therefore, confined our discussion to the prayer for regular bail in Crime No.17/2013. Thus understood, the decision pressed into service will be of no avail. For, these are not applications for release on bail on account of default in filing of the charge-sheet within the statutory period against the applicant in Crime No.17/2013. Notably, this argument has been raised at the fag end when the Court was about to close the arguments. Further, the argument was canvassed without raising a specific plea in the application with reference to Section 167 of Cr.P.C., as filed before us - except a vague ground taken in the form of paragraph 5.23 (d) that the applicant was not required in connection with any

interrogation in FIR No.17/2013 as his police custody was sought only between 12.11.2014 to 17.11.2014. There was no hurry or urgency for having police custody of the applicant for interrogation and the applicant was not required in connection with any interrogation in Crime No.17/2013. As a result, we need not examine this aspect any further.

**39.** Having said this, we may now revert to the grievance of the applicant that the Investigating Agency has been playing foul with the applicant all throughout. For that, emphasis was placed on the stand taken by the Investigating Agency in the replies filed before the Trial Court, High Court and the Supreme Court.

**40.** In reply to the application for grant of anticipatory bail filed by the applicant in Crime No.17/2013, the stand taken by the Investigating Agency was that the question of arrest of the applicant will be considered only after collection of sufficient evidence. According to the applicant, in subsequent proceedings, however, a different stand was taken. This argument does not commend to us. Instead, we find merits in the submission of the learned counsel for the prosecution that the

Investigating Agency could legitimately take a different stand in two crimes on the factum of need to arrest the suspect. That cannot be considered as inconsistent approach nor can it be said to be contradictory in any manner. In that, the requirement of the custody of the applicant in Crime No.18/2013 stood on a different footing because of the nature of material already collected till then. Unlike, in Crime No.17/2013, the process of verification of the material showing involvement of the applicant was underway. Similarly, the fact that the applicant had joined the investigation on earlier occasion and was not arrested would also make no difference. As the question of arresting the accused would arise only if the Investigating Agency is in a position to justify the arrest, keeping in mind the provisions of Section 41 and newly inserted Section 41B of Cr.P.C. That situation was present in Crime No.18/2013 at the relevant time and not in respect of Crime No.17/2013.

**41.** Much emphasis was placed by the learned counsel for the applicant on the reply filed by S.T.F. in Crime No.17/2013 dated 08.09.2013. In the said reply it has been stated that proclamation has been issued against the applicant. According to the



applicant, no such proclamation was in force and the statement so made was false to the knowledge of the Investigating Agency. This argument stands belied from the order passed under Section 82 of Cr.P.C. qua this applicant produced before us. First, we deem it apposite to reproduce the reply filed by the Investigating Agency dated 08.09.2014 in Crime No.17/2013. The same reads thus :-

“कार्यालय उप पुलिस अधीक्षक एस0टी0एफ0 मध्यप्रदेश भोपाल

7वी वाहिनी वि.स.बल. भोपाल के बगल में, जहाँगीराबाद, भोपाल-462008,  
फोन-0755-2573802

क्रमांक-उपुअ/एसटीएफ/2014-(एचक्यू- ) भोपाल, दिनांक- 08/09/2014

प्रति,

श्रीमान् सत्र न्यायाधीश महोदय,  
सत्र न्यायालय, भोपाल(म0प्र0)

विषय:- आवेदक/ आरोपी सुधीर शर्मा द्वारा प्रस्तुत  
जमानत आवेदन पत्र क्रमांक  
4573/14 के सम्बंध में।

सन्दर्भ:- माननीय न्यायालय के आदेश के पालन में।

विषयान्तर्गत लेख कर निवेदन है कि आवेदक/आरोपी द्वारा प्रस्तुत जमानत आवेदन पत्र का सम्बंध थाना एस.टी.एफ., जिला भोपाल के अपराध क्रमांक 17/13 धारा-420, 467, 468, 471, 120-बी, भा.द.वि., 65, 66 आई.टी. एक्ट तथा 3(घ) 1,2,/4 मध्यप्रदेश मान्यता प्राप्त परीक्षा अधिनियम -1937 से है। जिसमें आवेदक / आरोपी द्वारा मध्य प्रदेश व्यावसायिक परीक्षा मण्डल भोपाल द्वारा आयोजित पुलिस उप निरीक्षक भर्ती परीक्षा वर्ष 2012 में बिचौलियों, दलालों के माध्यम से व्यापम के अधिकारियों से उन्हें लाखों रुपये देकर उनके द्वारा अपनी उत्तरपुस्तिकाओं में खाली छोड़ें गये गोलों को भरवाकर फर्जी तरीके से पुलिस सूबेदार/ उप निरीक्षक/ प्लाटून कमाण्डर भर्ती परीक्षा वर्ष 2012 में सफलता प्राप्त की है। जिसके सम्बंध में प्रकरण विवेचनाधीन है। आवेदक/ आरोपी द्वारा प्रस्तुत अग्रिम जमानत आवेदन निरस्त किये जाने हेतु निवेदन इस प्रकार है:-

आवेदक/आरोपी द्वारा व्यापम के तत्कालीन नियंत्रक डॉ. पंकज त्रिवेदी के माध्यम से कई अभ्यर्थियों का चयन फर्जी तरीके से चयन पुलिस सूबेदार/ उप निरीक्षक/प्लाटून कमाण्डर भर्ती परीक्षा वर्ष 2012 में कराया गया है। जिसमें आरोपी के विरुद्ध प्रकरण विवेचनाधीन होकर साक्ष्य संकलन किया जा रहा है। आरोपी की गिरफ्तारी शेष है।

यह कि पूर्व में आरोपी का अग्रिम जमानत का आवेदन पत्र माननीय न्यायालय से लेकर माननीय सर्वोच्च न्यायालय तक निरस्त किया जा चुका है।

यह कि आरोपी/ आवेदक इस प्रकरण में गिरफ्तार नहीं है फिर भी आवेदक ने अंतर्गत धारा 439 दण्ड प्रक्रिया संहिता के अंतर्गत आवेदन पत्र प्रस्तुत कर दिनांक 25.07.2014 को इस प्रकरण में सी.जे.एम. महोदय के न्यायालय में सरेण्डर किये जाने एवं उक्त दिनांक से ही न्यायिक निरोध में मानकर श्रीमान जी के न्यायालय में प्रस्तुत किया था, जो विचारोपरांत श्रीमान जी द्वारा उक्त जमानत आवेदन क्रमांक 4587/2014 दिनांक 25.08.2014 को निरस्त किया गया है।

आवेदक/आरोपी के विरुद्ध थाना एम.टी.एफ. के अपराध क्रमांक 18/13 धारा 420, 467, 468, 471, 120बी भा.द.वि., 65, 66 आई.टी. एक्ट, 3(घ) 1,2,/4 म0प्र0 मान्यता प्राप्त परीक्षा अधिनियम-1937 में दिनांक 20.06.2014 को उद्घोषणा जारी की गई थी तथा दिनांक 21.07.2014 तक न्यायालय में उपस्थित होने का आदेश पारित किया गया है किन्तु आरोपी के उपस्थित नहीं होने पर धारा-83 दण्ड प्रक्रिया संहिता के अंतर्गत कार्यवाही हेतु दिनांक 28.07.2014 नियत किये जाने पर माननीय सर्वोच्च न्यायालय द्वारा अग्रिम जमानत आवेदन पत्र निरस्त किये जाने पर विवश होकर दिनांक 25.07.2014 को उपराध क्रमांक 18/13 धारा 420, 467, 468, 471, 120-बी भा.द.वि., 65, 66,आई.टी. एक्ट, 3(घ) 1,2,/4 म0प्र0 मान्यता प्राप्त परीक्षा अधिनियम-1937 में सर्पण किये जाने पर उक्त प्रकरण में गिरफ्तार किया गया था जो कि न्यायिक निरोध में जेल में निरुद्ध है।

यह कि आवेदक/ आरोपी जो कि अपराध क्रमांक 17/13 में नामजद आरोपी है किन्तु प्रकरण पूर्णतः तकनीकी डाटा एवं सीडीआर विश्लेषण से संबंधित है जिसके संबंध में तकनीकी साक्ष्य संकलित की जा रही है। उक्त साक्ष्य संकलन में काफी समय की आवश्यकता है जिस कारण से साक्ष्य संकलन पश्चात ही आरोपी को गिरफ्तार कर उनकी तस्दीक की जा सकेगी।

यह कि अगर आवेदक/ आरोपी को अग्रिम जमानत पर रिहा किया जाता है तो वह अपने प्रभाव का प्रयोग कर साक्ष्य संकलन में बाधा उत्पन्न करेगा साथ ही गवाहों को डरा-धमकाकर साक्ष्य से रोकेगा एवं स्वयं भी पूर्व की भांति फरार हो जाएगा जिससे प्रकरण की विवेचना एवं न्यायलयीन

कार्यवाही में बाधा उत्पन्न होगी।

अतः माननीय न्यायालय से निवेदन है कि उपरोक्त तथ्यों को दृष्टिगत रखते हुये आवेदक/ आरोपी सुधीर शर्मा का अग्रिम जमानत आवेदन पत्र निरस्त करने की कृपा करें, जो न्यायहित में होगा।

संलग्न— केस डायरी अप. क्रमांक 17/ 13

उप पुलिस अधीक्षक  
एस.टी.एफ.,  
म.प्र., भोपाल”

42. On a bare reading of this reply, we are in agreement with the submission canvassed on behalf of the prosecution that it refers to the fact that proclamation has been issued against the applicant in Crime No.18/2013 and not in Crime No.17/2013. The fact that such proclamation was issued is reinforced from the order passed by the concerned Magistrate on 20.06.2014, under Section 82 of the Code. The same reads thus :-

“न्यायालय :- मुख्य न्यायिक मजिस्ट्रेट, भोपाल (म0प्र0)  
अभियुक्त व्यक्ति का हाजिरी की अपेक्षा करने वाली उदघोषणा  
(अंतर्गत धारा 82 द0प्र0सं0)

मेरे समक्ष परिवाद किया गया है कि आप अभियुक्त सुधीर शर्मा पिता विदयाराम शर्मा, उम्र 48 वर्ष निवासी डी 55 आकृति गार्डन, नेहरू नगर, थाना कमला नगर भोपाल ने थाना एसटीएफ भोपाल के अप0 क्रं0 18/13 धारा 420, 467, 468, 471, 120 बी भा0द0सं0 एवं म0प्र0 मान्यता प्राप्त परीक्षा अधिनियम 1937 की धारा 3 (घ), 1, 2/4 एवं धारा 65, 66 आई टी एक्ट के अधीन दण्डनीय अपराध किया है और आरक्षी केन्द्र एसटीएफ भोपाल द्वारा अभियुक्त के फरारी पंचनामा को यह लिखकर प्रस्तुत किया गया है कि अभियुक्त अपने निवास स्थान पर काफी समय से दिखाई नहीं दिया है तथा उसके निवास स्थान पर ताला लगा है फरार हो गया है मिल नहीं रहा है और मुझे समाधानप्रद रूप से यह दर्शित कर दिया गया है कि आप अभियुक्त सुधीर शर्मा पिता विदयाराम शर्मा, फरार हो गया है तथा मामले में तामील से बचने के लिये अपने आप को छिपा रहे हैं।

इसलिये यह उदघोषणा की जाती है कि अभियुक्त सुधीर शर्मा पिता विदयाराम शर्मा, उम्र 48 वर्ष निवासी डी 55 आकृति गार्डन, नेहरू नगर,

थाना कमला नगर भोपाल से अपेक्षा की जाती है कि वह इस न्यायालय के समक्ष उस परिवाद के उत्तर देने के लिये जिला न्यायालय स्थित न्यायालय—मुख्य न्यायिक दंडाधिकारी, भोपाल में दिनांक 21.07.14 को या उसे पूर्व हाजिर हो अन्यथा आपके विरुद्ध अन्य विधिक कार्यवाही की जावेगी ।

तारीख 20.06.14  
स्थान :- भोपाल, म0प्र0

पंकज सिंह माहेश्वरी  
मुख्य न्यायिक मजिस्ट्रेट  
भोपाल, म0प्र0”

**43.** We accept the argument of the prosecution that that stand was taken in Crime No.17/2013 to persuade the Court for not granting anticipatory bail to the applicant against whom proceedings under Section 82 of the Code were already resorted to in connection with another crime. Hence, in our opinion, the grievance made by the applicant is not only misplaced but is only a subterfuge.

**44.** That takes us to the argument that the applicant may be granted bail in both the crimes and is willing to abide by any strict conditions that may be imposed by the Court including to keep himself away from the State of M.P. We have already dealt with this aspect in the earlier part of the judgment and having recorded the finding that since the investigation qua the applicant in both the crimes is still in progress and taking totality of the circumstances into account, releasing the

applicant on bail is not advisable, atleast, till filing of the charge-sheet in Crime No.17/2013 and final charge-sheet in Crime No.18/2013.

**45.** Accordingly, both these applications must fail and are, therefore, **dismissed**.

**46.** We direct the Registry to retain copies of the compilations containing the materials gathered by the Investigating Agency during the further investigation after filing of the charge-sheet in Crime No.18/2013 and in relation to the investigation in Crime No.17/2013 as well as the copies of the note indicating the reasons for time taken to arrest the applicant till 06.11.2014 in Crime No.17/2013 inspite of the order dated 29.10.2014, to be kept in sealed cover in the safe custody of the Registrar (Judicial) until the disposal of the Special Leave Petitions filed by the applicant.

**(A.M. Khanwilkar)**  
**Chief Justice**

**(Sanjay Yadav)**  
**Judge**

AM.