

HIGH COURT OF MADHYA PRADESH : JABALPUR

M.Cr.C. No.8811 of 2015
(with I.A.No.11502/2015 & I.A.No.11552/2015)

Vipin GoelApplicant

Versus

State of M.P. and othersRespondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice K.K.Trivedi, J.

Whether approved for reporting : Yes.

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Shri Anil Khare, Senior Advocate with Shri Priyankush Jain, Advocate, Shri H.S.Chhabra, Advocate and Ms. Namrata Kesharwani, 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 : 26.06.2015

Date of Decision : 29.06.2015

ORDER
{29th June, 2015}

Per: A.M. Khanwilkar, Chief Justice:

This is first bail application by this applicant in Crime

No.14/2013 registered with S.T.F. Police Station, Bhopal for offences commonly known as VYAPAM examination scam cases, punishable under Sections 409, 420, 120-B of I.P.C. and Section 3 (Gha), 1, 2/5 of M.P. Manyata Prapt Pariksha Adhiniyam, 1937.

2. The role ascribed to the applicant by the prosecution is that he acted as middleman to facilitate candidate (Dr. Prakhar Singhal). That candidate had appeared in the examination conducted by VYAPAM for Pre.P.G. Medical Course and allegedly indulged in unfair means during the said examination, in conspiracy with the racketeers involved in the crime. The applicant was called upon by the Investigating Officer vide notice dated 26.11.2014, to remain present in connection with enquiry concerning Crime No.14/2013. According to the applicant, in response to the said notice, applicant appeared before the Investigating Officer and extended full cooperation in the enquiry and disclosed all facts within his knowledge. The applicant was questioned extensively by the Investigating Officer. It is further stated that since the Investigating Officer was convinced with the explanation and the disclosures made by

the applicant, no precipitative action was taken against him. However, when the applicant apprehended that he may be arrested in connection with the said crime, applied for anticipatory bail before the Court of 9th Additional Sessions Judge, Bhopal. That anticipatory bail was rejected on 11.02.2015.

3. The applicant then rushed to the High Court against that decision by way of bail application under Section 438 of the Code of Criminal Procedure being M.Cr.C.No.3440/2015. That application was rejected by a speaking order dated 24.03.2015. The Court accepted the argument of the prosecution that the applicant was not cooperating in the enquiry and that the Investigating Officer was convinced that the custodial interrogation of the applicant had become necessary. The Court observed thus :-

“It is, fairly, accepted by the counsel for the State that as of today from the information gathered by the Investigating Officer, it appears that both these applicants were concerned only with Prakhar - one candidate. However, unless the investigation of Crime No.14/2013 is completed in all respects, it may not be possible to take any firm view in that regard. It is also not in dispute that pursuant to the liberty given to applicants to appear before the Investigating Officer, they had appeared in the Office of the Investigating Officer on 12 & 14th

March, 2015, for 13 hours 59 minutes in aggregate in M.Cr.C.No.3441/2015 and 13 hours 44 minutes in aggregate in the case of applicant in M.Cr.C. No.3440/2015. However, according to the Investigating Officer, the interrogation with the applicants was not fruitful as no further clues have been divulged by them during the said period. In view of the attitude of the applicants during the said interrogation, the Investigating Officer is convinced that custodial interrogation of the applicants has become necessary. Besides the phone call details made between the applicants and the middleman/racketeer, the Investigating Officer would like to interrogate the applicant in M.Cr.C.No.3440/2015 with regard to the information received from the computer details recovered from Nitin Mohindra mentioning about payments by separate cheques and cash amount as well as on matters as to how the applicants received the question papers in advance in connection with the said examination and the source from where the same were received and in respect of matters which unfolded after receipt of the said papers. The correct information can be unraveled by the Investigating Officer only on the basis of the custodial interrogation and confronting the two applicants in the said process”.

(emphasis supplied)

4. Against this decision the applicant unsuccessfully carried the matter in appeal before the Supreme Court by way of S.L.P. (Cri) No.2480/2015. The said Special Leave Petition was dismissed by the Supreme Court. The Supreme Court affirmed the findings recorded by this Court that the investigating agency was convinced that custodial interrogation of the applicant was essential having regard to the totality of the facts and

circumstances in which the offence was allegedly committed and that the applicant had not cooperated with the process of investigation till then. As a result, the prayer for grant of anticipatory bail pursued by the applicant was rejected right upto the highest Court. The Supreme Court vide order dated 30.03.2015, Bench of **Justice Ranjan Gogoi and Justice N.V.Ramana**, observed thus :-

“It is submitted by Mr. Amarendra Sharan, Learned Senior counsel appearing for the petitioners that in similar matters other accused have been granted the privilege of pre-arrest bail. It is further submitted that the petitioners in the present Special leave Petitions have been interrogated for about 14 hours and therefore, custodial interrogation is not required.

Upon reading the orders of the High Court, we find that according to the Investigating Agency custodial interrogation is required having regard to the totality of the facts and circumstances in which the offences are alleged to have been committed. The High Court has also recorded a finding that the petitioners have not cooperated with the process of investigation uptill now. In such circumstances, we decline to grant the privilege of pre-arrest bail to the petitioners. The mere fact that the other persons involved in the VYAPAM scam have been granted the privilege of pre-arrest bail will not be a ground for granting pre-arrest bail to the petitioners.

The facts of each case will have to be considered and it is in the light of the said facts that we have thought it proper to dismiss both these special leave petitions. It is ordered accordingly.”

(emphasis supplied)

5. Since the applicant did not respond to the Investigating

Officer, action under Section 82 of the Code of Criminal Procedure was resorted to against the applicant. The Trial Court had also issued non-bailable warrants against the applicant. The applicant, however, questioned the said processes resorted to by the prosecution, which proceedings were unsuccessfully carried right upto the Supreme Court. The Supreme Court vide order dated 19.05.2015 **Bench of Justice A.K.Sikri and Justice Uday Umesh Lalit**, rejected the Special Leave Petitions filed by the applicant bearing S.L.P. (Cri.) Nos.4342 – 4343 and 4351/2015 arising from the order passed by the High Court dated 24.04.2015 in M.Cr.C.No.3837/2015 and 05.05.2015 in M.Cr.C. No.6927 /2015 respectively. The said order reads thus :-

“SLP (CRL.) NOS. 4342-4343/2015

On the facts of this case, we are not inclined to grant anticipatory bail. Since by the impugned order, the High Court has refused to set aside the order dated 27.02.2015 passed by the Magistrate, the proper course of action for the petitioner is to approach the Magistrate with appropriate application. It is stated that such an application shall be filed within two weeks. The petitioner shall not be arrested for two weeks. Subject to above, the special leave petitions are dismissed. However, we make it clear that whenever such an application is filed by the petitioner, the same shall be considered by the concerned Magistrate on its own merits and without being influenced by the orders of the High Court in the impugned order. On the petitioner's filing the bail application, the

same shall also be considered expeditiously.

SLP (CRL.) No.4351 of 2015

After some arguments, Mr. P.H.Parekh, learned senior counsel, seeks permission to withdraw this special leave petition with liberty to apply for regular bail.

Liberty, as aforesaid, granted.

The special leave petition is dismissed as withdrawn, accordingly.”

(emphasis supplied)

6. Thereafter, the applicant once again approached the Trial Court by way of regular bail application under Section 439 of the Cr.P.C. The said application came to be dismissed by the Trial court on 29.05.2015. The applicant, however, could persuade the Trial Court to give protection to the applicant of not arresting him till he approached the High Court by way of regular bail application, in the light of observations in the Supreme Court order dated 19.05.2015.

7. The applicant then approached this Court on 1st June, 2015 by way of present bail application. The interim protection granted to the applicant was continued by the Vacation Bench until the hearing of the application on 04.06.2015 by the appropriate Bench. On 04.06.2015, the concerned Bench (Vacation Court) directed placing of the matter before the

regular Court on 16.06.2015, after the re-opening of the Court; and continued the interim protection to the applicant. Accordingly, the matter was placed before the regular Court (this Bench) after re-opening on 16.06.2015.

8. After hearing the counsel for the parties, the Court opined that since the application was for grant of regular bail and as that can proceed only if the applicant was already in jail or in custody of the Court, as is well established, the applicant through counsel agreed to appear before the Court on the next day. Accordingly, the matter was listed on 17.06.2015 but was ordered to be taken up for arguments on 18.06.2015. On 18.06.2015, the argument on this application proceeded. The Court noticed that subsequent to filing of this regular bail application on 01.06.2015, the applicant presented I.A.No.11502/2015 supported by affidavit of the applicant dated 14.06.2015. The applicant also filed further affidavit sworn on 17.06.2015, in support of his prayer for grant of regular bail. In these affidavits, entirely new plea has been taken. The applicant made serious allegations against the Investigating Officer – Shri D.S.Baghel. The Court allowed the applicant to tender those

affidavits, in the interest of justice; but thought it appropriate to give a fair opportunity to the prosecution to respond to the said allegations. The Court, however, noted that the question as to whether the applicant had knowledge about the facts stated in the said additional affidavits filed by the applicant, before 19.05.2015; and whether the applicant can be permitted to rely on those facts in the wake of Supreme Court order rejecting the appeals preferred by the applicant against the decision of this Court refusing to grant anticipatory bail and to set aside the process issued under Section 82 of Cr.P.C. and non-bailable warrant against the applicant, will be considered at the appropriate stage. The Court also noted that after considering the response of the respondents it may have to be ascertained whether the assertion made by the applicant in the additional affidavits is genuine and if so, whether it would reflect on the bonafides of the Investigating Officer. As the consideration of these matters were required to be deferred to give opportunity to the respondents to file response and as the applicant had already surrendered before the Court, the Court thought it appropriate to direct that the applicant shall remain in judicial custody at

Jabalpur. Accordingly, the applicant was taken in judicial custody and detained at Jabalpur. The hearing of the application was deferred till 23.06.2015.

9. On 23.06.2015, when the matter was taken up for hearing, counsel for the applicant pointed out to the Court that the applicant has filed one more affidavit in support of the relief claimed in this application, sworn on 19.06.2015. Since the said affidavit was not circulated to the Court, hearing of the application was deferred till 24.06.2015. On 24.06.2015, the arguments proceeded and finally concluded after filing of the further affidavits by the applicant and the response filed by the respondents in the form of affidavit of Ashish Khare, A.I.G., S.T.F., Bhopal dated 22.06.2015.

10. During the hearing, emphasis was placed by the counsel for the applicant as to how the Investigating officer D.S.Baghel was biased against the applicant. The whole attempt was to persuade the Court that the applicant has been falsely implicated in Crime No.14/2013, by D.S.Baghel. Further, custodial interrogation by D. S Baghel will not be free and fair.

11. In the context of the said apprehension of the applicant,

during the course of argument, the counsel appearing for the respondents had not only harped on the refutation of allegations made against the Investigating Officer – D.S.Baghel to contend that the apprehension of the applicant is misplaced and ill-advised, but went on to voluntarily suggest, without prejudice, that to assuage the apprehension of the applicant by D. S. Baghel, custodial interrogation of the applicant can be conducted under the supervision of the Head of the STF. In the light of this submission, we called upon the counsel for the applicant at the end of the hearing, as to whether the applicant was willing to consider this option given on behalf of the respondents. The counsel for the applicant prayed for time till 26.06.2015 to take instructions in that behalf. Accordingly, even though the hearing on this bail application had concluded for all purposes, the matter was deferred till 26.06.2015 as requested by the applicant.

12. On 26.06.2015, however, counsel for the applicant on instructions submitted that the applicant was not satisfied with the option offered on behalf of the STF. Instead, the applicant would invite decision of this Court on merits of the application.

In view of this stand, we directed posting of the matter on 29.06.2015 for pronouncement of the order.

13. To complete the record, it needs to be mentioned that although the applicant was ordered to be kept in judicial custody in terms of direction given by this Court vide order dated 18.06.2015, the local newspaper “Patrika” published on 25.06.2015 mentioned with photograph in support - that the applicant was having a free time in Subhash Chandra Bose Medical College, Jabalpur. The news item further mentioned as to how the applicant interacted with several visitors and that the family members of the applicant were in attendance in the separate room allocated to the applicant in the said hospital. Further, no police personnel were seen any where nearby the said room in which the applicant was seen resting along with his family members in the hospital. When our attention was drawn to this news item and counsel for the applicant was asked as to in what circumstances the applicant was shifted to the hospital as reported by the newspaper, without prior permission or for that matter any intimation to this Court, the counsel submitted that the State must explain the same. In the context of this

response, the counsel for the applicant was informed that the said issue will be taken up by the Court dealing with suo moto Writ Petition No.6385/2014 (PIL) concerning VYAPAM examination scam cases and the investigation whereof is under monitoring of this Court before the Bench (to which one of us A.M.Khanwilkar, Chief Justice is a party). That matter was scheduled for hearing after the lunch – break. Appropriate directions have been issued by the said Bench (A.M.Khanwilkar, Chief Justice and Alok Aradhe, Judge) to the Head of STF, Shri Sudhir Sahi to enquire into the said matter and submit his report in sealed cover before the next date of hearing on 02.07.2015.

14. Reverting to the grounds agitated in the original application as filed on 01.06.2015, the sum and substance is that the applicant is not involved in the commission of the alleged offence. He has been falsely implicated. In fact, STF had unequivocally denied about his involvement on affidavit dated 18.05.2015 filed in disposed of W.P.No.11695/2014 (PIL for transfer of investigation of VYAPAM related crimes to CBI). It is stated on affidavit that the applicant and his cousin nephew

Dr. Prakhar Singhal had no role in the examination of Pre-P.G. That, the applicant has not been named as accused in the FIR or the charge-sheet filed by the STF till date. None of the co-accused in the statement recorded under Section 27 of the Evidence Act have disclosed about the involvement of the applicant in the commission of the alleged crime. The entire case against the applicant was based on the memorandum statement of Mr. Nitin Mohindra dated 30.10.2014; but he has not named the applicant nor his cousin nephew. That, his cousin nephew Dr. Prakhar Singhal has already been granted bail by the Supreme Court on 23.02.2015 S.L.P. (Cri.) 1020/2015. The allegation about any unfair means committed during the examination by his nephew is illogical and baseless, as he is a meritorious student having very good academic record. There was no evidence at all about the involvement of Dr. Prakhar Singhal in the commission of the alleged crime. The fact that Dr. Prakhar Singhal was regularly staying in the house of the applicant, it would not follow that applicant had facilitated Dr. Prakhar Singhal in commission of the alleged offence. Similarly, mere acquaintance of the applicant with Nitin Mohindra cannot

be the basis to assume that the applicant, succeeded in getting admission for his cousin nephew in Medical course by conspiring with the racketeers in any manner. The applicant and other residents of their colony was in contact with Nitin Mohindra and Bharat Mishra in connection with maintenance issues in their colony. The allegation against the applicant that he had telephonic conversation with Nitin Mohindra, a day prior to the examination of Dr. Prakhar Singhal, was not based on any call details but sheer speculation - that the applicant "may" have procured the model answer key from the racketeers. Mere telephone calls between them, in any case, would not be an incriminatory circumstance to proceed. The prosecution, inspite of rejection of anticipatory bail application of the applicant, unfairly initiated action against the applicant under Section 82 of Cr.P.C. The applicant had raised concerns in that behalf in the proceedings questioning the said process. The Supreme Court though refused to interfere has made it clear that the regular bail application be decided on merits, but the Trial Court shockingly rejected the prayer for grant of regular bail. The STF having denied the involvement of applicant on affidavit filed on

18.09.2014 in disposed of Writ Petition No.11695/2014, cannot now proceed against the applicant. Further, the Trial Court committed palpable error in observing that if any person is accused of cognizable offence and is arrested in that behalf the police can interrogate him for 24 hours and in the present case, the police did not have that opportunity of custodial interrogation. According to the applicant, custodial interrogation must be resorted to only in exceptional cases when the person accused is so influential that he cannot be interrogated by the investigating agency without his custody. The applicant, however, is a small time businessman with fair reputation. The prosecution without any rhyme or reason wants to arrest the applicant only to cause his social death and infringe his right to liberty enshrined in Article 21 and 22 of the Constitution. The applicant had appeared before the Investigating Officer whenever called upon to do so in the past, but no question relating to the offence was asked to the applicant. The applicant was merely asked about general information like PAN card, Passport details, Bank A/c details, income-tax return and his family. According to the applicant, the prosecution is insisting

for custodial interrogation to explain details regarding a computer entry – which query was never put to the applicant, though he was interrogated on five times in the past by STF.

15. As aforesaid, after filing of this bail application 01.06.2015, the applicant filed application supported by affidavit dated 14.06.2015 (I.A.No.11502/2015) for taking additional facts and submissions on record. In this application, for the first time, the applicant has adverted to some litigation and dispute between one S.N.Goel Contractor for Chirayu Charitable Foundation of which Dr. Ajay Goenka was Secretary and Arvind Goenka was President. Reference is made to some transaction between the said parties regarding construction work to the tune of Rs.38,85,00,000/- (Rupees Thirty Eight Crores Eighty Five Lacs) and out of which Rs.12,85,00,000/- (Rupees Twelve Crores Eighty Five Lacs) was still unpaid by Chirayu Charitable Foundation. It is stated that on account of non-payment of that amount, a dispute has arisen between the present applicant and Dr.Ajay Goenka. Notably, in this application, the applicant has admitted that he is one of the Director of M/s Raksha Buildcon which is a company

incorporated under the Companies Act. Further, the father of the applicant S.N.Goel is also involved with the construction business and that the outstanding amount was due to them.

16. Reference is then made to the criminal case registered pursuant to the order passed by the Judicial Magistrate First Class, Bhopal, in Crime No.12/2013 dated 10.02.2012, filed by the applicant in his capacity as Director of M/s Raksha Buildcon Pvt. Ltd. against Dr. Ajay Goenka in particular. The relevant assertion in the subject application, for considering this bail application, is that, the Investigating Officer in Crime No.14/2013 - D.S.Baghel, D.S.P., STF, is also the Investigating Officer in the offences registered at the instance of the applicant against Dr.Ajay Goenka. He was shielding Dr. Ajay Goenka from the said criminal case because of his close proximity with him.

17. In paragraph 15, it is stated that Investigating Officer, D.S.Baghel is in regular contact with Dr. Ajay Goenka who has been named as accused in Crime No.12/2013. At the instance of Dr. Ajay Goenka, the Investigating Officer has maliciously implicated the applicant in the subject Crime No.14/2013

registered with STF concerning VYAPAM examination scam cases. The proximity and close relations between Dr. Ajay Goenka and Investigating Officer, D.S.Baghel can be noticed from the call records between the two by calling the same from the service provider. The applicant has requested the Court to summon the relevant records of Crime No.12/2013 registered by the applicant against Dr. Ajay Goenka and others.

18. In paragraph 16 of this application, it is alleged by the applicant that a clear pattern is likely to emerge from the call records about the interaction between Dr. Ajay Goenka and Investigating Officer D.S.Baghel event wise, in connection with the criminal proceedings. According to the applicant, it is also in public domain that the investigating officer was shielding Goenka in Crime No.12/2013, in view of the news report.

19. Besides filing the aforesaid application, the applicant has filed additional affidavit dated 17.06.2015 in support of the prayer for grant of bail. In this affidavit, for the first time, he has stated that he has become privy to certain additional facts in particular about the number of telephone calls exchanged between Dr. Ajay Goenka and Investigating Officer D.S.Baghel,

as much as 600 times and in particular the frequent calls on certain important events unfolding in criminal proceedings. The details of the number of calls so made on such events has been mentioned in tabular form.

20. However, as these affidavits were allowed to be tendered across the Bar on 18.06.2015, in the interest of justice; and after examining the same, as we found merits in the objection taken by the respondents, the applicant was called upon to give more specific information as to when the additional facts came to the knowledge of the applicant. As a result, the applicant has filed further affidavit sworn on 19.06.2015 giving details about the circumstances in which these additional facts came to his knowledge and purportedly about the source. This affidavit of the applicant states that suspicion arose about the proximity between the Investigating Officer, D.S.Baghel and Dr. Ajay Goenka after he obtained certified copy of the STF objection dated 29.05.2015, filed before the Trial Court on 03.06.2015. He found that in the objection reference has been made to FIR registered and pending against the deponent. That fact was within the exclusive knowledge of Dr. Ajay Goenka but has

been referred to by the Investigating Officer in the objection dated 29.05.2015. That gave rise to the suspicion of the applicant about the proximity of the Investigating Officer, D.S.Baghel and Dr. Ajay Goenka. The affidavit further mentions that the applicant has been informed that D.S.Baghel and Dr. Ajay Goenka were in regular contact during the course of Investigation by STF and on 13th June, 2015, the applicant came to know that D.S.Baghel and Dr.Ajay Goenka has telephonically contacted each other for over 600 times from December 2014 to May 2015 and most of the calls coincided with the events concerning the applicant - such as arrest of his nephew Dr. Prakhar Singhal, rejection of anticipatory bail application, rejection of application for regular bail etc. Thus, for the first time disclosure was made by the applicant that he acquired this additional information about the call records on 13.06.2015, but the source from which the same has been obtained has not been disclosed.

21. The respondents have filed affidavit sworn by Ashish Khare, A.I.G., S.T.F. dated 22.06.2015. It is accompanied by a report prepared under the signature of said Ashish Khare on the

same day. This report refers to the outcome of the enquiry conducted by him to ascertain the correctness of the allegations now made by the applicant about the proximity of the Investigating Officer with Dr. Ajay Goenka and that being the reason for implicating the applicant in Crime No.14/2013 concerning Vyapam Examination scam cases allegedly out of vengeance and at the behest of Dr. Ajay Goenka. The affidavit is also accompanied by the communication sent by the Investigating Officer to the affiant dated 21.06.2015, being his explanation. Similarly, communication under the signature of Dr.Ajay Goenka dated 21.06.2015, addressed to the affiant (Ashish Khare) is also enclosed along with the said affidavit.

22. At the outset, the respondents have denied the allegations made by the applicant. It is further stated that earlier application (anticipatory bail application) filed by the applicant has been rejected right upto the Supreme Court as there was evidence already available with the Investigating Agency to indicate the complicity of the applicant including the call details between the applicant and other co-accused and other material. It is then stated that there is no correlation between the evidence available

against the applicant in connection with subject Crime No.14/2013, which is independent of the factum of relationship of the Investigating Officer with Dr.Ajay Goenka. Further, the applicant has not disclosed the source from where the information referred to in the further affidavits filed by him has been gathered. The date on which he received such information has also not been disclosed. As a matter of fact, the affiant has verified with Idea Cellular Company as to whether the applicant had collected the call details of the said two persons from the company. However, the officials of the company, informally, informed in the negative. The affiant, however, has already made a request for providing necessary information officially, which is awaited.

23. Notwithstanding this affidavit filed by the respondents, the applicant has not filed any rejoinder to controvert the stand taken by the respondents or to offer further explanation but chose to proceed with the arguments on the bail application.

24. During the arguments, counsel for the applicant has relied on the averments made in the applications and affidavits filed by the applicant to contend that the applicant had no knowledge

about the events till recently. The applicant started doubting about the proximity between the Investigating Officer, D.S.Baghel and Dr.Ajay Goenka after 3rd June, 2015 as the Investigating Officer had disclosed certain facts in the objection filed by him to oppose the bail application filed by the applicant before the Trial Court, which fact was within the exclusive knowledge of Dr.Ajay Goenka. The whole attempt of the counsel for the applicant was to persuade the Court to hold that there is reasonable apprehension in the mind of the applicant that the Investigating Officer D.S.Baghel will not act fairly. Emphasis was placed on the stand taken by the STF on affidavit on 18.09.2014 filed to oppose the disposed of Writ Petition 11695/2014 (PIL), which according to the applicant, gives clean chit to the applicant. It was submitted that it is cardinal principle that the investigation must be done by the Investigating Agency in a free and fair manner; and if there was even slightest of apprehension and the circumstances spelt out by the applicant were sufficient to arouse such apprehension, it must necessarily follow that the applicant has been falsely implicated in Crime No.14/2013 out of vengeance and to further the cause of

Dr.Ajay Goenka.

25. Counsel for the applicant has also referred to the report prepared by Ashish Khare, appended to his affidavit dated 22.06.2015, to contend that there is clear admission of the Investigating Officer D.S.Baghel as well as Dr. Ajay Goenka about their acquaintance and proximity and that D.S.Baghel and his family members were taking medical treatment from Dr.Ajay Goenka on regular basis. Their association has been for quite sometime. Besides raising issues about the conduct of the Investigating Officer D.S.Baghel, it was contended that no fruitful purpose would be served by custodial interrogation which is the only ground for insisting to arrest the applicant and keep him in jail. The applicant cannot be forced to say what the Investigating Officer decides to record. The applicant has already revealed all information during the enquiry in the past and was interrogated for considerably long time. No new material can be obtained from the applicant. Further, since the applicant is engaged in a small time business, if he is released on bail, there is no possibility whatsoever that applicant will influence the prosecution evidence or further investigation of

the crime. In support, counsel for the applicant has relied on the decisions of the Supreme Court in the case of **Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab**¹ - paragraph 19, **Padmakar Tukaram Bhavnagar & anr Vs. The State of Maharashtra**² and **Babubhai Vs. State of Gujarat and others**³ para 32.

26. Having perused the averments in the respective applications, further affidavits filed by the applicant, the response filed by the respondents and considering the rival submissions, we have no manner of doubt that it is not open to the applicant to contend that there is absolutely no material whatsoever to proceed against the applicant in Crime No.14/2013, much less to resist the request of the Investigating Agency to allow custodial interrogation of the applicant. For, that aspect has already been dealt with in the earlier round of applications, for grant of anticipatory bail as also petition to question the validity of the process issued against the applicant under Section 82 of the Cr.P.C. and for cancellation of non-bailable warrant. This Court had rejected the said contention of

¹ (1980) 2 SCC 565

² (2012) 13 SCC 720

³ 2010 (12) SCC 254

the applicant and which finding has been affirmed by the Supreme Court.

27. Presumably, realizing this position, the applicant has advisedly taken a plea that the applicant is being persecuted by the Investigating Officer, D.S. Baghel at the behest of Dr. Ajay Goenka, who is in close proximity with the Investigating Officer and is accused in Crime No.12/2013 registered at the instance of the applicant. Notably, in the regular bail application filed by the applicant on 1.6.2015 this specific plea has not been taken by the applicant. The averments in the bail application, however, *inter alia*, rest on the assertion that there is no tangible material to proceed against the applicant and which fact has been stated on affidavit filed on behalf of STF to oppose the disposed of W.P. No.11695/2014 (PIL praying for transfer of investigation of all VYAPAM related Scam Cases to CBI).

28. Taking that plea first, no doubt, in the reply filed by the respondents in the said writ petition, it is mentioned that allegations regarding Vipin Goel and his sister's son admitted in Pre-P.G. is denied. However, that statement is being read out of context by the applicant. The averments in Paragraph No.56 of

the reply affidavit, is in response to the averments in Paragraph No.3.30 of the said writ petition. The whole paragraph will have to be considered in its totality. In Paragraph No.3.30 in the writ petition it is stated as follows:-

“3.30 – it is further submitted that, the STF instead of working independently and impartially is working in an arbitrary manner as the STF has adopted pick and choose method which ultimately would serious affect the fate of the entire scam. The petitioner herewith brings to the notice of this Hon’ble Court certain instances which are part of final report/challan filed by the STF before the competent criminal court demonstrating that, the STF has adopted pick and choose method due to pressure casted on it by political leaders, high ranked Administrative and Police Officials.

a) In FIR No.14/2013 which has been lodged in relation Pre-PG Examination, Mr. Raghvendra Singh Tomar has been made accused No.6. But till date Mr. Raghvendra Singh has not been arrested. It is alleged in theFIR that Mr. Raghvendra Singh along with Mr. Bharat Mishra who is brother of a Senior IPS Officer Miss Sonali Mishra took students to his factory at Mandideep and provided them Model key answers which were given to them by Nitim Mahindra. It is further alleged that an amount of Rs.30, Lacs was paid to Mr.Raghvendra Singh. However, to the utter astonishment the STF in order to save him has made him a witness under the influence of his brother in law Santosh Singh Gaur who is S.P. (E.O.W) in Gwalior.

It is not out of place to mention here that, the STF miserably failed to probe into the fact of the investments made by Nitin Mahindra of the money derived from the VYAPAM scam. Raghvendra Singh Tomar who is in the business of construction has made huge investment of the money belonging to Nitin Mahindra through his company M/s Faith Builders. Nitin Mahindra has made investment of the money

derived from VYAPAM scam in ash to Bharat Mishra, Raksha Builders and others. Despite being the above mentioned fact was in the notice, the STF did not probe into the investment made by Nitin Mahindra for the reason that there was likelihood of many other influential political leaders and high ranked officers to be surfaced. The STF is adopting pick and choose method which is palpably clear from the fact that Bharat Mishra was arrested but no concrete chain of connecting events to the crime was ever made out. It is important to mention here that Bharat Mishra who is brother of a Senior IPS Officer Sonali Mishra is a close friend of Nitin Mahindra. Raghvendra Singh Tomar with allegation of receiving Rs.30 Lacs has been made witness and all this have been done with a deliberate move on the part of STF as on a later stage when all memorandums would be testified in the competent criminal court. Other co-accused persons would gain benefit of the shortcomings of the prosecution and the culprits then would be acquitted. It is apt to mention here that reportedly one Vipin Goel who is owner of M/s Raksha Builders got his sister's son admitted in Pre-PG Exam through Nitin Mahindra adopting illegal means and in lieu of the same he then helped Nitin Mahindra to invest his black money by booking duplex/flats in the housing project. It is further submitted that, the political patronage enjoyed by Nitin Mahindra is clear from the fact that, in the year 2004 a crime bearing Crime No.26/2004 was registered by the Economic Offence Wing regarding purchase of computers at VYAPAM in which one Ajay Singh and Nitin Mahindra were accused No.6 and 7 respectively. But the government refused to grant sanction in this case. It is further submitted that, it was surfaced, subsequent sanction has been accorded to the above mentioned persons and supplementary challan has been filed. The petitioner poses a question that who were the officials/politicians and what were the reasons for refusing the sanction initially and now under peculiar circumstances the Government has decided to accord sanction. All the above mentioned circumstances command a detailed investigation as the links are connected with the VYAPAM scam however, the STF failed to focus its attention on arresting the middlemen, the beneficiaries and others. The petitioner herewith marks and encloses a copy of statements of

Raghvendra Singh Tomar under section

b) It is submitted that an FIR No.17/2013 Mr. Laxmikant Sharma was found involved but he has not been impleaded as accused nor has been arrested. The students and parents from Sironj District Vidisha has deposed that they have given the roll number to the then Minister Shri Laxmikant Sharma however the STF has not made his accused in the case and challan has been filed as such. With respect to FIR No.17 the statement of one Sanjiv Kumar Mutele and his mother Pushpa Devi Mutele has been filed along with the challan. From the statements it is apparently clear that the above mentioned persons had visited Shri Laxmikant Sharma at his residence and he had taken a photocopy of entrance card. Despite being sufficient evidence, Laxmikant Sharma deliberately has not been made accused in the crime. The petitioner herewith marks and encloses a copy of statements of Sanjiv Kumar Mutele and his mother Smt. Pushpadevi Muele as **Annexure P/25 and P/26.**”

(emphasis supplied)

29. In response to these averments the reply filed by the respondents in the writ petition sworn by Mr.Ashish Khare, AIG, STF, M.P. reads thus :-

“56. **Re: Para 3.30: Allegations regarding pick and chose method adopted by the STF are specifically denied.** The facts mentioned in this para are being clarified as under :

Regarding Raghevendra Singh Tomar: The allegation of any influence by Shri Santosh Singh Gour is specifically denied. Mr. Raghvendra Singh has become witness of the crime. It is not necessary to arrest him and this will facilitate the STF to proceed even against other accused persons who are key accused of the crime. It is submitted that neither Bharat Mishra nor any other person has given any concrete evidence against involvement of Raghvendra Tomar. It is the discretion exercised by the Investigating Officer

that the statement under section 164 CrPC of Raghvendra Tomar will facilitate the investigating agency to ensure that the main culprits are punished. In the crime No.14/13 the statement of Raghvendra Tomar under Section 164 of CrPC was very much useful as the same has become concrete evidence of linking other accused persons to expose the entire conspiracy.

Till date the entire investigation no fact has come on record to show that there was any investment made by Nitin Mohindra in the company of Raghvendra Tomar in his Faith Builders construction company. However efforts in this regard were already made any necessary interrogation was also done in this regard. It is submitted that as far as the involvement of nephew of Vipin Goel in Pre PG 2012 course is concerned, the issue is still under consideration and if it is found that Prakhar Singhal who is nephew of Vipin Goel is involved in the conspiracy a prompt action would be taken against him. Regarding allegations of non grant of sanction in EOW case No.26/2004 by the State is concerned it is submitted that the then Chairman of VYAPAM had refused the sanction against Nitin Mohindra and Ajay Sen. However, the said order has been reviewed and the sanction has been granted by the VYAPAM, in which investigation was done by EOW.

Regarding Vipin Goel : Allegations regarding Vipin Goel and his sister's son admitted in Pre PG is denied. The prosecution sanction in Crime No.26/04 to EOW was denied by the then Chairman of the VYAPAM. However, the said order was reconsidered and fresh sanction has been granted. So far as arrest of Lakshmikant Sharma in FIR 17/13 is concerned, when the arrest is to be made is to be decided by the investigating officer. The fact remains that Lakshmikant Sharma is already in jail.

It is submitted that petitioner is incorrectly stating that in Crime No.17/13 Lakshmikant Sharma is not accused. So far as the arrest is concerned, it will make no difference when the said person is already in jail in connection with other case and it is up to the investigating officer as to on which date he will arrest

any particular person. However, it is submitted that witnesses in this case were mostly from the constituency of the ex-minister and, therefore, with the efforts of the investigating agency statement under section 164 CrPC have been recorded against him, they will prove the case against him and his arrest will also be made as and when the same is required.”

(emphasis supplied)

30. With reference to the assertion concerning the applicant, Vipin Goel it is stated that the issue is still under consideration and if it is found that Dr. Prakhar Singhal nephew of Vipin Goel (applicant herein) is involved in the conspiracy, prompt action will be taken. The affidavit then denies the allegations regarding Vipin Goel and his sister's son admitted in Pre-PG course. This affidavit was filed on the basis of record available in the office of STF till 18.9.2014. However, thereafter on 26.11.2014, on the basis of material gathered by the Investigating Agency, notice was issued to the applicant for enquiry in connection with subject Crime No.14/2013. No doubt, the applicant appeared before the Investigating officer and was questioned on certain matters. However, as the investigation proceeded further on the basis of other material besides the memorandum of Nitin Mohindra recorded under Section 27 of the Evidence Act, the Investigating Agency was of the opinion that the applicant was

not cooperating during further investigation and that his custodial interrogation had become necessary. That plea of the Investigating Agency was tested by the Courts and was accepted whilst rejecting the anticipatory bail application filed by the applicant. In the first place, by the Trial Court and then by the High Court which finding was affirmed by the Supreme Court by a speaking order whilst rejecting S.L.P. (Cri) No.2480/2015 filed by the applicant vide order dated 30.3.2015.

31. Thus understood, it is not open to the applicant to raise the same plea in support of the prayer for grant of bail. The reliance placed by the applicant on the subsequent order passed by the Supreme Court on 19.5.2015, while dismissing the S.L.Ps. filed by the applicant will be of no avail to the applicant. The question whether the applicant should be arrested by the Investigating Agency and his custodial interrogation, has become final. The observations of the Supreme Court made in order dated 19.5.2015 pressed into service by the applicant are in the context of challenge to the process issued against the applicant under Section 82 of the Code and to the non-bailable warrant. The said observations are limited – to consider the

prayer for regular bail by the Court expeditiously without being influenced by the order of the High Court in those proceedings. To wit, orders dated 24.4.2015 and 5.5.2015 challenged in the said Special Leave Petitions. Those observations cannot be used by the applicant to contend that the applicant cannot be arrested nor subjected to custodial interrogation, notwithstanding the rejection of successive appeals of the applicant to the Supreme Court for grant of anticipatory bail in subject Crime No.14/2013 and more particularly the explicit findings and opinion given by the coordinate Bench of the Supreme Court in its order dated 30.3.2015.

32. Suffice it to observe that the Supreme Court having asked the applicant to resort to regular bail application presupposes that the applicant should be taken in custody. It is well established position that prayer for grant of bail can be entertained only when the person applying for bail is in custody – police custody/judicial custody or surrendered before the Court. For that reason, the applicant was called upon to first surrender before this Court, before commencing the arguments on the prayer for grant of bail in connection with Crime

No.14/2013. In that sense, he is already arrested in connection with Crime No.14/2013 and is in judicial custody, until final decision on this application.

33. As aforesaid, accepting the prayer for release of applicant on bail without the Investigating Agency being allowed to resort to custodial interrogation of the applicant in connection with Crime No.14/2013, will inevitably result in denying the Investigating Agency of the said opportunity already affirmed by the Supreme Court. Therefore, until custodial interrogation is done by the Investigating Agency in Crime No.14/2013, the question of releasing the applicant on bail does not arise.

34. Presumably, realizing this position, the applicant has now been advised to take a plea to question the fairness of investigation and, in particular, custodial interrogation by Investigating Officer, D. S. Baghel with reference to the events which have now been mentioned in the further affidavits filed during the pendency of the bail application. There is force in this submission of the respondents. We have already referred to the circumstances mentioned in the further successive affidavits filed by the applicant, as the hearing of the application progressed. In the original bail application there is

no reference to this aspect but other grounds have been taken which, as aforesaid, cannot be considered in view of the opinion already recorded right up to the Supreme Court that the Investigating Agency is entitled to subject the applicant to custodial interrogation in connection with Crime No.14/2013.

35. It has been faintly suggested in the application that custodial interrogation is not mandatory. This point was also argued before us. However, entertaining that argument would tantamount to circumventing the opinion already recorded right upto the Supreme Court whilst accepting the stand of the Investigating Agency that custodial interrogation of the applicant has become necessary in the fact situation of the present case. Presumably, for that reason, the applicant chose to file application for taking additional facts and submissions on record supported by his affidavit sworn on 14.6.2015. In this application, the applicant has highlighted the circumstance indicating the proximity of the Investigating Officer, D. S. Baghel and Dr. Ajay Goenka at whose behest, according to the applicant, the Investigating Officer was persecuting the applicant. Amongst others, the applicant has mentioned that as

per his information said Dr. Ajay Goenka and Investigating Officer, D. S. Baghel were constantly interacting on telephone and which fact can be established from the call records between the two. In respect of telephone numbers mentioned in Paragraph No.15 of this application, however, no specifics or material facts have been mentioned about the source of information or the period between which and the number of times the telephone calls were exchanged between the two. That has been stated only after the Court gave opportunity to the applicant for filing better affidavit, vide affidavit dated 17.6.2015. The applicant in this affidavit has, no doubt, mentioned about the number of telephone calls exchanged between the two, but has not disclosed as to when the applicant become privy to this additional information and the source from where the information has been derived. The applicant as per the liberty given by the Court has filed further affidavit sworn on 19.6.2015 to state that he became suspicious after he obtained certified copy on 3.6.2015 of the objection filed by the Investigating Officer to oppose his bail application. Assuming that the applicant has now revealed the details as to when he

became suspicious against the Investigating Officer, but has not disclosed the source of information and the authenticity of the figures about the date and number of telephone calls exchanged between the two. Moreso, inspite of specific stand taken by the respondents to counter that plea in the response filed by the Investigating Agency on affidavit sworn by Mr. Ashish Khare, AIG, STF dated 22.6.2015, the applicant has not filed any rejoinder. On the other hand, it is noticed from the affidavit of Mr. Ashish Khare, AIG, STF that he has made enquiries with the concerned telephone company to find out whether the applicant at any point of time obtained information regarding the call details between Investigating Officer, D. S. Baghel and Dr. Ajay Goenka. The informal response received by him from the officials of the telephone company was that no such information has been given to the applicant. Moreover, a formal request has been made by him to the concerned telephone company to give response in that behalf, which is still awaited.

36. Suffice it to observe that it is not possible to accept the vague and unsubstantiated plea taken by the applicant in his further application and additional affidavits. Notably, in the

context of the apprehension of the applicant that the Investigating Officer, D. S. Baghel may not act fairly, the respondents volunteered, without prejudice, that the Head of STF Shri Sudhir Sahi, DGP can be asked to supervise the custodial interrogation session of the applicant by D. S. Baghel. However, the applicant for the reasons best known to him, has rejected this offer through counsel and instead has invited the decision on merits.

37. As noted earlier, the question of releasing the applicant on bail before the Investigating Agency subjects the applicant to custodial interrogation does not arise in the fact situation of the present case. The applicant must undergo custodial interrogation as is the opinion of Supreme Court in its order dated 30.3.2015 in S.L.P. (Cri) No.2480/2015, which was filed by the applicant. It is also not possible to countenance the argument of the applicant that there is no material whatsoever before the Investigating Agency to proceed against the applicant. Even that question has been considered and answered against the applicant in the same proceeding whilst rejecting prayer for anticipatory bail. On this count alone the prayer for regular bail even before

the formal arrest of the applicant by the police in connection with Crime No.14/2013 and more so custodial interrogation, cannot be countenanced. For, granting bail to the applicant will inevitably result in circumventing the earlier opinion formed by the Courts for rejecting his anticipatory bail application.

38. We may now turn to the ground urged by the applicant that he is a small time businessman and not likely to influence the ongoing investigation, prosecution evidence or witnesses, in any manner. Although, this specific plea is taken in the original bail application filed on 1.6.2015, in Paragraph No.5.18. However, from the further affidavits filed by the applicant, in particular, the averments in the application I.A. No.11502/2015, it leaves no manner of doubt that the applicant is engaged in construction business in a big way as is evident from the volume of transaction entered by the company of which the applicant claims to be the Director. That speaks volumes about the status of the applicant in the society. Further, the applicant in his application has accepted the fact that he has had fair association with the persons staying in the colony like Nitin Mohindra and Bharat Mishra, who are also residents of Eden Garden Colony .

They have been named as principal conspirators in the commission of offence pertaining to VYAPAM Scam Cases.

39. The Investigating Agency, therefore, wants to rule out the possibility of involvement of applicant as middleman for other candidates in conspiracy with Nitin Mohindra and Bharat Mishra. The statement made by the Investigating Agency on 24.3.2015, that it is fairly accepted by the State that, as of today (i.e. 24.3.2015), from the information gathered by the Investigating Officer the applicant was concerned only with Dr. Prakhar Singhal – one candidate. That cannot be the basis to ignore the perception of the Investigating Agency which may have changed with the further evidence collected during the ongoing investigation. That being a continuous process till the filing of the final police report (charge sheet). Moreover, the statement clearly mentions that it was made on the basis of information available as on that date i.e. 24.3.2015. In any case, these are issues for investigation and the Investigating Agency cannot be asked to confine the investigation in a particular direction, notwithstanding the other material becomes available to it during the ongoing investigation.

40. Be that as it may, we are not at all impressed by the stand taken by the applicant that he is a small time businessman. Firstly because of his own revelation in the further affidavit and also because it has been stated on instructions by the counsel for the respondent/State that the applicant is none else but President of the Builders Association in Indore. The status of the applicant in society has been reinforced from the news item which appeared in local newspaper "Patrika Daily" on 25.6.2015. In that, though the applicant was ordered to be kept in judicial custody, he was having free time in Subhash Chandra Boss, Medical College, Jabalpur. He was allowed to freely interact with several visitors; and his family members were in attendance throughout in the hospital, but no Police Officer was found anywhere nearby the separate room allocated to the applicant. The circumstance in which the applicant was shifted to hospital from the Jail without the permission of this Court, much less, a formal intimation to the Court, is a mystery. That issue, indeed, is being enquired into in the suo moto proceedings W.P. No.6385/2014 (PIL for monitoring the investigation of crimes related to VYAPAM Examination Scam Cases). The

Division Bench (of which one of us A. M. Khanwilkar, Chief Justice) is party has already directed enquiry into that episode on 26.6.2015. The relevant extract of the order reads thus :-

“12. One intriguing situation has been noticed very recently when another Division Bench of this Court (to which one of us was party – A. M. Khanwilkar, Chief Justice) dealing with M.Cr.C.No.8811/2015 (Vipin Goel Vs. State). The said applicant was ordered to be taken in judicial custody vide order dated 18.6.2015, to be kept at Jabalpur until further decision in that application. The said applicant was taken in judicial custody on the same day, but the local newspaper “Patrika Daily” dated 25.06.2015 has mentioned that Vipin Goel was having free time in Subhash Chandra Bose Medical College, Jabalpur. Notably, the said application is still pending in this Court. However, the newspaper report mentions that many visitors interacted with the said Vipin Goel in the stated hospital including his family members who were in attendance throughout but no police officer was found anywhere nearby the said Vipin Goel, who was seen resting in company with his family members in a separate room allocated to him. The circumstance in which the said Vipin Goel was moved to the hospital from Jabalpur jail without the permission of this Court will have to be enquired. Further, how the said applicant was allowed to mingle with visitors, will also have to be examined. Moreover, how many visitors and the particulars of those visitors who interacted with Vipin Goel during the time he was in hospital, will also have to be ascertained. We direct the Head of STF to inquire into these matters and submit a report in a sealed cover on the next date. If any Government Officials and in particular Police Officials are found to be involved, whether the State Government has initiated any action against such officials (Doctors, Jail Authorities/Police Authorities) be placed on

record in these proceedings. Further, the Head of STF must immediately visit the said hospital today before proceeding to Bhopal to ascertain whether the lobbies in the hospital have been provided with CC TV Cameras and if yes, to obtain that record, for the relevant period, when the applicant was kept in that hospital and to inquire into all relevant matters.”

41. This, direction was required to be given because of the stand taken by the applicant when called upon to explain the circumstances in which he was admitted in the hospital. Instead, he argued that the explanation should be sought from the State and not the applicant.

42. We shall now revert to the Supreme Court decision relied by the counsel for the applicant in the case of **Shri Gurbaksh Singh Sibbia and others** (supra). Relying on the exposition in Paragraph No.19 of this decision, it was contended that arrest of the accused for recording his memorandum of statement under Section 27 of the Evidence Act is not a *sine qua non*. The Supreme Court while referring to the decision of **State of U.P. Vs. Deoman Upadhyay**⁴ has noted that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact,

⁴ (1961) 1 SCR 14

having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. It is further noted in this decision that Section 46 of Cr.P.C. does not contemplate any formality before a person can be said to be taken in custody; submission to the custody by word or action by a person is sufficient. These observations, in our opinion, will be of no avail to the applicant in the fact situation of the present case since his prayer for grant of anticipatory bail has already been rejected by the Courts right upto the Supreme Court consequent to upholding the plea of the Investigating Agency that the applicant was not cooperating in the investigation of the subject crime and his custodial interrogation has become necessary.

43. Reliance was then placed on the decision of the Supreme Court in the case of **Padmakar Tukaram Bhavnagar** (supra), in support of the argument that the applicant was not an influential person and that the decision in the case of **CBI Vs. Anil Sharma**⁵ has been explained. The dictum in Para No. 6 of **Anil Kumar Sharma's** case (supra) is about the efficacy of the custodial interrogation. As aforesaid, it is not open to the

⁵ (1997) 7 SCC 187

applicant to contend that he cannot be subjected to custodial interrogation. Further, for the finding already recorded about the status of the applicant in the society, the observations in the case of **Padmakar Tukaram Bhavnagare** (supra) are inapposite in the case of applicant. In that case, the Court proceeded on the finding that the appellant before it was aged, rustic and uninfluential person and did not have propensity of bringing pressure on the Investigating Agency. None of this would apply to the case of the applicant, as has been noticed earlier.

44. Reliance is then placed on the decision of the Supreme Court in the case of Babubhai (supra), in particular Paragraph 32, to contend that the investigation of a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. In the present case, however, it has been found by the Courts whilst rejecting the prayer for grant of anticipatory bail, right upto the Supreme Court, that there was fair amount of material before the Investigating Agency to proceed against the applicant in Crime No.14/2013 and also to subject the applicant to

custodial interrogation. Further, we have held that the apprehension of the applicant is vague and unsubstantiated. The applicant, as the proceeding has progressed, has improvised his plea. That is an argument of desperation. Having said this, we may note that the respondents have voluntarily offered, without prejudice, whilst refuting the allegations of the applicant against the Investigating Officer, that the Head of the STF will supervise the custodial interrogation session of the applicant by D. S. Baghel (I. O.). That would meet the ends of justice and enough to dispel even the slightest of apprehension of the applicant that the Investigating Officer, D.S.Baghel will forcibly extract incriminatory statements from the applicant during his custodial interrogation. Even though the applicant has rejected that option, as was conveyed to us through counsel; and inspite of rejecting the prayer for bail, we would still ask the Head of STF, Shri Sudhir Sahi, D.G.P., to supervise the custodial interrogation session of the applicant conducted by the Investigating Officer, D.S.Baghel in connection with Crime No.14/2013. This, however, will not be treated as a precedent. For, we are doing this in the facts of the present case only to

assuage the misplaced apprehension of the applicant.

45. As a matter of fact, there is no need to show this indulgence, considering the fact that the investigation of crimes related to VYAPAM examination scam cases is being monitored by the High Court for which even a Special Investigation Team of experts (headed by former Judge of this Court and a former high ranking Police Official (IPS) and also a former high ranking official of NIC as IT expert) has been constituted to assist the High Court, who in turn, analyse the investigation reports on case to case basis. Indeed, the scope of monitoring of those cases also encompasses as to whether Investigating Agency is following the exposition of the Supreme Court while carrying on the investigation of the concerned crime. For, it is the duty of the investigating officer to conduct fair investigation and avoid any kind of mischief and harassment to any of the accused.

46. For the aforesaid reasons, the applicant's prayer for bail is rejected, at this stage. In view of the dismissal of this bail application, the interlocutory applications are also **disposed of**.

47. As the bail application is rejected, the applicant who has

been directed to be taken in judicial custody at Jabalpur during the pendency of this application, the Investigating Agency (STF) is free to take custody of the applicant forthwith and to proceed with the investigation including custodial interrogation of the applicant, in connection with Crime No.14/2013, in accordance with law.

(A.M. Khanwilkar)
Chief Justice

(K.K.Trivedi)
Judge

Anchal/AM.