* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14.09.2026
Date of Decision: 23.09.2026
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\# **CNR No. DLHC010140592023**
\+ **CRL.M.C. 2749/2023**

CENTRAL BUREAU OF INVESTIGATION .....Petitioner

Through: Mr. Rajesh Kumar, SPP for CBI

versus

SANJAY PANDEY .....Respondent

Through: Ms. Aparajita R. Jha and Mr. Rahul Kamerkar, Advs. (*through VC*).

\# **CNR No. DLHC010140702023**
\+ **CRL.M.C. 2751/2023**

CENTRAL BUREAU OF INVESTIGATION .....Petitioner

Through: Mr. Rajesh Kumar, SPP for CBI

versus

CHITRA RAMAKRISHNA .....Respondent

Through: Mr. Shivam Batra, Mr. Rony O. John, Mr. Arshdeep Singh, Ms. Arpita, Mr. Mohd Ibrahim, Advs.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petitions have been instituted by the Central Bureau of Investigation [hereinafter referred to as 'CBI'] under Section 482 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'], read with Article 227 of the Constitution of India. The involved challenge herein is to two separate orders dated 21.12.2022 passed by the same learned Special

judge [PC Act] [CBI], Rouse Avenue District Courts, New Delhi, in ***RC No. 2212022E0030-CBI/EO-III/New Delhi***. *Vide* the said orders, Sanjay Pandey, the respondent in ***CRL.M.C. 2749/2023***, and Chitra Ramakrishna, the respondent in ***CRL.M.C. 2751/2023***, were granted regular bail, respectively.

2. Both the petitions arise from the same FIR and concern the same alleged transaction. They were, therefore, heard together and are being decided *vide* this common judgment.

BACKGROUND

Factual history

3. The controversy in the present petitions relates to the recording and examination of the telephone calls that were made from the premises of the National Stock Exchange of India Limited [hereinafter referred to as 'NSE']. The prosecution case itself proceeds on the basis that a system for recording certain telephone calls existed at NSE even before iSEC Services Private Limited [hereinafter referred to as 'iSEC'] was engaged. The present proceedings, however, relate to the engagement of iSEC between 01.01.2009 and 13.02.2017 under work orders described as relating to a *"Periodic Study of Cyber Vulnerabilities"*. According to the CBI, the work undertaken pursuant to the said work orders included the unauthorised interception and monitoring of telephone calls of certain NSE employees.

4. Sanjay Pandey, an officer of the Indian Police Service [hereinafter referred to as 'IPS'] who has since retired, had incorporated iSEC in 2001, held 50 per cent of its shareholding and was one of its two directors. He resigned as a director and transferred his shareholding to the members of his family in the year 2006. The CBI herein alleges, that, even after cessation of his formal association with the company, he continued to participate in and

exercise control over its day-to-day affairs, the very extent and the nature of which Sanjay Pandey disputes.

5. Chitra Ramakrishna was, during the corresponding period, a senior functionary of the NSE. She served as its Deputy Managing Director [D.MD] until 2010, Joint Managing Director [J.MD] until 2013 and Managing Director [MD] until December 2016. The period during which she occupied these positions substantially overlaps with the period for which iSEC remained engaged by NSE under the concerned work order.

6. In 2009, iSEC submitted an undated proposal to NSE under the description *"Periodic Study of Cyber Vulnerabilities"*, which was initiated within NSE by Mahesh Haldipur and was approved by Ravi Narain and Chitra Ramakrishna. A work order dated 03.06.2009 was thereafter issued to iSEC with the endorsement *"kind attention to Sanjay Pandey"*. The arrangement was subsequently renewed from year to year. CBI alleges, that the work actually undertaken by iSEC included activities that were not disclosed in the proposal or the work orders. These activities as per CBI included unauthorised interception, recording and examination of telephone calls of certain NSE employees.

7. In relation to Chitra Ramakrishna, CBI alleges that she introduced Sanjay Pandey to Ravi Varanasi, a senior official of NSE, and entrusted Ravi Varanasi with the responsibility of coordinating the assignment and processing the approval notes for its continuation. It is further alleged that the employees and telephone extensions whose calls were to be examined were identified under her directions and communicated to iSEC through the concerned officials of NSE. CBI also relies upon material, suggesting, that Ravi Varanasi periodically briefed her about the reports received from iSEC

and that after becoming MD, she approved the continuation of the arrangement.

8. Insofar as Sanjay Pandey is concerned, the CBI relies upon electronic communications and statements collected during the investigation to allege, that he continued to be involved in the functioning of iSEC even after his resignation as its director. According to CBI, he sought updates regarding the volume of call data examined, the calls identified as suspicious and the work performed by the personnel associated with the assignment. The procurement and installation of recording equipment at the premises of NSE are also alleged to have been undertaken by iSEC at his very instance.

9. CBI further alleges that the recorded data was copied at regular intervals by employees of iSEC and taken to its office for examination. Selected calls were allegedly listened to and transcribed, following which reports identifying calls that were considered suspicious were supplied to senior officials of NSE. Some of these reports are stated to have been recovered from the possession of NSE officials and others from the office of iSEC. The prosecution further alleges that neither permission from the competent authority nor the consent of the concerned employees had been obtained and that NSE paid approximately Rs. 4.54 crores to iSEC during the relevant period.

10. The respondents deny having participated in any unauthorised interception. Sanjay Pandey maintains that iSEC was supplied with pre-recorded call data by NSE for analysis from the perspective of information security and cyber vulnerability. Chitra Ramakrishna maintains that the engagement was processed through the contractual and internal approval mechanisms of NSE.

11. The arrangement with iSEC continued until 13.02.2017. The CBI further alleges that, after the registration of a separate case concerning the NSE co-location issue in 2018, certain recording systems and software used during the relevant period were caused to be sent for scrap in 2019 by some of the officials of NSE. This allegation subsequently formed part of the basis on which Section 201 of the IPC was invoked in the charge-sheet.

Brief procedural chronology

PARTICULARS	***RESPONDENTS***	
	SANJAY PANDEY	***CHITRA RAMAKRISHNA***
DIRECTORATE OF ENFORCEMENT [ED]		
Arrest	*19.07.2022*	*14.07.2022*
Status of Bail [learned Special judge]	*04.08.2022 [Rejected]*	*29.08.2022 [Rejected]*
Status of Bail [this Court]	*08.12.2022 [Granted]*	*09.02.2023 [Granted]*
CENTRAL BUREAU OF INVESTIGATION [CBI]		
Arrest	*24.09.2022*	*27.09.2022*
Status of Bail [learned Special judge]	*21.12.2022 [Granted]*	*21.12.2022[Granted]*

Procedural history

12. On 07.07.2022, acting upon a complaint received on the same date, CBI registered ***RC No. 2212022E0030*** against iSEC, the present respondents and the other persons named therein. The FIR invoked Sections 120-B, 409 and 420 of the Indian Penal Code [hereinafter referred to as 'IPC'], Sections 69B, 72 and 72A of the Information Technology Act, 2000 [hereinafter referred to as 'IT Act'], Sections 20, 21, 24 and 26 of the Indian Telegraph Act, 1885 [hereinafter referred to as 'Tele Act'], Sections 3 and 6 of the Indian Wireless Telegraphy Act, 1933 [hereinafter referred to as 'WTA'] and Section 13(2)

read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act'].

13. On 11.07.2022, the Directorate of Enforcement [hereinafter referred to as 'ED'] registered ***ECIR No. ECIR/DLZO-I/28/2022*** on the basis of the scheduled offences arising from the case registered by CBI. Chitra Ramakrishna was arrested by ED in relation to its case proceedings on 14.07.2022 and Sanjay Pandey was subsequently arrested on 19.07.2022. Their applications for bail in those very proceedings were rejected by the learned Special judge on 29.08.2022 and 04.08.2022, respectively.

14. Sanjay Pandey was thereafter arrested by CBI in relation to its registered case on 24.09.2022 and Chitra Ramakrishna subsequently, on 27.09.2022. Both of them moved separate applications for grant of regular bail before the learned Special judge.

15. During the pendency of the aforesaid bail applications filed before the learned Special judge seeking bail in the case registered by CBI, a coordinate bench of this Court, *vide* judgment dated 08.12.2022 in ***BAIL APPLN. 2409/2022***, granted regular bail to Sanjay Pandey with respect to the case registered by ED. So, while considering the applications for grant of regular bail to both the respondents in relation to the CBI's case, the learned Special judge referred to the *prima facie* observations concerning the scheduled offences made in the aforesaid judgment of this Court wherein only the respondent Sanjay Pandey was granted regular bail, and *vide* separate orders dated 21.12.2022, granted regular bail to both the respondents in the present petitions, subject to the conditions stipulated in the impugned orders.

16. On the following day, i.e. 22.12.2022, the CBI filed ***Charge-sheet No. 44/2022*** against iSEC, the present respondents and the other accused persons. The charge-sheet alleged commission of offences under Section 120-B read

with Sections 409 and 201 of the IPC, Sections 24 and 25 of the Tele Act, Sections 69B and 72A of the IT Act and Section 13(2) read with Sections 13(1)(c) and 13(1)(d) of the PC Act, together with the substantive offences attributed to the respective accused.

17. Certain provisions invoked at the stage of registration of the FIR i.e. Section 420 IPC, Sections 20, 21 and 26 of the Tele Act, Sections 3 and 6 of the WTA and Section 72 of the IT Act were not carried into the chargesheet. Section 201 of the IPC and Section 25 of the Tele Act were, however, added.

18. Chitra Ramakrishna was subsequently granted regular bail with respect to the case registered by ED, by a coordinate bench of this Court on 09.02.2023. In the meantime, CBI instituted the present petitions challenging the orders dated 21.12.2022 passed by the learned special judge wherein regular bail was granted to the respondents in the present connected petitions. Notice was issued in both the matters on 19.04.2023. In the meanwhile, the special leave petitions [SLPS] preferred by ED against the judgments granting regular bail to Sanjay Pandey and Chitra Ramakrishna in the connected ED proceedings were subsequently dismissed by the Hon'ble Supreme Court on 08.05.2023 and 06.10.2023, respectively.

<u>SUBMISSIONS ADVANCED</u>

<u>On behalf of CBI</u>

19. Learned SPP appearing for the CBI submits that the present challenge has two principal limbs. First, that the learned Special judge did not independently assess CBI's case and instead treated the bail judgment dated 08.12.2022 passed by a coordinate bench of this Court in the connected ED proceeding against Sanjay Pandey as being determinative in nature. Secondly, that the learned Special judge did not test the seriousness of the allegations

and the material collected by CBI during its investigation against the settled parameters governing the grant of bail.

20. With respect to the first limb, it is submitted that the CBI proceeding and the ED proceedings are legally distinct in nature. That CBI was not a party to Sanjay Pandey's bail application in the ED case and that the report referred to in paragraph 34 of the High Court's bail granting judgment had been filed by the CBI in a separate quashing petition and was not a substitute for an opportunity to place the its case in that particular bail proceeding. That the *prima facie* assessment made in that judgment could not, therefore, be adopted as a conclusion in CBI's case.

21. Reliance is placed by the learned counsel appearing for CBI on ***Manik Bhattacharya v. Ramesh Malik, 2022 SCC OnLine SC 1465*** to submit that an order or a judgment operating in a proceeding conducted by one investigating agency cannot insulate an accused from lawful action in a separate proceeding conducted by another investigating agency merely because the two proceedings share a common factual foundation. That the learned Special judge in the present case was required to examine CBI's case on its own merits and record rather than import an assessment made in the proceedings connected with the ED's case.

22. It is further submitted that the impugned orders in the present case reproduce the *prima facie* conclusion arrived at in the PMLA bail judgment dated 08.12.2022 which is that the ingredients of the scheduled offences were not made out. So according to CBI, applying that conclusion to its own case without an independent evaluation effectively prejudges the very offences sought to be tried and is capable of seriously prejudicing the prosecution. That the customary observation, that nothing in a bail order or judgment amounts to an expression on the merits of the case does not cure an order which, in

substance, rests entirely on a conclusion that the prosecution's case is not made out.

23. With respect to the second limb, the learned SPP submits that the present impugned orders do not at all engage with the substance of the allegations that have been levelled by the CBI against the respondents in the present case.

24. The learned SPP states that the chargesheet was filed on 22.12.2022, one day after the impugned orders granting bail to the respondents in its very own case were passed. The reason for submitting as above is, that the chargesheet which now embodies the cumulation of the material CBI collected during the investigation needs an independent assessment.

25. He expressly submits that, if the respondents satisfy the governing tests, then bail may be granted to them but its grievance is that the decision must follow a consideration of the allegations that have been levelled, the evidence that has been collected during investigation and the applicable bail parameters, rather than an adoption of a *prima facie* conclusion recorded in another proceeding.

26. For this purpose, reliance is placed by the learned counsel on ***Deepak Yadav v. State of U.P., (2022) 8 SCC 559***. It is submitted that an order granting bail may be set aside where relevant material has been ignored, irrelevant considerations have governed the decision, or the discretion has been exercised arbitrarily or perversely. The petitioners i.e. CBI accordingly seek that the impugned orders dated 21.12.2022 be set aside and that the bail applications decided, be remitted to the learned Special judge for fresh consideration on the basis of the present material and record available.

27. At this stage, the learned counsel appearing for respondent Chitra Ramakrishna submits that no cognizance has been taken since the filing of the

chargesheet and that nearly 4 years have elapsed since the same was filed. He further submits that many of the provisions invoked in the FIR at the time this case was registered have been dropped from the chargesheet.

28. In answer to the aforesaid submission, the learned SPP submits that cognizance was not taken because the connected matters were pending at the time. It is further submitted that this delay in taking of cognizance does not validate the exercise of discretionary power by the learned Special judge in the impugned orders and that likewise, alteration of penal provisions between the FIR and the chargesheet is no ground to oppose the present petitions as the remaining provisions must still be independently examined.

<u>On behalf of respondent Sanjay Pandey</u>

29. Learned counsel appearing on behalf of respondent Sanjay Pandey submits that CBI has not met the threshold for interference with an order granting regular bail. That the correctness of an order granting bail is tested by asking whether the discretion was exercised improperly or arbitrarily and whether the order is perverse, illegal or unjustified in nature. That cancellation for subsequent misconduct stands on a different footing and ordinarily requires supervening circumstances or breach of bail conditions. Reliance in this regard is placed on ***Deepak Yadav v. State of U.P. [supra]***, which reiterates the distinction explained in ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118*** and ***Neeru Yadav v. State of U.P., (2014) 16 SCC 508***.

30. It is submitted that the decision in ***Manik Bhattacharya v. Ramesh Malik [supra]*** does not govern the present case. That the aforesaid matter was related to the effect of interim protection in relation to coercive action by a different investigating agency and that the present case concerns regular bail granted after the respondent had been in custody and the investigation had substantially progressed. It is further submitted that the impugned order

neither restrains CBI from investigating nor grants the respondent an immunity from CBI's case. That it only determines whether continued custody was warranted or not.

31. The learned counsel further submits that the learned Special judge was entitled to consider the judgment dated 08.12.2022 as it arose from the same FIR and examined the ingredients of the alleged scheduled offences, CBI's report referred to in paragraph 34, the provisions of the IPC, the IT Act and the PC Act and the nature of the NSE-iSEC arrangement and since bail under Section 45 of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] was granted after application of a more stringent statutory test, the learned Special judge's reliance on that assessment was rightful and relevant, and not a mechanical substitution of one proceeding for another.

32. It is further submitted that the judgment dated 08.12.2022, whereby the respondent Sanjay Pandey was granted bail in the proceedings under the PMLA, was assailed by ED before the Supreme Court by way of a special leave petition [SLP], which came to be dismissed on 08.05.2023. Learned counsel submits that the refusal of the Supreme Court to interfere left the order granting bail undisturbed. It is, however, acknowledged that the Supreme Court clarified that the observations made for the purposes of deciding the said bail application would have no bearing on the final view to be taken after trial. Reliance upon the said order is, thereby, placed not as an adjudication upon the guilt or innocence of the respondent, but as a circumstance supporting the continuance of bail.

33. The learned counsel appearing for respondent Sanjay Pandey submits that the challenge to the grant of bail must be examined in the light of the offences and the specific role ultimately attributed to the respondent in the

charge-sheet, and not on the basis of the wider array of provisions initially invoked in the FIR.

34. In relation to the factual allegations, it is submitted by the learned counsel that iSEC was engaged under written contracts to analyse calls recorded within NSE's system and to identify suspicious communications bearing on insider trading and related vulnerabilities. It is further submitted that respondent Sanjay Pandey had ceased to be a director of iSEC before the relevant work orders and that he had relinquished the company upon returning to public service. It is submitted that NSE had been recording calls long before iSEC was engaged and that Rs 4.54 crores represented not an unlawful pecuniary advantage, but a consideration given for services that were rendered.

35. It is lastly submitted by the learned counsel that the case is founded substantially on documentary material which has been collected by the investigating agency, that neither has there been a breach of a bail condition nor any subsequent attempt to influence the investigation has been shown and that the bail granted to certain co-accused persons has not been challenged. The petition is therefore said to disclose neither any perversity in the impugned order nor any subsequent circumstance warranting cancellation and is accordingly stated as liable to be dismissed.

On behalf of respondent Chitra Ramakrishna

36. Learned counsel appearing for Chitra Ramakrishna adopts the threshold submission that an order granting bail cannot be displaced merely because another view might be possible. It is submitted that CBI must show that the order is illegal, perverse, unjustified or the product of an arbitrary exercise of discretion. He submits that there is no allegation that the respondent violated any condition of bail or misused the liberty granted to her.

37. It is submitted that the order in her i.e. respondent Chitra Ramakrishna’s case cannot fairly be described as an unreasoned order. It is submitted that the impugned order granting regular bail to his client records CBI's specific objections that her alleged role differed from Sanjay Pandey's role, that the CBI was not a party to the ED bail proceeding and that the CBI report considered by the High Court had been filed in the quashing petition. It is further submitted that the concerned impugned order also considered all the objections of the CBI with respect to the factual matrix of the case and that the bail was granted after the consideration of the aforesaid.

38. The learned counsel now further submits that the reliance on the judgment granting bail to respondent Sanjay Pandey in the PMLA case was legally relevant as the concerned coordinate bench of this Court had examined the ingredients of the alleged predicate offences under the more stringent standard set out in Section 45 of PMLA and that ED’s challenge to that judgment was thereafter also dismissed by the Supreme Court.

39. It is accordingly submitted that the challenge to the grant of bail must be examined in the light of the offences and the specific role ultimately attributed to the respondent in the chargesheet, and not on the basis of the wider array of provisions initially invoked in the FIR.

40. The learned counsel also invokes the proviso to Section 437(1) CrPC stating that his client’s status as a woman is not being put forward as an absolute entitlement to bail but as an express statutory circumstance which the court is permitted to consider along with the length of the proceedings, the completion of investigation and her conduct while on bail.

41. Lastly, it is submitted that the other co-accused persons, including a senior NSE officeholder were granted bail, and the CBI did not challenge every such order wherein they were granted such bail. The learned counsel

further contends that no principled basis has been shown for unsettling his client's bail while leaving that of the others' undisturbed. He submits that since the learned Special judge considered the rival positions and no supervening circumstance that may have arisen since has been shown by CBI, the concerned petition is liable to be dismissed.

ANALYSIS

42. This Court has heard the learned SPP appearing for CBI as well as the learned counsels appearing for the respective respondents. The material placed on record has also been perused by this Court.

43. Having considered the rival submissions, this Court considers it imperative to state at the very outset that, it has not been called upon to adjudicate the prosecution's case or make findings concerning the guilt or innocence of any party involved herein.

44. It is also made clear that this Court is neither examining the correctness of the judgment dated 08.12.2022 pronounced by a Coordinate bench of this Court nor sitting in appeal over any *prima facie* observation contained therein.

45. *Vide* the impugned orders, regular bail was granted to the respondents herein. Although setting aside of the impugned orders wherein bail is granted to an accused person, and cancelling bail of that accused person may produce the same practical consequence, the two are however, governed by distinct legal considerations. This Court therefore, deems it appropriate to first delineate the distinction between setting aside an order granting bail, on account of perversity, illegality or material irregularity, and cancelling bail on account of subsequent conduct or supervening circumstances, so as to identify the principles that would govern the present petitions.

46. The Supreme Court in ***Neeru Yadav v. State of U.P. [supra]*** elucidated the distinction between cancellation of bail founded upon post-release

misconduct or supervening circumstances, and the setting aside of an order granting bail that is itself unjustified, illegal or perverse. It was held that where relevant considerations have been ignored, or the grant of bail is founded upon irrelevant considerations, a superior court is competent to examine the justifiability and soundness of the order.

47. The aforesaid distinction was reiterated in ***Y v. State of Rajasthan, (2022) 9 SCC 269***, wherein the Apex Court while examining, whether the discretionary power under Section 439 CrPC had been appropriately exercised or not, clarified that an inquiry into the legality and propriety of the original order granting bail stands on a footing distinct from cancellation sought on the basis of circumstances arising subsequent to the grant of bail.

48. The distinction between the two categories was further explained in ***Meena Devi v. State of U.P., (2022) 14 SCC 368*** wherein the Hon'ble Supreme Court explained that while a challenge to the correctness of an order granting bail requires an examination of whether the discretion was exercised improperly or arbitrarily, an application seeking cancellation of bail ordinarily proceeds on the basis of supervening circumstances or a violation of the conditions of bail.

49. More recently, in ***Ashok Dhankad v. State (NCT of Delhi), 2025 SCC OnLine SC 1690*** the Apex Court after considering its earlier decisions including the decisions in ***Neeru Yadav v. State of U.P. [supra], Y v. State of Rajasthan [supra]*** and ***Meena Devi v. State of U.P [supra]*** consolidated the principles governing a challenge to an order granting bail and distinguished such a challenge from an application seeking cancellation of bail. The principles were summarised as follows:

> *"19. The principles which emerge as a result of the above discussion are as follows:*

*(i) **An appeal against grant of bail cannot be considered to be on the same footing as an application for cancellation of bail**;*
*(ii) **The Court concerned must not venture into a threadbare analysis of the evidence adduced by prosecution. The merits of such evidence must not be adjudicated at the stage of bail**;*
*(iii) **An order granting bail must reflect application of mind and assessment of the relevant factors for grant of bail that have been elucidated by this Court**. [See: Y v. State of Rajasthan (Supra); Jaibunisha v. Meherban[9] and Bhagwan Singh v. Dilip Kumar @ Deepu[10]]*
*(iv) **An appeal against grant of bail may be entertained by a superior Court on grounds such as perversity; illegality; inconsistency with law; relevant factors not been taken into consideration including gravity of the offence and impact of the crime;***
*(v) **However, the Court may not take the conduct of an accused subsequent to the grant bail into consideration while considering an appeal against the grant of such bail. Such grounds must be taken in an application for cancellation of bail**; and*
(vi) An appeal against grant of bail must not be allowed to be used as a retaliatory measure. Such an appeal must be confined only to the grounds discussed above." [Emphasis supplied]

50. The legal position emerging from the aforesaid authorities is that a challenge to the correctness of an order granting bail and an application seeking cancellation of bail on account of subsequent events operate in distinct fields. In the former, the superior court examines whether the discretion exercised at the time of granting bail stands vitiated by perversity, illegality, non-application of mind, consideration of irrelevant material or omission to consider material and relevant circumstances. In the latter, the

inquiry ordinarily centres upon the subsequent conduct of the accused, violation of the conditions of bail or the emergence of supervening circumstances. Even while examining the correctness of an order granting bail, the superior court cannot undertake a *"threadbare"* evaluation of the evidence or substitute its own view merely because another view might also be possible.

51. Applying the aforesaid, the present petitions fall within the former category. CBI does not seek cancellation of bail on the ground of any misconduct allegedly committed by the respondents after their release on regular bail *vide* the impugned orders or on the ground of violation of the conditions imposed upon them or because of the emergence of any supervening circumstance. Its challenge, is directed against the legality and soundness of the original exercise of discretion by the learned Special judge. The principal grievance of CBI is that the learned Special judge relied upon the *prima facie* observations made in the judgment dated 08.12.2022 in the connected PMLA proceedings passed by a Coordinate bench of this Court without independently examining the allegations levelled against the respective respondents, the material collected during investigation and the respective roles attributed to the respondents in the case registered by CBI.

52. This Court therefore, in the present petition is only required to conduct a limited assessment of whether the impugned orders dated 21.12.2022 *vide* which regular bail was granted to the respondents in CBI's case suffer from any perversity, illegality, material defect or non-application of judicial mind so as to warrant interference by this Court in exercise of its inherent jurisdiction.

53. To conduct the aforesaid limited assessment, two questions have to be considered by this Court. First, whether reference to and taking into

consideration of, the judgment dated 08.12.2022 passed by a Coordinate bench of this Court in the PMLA proceedings with respect to respondent Sanjay Pandey granting him regular bail therein, by the learned Special judge, to grant regular bail to both the respondents herein, amounted to an abdication of the jurisdiction vested in the learned Special judge. Second, whether any material circumstance placed by the CBI before the learned Special judge was left out of consideration so as to render the grant of bail perverse or unjustified in nature.

First

54. The proceedings whenever conducted, in relation to the case of the CBI and the ED, are undoubtedly distinct in nature. An order passed in one proceeding neither binds the other investigating agency to the one with respect to which the said order has been passed, nor does it confer immunity on an accused person from lawful action that might be taken by the other investigating agency under a different enactment. At the same time, where both proceedings arise from the same FIR and the alleged scheduled offences form a common factual foundation, a judicial assessment of those very offences cannot be treated as being wholly irrelevant to being considered for the purposes of grant of bail.

55. The PMLA judgment dated 08.12.2022 was not merely a judgment that concerned an unrelated transaction. The aforesaid judgment examined the very ingredients of the offences that formed ED's case at the time i.e. ingredients of offences punishable under Section 120-B read with Sections 409 and 420 IPC, Section 72 of the IT Act and Section 13(2) and 13(1)(d) of the PC Act arising from the same alleged NSE-iSEC arrangement. The very offences, ingredients of which were examined in the aforesaid judgment also form a part of CBI's case presently. Now even though, the findings were

prima facie in nature and did not bind the learned Special judge, the judgment still constituted relevant material which the learned Special judge was entitled to consider.

56. The entitlement of a Court to take note of such material flows from the nature of the jurisdiction which is exercised while deciding an application for bail. The judgment dated 08.12.2022 was rendered after examining whether the material disclosed the ingredients of the scheduled offences which, as they then stood in the FIR, also constituted the principal non-bailable offences in CBI's case. The assessment made therein was, therefore, not divorced from the proceedings under the bail applications filed by the respondents herein before the learned Special judge. It concerned the same FIR, the same NSE-iSEC arrangement and the same alleged criminal activity. The fact that the judgment was rendered in proceedings instituted by ED affected the weight to be attached to it, but did not render it an irrelevant circumstance.

57. This position also finds support from the decision of the Hon'ble Supreme Court in ***Arvind Kejriwal v. CBI, 2024 SCC OnLine SC 2550*** wherein, while considering the prayer for bail in the CBI case, the Hon'ble Supreme Court expressly took note of the interim bail granted to the accused in the connected ED matter arising from the same set of facts. Further, the conditions imposed in the ED proceedings were made applicable *mutatis mutandis* to the bail granted in the CBI case. The decision thus recognises that a bail order passed in proceedings under the PMLA may constitute a relevant circumstance in the connected CBI proceedings where both arise from the same factual foundation or similar set of facts.

58. The relevance of an earlier order must, however, be distinguished from its conclusiveness. In ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, the Hon'ble Supreme Court observed that the precedent

of another case cannot, by itself, form the basis for either granting or refusing bail, though it may have a bearing on the consideration, which must ultimately proceed on the facts of each case. Thus, the judgment dated 08.12.2022 could be considered by the learned Special judge as one of the relevant circumstances, but could neither bind the CBI nor substitute the requirement of arriving at an independent satisfaction in the bail applications before the concerned learned Special judge.

59. A similar qualification follows from ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230***. The Apex Court in this case cautioned that parity cannot be applied mechanically and that the role attributed to each accused, his or her position in relation to the incident and the surrounding circumstances, must be examined. This qualification assumes particular importance in the case of respondent Chitra Ramakrishna, who had not been granted bail in the ED proceedings when the impugned order in her case was passed. Nevertheless, the judgment dated 08.12.2022 was relevant to her application to the limited extent that it examined the ingredients of the offences forming the common foundation of both the proceedings. Her individual role was however still required to be considered separately.

60. From the above discussion, it is clear, that the learned Special judge was entitled to take the PMLA judgment dated 08.12.2022 into consideration while deciding the applications for regular bail filed by the respondents in the CBI's case. Such reference did not, by itself, amount to an abdication of the concerned Judge's jurisdiction. The judgment, even though neither binding nor determinative upon the learned Special judge when considering applications for grant of bail, was a relevant circumstance. However, whether the learned Special judge considered the remaining material placed by CBI before her and independently exercised the discretion vested in her is a

separate issue, which shall now be examined and since the allegations against the two respondents are not identical, even though arising from the same factual foundation, the reasoning recorded in the two impugned orders shall be examined separately for such assessment.

Second

Impugned order dated 21.12.2022 [Sanjay Pandey]

61. The relevant portion of the impugned order passed in respondent Sanjay Pandey's bail application is as follows:

> *"6. On the other hand, **Ld. Sr. PP for CBI has vehemently opposed the bail application and submitted that accused cannot be allowed to take benefit of aforementioned order of Hon'ble High Court as the same was passed in a bail application moved in a separate ED matter of ECIR/DLZO-I/28/2022 and CBI was not even party to said bail application and never got the opportunity to put forward its case before Hon'ble High Court regarding predicate offences of the instant FIR. It is further submitted that the report filed by the CBI which finds mention in the para 34 of said order was filed in a quashing petition filed by the accused herein for quashing of instant FIR which is still pending before the Hon'ble High Court.***
>
> *7. **I have given my thoughtful consideration to the rival contentions, raised from both the sides and also carefully gone through the entire record.***
>
> *8. It is pertinent to note here that aforementioned ED matter i.e. ECIR/DLZO-I/28/2022 is based on the premise that accused persons including the applicant herein indulged in illegal interception of MTNL lines at NSE during the period 2009-2017, resulting into commission of various offences under 120-B, 409, 420 of IPC, Section 72 of IT Act, Section 13(2) r/w 13(1)(d) of the PC*

Act covered in the category of scheduled offences/predicate offences under Prevention of Money Laundering Act (PMLA) and same also led to generation of proceeds of crime to the tune of Rs. 4.54 crores given by NSE to applicant's company M/s iSec Services Pvt. Limited for the aforementioned illegal activity, thereby making them (accused) also liable for the offence of money laundering punishable under Section 4 of PMLA.

*9. **It is also important to note that for consideration of bail in a case involving offence of money laundering, the case has to withstand the stringent conditions of Section 45 PMLA as well as the triple test of 439 Cr.PC. As such, when a bail plea is opposed by the prosecutor in an ED case, the court needs to satisfy that the accused is not guilty of the offence of money laundering and will not commit any such crime after his release on bail."***

*"11. In the light of the aforementioned observation made by the Hon'ble High Court regarding lack of essential ingredient of the predicate offences, this court is inclined to grant bail to the accused/applicant even in the instant case**. Mere fact that CBI was not a party to bail application of the applicant moved before the Hon'ble High Court in said ED matter, cannot be a ground to urge before this court to take a different view with regard to the predicate offences. Undoubtedly, the observations contained in the aforementioned order are reflective of only the prima facie view taken by the Hon'ble High Court but, this court also at this stage is required to only take a prima facie view of the matter. Furthermore, the reply filed by the CBI in the quashing petition pending before the Hon'ble High Court was also taken into account by the Hon'ble High Court before passing the aforementioned order in favour of***

> ***<u>the applicant.</u>***
> *12. **<u>Considering the fact that the Hon'ble High Court has already granted bail to the accused/applicant in the connected ED matter, which in the light of Section 45 PMLA embodies far more stringent conditions for grant of bail, I find no reason to decline bail to the applicant in the present case.</u>** As already noted above, all the offences other than predicate offences of the present FIR are bailable. In view thereof, accused is granted bail…" [Emphasis supplied]*

62. A bare reading of the aforesaid shows, that the learned Special judge did not overlook the objections raised by CBI. That the objection that CBI was not a party to the ED proceeding was expressly recorded. That the further objection, that the CBI's status report had been filed in the quashing proceedings, and not in the PMLA bail application before the Coordinate bench of this Court, was also noticed. It is also clear, that the learned Special judge thereafter examined the factual connection between the two proceedings that both arose from the alleged interception of telephone lines at NSE during the period from 2009 to 2017. The alleged payment of ₹4.54 crores by NSE to iSEC and the offences which formed the basis of the ED proceedings were also recorded. The reliance upon the judgment dated 08.12.2022 was, therefore, preceded by an identification of the common factual and legal foundation of the two proceedings.

63. The learned Special judge was also conscious that the observations made in the judgment dated 08.12.2022 were only *prima facie* in nature. The impugned order did not treat those observations as an adjudication upon the guilt or innocence of the respondent. It proceeded on the limited consideration required at the stage of bail and expressly clarified that nothing stated in the order would amount to an expression of opinion on the merits of the case.

64. A perusal of the impugned order clearly shows that it cannot be characterised as one which was passed upon a mere mechanical adoption of the judgment passed in the PMLA proceedings. The learned Special judge considered the objection of CBI, the common factual foundation, the nature of the alleged predicate offences, the additional rigours of Section 45 of the PMLA and the fact that the remaining offences invoked in the FIR were bailable. Conditions were also imposed to secure the presence and cooperation of the respondent and to prevent any interference with the investigation or prosecution witnesses.

Impugned order dated 21.12.2022 [Chitra Ramakrishna]

65. The case of respondent Chitra Ramakrishna requires separate consideration. When the impugned order was passed, her bail application in the ED proceedings had been heard by the coordinate bench of this Court and was reserved for judgment. She had not, at that stage, been granted bail in the ED case. CBI had also specifically contended that her role was different from that of respondent Sanjay Pandey. The learned Special judge recorded and considered the said objection in the following terms:

> *"9.* ***On the other hand, Ld. Sr. PP for CBI vehemently opposed the bail application by submitting that the role attributed to accused/applicant Chitra Ramakirshnan in the instant FIR is entirely different from the role attributed to co-accused Sanjay Pandey, who was granted bail by the Hon'ble High Court vide aforementioned order dated 08.12.2022. It is further submitted that said order was passed on the bail application moved in a separate ED matter*** *ECIR/DLZO-I/28/2022* ***and CBI was not even party to said bail application and never got the opportunity to put forward its case before Hon'ble High Court regarding predicate***

offences of instant FIR. It is further submitted that the report filed by the CBI which finds mention in para 34 of said order, was filed in a quashing petition and not in the bail application and said quashing petition filed by co-accused Sanjay Pandey for quashing of instant FIR is still pending before the Hon'ble High Court.

10. ***I have given my thoughtful consideration to the rival contentions raised from both the sides and also carefully gone through the entire record.***

*14. As per instant FIR****, top officials of NSE including the applicant herein conspired with M/s iSec to cheat the NSE and its employees and in furtherance of this criminal conspiracy iSec was hired for illegal interception of the phone calls of NSE employees****. For said purpose, iSec was issued Agreement/work orders in the guise of Periodic Study of Cyber Vulnerabilities of NSE and same was done in contravention of the provisions of Telegraph Act as no permission was taken from competent authority as per provisions of Telegraph Act. Transcripts of these calls were provided by M/s iSec and received by the officials of NSE at the top level, which resulted in breach of confidentiality and privacy of the employees of NSE and caused wrongful gain of Rs. 4.54 crores to iSec as payment for this task and corresponding wrongful loss to NSE.*

*15****. As per the allegations, the applicant was directly connected with the illegal recording of telephone calls of NSE employees because the approvals for giving contract of Periodic Study of Cyber Vulnerabilities under the guise of which illegal tapping of phone calls of NSE Employees was done, was processed/granted by the applicant/accused in her capacity as Deputy Managing Director/Joint Managing Director/Managing Director of NSE during the period of offence between 2009-2017.***

*16. However, **in the light of the aforementioned observation made by the Hon'ble High Court regarding lack of essential ingredient of the predicate offences, this court is inclined to grant bail to the accused/applicant in the instant case. Mere fact that CBI was not a party to bail application of the co-accused moved before the Hon'ble High Court in said ED matter, cannot be a ground to urge before this court to take a different view with regard to alleged predicate offences. Undoubtedly, the observations contained in the aforementioned order are reflective of only the prima facie view taken by the Hon'ble High Court but, this court also at this stage is required to only take a prima facie view of the matter for consideration of bail application of the accused. Furthermore, the reply filed by the CBI in the quashing petition pending before the Hon'ble High Court was also taken into account by the Hon'ble High Court before passing the aforementioned order.***

*17**. Considering the fact that the Hon'ble High Court has already granted bail to the co-accused Sanjay Pandey in the connected ED matter, which in the light of Section 45 PMLA embodies far more stringent conditions for grant of bail, I find no reason to decline bail to the applicant in the present case.** As already noted above, all the offences other than predicate offences of the present FIR are bailable. In view thereof, accused is granted bail…" [Emphasis supplied]*

66. The aforesaid extracts are an answer to the contention that whether respondent Chitra Ramakrishna was granted bail solely on the basis of parity with respondent Sanjay Pandey in the ED's case or not. The learned Special judge expressly recorded CBI's objection that her role was different from that

of respondent Sanjay Pandey and the order thereafter sets out the substance of the allegations against her.

67. In particular, the learned Special judge noticed that the work orders issued to iSEC were allegedly processed or approved by respondent Chitra Ramakrishna while she was holding different senior positions at NSE between 2009 and 2017. The allegation that transcripts of the recorded calls were received by senior officials of NSE and that the arrangement caused a wrongful gain of ₹4.54 crores to iSEC and a corresponding wrongful loss to NSE was also recorded. Therefore, the factual role attributed to her was not omitted from consideration.

68. The learned Special judge did not proceed on the basis that the respective acts attributed to the two respondents were identical. The reliance placed upon the judgment dated 08.12.2022 was directed towards the common ingredients of the alleged predicate offences. The individual role of an accused and the essential ingredients of an offence are distinct considerations. Even where the acts attributed to two accused persons are different, a *prima facie* judicial assessment concerning the absence of an essential ingredient of the common offence may still remain relevant to both. The learned Special judge also clarified that the observations made in the concerned judgment were *prima facie* and that the consideration before her was similarly confined to the grant of bail.

69. Therefore, the impugned orders passed in both of their cases, cannot be read as having been passed without taking into account CBI's objections or the alleged factual role attributed respectively to both of them.

FINDINGS

70. The learned Special judge was not required, while deciding the applications for bail, to undertake a detailed evaluation of every document or record findings upon each ingredient of the alleged offences. Such an exercise would have travelled beyond the limited consideration permissible at the stage of bail and could have prejudiced the trial. What was required was an application of mind to the material circumstances bearing upon the continued custody of the respondents which is clear from the analysis taken above, was the case in both the impugned orders.

71. The submission advanced by the learned SPP appearing for CBI that the chargesheet filed one day after the impugned orders were passed now warrants an independent assessment cannot be sustained. The legality of the exercise of discretion on 21.12.2022 must be examined with reference to the material and the prosecution’s case placed before the learned Special judge on that date. The subsequent filing of the charge-sheet, including the alteration or addition of penal provisions, cannot retrospectively render the impugned orders perverse. The consequences of any offence subsequently added in the charge-sheet are matters to be dealt with by the competent court in accordance with law at the appropriate stage.

72. The decision in ***Manik Bhattacharya v. Ramesh Malik, 2022 SCC OnLine SC 1465*** also does not carry the matter further for CBI. That decision arose from protective directions operating in relation to action by a particular investigating agency and does not render an order passed in one proceeding binding upon another agency. The respondents do not claim immunity from investigation or lawful action by CBI. The limited question here was whether the learned Special judge independently applied the governing parameters while considering their applications for bail in the CBI case.

73. The objections now urged by CBI, that the CBI and ED proceedings are distinct, that CBI was not a party to the bail proceedings arising from the PMLA case, and that its status report had been filed in the connected quashing proceedings, are not being raised for the first time. The same objections were specifically advanced before the learned Special judge and stand recorded in the impugned orders. CBI has not identified any material circumstance, which placed before the learned Special judge, was omitted from consideration, nor has it demonstrated that the discretion exercised was vitiated by perversity, illegality or reliance upon an irrelevant consideration. A mere reiteration of the same objections in the present proceedings, without establishing any legally sustainable ground for interference with the grant of bail, cannot justify substitution of this Court's discretion for that exercised by the learned Special judge. The objections are, accordingly, devoid of merit and are liable to be rejected.

CONCLUSION

74. In view of the discussion above, this Court finds no ground that would warrant an interference by this Court in exercise of its inherent jurisdiction with the impugned orders dated 21.12.2022 passed by the learned Special judge [PC Act] [CBI], Rouse Avenue District Courts, New Delhi, in ***RC No. 2212022E0030-CBI/EO-III/New Delhi***.

75. Accordingly, the present petitions are dismissed and thereby, disposed of.

76. Pending application[s], if any, also stand[s] disposed of.

77. Interim order[s], if any, also stand[s] vacated.

78. It is clarified that the observations made in this judgment are confined to the adjudication of the present petitions. That the learned Trial Court shall proceed with the matter, uninfluenced by any *prima facie* observation

contained in the impugned orders dated 21.12.2022, in the judgment dated 08.12.2022 and in the present judgment.

79. A copy of this judgment be sent to the concerned learned Trial Court for necessary information, action and compliance.

80. This judgment be uploaded on the website *forthwith.*

MADHU JAIN
[JUDGE]

SEPTEMBER 23, 2026/PG