IN THE COURT OF VIKAS DHULL, SPECIAL JUDGE (PC ACT) (CBI)-23 (MPs/MLAs Cases) ROUSE AVENUE COURT COMPLEX, NEW DELHI

Case : CC No. 57/2019
CNR No. DLCT11-000283-2019

FIR NO. RC-02(A)/2006/ACU-VII
U/S. 13(1)(e) r/w 13(2) of PC Act, 1988
Branch: CBI,ACU-VII/New Delhi

27.05.2022

ORDER ON SENTENCE

1. Arguments on the point of sentence were heard on 26.05.2022.
2. It was submitted by Ld.SPP for CBI that the convict deserves the maximum punishment provided for the offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (**hereinafter referred to as the "PC Act, 1988"**). In support of his submission, Ld.SPP for CBI has submitted that convict has not got clean antecedents as he stands convicted in a previous case bearing CC No. 37/10, RC No.3(A)/04/ACU/IX/Delhi for the offence under Section 418/467/471 read with 120-B IPC and under Section 13(1)(d) read with 13(2) of PC Act, 1988 wherein he was sentenced to 10 years Rigorous Imprisonment and even the appeal preferred by the convict before the Hon'ble Supreme Court of India was dismissed and the convict has undergone the said sentence. It was further submitted that in the previous case also, convict was found guilty of having abused his official position for the pecuniary advantage being the Chief Minister of Haryana, by selecting teachers in the

Haryana Government in the JBT scale by replacing the list of meritorious candidates with those candidates, who had paid the bribe. It was further submitted that there are no chances of reformation of the convict as he has again been found guilty in the present case of having misused his official position i.e. of MLA/CM of Haryana, to acquire assets to the tune of Rs.2.81 Crores which were beyond his known source of income.

3. It was further submitted that even one more case lodged by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 is pending trial against the convict in this court where charge has been framed against the convict and matter is pending at the stage of prosecution evidence.
4. It was further submitted that no leniency should be shown to the convict in sentencing him as it will send a wrong message to the society that, people who are rich and powerful, will never be punished heavily and will be left off with minimum sentence.
5. It was further submitted that convict was the MLA/CM of Haryana from 1993 till 2005 and was expected to be the role model for the people of Haryana. People elect MLA so that the elected representative can work honestly for the welfare of the people of the constituency that he represents. However, in the present case, convict being a political leader and an elected representative, had belied the trust of the voters of his constituency by abusing his official position to generate assets for himself. Therefore, convict needs to be dealt with strictly and maximum punishment is required to be imposed upon him.

Accordingly, a prayer was made to inflict maximum punishment provided under the law to convict so that strong message goes to the society at large that such acts will not be tolerated and even if convict happens to be the Chief Minister, then also he would be given maximum punishment provided under law.

6. On the other hand, Ld.counsel for convict had prayed for taking a lenient view and for giving minimum sentence as provided under the law to the convict. In support of his submission, Ld.counsel for convict had submitted that convict is aged about 87 years and is suffering from various ailments. It was further submitted that convict has also filed on record an affidavit with regard to his disability and medical documents to show that he is suffering from various ailments like bronchial asthma, coronary artery disease, hypertension, diabetes, lower respiratory tract infection etc.

7. Secondly, it was submitted that convict has faced trial in the present case for around 12 years and this long delay in conducting the trial has caused great stress and agony to convict and, therefore, convict deserves to be treated with leniency by imposing minimum sentence. In support of his plea of granting minimum sentence, Ld.counsel for convict has relied upon the following judgments: (1) B.G.Goswami Vs. Delhi Admn. (1974) 3 SCC 85; 1973 SCC (Crl.) 796; (2) Ashok Kumar Vs. State (Delhi Admn.) (1980) 2 SCC 282; (3) Vishnu Nagnath Deshmukh Vs. State of Maharashtra (2001) 1 SCC 345; 2001 SCC (Crl.)150; (4) Surain Singh Vs. State of Punjab

(2009) 4 SCC 331; (2009) 2 SCC (Crl.) 286; (5) V.K.Verma Vs. CBI (2014) 3 SCC 485; 2014 XI AD (S.C.) 336; and (6) K.P.Singh Vs. State of NCT of Delhi (2015) 15 SCC 497; 2015 XI AD (S.C.) 27; and (7) Manoj and Ors. Vs. State of Madhya Pradesh Crl.Appeal Nos.248-250 of 2015 delivered by the Hon'ble Supreme Court of India.

8. In rebuttal, Ld.SPP for CBI had submitted that none of the judgments relied upon by the Ld.counsel for convict lays down a proposition that in case, convict has committed a serious offence under Section 13(1)(e) of the PC Act, 1988 by acquiring assets to the tune of Rs.2.81 Crores, which were beyond his known source of income, then minimum sentence can be granted having regard to the age of the convict.

9. It was further submitted that in all the judgments relied upon by Ld.counsel for convict, the minimum sentence or sentence undergone by the convict was awarded as the amount of bribe money was too small, the convict had lost his job or was of young age. However, none of the judgments relied upon by the Ld.counsel for convict are applicable to the facts of the present case as the amount of disproportionate assets proved in this case is running into several crores and there is no prospect of convict losing any job and none of the family members of the convict are dependent upon the convict for their livelihood.

10. It was further submitted that 60% disability of convict is on account of polio as per the certificate filed on record of Dr.Ram Manohar Lohia Hospital, New Delhi and other diseases like hypertension, diabetes, lower respiratory tract infection are

common ailments, from which even the young people are suffering in today's time. It was further submitted that in the previous case bearing CC No. 37/10, RC No.3(A)/04/ACU/IX/Delhi, the disability of the convict, his age and the ailments from which he was suffering did not persuade any of the courts including the Hon'ble Supreme Court of India to inflict reduced or minimum sentence upon the convict.

11. It was further submitted that there is no medical document filed on record to show that convict is suffering from any kind of serious ailment which is life threatening or which is of such nature that it will affect the health of the convict if he is incarcerated. Accordingly, it was again reiterated that maximum sentence as per law be imposed upon the convict alongwith fine.

12. I have considered the rival submissions and the aggravating and mitigating factors as well as the judgments relied upon by the convict and his medical record.

13. The judgments relied upon by the Ld.counsel for convict for giving minimum sentence delivered in **B.G.Goswami's case (supra), Ashok Kumar's case (supra), Vishnu Nagnath Deshmukh's case (supra), Surain Singh's case (supra), V.K.Verma's case (supra) and K.P.Singh's case (supra)** are not applicable to the facts of the present case as in the aforementioned judgments, sentence was reduced to the period already undergone or minimum sentence was awarded due to the fact of young age of convict, he having required to take care of his family and bribe amount being too small ranging from

Rs.10 to Rs.700/-.

14. Another judgment relied upon by the Ld.counsel for convict delivered by the Hon'ble Supreme Court of India in the matter of **Manoj and Ors.'s case (supra)** is also not applicable to the facts of the present case as in the said case, death penalty awarded to the appellants under Section 302 IPC was converted into Life Imprisonment, having regard to the young age of the appellants and their good conduct in the jail and their being chance of reformation.

15. In sentencing a convict, balance of aggravated and mitigating factors have to be taken into account. In the present case, the mitigating factors which have come on record is the fact of convict being aged about 87 years, his suffering from partial disability of 60% due to polio as per the disability certificate dated 25.04.2013 of Dr. Ram Manohar Lohia Hospital, New Delhi, his suffering from other ailments like hypertension, diabetes, coronary artery disease, lower respiratory tract infection etc. and lastly, the fact that convict has faced trial for around 12 years.

16. On the other hand, aggravating factors are the previous conviction of convict in case CC No. 37/10, RC No.3(A)/04/ACU/IX/Delhi wherein convict was held guilty for the offence under Section 418/467/ 471/120-B IPC and 13(1)(d) read with 13(2) of PC Act, 1988 and was accordingly sentenced to 10 years rigorous imprisonment for having abused his official position i.e. Chief Ministership of Haryana in the recruitment of JBT Teachers in the Haryana Government by

taking pecuniary advantage by replacing the list of meritorious candidates with another list and even the appeal filed by the convict before the Hon'ble Supreme Court of India was dismissed.

17. Secondly, Convict is also facing a trial before this court in **CT Case No.01/2020, ID No. 11/19, CNR No.DLCT11-000398-2019 titled as Assistant Director, DoE Vs. Om Prakash Chautala** for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 wherein charge has been framed and the matter is now pending at the stage of trial.

18. Another aggravating factor which goes against treating the convict with leniency is the factum of gravity of the offence. In the present case, convict after getting elected as MLA / Chief Minister of Haryana between the period from 1993 till 2005 had taken the oath to faithfully and conscientiously discharge his duties for the State and the people as per the Constitution of India, 1950. It is noted that convict being a public servant i.e. MLA/CM of Haryana between the period from 1993 till 2005, instead of working honestly in the public interest, had in fact worked to promote his self interest i.e. by acquiring assets for himself by abusing his official positions to the tune of 103% of his known source of income and the value of disproportionate assets so acquired is Rs.2,81,18,451/- (Rupess Two Crores Eighty One Lacs Eighteen Thousand Four Hundred and Fifty One only). In the light of aforementioned facts, the maxim **"'power corrupts; absolute power corrupts absolutely"** can be applied to the

case of convict.

19. Lastly, the factum of galloping rise in cases where misuse of official positions is done by public servants to acquire assets is another factor which weighs in the mind of this court against leniency in sentencing the convict so that a strong message is sent to the potential offenders that in case, they acquire assets abusing their official positions, then not only they will be punished heavily but even their properties so acquired shall be liable for confiscation.

20. Further, the 60% disability as per the certificate issued by Dr.Ram Manohar Lohia Hospital, New Delhi in 2013 is on account of polio and other ailments like hypertension, diabetes, bronchial asthma etc. are not life threatening and managable and there is no medical document brought on record to show that incarceration of the convict will lead to deterioration of his health. Further, the time taken of 12 years in conducting the trial was due to the fact of large number of witnesses, voluminous record, filing of miscellaneous applications by the convict and pandemic situation due to Covid-19. Therefore, it cannot be said that delay in trial was solely on account of prosecution. Therefore, on balancing aggravated and mitigating factors, it is apparent that aggravating factors far outweighs the mitigating factors and, therefore, convict deserves to be dealt with strictly while sentencing him.

21. In the light of aforesaid discussion, I am not inclined to accept the plea of Ld.counsel for convict for taking a lenient view by awarding minimum sentence. I am supported in my

reasoning against the leniency by the judgment of the **Hon'ble Supreme Court of India delivered in the matter of State of Madhya Pradesh Vs.Shambhu Dayal Nagar (2006) 8 SCC 693 wherein it was held as under:**

> "It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large scale corruption retards the national building activities and everyone has to suffer on that count. As has been aptly observed in Swatantar Singh v. State of Haryana reported in (1997) 4 SCC 14, corruption is corroding like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseably clouds around the conduct of the officer and gain notoriety much faster than the smoke."

22. The convict has committed an offence under Section 13(1)(e) of the PC Act, 1988 during the period from 1993 till 2006 and the said offence is punishable under Section 13(2) of PC Act, 1988. As per Section 13(2) of PC Act, 1988 (**existing prior to amendment in 2014**), minimum sentence was 01 Year and maximum sentence was 07 Years and Fine. In the facts and circumstances, having regard to the age of convict, disability and the various ailments from which convict is suffering (although none of them are serious and life threatening), I am not inclined to accept the plea of Ld.SPP for CBI for awarding maximum punishment. In the facts and circumstances, this

court is of the opinion that 04 Years Rigorous Imprisonment is just and reasonable to meet the ends of justice. **Accordingly, convict is sentenced to Rigorous Imprisonment of 04 Years.**

23. Now, I shall deal with the application of CBI filed under Section 452 Cr.P.C. praying for attachment / confiscation of properties of the convict.

24. Notice of the said application was issued to Ld.counsel for convict, who has filed a detailed reply.

25. It was submitted by Ld.SPP for CBI that convict has been found guilty for the offence under Section 13(1)(e) read with 13(2) of PC Act, 1988 for having acquired assets to the tune of Rs.2.81 Crores which were beyond his known source of income. Accordingly, it was prayed that assets of convict to the extent of disproportionate assets be confiscated.

26. On the other hand, it was submitted by the Ld.counsel for convict that as per Section 452 (1) of Cr.P.C., it is not mandatory for this court to confiscate the assets of the convict and a discretion has been given to this court. It was further submitted that even if this court exercises its discretion to confiscate the assets of the convict, then also as per Section 452 (4) of Cr.P.C., such order cannot be given effect to till the appeal filed by the convict is not disposed of. Accordingly, a prayer was made to pass appropriate orders.

27. During the course of arguments on the said application, this court had inquired from both the parties as to whether any asset of the present case has been disposed of by the convict or encumbered and in response to the same, it was jointly

submitted by Ld.SPP for CBI as well as by Ld.counsel for convict that only one property i.e. Plot No. 6, Pocket No. 11, Block-D, Sector-8, Rohini, having land area measuring 92 sq. mtr. (92.25 Sq.m) has been disposed of by the convict after taking due permission from the Ld.Predecessor of this court.

28. I have considered the rival submissions and have carefully perused the record.

29. The powers of this court to confiscate the properties of convict under Section 452 Cr.P.C. with regard to offence of disproportionate assets under the PC Act, 1988 **has been affirmed by the Hon'ble Supreme Court of India by the judgment delivered in Mirza Iqbal Hussain through Askari Begum Vs. State of Uttar Pradesh 1982 (3) SCC 516** wherein it was held as under:--

> "1. By a judgment dated February 16, 1976 the learned Special Judge, Deoria, convicted the appellant under Section 5(1)(e) of the Prevention of Corruption Act, 1947 on the charge that during the period of his office as a police constable, he was found in possession of property disproportionate to his known sources of income, for which he could not satisfactorily account. The learned Special Judge directed that the two fixed deposit receipts in the sum of rupees five thousand each and the cash amount of Rs. 5,200 which were seized from the house of the appellant and which formed the subject-matter of the charge under Section 5(1)(e) shall stand confiscated to the State. The appellant filed an appeal against the judgment of the Special Judge to the High Court of Allahabad but that appeal was dismissed. No point was raised in the High Court that the order of confiscation passed by the trial court was either without jurisdiction or was not called for on the facts of the case.
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> 2. In this appeal by special leave, the only point raised by Mr. Bana on behalf of the appellant is that the learned Special Judge had no jurisdiction to pass an order of confiscation. We see no substance in this contention.

Section 4(2) of the CrPC provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and "otherwise dealt with according to the provisions contained in the CrPC, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." It is clear from this provision that in so far as the offence under laws other that the Indian Penal Code are concerned, the provisions of the CrPC apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried. Therefore, what we have to ascertain is whether the CrPC confers the power of confiscation, and secondly, whether there is anything in the Prevention of Corruption Act which militates against the use of that power, either by reason of the fact that the latter Act contains a specific provision for confiscation or contains any provision inconsistent with the power of confiscation conferred by the CrPC. On the first of these questions, Section 452 of the Code provides by Sub-section (1), in so far as material, that if the trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of property by confiscation. This power would, therefore, be available to a Court trying an offence under the Prevention of Corruption Act unless that Act contains any specific or contrary provision on the subject- matter of confiscation. None of the provisions of the Prevention of Corruption Act provides for confiscation or prescribes the mode by which an order of confiscation may be passed. The Prevention of Corruption Act being totally silent on the question of confiscation, the Provisions of the CrPC would apply in their full force, with the result that the Court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of the provisions contained in Section 452 of the CrPC. The order of confiscation cannot, therefore, be held to be without jurisdiction.

3. If we were to accept the above submission of Mr. Bana, it would lead to startling results. If, for example, a person is convicted for taking a bribe under the Prevention of Corruption Act, he could always say that since he has already taken the bribe and the money which forms the subject-matter of the bribe belongs to him, no order of confiscation of that amount can be passed. A person who is found guilty of accepting the

bribe is not only liable to be convicted and sentenced for the offence of bribery, but the amount which he has taken by way of bribe is liable to be confiscated by reason of the powers of confiscation conferred by Section 452 of the CrPC to the extent that the said provisions apply.

4. There is equally no substance in Mr. Bana's contention that even assuming that the Special Judge had the power or the jurisdiction to pass the order of confiscation, he did not exercise his discretion properly in ordering the confiscation of the two fixed deposit receipts and the cash amount found in the house of the appellant. The appellant has been convicted under Section 5(1)(e) precisely for the reason that he was in possession of the two receipts and the aforesaid cash sum. It cannot then be said that the order of confiscation in regard to these amounts has not been properly passed or has been passed without any application of mind."

30. The aforementioned judgment was relied upon by the Hon'ble Supreme Court of India in a case of disproportionate assets reported as **State of Karnataka Vs. Selvi J.Jayalalitha & Ors., 2017 (6) SCC 263** wherein power of this court to confiscate assets of the convict under Section 452 Cr.P.C. was affirmed and the relevant paras are reproduced hereinbelow:--

"**163.** Section 22 of the Act also makes the provisions of the Code of Criminal Procedure, 1973 applicable to a proceeding in relation to an offence punishable thereunder, subject to certain modifications as mentioned therein. Here as well, the applicability of Section 452 of the Code otherwise empowering a criminal court to order for disposal of the property at the conclusion of the trial before it, has not been excluded.

564. In our comprehension, the course adopted by the Trial Court cannot be faulted with. To reiterate, in terms of Section 5(6) of the Act, it was authorised to exercise all powers and functions exercisable by a District Judge under the Ordinance. The offences at the trial were under Sections 13(1)(e), 13(2) of the Act, Sections 109 and 120B of the Indian Penal Code encompassed within paragraphs 4A and 5 of the Schedule to the Ordinance.

These offences were unimpeachably within the contours of the Act and triable by a special Judge thereunder. Having regard to the frame and content of the Act and the limited modifications to the provisions of the Code of Criminal Procedure, in their applicability as occasioned thereby and the authorisation of the special Judge trying the offences thereunder to exercise all the powers and functions invocable by a District Judge under the Ordinance, we are of the opinion that the order of confiscation/forfeiture of the properties standing in the name of six companies, as involved, made by the Trial Court is unexceptionable. In any view of the matter, with the peremptory termination of the criminal proceedings resultant on this pronouncement, the direction of the Trial Court towards confiscation/forfeiture of the attached property, as mentioned therein, is hereby restored and would be construed to be an order by this court as well. The decisions cited on behalf of the respondents on this issue, are distinguishable on facts and are of no avail to them.

565. In Mirza Iqbal Hussain through Askari Begum Vs. State of Uttar Pradesh, (1982) 3 SCC 516, two fixed deposit receipts and the cash amount of Rs.5200/- seized from the house of the appellant and proved to be the subject-matter of charge under Section 5(1)(e) of the 1947 Act, were ordered to be confiscated to the State. Responding to the plea of want of jurisdiction of the Special Court to order confiscation, this Court referring to Section 4(2) of Cr.P.C., held that in terms thereof, all offences under any law other than the Indian Penal Code have to be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiry, trial or otherwise dealing with such offences. It was observed that none of the provisions of the Prevention of Corruption Act provided for confiscation or prescribed the mode by which an order of confiscation could be passed and thus, it was ruled that the order of confiscation in the facts of the case could not be held to be de hors jurisdiction. The invocation of Section 452 of the Code, in absence of any provision in the Prevention of Corruption Act, excluding its operations to effect confiscation of the property involved in any offence thereunder, was thus affirmed."

31. Therefore, in the light of aforementioned judgments of the Hon'ble Supreme Court of India delivered in **Mirza Iqbal Hussain through Askari Begum' case (supra) and Selvi J.Jayalalitha's case (supra)**, this court has power under Section 452 Cr.P.C. to confiscate the assets of the convict with regard to offence under Section 13(1)(e) read with 13(2) of PC Act, 1988. The disproportionate assets acquired by the convict in the present case are to the tune of Rs.2.81 Crores. Therefore, this court can confiscate the assets of the convict to the extent of disproportionate assets. Accordingly, following properties of the convict are confiscated to the Government of India. The details of properties confiscated are as under: --

S.No.	**Description of Property**	**Value of Property (in Rs.)**
1.	Land at E-Block, Asola Farm, New Delhi, Khasra No. 1369 and 1370 with area measuring 13 Bigha 19 Bishwa. (i.e. 2.905 acres)	2,90,000/-(Purchase value of the land) (+) 1,47,42,908.06p. (Cost of Construction) = 1,50,32,908.06p.
2.	Flat No. B-601, Gauri Sadan, 5, Hailey Road, New Delhi having area measuring 2107 Sq. ft	43,02,961/-
3.	Flat No. P-1, The Haryana Jan Pratinidhi Co-operative Group Housing Society, Sector-28, Gurugram	50,00,000/-
4.	Plot No. 6-P in Sector-4, Mansa Devi Complex at Panchkula, Haryana having area measuring 846 sq. mtr.	Rs.5,23,494/-
	Total	**2,48,59,363.06p.**

The SP, CBI / IO is directed to inform the concerned Sub-Registrar / NDMC / HUDA regarding the confiscation of aforementioned properties to the Government of India.

32. There are no other immovable assets of the convict which can be confiscated as property bearing No. Plot No. 6, Pocket No. 11, Block-D, Sector-8, Rohini, having land area measuring 92 sq. mtr. (92.25 Sq.m) already stands sold by the convict and with regard to other immovable assets of the convict, their value is not known to this court. Further, there are no movable assets like bank deposits, FDRs which can be attached / confiscated. Therefore, balance disproportionate assets to the tune of Rs.32,59,087.94p. [Rs.2,81,18,451/- (minus) Rs.2,48,59,363.06p.] cannot be confiscated due to non-availability of assets. **However, this balance DA of Rs.32,59,087,94p. can be considered for fixing the fine.** I am supported in my reasoning by Section 16 of the PC Act, 1988 **(as it existed prior to amendment in the year 2018)** and the same reads as under:--

> **"16. Matters to be taken into consideration for fixing fine.**—Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily."

33. From Section 16 of PC Act, 1988, it is amply clear that

Court in fixing the fine with regard to offence under Section 13(1)(e) read with 13(2) of the PC Act, 1988 has to give due consideration to the pecuniary resources acquired by convict for which convict is unable to account satisfactorily.

34. In the present case, out of the total disproportionate assets of Rs.2.81 Crores, assets worth Rs. 2,48,59,363.06p. has been confiscated as discussed hereinabove and only the balance DA of Rs.32,59,087.94p. is required to be considered in fixing the amount of fine. **Therefore, this court while exercising its power under Section 16 of the PC Act, 1988 and having regard to the balance DA to the tune of Rs.32,59,087.94p., hereby impose a fine of Rs.50,00,000/- (Rupees Fifty Lacs only) upon the convict. Out of the said fine, Rs.5 Lacs shall be given to the CBI in defraying the expenses incurred in the prosecution / investigation. In the event of default in the payment of fine, convict shall further undergo Simple Imprisonment of 06 months.**

35. **With regard to benefit under Section 428 Cr.P.C,** it was submitted by the Ld.counsel for convict that period of custody undergone by the convict in CC No. 37/10, RC No.3(A)/04/ACU/IX/Delhi be also taken as custody in the present case for the purpose of giving the benefit of Section 428 Cr.P.C. In support of his submission, he has relied upon the judgment of the Hon'ble Supreme Court of India delivered in **State of Maharashtra and anr. Vs. Najakat Alia Mumbarak Ali (2001) 6 SCC 311.**

36. On the other hand, Ld.SPP for CBI has submitted that as

per Section 428 Cr.P.C., only such period during which convict was in custody during inquiry, investigation or trial in the present case, can be set off.

37. It was further submitted that in para 18 of the judgment of the Hon'ble Supreme Court of India delivered in **Najakat Alia Mumbarak Ali' case (supra)** relied upon by the Ld.counsel for convict, the same proposition has been upheld and the period of custody undergone by the convict in the earlier case, cannot be counted under Section 428 Cr.P.C. Accordingly, a prayer was made to reject the submission of Ld.counsel for convict.

38. I have considered the rival submissions and have carefully perused the judgment of the Hon'ble Supreme Court of India delivered in **Najakat Alia Mumbarak Ali' case (supra)**. In para 18 of the aforementioned judgment, it was held as follows:--

> **"18.** Reading Section 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

39. Therefore, in the light of aforementioned judgment and having regard to Section 428 Cr.P.C., the period of custody

undergone by convict in the present case whether at the stage of investigation, inquiry or trial is required to be set off under Section 428 Cr.P.C. and the period of imprisonment undergone by the convict in the earlier case bearing CC No. 37/10, RC No.3(A)/04/ACU/IX/Delhi when the convict was on bail in this case, cannot be set off as per Section 428 Cr.P.C. and as per the aforementioned judgment of the Hon'ble Supreme Court of India. Accordingly, the following period, regarding which there is a specific order of taking the convict into custody pursuant to withdrawal of his bail bonds and specific order regarding his release pursuant to submission of his fresh bail bond can be set off under Section 428 Cr.P.C. The period undergone by the convict is as under:--

(a)	18.03.2016 to 30.09.2016
(b)	20.07.2017 to 12.10.2017
(c)	09.11.2017 to 20.12.2017
(d)	27.03.2018 to 23.05.2018
(e)	13.07.2018 to 14.09.2018
(f)	07.12.2018 to 16.01.2019

40. **Therefore, benefit under Section 428 Cr.P.C. be given to the convict and the aforementioned period be set off from the sentence imposed by this court.**

41. A copy of judgment and a copy of order on sentence be supplied free of cost to the convict against receipt. **The Convict be taken into custody to serve the sentence as awarded by this court.**

42. A copy of order be sent to the SP, CBI, New Delhi for information and compliance.

43. File be consigned to record room.

Announced in the open court
Dated: 27.05.2022

(Vikas Dhull)
Special Judge (PC Act) (CBI)-23
(MPs/MLAs Cases) RADC
New Delhi