

**IN THE COURT OF SH. SANJEEV AGGARWAL,
SPECIAL JUDGE (PC ACT) (CBI)-02, ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

**1. Chitra Ramkrishna Vs. CBI
Bail No. 65/2022
CNR No. DLCT11-000156-2022**

**2. Anand Subramanian Vs. CBI
Bail No. 84/2022
CNR No. DLCT11-000214-2022**

**(FIR No. RC2162018A0011 (RC AC1 2018 A0011 dt. 28.05.2018)
U/s 120 B IPC r/w 13(1)(d) r/w. 13(2) PC Act 1988
and substantive offences thereof
CNR No. DLCT11-000236-2022)**

12.05.2022

ORDER

1. Vide this common order, I shall dispose off the first bail application u/S. 439 CrPC moved on behalf of accused Ms. Chitra Ramkrishna (**hereinafter referred to as A-1**) and second bail application u/S. 437/439 CrPC moved on behalf of accused Anand Subramanian (**hereinafter referred to as A-2**) for grant of regular bail.

2. Brief relevant facts which can be culled out from the charge sheet are as under :

16.1 RC AC1 2018 A0011 was registered u/s 120-B & 204 of IPC, sections 7, 12, 13(2) r/w 13(1)(d) PC Act, 1988 and section 66 I.T. Act, 2000 on 28.05.2018 by CBI, against Sanjay Gupta, Aman Kokrady, Ajay Narottam Shah, M/s OPG Securities Pvt. Ltd, Unknown officers/officials of Securities and Exchange Board of India (SEBI) & National Stock Exchange (NSE), Mumbai and other unknown persons, on the basis of source information. While investigation was underway, it was gathered that SEBI had passed an order dated 11.02.22 in the matter of

issues at NSE relating to appointment of Mr. Sh. Anand Subramanian as Chief Strategic Advisor ('CSA'), his Re-designation as 'Group Operating Officer and Advisor to MD' and Sharing of internal confidential information of NSE with unknown person by Ms. Chitra Ramkrishna. Further, CBI received a request from the Ministry of Finance, Govt. of India to investigate the issues arising out of SEBI Final Order dated 11.02.2022. Since the matter is linked with the ongoing investigation of CBI and the issues highlighted in the order of SEBI dated 11.02.2022 had a serious bearing on the integrity and functioning of the largest stock exchange of our country and in turn on the robustness/integrity of National Financial System, this issue was taken up for investigation immediately.

16.2.1 Investigation established that M/s National Stock Exchange of India Ltd. (NSEIL) is a recognized stock exchange of India and is also the first level Regulator. M/s National Stock Exchange of India Limited (NSEIL/ NSE) was incorporated in 1992 under the Companies Act, 1956. It was recognised as a stock exchange by SEBI in April 1993 as per the provisions of the Securities Contracts (Regulation) Act, 1956 and it commenced operations in 1994.

16.2.2 Investigation established that in the Memorandum & Articles of Association of NSEIL, it has been specifically mentioned that :

“A. THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE: 1.To facilitate, promote, assist, regulate and manage in the public interest, dealings in securities of all kinds (which shall include all securities defined as such under the Securities Contracts (Regulations) Act, 1956 and all other instruments of any kind including money market instruments) and to.....to support, develop, promote and maintain healthy market in the best interest of the investor and the general public and economy.....”.

Therefore, the officials of NSE perform public duty and

thus its officers and officials come within the purview of the definition of “Public Servant” as defined u/s 2(c) of the PC Act, 1988.

16.2.3 NSE has been held to be a “public authority” under RTI Act 2005 by the Hon’ble Delhi High Court in WPC No.4748/2007 (National Stock Exchange of India Limited Vs Central Information Commission & Others).NSE is a statutory body and a “State” within the meaning of Article 12 of the Constitution of India, as held by the Hon’ble Supreme Court in the matter of K.C. Sharma V/s Delhi Stock Exchange & others.

16.2.4 Investigation established that Ms. Chitra Ramkrishna was designated as Joint Managing Director (JMD) from 2009 till 31st March, 2013. During her tenure as Joint MD, NSE, co-location was conceptualized and implemented. She functioned as Managing Director & Chief Executive Officer (MD & CEO) from 1st April, 2013 till 2nd December, 2016. The accused Anand Subramanian was appointed as Chief Strategic Advisor to MD w.e.f. 01.04.2013 and subsequently was re-designated as Group Operating Officer & Advisor to MD on 01.04.2015, thereby placing him at par with job grade M13 that is equivalent to Group President, just next to MD & CEO. In the Board meeting held on 11.08.2015, substantial powers were delegated upon the accused. The organization structure of NSE during the relevant period reveals that a large number of departments / divisions including the business heads, CTO-Operations were reporting to the accused Anand Subramanian after his elevation as Group Operating Officer (GOO) and Advisor to MD. Thus, the accused Anand Subramanian was holding a very important position in NSE during the relevant period, was privy to sensitive data and was responsible for the day to day operations of the exchange.

16.2.5 Investigation revealed that vide order dated 30.04.2019, Shri S.K. Mohanty, the whole time member SEBI, has

held that both the accused persons alongwith others have violated the provisions of SEBI Act 1992, in the matter of dark fibre / leased line connectivity allowed to certain stock brokers by NSE.

- 16.2.6 Investigation established that the allocation of IP addresses and port was done by the Co-location support team of Business Development Unit headed by Ravi Varanasi who reported to the accused Chitra Ramkrishna during the period 01.04.2013 to 31.03.2015 and to both Ms. Chitra Ramkrishna and Anand Subramanian during the period 01.04.2015 to 21.10.2016. Investigation also established that both Chitra Ramkrishna and Anand Subramanian ran the exchange to serve their personal interests. Ms. Chitra Ramkrishna in connivance with Anand Subramanian, who did not have technical expertise, posted their favoured officials in critical positions of the exchange. Further, Anand Subramanian also used to take interest in the matter of co-location facility.
- 16.2.7 Investigation has established that Sh. Muralidharan Natarajan, the CTO of NSETech (a subsidiary of NSE), was responsible for putting in place the co-location architecture at NSE. He was reporting to Ms. Chitra Ramkrishna.
- 16.2.8 Investigation conducted so far has established that during the period 2010-15 (i.e. when the accused Chitra Ramkrishna was managing the affairs of NSE), OPG Securities had connected to the secondary POP server on 670 trading days in the Futures & Options segment. Investigation regarding allegations of preferential access granted to certain brokers by officials of NSE and undue gains made out of it, during the tenure of Chitra Ramkrishna and Anand Subramanian, is underway.
- 16.2.9 Investigation established that the accused Ms. Chitra Ramkrishna entered into criminal conspiracy with the

accused Sh. Anand Subramanian and in pursuance to the same, she illegally and arbitrarily appointed Sh. Anand Subramanian in the National Stock Exchange. In furtherance to the criminal conspiracy, Sh. Anand Subramanian was given disproportionate and arbitrary increase in remuneration from time to time. Further, in pursuance to the criminal conspiracy, Ms. Chitra Ramkrishna, erstwhile MD & CEO of NSE abused her official position and re-designated Sh. Anand Subramanian as Group Operating Officer and subsequently delegated substantial powers without making him KMP and without bringing the same to the notice and also without taking approval of Nomination and Remuneration Committee (NRC) of NSE.

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16.5.12 Investigation established that the issue of engagement of Sh. Anand Subramanian was examined by the NRC of the NSE during October 2016. Perusal of NRC report dated 22.11.2017 and NSE letter dated 14.09.2018 sent to SEBI, reveals that the NRC believed that the re-designation of Sh. Anand Subramanian, who lacked relevant experience, as Group Operating Officer by the then MD & CEO in 2015 coupled with such a high compensation, ought to have been approved by the NRC / Board. In the said Board meeting, Ms. Chitra Ramkrishna was firmly told regarding the opinion of the Board as to the unsuitability of Sh. Anand Subramanian to perform the assigned tasks and hence, he should step down immediately.

16.5.13 Investigation established that Ms. Chitra

Ramkrishna deliberately did not place the proposal relating to re-designation and compensation of Sh. Anand Subramanian before NRC, since she was aware that in case of scrutiny, the same would face resistance and also might be turned down. The motive for this approach was to get Sh. Anand Subramanian huge monetary and status benefit by circumventing the established and laid down process.

16.6 Investigation has established that Sh. Anand Subramanian had created an e-mail id ‘rigyajursama@outlook.com’ on 10.03.2013 and used the same to communicate with Ms. Chitra Ramkrishna to further their criminal conspiracy.

16.6.1 Investigation into allegations regarding leakage of data unauthorizedly from NSE established that Ms. Chitra Ramkrishna, the then MD & CEO of NSE was communicating with an external e-mail ID “rigyajursama@outlook.com” through her e-mail IDs. In this connection, a search was conducted at the premises of Sh. Anand Subramanian, the then Group Operating Officer & Advisor to MD of NSE. In his disclosure statement U/s 27 of Indian Evidence Act, he admitted having operated the said e-mail ID “rigyajursama@outlook.com” and accessed the said e-mail ID in the presence of independent witnesses. At the instance of Sh. Anand Subramanian and the disclosure statement made by him, incriminating e-mails were recovered.

16.6.2 Investigation has established that in furtherance to criminal conspiracy, Ms. Chitra Ramkrishna communicated with this external e-mail ID

rigyajursama@outlook.com and sought advice and guidance on official matters of NSE. To add value to the robustness of evidence collected on the issue, MLAT request to USA has been sent by CBI through the Central Authority, for collection of metadata and content data of the e-mail ID rigyajursama@outlook.com from M/s Microsoft Inc.

16.7 Thus, from the aforesaid facts and circumstances, based on the evidence collected during the course of investigation, it is established that Ms. Chitra Ramkrishna and Sh. Anand Subramanian entered into criminal conspiracy and in pursuance to the same, Ms. Chitra Ramkrishna abused her official position as JMD as well as MD of NSE to illegally and arbitrarily appoint Sh. Anand Subramanian as Chief Strategic Advisor to MD. In pursuance to the criminal conspiracy, Ms. Chitra Ramkrishna arbitrarily hiked the compensation of Sh. Anand Subramanian and re-designated him as Group Operating Officer without taking approval of NRC or Board. In pursuance to criminal conspiracy, Ms. Chitra Ramkrishna exercised undue influence on the concerned departments while sending replies to SNACO & SEBI. Thus, Ms. Chitra Ramkrishna and Sh. Anand Subramanian have committed offences punishable U/s 120-B IPC r/w 13 (1)(d) r/w 13 (2) PC Act. 1988 and substantive offences thereof. Investigation qua these allegations is complete, hence this chargesheet is being filed.

16.8 The circumstances in which Sh. Anand Subramanian was illegally and arbitrarily appointed and delegated substantial powers to run the exchange

bypassing the NRC and the Board, his role in postings of officials at sensitive positions, reveal a well planned conspiracy which is a vital aspect in the entire set of allegations. Further Investigation with regard to other allegations of FIR is underway and report U/s 173 CrPC will be filed on completion of investigation.

3. I have heard Sh. N. Hariharan, Ld. Senior Advocate along with Sh. Shivam Batra, Ld. Counsel for the accused Ms. Chitra Ramkrishna (A-1) and Sh. Arshdeep Singh along with Ms. Aakash Lodha, Ld. Counsel(s) for applicant / accused Anand Subramanian (A-2) and Sh. V. K. Pathak, Ld. PP for CBI.

4. The bail application on behalf of accused (A-1) has been filed on the following main grounds :

a) That the accused had joined the investigations on various occasions, as mentioned in para 3 of her application, despite that she was arrested on 06.03.2022 from the CBI office. Thereafter, she was remanded to police custody for 07 days and since then she is in JC.

b) It is further stated that the accused has been wrongly arrested in the present case. She is not even named in the FIR, as there are no direct allegations against the accused.

c) It is further stated that at the face value, the case of the CBI pertains to negligence in administration of NSE, which at the best is a civil wrong, but not a criminal offence and it is not the case of the CBI anyway that the accused had any *mens rea* towards commission of any crime. No such role has been attributed to the accused.

d) It is also indisputable that the accused had joined investigations on numerous dates with the CBI, both in Mumbai and Delhi and search was also conducted qua the applicant on 24.02.2022 and all the electronic devices, including laptop and mobile phones of the accused were seized and are presently in the custody and control of CBI.

e) It is further stated that the CBI had also carried out custodial interrogation of the accused. She is no longer required for further investigations. It is also stated that there are no specific allegations against the accused.

f) It is further stated that the case set up, till date against the accused is directly based on the proceedings conducted before SEBI are in relation to civil allegations and an appeal has already been filed against the order dated 30.04.2019 passed by SEBI, wherein the judgment has already been reserved by Hon'ble SAT and she is also in the process of filing an appeal against the order dated 11.02.2022 passed by SEBI, which appeal will be decided on merits.

g) It is further stated in the following relevant para(s) as under :

13. That it is the case of prosecution that between 2010 to 2014 original accused persons named in the FIR had abused the server architecture (tick-by-tick) of the National Stock Exchange (NSE), thereby enabling M/s. OPG Securities Pvt. Ltd. to log-in first to the server of the NSE and get the data split-second faster, wherein unfair advantage was given to M/s. OPG Securities Pvt. Ltd. it is further alleged that he said M/s. OPG Securities Pvt. Ltd. were permitted to connect to the backup servers which had very less load, and therefore, they were given

far better and faster access to the market feed. It is further alleged that the said accused persons had dishonestly and fraudulently induced the officials of SEBI with bribe money in order to get a favourable report from SEBI. It is further alleged that the NSE officials had provided trade data to accused Ajay Shah who, in turn, developed algo-trading software named “Chanakya”. It is further alleged that this software was sold to selected brokers who, in turn, benefited by exploiting the tick-by-tick architecture by using the said software. It is pertinent to note that none of these allegations have any connection, whatsoever, with the applicant herein.

14. That it is pertinent to note that the statements of the concerned persons, including the earlier Managing Director i.e. Sh. Ravi Narain, was recorded by SEBI in relation to the alleged irregularities which are a subject-matter of the present FIR. It is pertinent to note that the said Sh. Ravi Narain was the Managing Director at the relevant time when the co-location facility was introduced. In his statement, Sh. Ravi Narain had also submitted that the co-location was seen as a natural evolution of technology into the markets as had been happening elsewhere in the world. He also submitted that as the market evolved and grew, the technology would also require multi-cast to be introduced. He further submitted that equal and fair access was seen to be an outcome of insuring adequate capacity at all times as the market grew and ensured that no crowding would take place. He further submitted that the system to log-in

first was open to any member and, hence, it was understood to be a fair way to ensure equity amongst members.

15. That co-location and the corresponding infrastructure facilities were highly technical in nature and, therefore, there were different teams looking after different aspects, including technology, implementation, and operations. It is pertinent to note that from the statement of Sh. N. Muralidaran before SEBI, it is borne out that he was responsible for the conceptual design and implementation of co-location in collaboration with CTO, Business and Management Team. That he has also submitted why the TCP/IP was selected as the technology to be used, and further what steps were taken for the entire process to be fair and equitable. It is pertinent to note that Sh. N. Muralidaran has categorically submitted that, theoretically, propagation (transmission) delays inherently introduced by operating system, network, etc. do not guarantee the packet sent first may not be received by the recipient first. Therefore, Sh. N. Muralidaran had contended that, in the practical scenario, there was no guarantee of any undue advantage to any trading member. That he had further submitted that there was no visualization of any concern regarding one member getting advantage over other members through early login and therefore, the load balancer was not discussed. That, in any case, even as per the case of the CBI in its Remand Application dated 07.03.2022, the putting in place of the co-location system was the responsibility of Sh. N. Muralidaran, and the Applicant herein had no

direct concern with the same.

16. That none of the offences alleged are attributable or have any connection with the represent scope of investigation which has been expanded by the prosecution to include Mr. Anand Subramaniam. That much emphasis has been laid by the prosecution to the irregularities in appointing Mr. Anand Subramaniam, and thereafter, increasing his remuneration from time to time. It is pertinent to note that the appointment was done in consonance with the powers exercised by the Managing Director. Further, increase in the mandate of the work handles by Mr. Anand Subramaniam was approved by the Board of Directors vide various meeting which were duly recorded. Therefore, there was no question of any illegality in appointing a person as an advisor or group operating officer in a non-public / non-government institution like the NSE. The prosecution has miserably failed to adduce any criminality in the appointment and delegation of duties to Mr. Anand Subramaniam.

17. That much emphasis has been laid on alleged emails exchanged between the applicant nad the email ID rigyajursama@outlook.com. That even according to the prosecution, as submitted in their Reply dated 23.02.2022 / Remand Application dated 07.03.2022, it is alleged that information of NSE, including its organizational structure, dividend scenario, financial results, human resources policy and related issues, response to regulator, future projects etc. was shared with the above email ID from 2013 to 2016. That whereas, it is

the case of the prosecution that the said email ID was accessed by none other than Mr. Anand Subramaniam, who at that point of time, was already employed with the NSE and as such, already had access to all this information, the contention of the prosecution that sensitive information was leaked and shared with outsiders does not survive. It is further pertinent to note that these allegations were nowhere in the FIR, which was admitted registered in the year 2018, and were part of the separate SEBI proceedings.

18. That the CBI has not established any link or nexus between appointment Mr. Anand Subramaniam with sharing of emails and information by the Applicant to alleged commission of crimes in connection with the co-location system. That in absence of any such link or nexus, the former would have no bearing or correlation to the latter. That in the said backdrop, the continued custody of the Applicant in connection with the subject-matter FIR case is unwarranted and unjustified.

19. That, indisputably, the Applicant is not and was never, for the relevant purpose and period of subject-matter FIR, a “public servant” and as such, none of the provisions qua the provisions of the Prevention of Corruption Act, 1988, are attracted against the Applicant. That, save and except the said provisions, the other offences alleged are bailable in nature and, as such, on this ground itself, bail ought to be granted to the Applicant herein.

20. That even as per the nature of allegations, the case is primarily documentary and technical in nature. That the relevant documents, electronic and physical, have already been seized by the CBI and are in its custody. Further, qua the Applicant, the search and seizure has already been carried out on 24.02.2022, and no further recovery is sought against the Applicant. That, as such, there is no reason for continued custody of the Applicant in connection with the present case, since the same does not advance any cause of justice.

h) It is also stated that she was also confronted with various persons, as mentioned in para 22 of her application. It is also stated that she is not a flight risk nor threat to any witness nor there is any possibility of tampering with any evidence, therefore, she qualifies the triple test.

i) It is further stated that she is a single mother to a 24 years old daughter, who resides with her in Mumbai, Maharashtra. Further, she is the primary caretaker of her 85 years old mother, who suffers from various age related ailments, as such there is no possibility of her absconding.

Therefore, it is prayed that the accused (A-1) be released on regular bail.

5. Reply has been filed by CBI to the application of accused (A-1), in which the averments made in the bail application have been strongly refuted.

It is stated in para 2 of the parawise reply as under :

2. It is submitted that applicant is not FIR named accused is correct. However, her incriminating role merged during the course of investigation. Launch of co-location at NSE was a major policy decision therefore

the role of MD & CEO and senior functionaries has to be looked into. Investigation has revealed that the applicant was appointed as Joint MD in the year 2009 and continued so till 31st March, 2013, with the power of MD. Thereafter, she took over as MD and CEO on 1st April, 2013. It was during this period that co-location was started by NSE. Investigation with regard to her role and other allegations, is underway and is at a crucial stage. There is every possibility that, if granted bail, the accused / applicant may influence the witnesses and may tamper with evidence.

It is also stated in the reply that the accused was performing public duty and she was a public servant, as mentioned in Section 2(b) and 2(c) of the PC Act, 1988. It is also stated that NSE has been held to be a public authority under RTI Act 2005 by the Hon'ble High Court in WPC No. 4748/2007 (National Stock Exchange of India Limited Vs. Central Information Commission & Others).

Moreover, NSE is a statutory body and a State within the meaning of Article 12 of the Constitution of India, as held by the Hon'ble Supreme Court in order dated 1st April, 2005 in Appeal (Civil) 7055 of 2002 in the matter of K.C. Sharma Vs. Delhi Stock Exchange & Ors.

Thus officials of NSE are public servants in terms of Section 2(c)(viii) of the PC Act, 1988.

It is further stated in para 6(iv) as under :

The contentions of the applicant at para 7(d) of the application are denied. In this regard, it is submitted that launch of Co-location at NSE was a major policy decision wherein the role of MD & CEO and senior functionaries was decisive. Investigation has revealed that the applicant was appointed as Joint MD in the year 2009 and continued so till 31st March, 2013, with the

power of MD. Thereafter, she took over as MD and CEO on 1st April, 2013. It was during this period that co-location was started by NSE.

Investigation has also revealed that Sh. Muralidharan Natarajan, the CTO of NSETECH (a subsidiary of NSE), who was responsible for putting in place the co-location architecture at NSE was directly reporting to the applicant. Further, the co-location support team was reporting to Business Development Head, who in turn was reporting to the applicant.

Further in para 6(vii), it is stated as under :

The contentions of the applicant at para 7(i) of the application are vehemently denied. In this regard, it is submitted that investigation has revealed that Anand Subramanian was illegally and arbitrarily appointed as Chief Strategic Advisor to MD w.e.f. 01.04.2013 and subsequently was re-designated as Group Operating Officer & Advisor to MD on 01.04.2015 by the applicant. The organization structure of NSE during the relevant period reveals that a large number of departments / divisions including the business heads, CTO-Operations were reporting to Anand Subramanian after his elevation as GOO and Advisor to MD. Thus, Anand Subramanian wa holding a very important position in NSE during the relevant period, was privy to sensitive data and was responsible for the day to day operations of the exchange. The Business Development head (to whom the co-location support team reported to) reported to the applicant Chitra Ramakrishna during the relevant period.

Further in para 6(xi) i, ii & iii it is stated as under :

(i) In response to contentions of the applicant at para 7(m)(i) of the application, it is submitted that Chitra Ramakrishna was designated as Joint MD from 2009 till 31st March 2013. During her tenure as Joint MD, NSE, when she exercised all the powers of MD, the co-location was conceptualized and implemented. She functioned as MD & CEO from 1st April 2013 till 2nd December 2016 and was responsible for the day to day operations of the exchange during the relevant period.

(ii) The contentions of the applicant at para 7(m)(ii) of the application are completely false. In this regard, it is submitted that investigation has revealed that Sh. Muralidharan Natarajan, the CTO of NSETECH (a subsidiary of NSE), who was responsible for putting in place the co-location architecture at NSE was directly reporting to the applicant. Further, the co-location support team was reporting to Business Development Head, who was in turn reporting to the applicant.

(iii) the contentions of the applicant at para 7 (m)(iii) of the application are denied. The investigation conducted by CBI is independent and not limited to the enquiry conducted by SEBI.

It is further stated in para(s) 8, 9, 10, 13, 14 & 16 as under :

8. It is submitted that the present proceedings pertain to criminal investigation being conducted as per procedure established by law. The allegations are serious in nature. Investigation has revealed that the applicant by gross abuse of her official position, illegally and arbitrarily appointed Anand Subramanian, who did not have relevant experience, in NSE. It has also been revealed tha the applicant deliberately did not bring the matter of re-

designation of Anand Subramanian as Group Operating Officer and his remuneration before NRC (Nomination & Remuneration Committee) / Board of NSE, thus granting him huge financial benefits. Investigation has revealed that the applicant Chitra Ramakrishna through Anand Subramanian (who was supervising HR Head) posted her favourable officials at critical positions in NSE, including those manning the co-location facility.

9. The contentions of the applicant at para 11 of the application are denied. In this regard, it is submitted that though the applicant had joined physically the investigation, she was evasive and non-cooperative throughout. Investigation has revealed that the applicant had misused her official position and exercised undue influence to compromise the replies sent by NSE to the queries of SEBI and the secretarial auditor. This shows that the accused has no respect for the legal process and can go to any extent to frustrate the investigation. The accused is highly influential and there is every likelihood that she may influence the witnesses and tamper with evidence if bail is granted to her. Investigation is at crucial stage and analysis of digital data & examination of witnesses is underway.

10. Investigation has also revealed that NSE, headed by Ms. Chitra Ramakrishna, gave the trading data to M/s. Infotech Financial Services Pvt. Ltd. which was misused for developing algorithm for trading products for the securities market participants. This software was in turn sold to various trading members thereby giving them undue advantage.

13. further, NSE is the largest stock exchange in the

country performing functions in public interest. Appointing Anand Subramanian, an inexperienced person illegally, was decision of the applicant to serve her own interests. The manner in which the accused Anand subramanian ws illegally and arbitrarily appointed and delegated substantial powers to run the exchange, bypassing the NRC and the Board, his role in postings of officials at sensitive positions reveal a well knit conspiracy which is a vital aspect in the entire set of allegations.

14. The contentions of the applicant at para 17 & 18 of the application are denied. In this regard, it is submitted that sharing of emails with rigyajursama@outlook.com was part of criminal conspiracy hatched by applicant Ms. Chitra Ramakrishna and Anand Subramanian. The said email ID rigyajursama@outlook.com was used as a platform by the accused Anand Subramanian to criminally conspire with the applicant to fulfill their nefarious designs. Further investigation qua this issue is underway.

16. The contentions of the applicant at para 20 of the application are incorrect and hence denied. In this regard, it is submitted that investigation is at crucial stage and analysis of digital data & examination of witnesses is underway. Investigation has revealed that the applicant had misused her official position and exercised undue influence on officials of NSE to manipulate the replies sent to queries of SEBI and the secretarial auditor. This shows that the accused has no respect for the legal process and can go to any extent to frustrate the investigation.

It is further stated in paras (iii) and (iv) of the grounds for opposing the bail application as under :

(iii) That the case pertains to the allegations against senior officials of the NSE where undue gains have been made by trading members by abusing the co-location facility. Investigation into the role and responsibility of top officials in facilitating unfair access to the Co-location setup is underway. The nature and gravity of offence is quite severe having far reaching repercussions on financial stability. The petitioner was a high ranking official of NSE during the relevant period. Incriminating evidence have already come to fore against her. The consequences of granting bail will adversely affect the investigation.

(iv) That the examination of other witnesses is underway to unearth the conspiracy related to co-location set up and the role played by the applicant Ms. Chitra Ramakrishna therein. She was looking into the day to day affairs and the entire Co-location setup was implemented under during her tenure in NSE. There are apprehensions that she may sway the witnesses, if enlarged on bail.

It is further stated that the accused is a highly influential person, may temper with the evidence and may also hamper the investigations by absconding. Therefore, it is stated that the bail application of accused is liable to dismissed.

6. The bail application on behalf of accused (A-2) has been filed on the following main grounds :

a) It is stated that the accused has no role in the present FIR and after four years of registration of the FIR, he was summoned by the CBI for investigation in January 2022 till February 2022 and he had fully cooperated in the same, whereafter he was arrested on 24.02.2022, on

which date CBI also conducted a search and seizure at the residence of the accused and seized the electronic devices including laptop, I-pad and phone and some other files.

b) It is further stated that there is no question of tempering with the evidence. It is also stated that he was remanded to police custody on 25.02.2022 till 06.03.2022. It is also stated that he had filed regular bail application earlier, which was dismissed vide detailed order dated 24.03.2022.

c) It is also stated that he has not committed any crime and a false case has been foisted upon him. The investigating agency seems to have been influenced by media reports, which are only sensational in nature and they have proceeded on the basis of media reports.

d) It is further stated that the accused qualifies triple test, as he is a permanent resident of Chennai, having deep roots in the society and willing to surrender is passport.

e) It is further stated that he left his employment with NSE in the year 2016, therefore, there is no question of influencing the witnesses or tempering with the evidence. Merely because he was the CEO between 2013-2016 is baseless to falsely implicate him in the present case.

f) It is further stated that there is no likelihood of tempering or absconsion. It is also stated that the accused has a family consisting of his wife and two children aged 24 years and 18 years and also old parents / parents-in-law to look after.

g) It is further stated that for proper and effective preparation of the defence by accused and to ensure proper and fair trial, the accused deserves to be released on bail.

Therefore, it is prayed that the accused Anand Subramanian (A-2) be released on regular bail. Ld. Counsel for (A-2) has relied upon the following judgments in support of his contentions :

a) P. Chidambaram Vs. Directorate of Enforcement (2020) 13 Supreme Court Cases 791;

b) P. Chidambaram Vs. Central Bureau of Investigation (2020) 13 Supreme Court Cases 337.

7. Reply has been filed by the CBI to the application of accused (A-2), in which the averments made in the bail application have been strongly refuted.

It is stated in paras 8, 9, 15, 19, 20, 21 and 23 of the reply as under :

8. That investigation has also established that the allocation of IP addresses and port was done by the Co-location support team of Business Development Unit headed by Ravi Varanasi who reported to the co-accused Ms Chitra Ramakrishna during the period 01.04.2013 to 31.03.2015 and to both Ms. Chitra Ramakrishna and Anand Subramanian during the period 01.04.2015 to 21.10.2016. Investigation has also revealed that both accused Ms. Chitra Ramakrishna and Anand Subramanian ran the exchange to serve their personal interests. Ms. Chitra Ramakrishna in connivance with Anand Subramanian ,who did not have technical expertise, posted their favoured officials in critical positions of the exchange. Further, accused applicant Anand Subramanian also used to take interest in the matter of co-location facility.

9. That investigation conducted so far has revealed that during the period 2010-15 (i.e. when the co-accused Ms. Chitra Ramakrishna was managing the affairs of NSE), OPG Securities had connected to the secondary POP server on 670 trading days in the Futures & Options segment.

15. That the averments made in para 6 are false and

denied. It is submitted that the accused / applicant was examined and was found to be evasive and non-cooperative. Therefore, the accused applicant was arrested on 24.02.2022 for custodial interrogation.

19. That investigation has further has revealed that the allocation of IP addresses and port had a bearing on the way the data was accessed by the trading member from the data servers of NSE. The IPs allocation was done by the Co-location support team of Business Development Unit headed by Ravi Varanasi who reported to the accused Ms. Chitra Ramakrishna during the period 01.04.2013 to 31.03.2015, when Anand Subramanian was the Chief Strategic Advisor to the MD & CEO. Ms. Chitra Ramakrishna in connivance with Anand Subramanian posted their favoured officials at critical positions of the exchange.

20. That the FIR is also against unknown officers / officials of National Stock Exchange (NSE), Mumbai. The role of the NSE officials as to whether they extended favour to the trading members utilizing the services of co-location setup including M/s. OPG Securities is being looked into. Investigation regarding allegations of preferential access granted to certain brokers by officials of NSE and undue gains made out of it, during the tenure of Ms Chitra Ramakrishna and Anand Subramanian, is underway. Even though Multicast was introduced, the TBT data dissemination over TCP/IP continued till 2016.

21. That the averments made in para 17 and 18 are categorically denied. The allegations are serious in nature and are specifically attributed to him. The

criminal investigation is independent and is not limited to the enquiry conducted by SEBI. It is further submitted that during investigation the accused applicant has himself disclosed that he was operating and accessing the e-mail id '[rigyajursama@outlook.Com](mailto:rigyajursama@outlook.com)'. It was on his disclosure that the incriminating e-mails were recovered.

23. That the averments made in para 20 and 21 are also categorically denied. In this regard, it is also submitted that in furtherance to the criminal conspiracy the co-accused Ms. Chitra Ramakrishna, by gross abuse of her official position, illegally and arbitrarily appointed the accused applicant who did not have relevant experience, in NSE.

It is stated that the accused is involved in a serious economic offence by obtaining an illegal appointment in NSE having implications on the economic security of the national financial system. Therefore, it is stated that the bail application of accused is liable to dismissed.

8. I have gone through the rival contentions.

9. It has been held in the following judgment(s) that economic offence(s) are in itself a class of its own and they need to be viewed seriously and have to be considered as grave offences affecting the economy of the country as a whole, thereby posing serious threat to the financial health of the country. In this regard, it has been held in the following judgment(s) as under :

10. In the case of ***Rohit Tandon Vs. ED 2018 11 SC 46 (AIR 2017 SC 5309)***, it has been held as under :

21. *The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the Act of 2002.*

11. Further, in the case of *Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation (2013) 7 SCC 439*, it has been held as under :

15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

12. Further, in the case of *Nimmagadda Prasad Vs. CBI 2013 7 SC 466*, while relying upon the judgment of Hon'ble Supreme Court in *State of Gujrat Vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364*, it has been held as under :

26) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....”

13. Further, in the case of **Gautam Kundu Vs. The Enforcement Directorate CRM No. 8345 of 2019/MANU/WB/0348/2020**, it has been held as under :

It is submitted on behalf of the petitioner, since the petitioner has completed one half of the maximum period of imprisonment specified for the offence under the said Act 2002, the petitioner has preferred the instant application for bail under [Section 436A](#) of the Code of Criminal Procedure but the learned trial Judge was of the opinion that the case is an exceptional case which cannot be equated with the cases where the offenders involved in common phenomenon other than the economic offences and rejected prayer of the petitioner to release him on bail. It is argued that the provision of [Section 436A](#) of the Code relates to a maximum period for which an undertrial prisoner can be detained during investigation, inquiry or trial. It is also provided that in no case, an undertrial prisoner can be detained beyond the maximum period of imprisonment for which he can be convicted for the offence. Accordingly, it is urged that since the petitioner has been in custody for more than four and half years, his detention period is beyond one half of the maximum period as the maximum punishment provided for the offence under [Section 4](#) of the Act, 2002 is for a term of seven years and even the trial has not been initiated. The trial Judge while dealing with the application under [Section 436A](#) of Cr.P.C. has observed that there is a merit of further detention of further custody since the matter is very sensitive. Similar to that of 167(2) of the Code, [Section 436A](#) of the Code of Criminal Procedure provides that the learned Judge loses his jurisdiction to remand the under trial for custody after expiry of a period of one half of the maximum punishment and for such reasons the order rejecting the prayer for release of the accused petitioner has been assailed as per se illegal and in violation of [Section 436A](#) of Criminal Procedure Code.

XXXX XXXX XXXX XXXX

Accordingly, in the context of what has been discussed above, the prayer for release of the petitioner Gautam Kundu is refused considering the enormity of the crime and his involvement in many other cases relating to Rose Valley cheat fund scam case.

14. Further, in the case of **State of Bihar Vs. Amit Kumar MANU/SC/0515/2017 : (2017) 13 SCC 751**, it has been held as under :

...In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts.

Although there is no quarrel with respect to the legal

propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under [Article 21](#) of the Constitution. [Section 439](#) of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.

.....It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.[10] Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously.

15. No doubt the gravity of the offence and the role played by the accused as well as the nature of accusations and the punishment it entails as well as the magnitude of the offence and the length of the sentence prescribed for the offence are all important factors to be considered at the time of considering the bail application of accused. But at the same time, the magnitude of the allegations against the accused as well as the enormity of the allegations especially in case of economic offences which are considered as a class of their own have to be viewed differently.

16. It has been recently held by the Hon'ble Supreme Court in ***P. Chidambaram Vs. Directorate of Enforcement (Criminal Appeal No. 1831/2019) (Arising out of SLP (Criminal) No. 10493 of 2019 decided on 04.12.2019*** as under :

21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

(emphasis supplied)

However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

17. As held in the aforesaid judgment, bail is a rule and refusal is an exception, but at the same time, it has also been held therein that the under lining conclusion is irrespective of the nature and gravity of the charge, the precedent of another case will not be the basis for either grant or refusal of bail, though, it may have bearing on the principle, but ultimately the consideration will have to be on case to case basis. It has also been held in said judgment that the gravity of the offence will have to be gathered from the facts and circumstances arising in each case keeping in view the consequences that would befall on the society in case of financial irregularities. It has also been held that even economic offences would fall under the category of “**grave offence**”.

18. Ld. Counsel for the accused (A-1) has argued that the **tick-by-tick** technology was introduced in August 2009 when the present accused was only working as Joint Managing Director and one Ravi Narain was

the Managing Director of NSE at that time. Therefore, the accused has no role in introducing the said technology, rather he has argued that it was this accused, who introduced the multi-cast technology during her tenure, as the Managing Director of NSE, which is the most transparent version of the relevant technology.

19. He has further argued that vide Board Resolution dated 11.08.2015, substantial powers were delegated to the Group Operating Officer i.e. Anand Subramanian, and therefore, the increase of salary, perks and other powers given to the said accused were given as per the Board Resolution dated 11.08.2015 (**D-44, at page no. 2203 onwards**) and all these acts are presumed to be well within the knowledge of the Board of Directors and cannot be solely attributed to the Managing Director i.e. the present accused.

20. He has further argued that the total data involved in the present case is almost 400 TB (terabytes), therefore, the analysis of the same will take a long time. He has further argued that the investigation qua the present accused is complete. The accused was also sent to police custody for substantial period of time, as stated in the bail application of the accused and thereafter the investigation has been completed and the charge sheet has also been filed. He has also argued that she is a single female having a daughter and old mother to look after. Therefore, no useful purpose shall be served by keeping her behind the bars.

21. Regarding the accused (A-2), it is argued that this accused was appointed by the NSE and his pay and perks were increased taking into account his capabilities and performance and the substantial powers were delegated to him by the Board vide resolution dated 11.08.2015 (**D-44, at page no. 2207 onwards**). Therefore, the Board of Directors are presumed to have the knowledge regarding the pay hike given to the said

accused and the other substantial powers delegated to him in due course of official business and no conspiracy in this regard can be attributed between him and the co-accused Ms. Chitra Ramkrishna.

22. Regarding the aspect of “*Himalayan Yogi*” or creation of E-mail by the domain name rigyajursama@outlook.com., it is argued that it has not been shown by the prosecution at this stage that the same was created by the present accused, though, it is the case of the prosecution that this accused had provided the password during his interrogation and pursuant to the said disclosure statement, the said E-mail account was opened and certain E-mails were recovered / retrieved, which is false, as no such disclosure statement was given by the accused nor any password.

23. On the other hand, Ld. PP for CBI has vehemently opposed the bail application(s) filed by the accused persons and has argued that at the relevant time when the **tick-by-tick** technology was introduced, though accused (A-1) was the Joint MD, but she was looking after the affairs in the country including the introduction of the said technology in India, whereas one Ravi Narain, who was the MD at that time was looking after the international affairs. Therefore, the entire decision making with regard to the introduction of **tick-by-tick** technology rests upon her.

24. He has further argued that a fictitious E-mail account was made by the name of rigyajursama@outlook.com, so as to allow the access of the said E-mail to some unknown persons and to leak sensitive and secret data regarding the working of the NSE, on which aspect the investigations are still going on and the relevant information has been requested to the concerned country, where the servers by the said domain name are located through MLAT.

25. He has further argued that from the perusal of the E-mails,

(which are part of document D-120), shows that there was clear cut conspiracy between A-1 and A-2, which can be inferred from the reading of the said E-mails. He has further argued that the accused Anand Subramanian (A-2) was appointed as Chief Strategic Officer without taking any application form for the said post and the said application form was obtained post facto after his appointment and no particular post was mentioned in the said application form for which he had applied for (which is part of document D-5, page no. 238 onwards). Therefore, he submits that in view of the afore serious allegations against the accused persons, their bail applications are liable to be dismissed.

26. During arguments, it was pointed out by the IO that the investigations in the present co-location scam are going on five different aspects namely :

- i) *The role of brokers in co-location scam i.e. misusing of architecture of co-location ;*
- ii) *The role of one Ajay Narottam Shah, who took sensitive data from the NSE for research, whereafter he developed algorithm namely “Chanakya”;*
- iii) *Who decide at the relevant time, whether to go by **tick-by-tick** technology or **multi-cast** technology;*
- iv) *The role of NSE i.e. the role of accused Ms. Chitra Ramkrishna in illegal appointment of accused Anand Subramanian, giving him undue benefits and also sharing of sensitive information / data of NSE on fictional E-mail in the name of rigyajursama@outlook.com.*
- v) *The role of the Securities Exchange Board of India (SEBI) and NSE officials in this matter.*

27. As per the allegations mentioned in the charge sheet, the

investigations have established that the accused A-1 was known to A-2 prior to his engagement as Chief Strategic Advisor at NSE i.e. since 1999, as she had made payments from her bank accounts for purchase of property by A-2. Further A-1 had also allowed A-2 to live in her flat with his family at Chennai.

It is also stated in the charge sheet that though the contract agreement was signed by A-2 on 21.01.2013, but his application form to NSE had been signed on 01.04.2013 which reveals that the application form had been submitted subsequent to his appointment as a cover up exercise.

28. Further in the application form, the A-2 had not mentioned anything against the column "position applied for" and kept the same blank which is part of document D-5. The date of interview has also not been mentioned. The HR Head Sh. Chandrasekhar Mukherjee had stated that he was not aware about the exact designation of the post against which A-2 was appointed.

It has further come in the charge sheet that the investigations established that the previous experience of A-2 was not relevant to the position for which he was appointed, prior to joining NSE, A-2 was working at various positions mentioned at para no. 16.3.10 and when compared to other consultants recruited during the said relevant period the compensation and contract period offered to A-2 was disproportionately higher, which is also depicted in a table in para no. 16.3.11 of the charge sheet.

29. It is further stated that A-2 entered into criminal conspiracy with A-1 and in pursuance to the same arbitrarily enhanced the compensation of A-2 at frequent intervals without any reasonable basis by gross misuse of her official position. It is stated that the total emoluments which A-2 was getting lastly was Rs. 4.21 Crores for the period 2016-17

and the total gross amount received by A-2 from NSE during the period 01.04.2013 to 21.10.2016 was about Rs. 11,94,30,347/-.

30. Further as per chargesheet, there is no performance evaluation document available in the NSEIL and the same was carried out by A-2 and the internal notes for enhancement of salary of A-2 were always dictated by A-1 as per HR Head Chandrasekhar Mukherjee and the said enhancements were done without taking any inputs from the HR department and as per para 16.4.5 it is stated as under :

Investigation has established that the contract of Sh. Anand Subramanian was revised by Ms. Chitra Ramkrishna to five days only on paper, to illegally grant more compensation to Sh. Anand Subramanian. In this regard, e-mail dated 19.02.2015 (08:32 PM) from rigyajursama@outlook.com (operted by Sh. Anand Subramanian) to Ms. Chitra Ramkrishna has been collected during investigation. The extract of the said e-mail is as follows :

“..... Contract to revise to 5 day week only for paper and emoluments. 3 day will continue on routine with HO and rest at will.....”

31. It is further stated in the charge sheet that A-1 in conspiracy with A-2 by misusing her official position re-designated the post of A-2 as Group Operating Officer and Advisor to MD on 01.04.2015 without brining the same to the notice of NRC members and Board and thereafter, A-2 started attending the Board Meetings since 11.08.2015 and various functional heads were reporting to A-2 during the period 2015-16, whereas A-2 was directly reporting to A-1, who was the MD and CEO, despite the fact that as per the **Regulation 2(1)(i) of Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) Regulations, 2012** and **Section 178 of Companies Act 2013**, the A-2 was

to be designated as KMP i.e. “**Key Management Personnel**”, which was not done and the same was never brought to the notice of NRC members and the Board and ultimately the issue regarding the illegal appointment of A-2 was examined by NRC, who lacked relevant experience as Group Operating Officer and in the Board meeting and in the report dated 22.11.2017 of NRC, A-2 was directed to step down.

32. It is also stated in para 16.6 and 16.6.1 of the charge sheet as under :

16.6 Investigation has established that Sh. Anand Subramanian had created an e-mail id ‘rigyajursama@outlook.com’ on 10.03.2013 and used the same to communicate with Ms. Chitra Ramkrishna to further their criminal conspiracy.

16.6.1 Investigation into allegations regarding leakage of data unauthorizedly from NSE established that Ms. Chitra Ramkrishna, the then MD & CEO of NSE was communicating with an external e-mail ID “rigyajursama@outlook.com” through her e-mail IDs. In this connection, a search was conducted at the premises of Sh. Anand Subramanian, the then Group Operating Officer & Advisor to MD of NSE. In his disclosure statement U/s 27 of Indian Evidence Act, he admitted having operated the said e-mail ID “rigyajursama@outlook.com” and accessed the said e-mail ID in the presence of independent witnesses. At the instance of Sh. Anand Subramanian and the disclosure statement made by him, incriminating e-mails were recovered.

16.6.2 Investigation has established that in

furtherance to criminal conspiracy, Ms. Chitra Ramkrishna communicated with this external e-mail ID rigyajursama@outlook.com and sought advice and guidance on official matters of NSE. To add value to the robustness of evidence collected on the issue, MLAT request to USA has been sent by CBI through the Central Authority, for collection of metadata and content data of the e-mail ID rigyajursama@outlook.com from M/s Microsoft Inc.

33. Though both A-1 & A-2 have filed voluminous documents with regard to the SEBI orders, however, during the course of arguments, Ld. Counsels did not press those documents nor made any reference to those documents. In any case, this issue has already been dealt with while disposing off the earlier anticipatory bail application of the accused A-1 vide order dated 05.03.2022 as under :

“Regarding the contention of the Ld. Sr. Counsel(s) that an order dated 30.04.2019 was passed by Security Exchange Board of India (hereinafter referred to as SEBI) wherein certain observations were made against the applicant, while she was Managing Director of NSEIL which order was challenged vide Appeal no. 297/2019 before Hon'ble Securities Appellate Tribunal, Mumbai (SAT) and vide order dated 30.05.2019 the Hon'ble SAT has been pleased to stay the said order. In continuation of the same, it is also stated that on 11.02.2022, another order was passed by SEBI, wherein certain private conversations of the applicant have been quoted and mentioned, which have no bearing on the present case as well functioning of the applicant, the

applicant is taking legal recourse qua the said order.

In this regard, it would be pertinent to mention that the SEBI vide order dated 30.04.2019 had passed following directions in exercise of the powers conferred under section 19 of the SEBI Act, 1992 read sections 11, 11(4) & 11B of the SEBI Act, 1992 and Section 12A of Securities Contracts (Regulation) Act, 1956 read with Regulation 49 of SEBI (SECC) Regulations, 2012, against the present applicant, who was Noticee no. 3 therein and against her following penalty was imposed :

- a. shall disgorge 25% of the salary drawn for FY 2013-14, to the IPEF created by SEBI under Section 11 of the SEBI Act, through NSE, within a period of 45 days from the date of this order;**
- b. shall be prohibited from associating with a listed company or a Market Infrastructure Institution or any other market intermediary for a period of Five (5) years.**

The said order has been stayed by the Hon'ble SAT vide order dated 06.06.2019.

20. Thereafter, SEBI vide recent order dated 11.02.2022 had imposed penalty upon the applicant, who was Noticee No. 1 in the said proceedings initiated u/S. 11(1), 11(4), 11(4A), 11B(1), 11B(2) and 151 of the Securities and Exchange Board of India Act, 1992, Sections 12A(1), 12A(2) and 231 of the Securities Contracts (Regulation) Act, 1956, Regulation 49(c) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (Since Repealed) read with Rule 5 of Securities and Exchange Board of India

(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005. The penalty which was imposed by the SEBI against the applicant u/S. 15HB of SEBI Act, 1992 and Section 23A and 23H of SCRA, 1956 was Rs. 3 crore (Rupees three crore).

21. The main duty of the SEBI is to regulate the Indian Capital Markets, it monitors and regulates the stock markets and protects the interests of the investors by enforcing certain rules and regulations. No doubt SEBI has power to launch serious criminal proceedings under Section 24 of the SEBI Act, however, the scope of the proceedings before the SEBI being a market regulator is totally different from the scope and nature of the present criminal proceedings launched in the present RC / FIR. Though there be some overlapping, it is although a different matter all this while the SEBI has looked away with regard to launching criminal proceedings.

34. Further while disposing off the earlier bail application of the accused A-2 vide order dated 24.03.2022, the said issue pertaining to SEBI orders has been dealt with as under :

“Regarding the contention of the Ld. Counsel for the accused that an order dated 30.04.2019 was passed by Security Exchange Board of India (hereinafter referred to as SEBI) where the present accused was Noticee No. 4 and wherein certain observations were made against the applicant/accused, while dealing with the topic “Liability of Employees for PFUTP and SECC Regulations” qua the role of the present

accused, it was observed as under in para 8.4.7.7 :

“I have considered the allegations against Anand Subramanian, Ravi Apte and Umesh Jain. Anand Subramanian has contended that he was not involved in COLO matters directly or indirectly and was only taking care of the regular operations of the exchange and the regulatory side of the exchange. His case is that he was a part time consultant and he demitted office in October 2016).....”

Thereafter, he has relied upon another order of the SEBI dated 11.02.2022, wherein the present accused was Noticee No. 6, wherein qua the present accused it was observed as under :

“43.1 Noticee no. 6 has made Incorrect and misleading statement before SEBI on his appointment and selection in NSE. Noticee no. 6 then 'Group Operating Officer and Advisor to MD' ('GOO') on consultancy contract w.e.f. April 01, 2015 was in substance KMP under SECC Regulations, 2012.

43.1.1 The SCN-VI alleges that with reagrd to the joining at NSE, the Noticee in his statement dated April 11, 2018 before SEBI has, inter alia, stated that he applied directly to HR at NSE after getting leads from headhunter and went through a routine process interview with HR Head Shri Chandrasekhar Mukherjee and Noticee no. 1 the then Joint MD, individually and the offer was received from NSE. Upon examination of the matter it is noted that appointment of the Noticee no. 6 was approved by Noticee no. 1, then Joint MD vide internal note dated

January 18, 2013 and accordingly a letter of agreement dated January 18, 2013 was executed between NSE and the Noticee no. 6.”

19. Therefore, he has argued that in view of the observations made by SEBI which is the capital market regulator, it is clear that no criminality can be attributed to the accused, as he has no role to play in the day to day running of the National Stock Exchange and he was only an employee and not the decision maker and even the SEBI had given clean chit saying that he was not involved in co-location matters directly or indirectly and was only taking care of regular operations of the exchange at the regulatory side of the exchange.

20. It is pertinent to mention herein that the main duty of the SEBI is to regulate the Indian Capital Markets, it monitors and regulates the stock markets and protects the interests of the investors by enforcing certain rules and regulations. No doubt SEBI has power to launch criminal proceedings under Section 24 of the SEBI Act, however, the scope of the proceedings before the SEBI being a market regulator is totally different from the scope and nature of the present criminal proceedings launched in the present RC / FIR.”

In view of afore discussion, while discussing the earlier anticipatory / regular bail application(s) of A-1 & A-2 respectively mentioned above, the same needs no further discussion.

35. Though the charge sheet with regard to the aspect i.e. the role

of NSE i.e. the role of accused A-1 in illegal appointment of accused A-2, giving him undue benefits and also sharing of sensitive information / data of NSE on fictional E-mail in the name of rigyajursama@outlook.com. has already been filed i.e. the present chargesheet, but the true magnitude of the present co-location scam is still to be worked out by the investigating agency, as the same could have huge implications both national as well as international with regard to the image of NSE, which is one of the biggest derivative stock exchange in the world.

36. Regarding the argument that the present charge sheet has only been filed **u/S. 120B IPC r/w. 13(1)(d) r/w. 13(2) PC Act, 1988** and substantive offences thereof, which does not entail severe punishment and in any case Section 13(1)(d) of PC Act, 1988 has been removed / deleted vide **The Prevention of Corruption (Amendment) Act 2018 w.e.f. 26.07.2018**, since the said provision no longer exists in the statute book, as per the wisdom of the Legislature, therefore, this itself is ground for release on bail.

37. The said argument is without any substance, as the said provision was very much in force at the time of offence(s) in question, which pertains to the period 2009 till 2016. Further the FIR in this case was registered on 28.05.2018 and the Amended Act came into force **w.e.f. 26.07.2018** and the punishment prescribed u/S. 13(2) as per the prevailing Act was upto 10 years as also fine.

38. Regarding the argument that the accused persons were not public servant(s) at the relevant time, it has been mentioned in the charge sheet at para 16.2.1 to 16.2.3 and has been argued by the Ld. PP for CBI that the officials of NSE perform public duty and thus its officials come within the purview in the definition of “**public servant**” as defined **u/S. 2(c) of the PC Act 1988** and NSE is a statutory body and a “**State**” within

the meaning of Article 12 of the Constitution of India, as held by the Hon'ble Supreme Court in the matter of ***K. C. Sharma Vs. Delhi Stock Exchange and Ors.***

The arguments to the contrary by the Ld. Defence Counsel(s) that it is not so i.e. the accused persons are not public servant nor they perform any public duty is a matter which is left open to be decided at an appropriate stage, as at the present stage of deciding the present bail application(s), this Court cannot go into the merits of this aspect, lest it may prejudice the case of the prosecution / defence.

39. With regard to the triple test, though both A-1 and A-2 cannot be said to be at flight risk in view of the discussion above, however, since both of them were at pole position in NSE at the relevant time, where A-1 was the Joint MD/MD and A-2 was the Chief Strategic Officer / Group Operating Officer, therefore, the chances of their tempering with the evidence and influencing the witnesses at this stage cannot be ruled out. Therefore, both of them do not meet the triple test.

40. The present scam may also impact the investment scenario in the country viz a viz foreign institutional investors (FIIs), who are always looking for fair, transparent and clean stock exchange to trade with, the present case has shaken the financial conscious of every investor, whether retail, institutional or otherwise, which needs mending to restore confidence of public at large in the same.

41. From the afore discussion, it appears that accused A-1 *prima facie* seems to have been running the affairs of NSE akin to that of a private club; **singer writer, Nobel Laureate** Bob Dylan once said '**money doesn't talk, it swears**', which is a song of, 1964 song album "**It's Alright Ma I'm Only Bleeding**", means that money not only has influence, but it has great influence, even a perverse influence on people.

42. Financial world including The FIIs are waiting with bated breath for NSE to redeem itself, so that they can fly to this country for investment in droves, which is at present, a brilliant destination for investment.

With regard to affairs of NSE at the relevant time, it would not be out of place to observe herein that there comes a time in a lifetime of an institution, where it finds itself at crossroads, then it should take a path which is a right path to restore its glory, rather than burying the skeletons, which may later turn into Frankenstein monsters.

43. Therefore, considering the gravity as well as the seriousness, enormity and magnitude of the allegations against both the accused persons, as discussed above, no ground for their bail is made out at this stage. Both the above bail application(s) stand dismissed.

44. With these observations, the above bail application(s) moved on behalf of applicant / accused Chitra Ramkrishna (A-1) and Anand Subramanian (A-2) for grant of regular bail stand disposed off accordingly.

Nothing expressed hereinabove, shall have any bearing on the merits of the case.

**Announced in the open
Court on this 12th day of
May 2022.**

**(Sanjeev Aggarwal)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/12.05.2022**