HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 28.11.2024
Pronounced on: 20.12.2024

CRM(M) No. 450/2022
CrlM No. 1283/2022, 1284/2022

Raj Singh Gehlot …..Appellant(s)/Petitioner(s)
S/o Late Sh. Nihal Singh R/o A-5,
May Fair Garden, New Delhi-110016

Through: Mr. Tanveer A. Mir, Advocate with
Mr. Vaibhav Suri, Advocate &
Mr. Arfat Rashid Lone, Advocate.

vs

The Anti-Corruption Bureau, (Central Kashmir) Home Department ….. Respondent(s)
At Anti Corruption bureau Headquarters
Peer Bagh, Srinagar, Kashmir (J&K)
Also at Anti Corruption Bureau
Headquarters Behind New Secretariat,
Jammu Tawi (J&K)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Nadia Abdullah, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The petitioner in the instant petition has invoked the inherent power of this Court saved under Section 482 Cr. P.C. for quashing FIR No. 16/2019 dated 29.07.2019 registered with Police Station, Anti Corruption Bureau, Central Kashmir (for short ABC) for offences under Section 5(1) (d), 5 (2) of the J&K Prevention of Corruption Act read with Section 120-B RPC.

2. **<u>Factual matrix:-</u>**

i. The petitioner herein states to be a qualified chartered accountant and also a law graduate besides promoter and director of the company, namely, M/s Ambiance Towers Private Limited (for short 'ATPL') established in the year 1986 by the petitioner and involved in developing premium residential apartments and commercial properties in South Delhi, having successfully executed more than 150 projects in and around Delhi and Gurgaon.

ii. The ATPL is stated to have purchased a commercial freehold plot of land measuring 4106.91 sq. mtrs. located at 2B2 Twin District Center, Sector-10, Rohini, Delhi in an open auction held on 07.12.2006 by Delhi Development Authority (for short DDA) by submitting the highest bid of Rs. 120.52 crore whereupon the DDA executed a conveyance deed on 23.09.2008.

iii. It is stated that the ATPL decided to develop a Shopping Cum Office Complex (for short "the Project") on the said plot of land and as such, obtained building plan from the DDA vide sanction No. F-13 (281) 08/Bldg. Dated 10.05.32010 after obtaining various requisite permissions and clearances from the concerned authorities, whereupon the construction and development of a Shopping Mall (for short "the Mall") comprising of three level basements for service and parking and 361738 sq ft. of leasable area on ten floors (with ground floor to nine floors) got commenced and completed in the year 2010 uptill 2015 and Occupancy Certificate/Completion Certificate was consequently applied for by the ATPL and issued by the DDA vide No. C.13(281)2008/Bldg./16 dated 17.03.2016.

iv. An amount of Rs. 315 crore is stated to have been incurred on the cost of acquisition, construction and development of the project, which came to be financed by way of promoter contribution of Rs. 165 crore and term loan of Rs. 150 crore sanctioned by UCO Bank, Central Bank of India and Small Industries Development Bank of India (for short "SIDBI").

v. It is stated that during the course of construction of the project, one **Future Group** agreed to take on lease the entire area of 3,61,738 sq. ft. from ground floor to ninth floor in the Mall on a monthly rent of Rs. 103 per sq. ft. per month, however, before operationalization of the leased area by the said Future Group, HDFC Bank Ltd. expressed an interest and desired to take on lease an area of 1,35,615 sq. ft. from fifth floor to eighth floor of the Mall as a consequence whereof the ATPL took a considered decision to lease out the space to HDFC Bank Ltd., which decision was driven by commercial reasons, such as, longer tenure proposed by the HDFC Bank of being 25 years, consistency of monthly rental, long term association and most importantly rental security, in that, bank being a more secured tenant than a retail outlet.

The said decision is stated to have been taken by the ATPL regardless of the fact that the offer of HDFC Bank Ltd. qua fifth to eighth floors in the Mall was Rs. 45.59 per sq. ft. per month which was considerably less than the already agreed rent of Rs. 103 per sq. ft. per month offered by the Future Group.

vi. It is being stated that the HDFC Bank issued a letter of intent dated 01.08.2014 for taking on lease 135615 sq. ft. of area qua fifth to eighth floor in the Mall at the rate of 45.59 per sq. ft. per month, whereas the Future Group agreed to take on lease 174950 sq. ft of area in the Mall qua the ground floor to fourth floor in terms of an unregistered lease agreement dated 22.11.2013.

vii. It is stated that an area measuring 51173 sq. ft. left out on the ninth floor came to be leased out by the ATPL to one **M/s Sindhu Trade Links Pvt. Ltd.** on rent basis at the rate of Rs. 92 per sq. ft. per month in terms of an unregistered lease agreement dated 17.11.2014.

viii. It is being next stated that the ATPL approached various banks for sanctioning of Lease Rental Discounting Loan (for short 'LRD Loan') by way of discounting of term loan and discounting of future lease rental as also other receivables of the Mall in terms of policy framed by the banks as per guidelines of the Reserve Bank of India in respect of said type of loans and the Punjab Housing Finance Ltd. (for short PNB HFL) as also State Bank of India (SBI) after inspection and verification of documents sanctioned LRD loan of Rs. 50 crore vide sanction letter dated 23.01.2025 and Rs. 100 crore vide sanction letter dated 03.03.2015 respectively in favour of ATPL and the ATPL after execution of the loan documents of the SBI and PNB HFL, obtained disbursement of Rs. 150 crores of LRD loan for the Mall which was utilized to pay for the outstanding balance in the project term loan account of Rs. 150 crore sanctioned and disbursed by UCO Bank, Central Bank of India and SIDBI for construction and development of the Mall.

ix. It is being stated that the EMI's in the project loan of the above said banks being UCO Bank, Central Bank of India and SIDBI came to be regularly paid by the ATPL and the loan accounts of all said banks were standard and performing.

x. It is being next stated that the SBI had evaluated the eligibility of ATPL for LRD loan at Rs. 250 crores on the basis of future lease rent of the Mall for a period of nine years, but later on the State Bank of Hyderabad (SBH) assessed the eligibility of the ATPL for such LRD loan at Rs. 300 crores on the basis of future lease rent of the Mall for a period of 12 years and sanctioned part of LRD loan of Rs. 50 crores vide sanction letter dated 13.06.2015. Besides, Punjab and Sind Bank is stated to have also assessed the eligibility of ATPL for Rs. 300 crores for LRD loan and consequently sanctioned Rs. 100 crores vide sanction letter dated 13.08.2014.

Following is the breakup given by the petitioner herein qua the requested LRD loan of Rs. 300 crores and sanctioned by the various banks:

- State Bank of India (SBI) Rs. 100 Cr.
- PNB Housing Finance Ltd. (PNB HFL) Rs. 50 Cr.
- State Bank of Hyderabad (SBH) Rs. 50 Cr.
- Punjab and Sind Bank (P&SB) Rs. 100 Cr.

xi. It is being next stated that in the process of finding a suitable banking partner for the LRD loan of Rs. 300 crores, ATPL had also approached the J&K Bank Ltd. for sanctioning part of LRD loan of Rs. 300 crores and the said bank had expressed its willingness to sanction entire LRD loan of Rs. 300 crores and ATPL with a view to deal with one bank instead of multiple banks for the purpose of availing LRD loan, filed an application before the J&K Bank Ltd. on 28.11.2015 for sanction of entire LRD loan of Rs. 300 crores by way of discounting the 12 years lease rental and other receivables from the leased space in the Mall, in response to which the J&K Bank sanctioned LRD loan of Rs. 258 crores as against the demand loan of Rs. 300 crores, which the ATPL did not avail and instead again sought the LRD loan of Rs. 300 crores and requested the J&K Bank to review its decision and to sanction demanded loan of Rs. 300 crores, whereupon the J&K Bank Ltd. after conducting fresh evaluation of the loan proposal of the ATPL sanctioned the LRD loan of Rs. 300 crores vide sanction letter dated 02.02.2016, which loan is stated to have been sanctioned subject to multiple conditions including that the ATPL will provide copies of registered lease deeds to the bank before disbursement, in response to which the ATPL stated that in terms of above proposal dated 28.11.2015, the loan has to be disbursed on the basis of unregistered lease deeds only as was earlier agreed by SBI and PNB HFL, in response to which the J&K Bank Ltd. vide sanction letter dated 19.03.2016 agreed to the said request of ATPL and permitted it to submit registered sale deeds within a period of 120 days of the disbursement of LRD loan of 300 crores. In respect of another condition incorporated by the J&K Bank in the sanction letter dated 02.02.2016, the J&K Bank is stated to have also provided that the ATPL had to keep the total peak exposure of J&K Bank in Ambience Group to Rs. 650 crores and to bring it down to Rs. 625 crores initially and subsequently to Rs. 600 crores and the ATPL in compliance to the said condition paid back project loan of Rs. 150 crores granted by the J&K Bank for its Panipat Project from its own sources in order to comply with the said condition incorporated in letter dated 02.02.2016.

xii. It is being further stated that the ATPL duly complied with all the conditions of sanction letter dated 02.02.2016 including the execution of all other requisite loan documents, whereafter the J&K Bank disbursed the first tranche of Rs. 142.38 crores on 30.03.2016 which was utilized by ATPL to pay for the outstanding balance of LRD loan of SBI and PNB HFL amounting to Rs. 96.21 crores and Rs. 46.14 crores respectively, besides the mortgage of the Shopping Cum Office Complex at 2B2, Sector 10, Twin District Centre, Rohini, Delhi was completed by the ATPL out of the remaining amount of first tranche, whereafter the J&K Bank Ltd. disbursed the second tranche of Rs. 157.62 crores to the ATPL on 31.03.2016 for payment of unsecured loan of other banks taken by ATPL for construction and development of the Mall and for other purposes.

xiii. It is being next stated that the ATPL has paid and is regularly paying the EMI's in the LRD loan of J&K Bank and the said account is Performing Asset in terms of norms and guidelines of J&K Bank and Reserve Bank of India since the date of its sanction and disbursement and has neither caused nor is causing pecuniary or notional loss to the bank in any manner.

xiv. It is being further stated that the HDFC bank in order to meet its requirements of additional space approached the ATPL to lease out 51173 sq. ft. of space lying vacant on the 9th floor, whereupon the ATPL requested M/s Sindhu Trade Links, who had by that time not operationalised the area obtained by it on the ninth floor, to shift its lease from ninth floor to terrace floor and in atrium of the Mall for setting up of its food court and accordingly M/s Sindhu Trade Links Ltd. agreed to the proposal, however, later on because of non-operationalization of the said alternate space provided to M/s Sindhu Trade Links Ltd., the lease deed signed and executed by the ATPL with M/s Sindhu Trade Links Ltd. got terminated on 01.03.2018, whereupon in terms of registered lease agreement dated 28.06.2016, 4^{th} floors to 9^{th} floor of the Mall came to be leased out to the HDFC Bank at the rate of 45.59 per sq. ft. per month with a condition to renew the same after another five years.

xv. It is being next stated that the Future Group in order to ease out the burden of rent of initial period of its opening of the retail outlets, namely, 'Big Bazaar' and 'Central' requested the ATPL to bifurcate the agreed lease rent of its spaces into a fixed lease rent of Rs. 57.20 per sq. ft. per month as Minimum Guaranteed Rent and a percentage of Net Sales Value whichever was higher as per practice followed in other Malls and consequently the ATPL agreed to link the rentals of M/s Future Group with net turnover as business prudence and consequently executed two separate lease deeds in favour of M/s Future Retail Ltd. for "Big Bazaar" and in favour of M/s Future Lifestyle Fashion Ltd. for Central Brand with minimum guaranteed return of Rs. 57.20 per sq. ft. linked with percentage of sale/turnover. The said exercise is stated to have been a normal market practice to lease out rental spaces in commercial complexes to fix the rate of rent payable for the space on per sq. ft. on monthly basis at the time of signing the preliminary agreement and then to work out and agree on the percentage of turnover with Minimum Monthly Guarantee (MMG) whichever is higher in such manner that over the period of lease the overall agreed rent is realized.

xvi. It is being also stated that the EMI's of interest and instalment of the sanctioned LRD loan of Rs. 300 crores availed by the ATPL from J&K Bank were and are being paid in terms of sanction letter of the Bank and the said loan account is **Standard and Performing Asset** in terms of norms and guidelines issued by the RBI.

xvii. It is being next stated that the ATPL received a notice from Anti Corruption Bureau (ACB), Jammu to attend its office on 01.07.2019, whereupon the petitioner herein attended the said office on 01.07.2019, on which date his statement came to be recorded over three days, whereupon for the reasons best known to ACB, the impugned FIR came to be got registered against the ATPL and its promoters and directors.

xviii. It is being next stated that on account of registration of the impugned FIR, ATPL vide its letters dated 03.08.2019, 17.09.2019, 23.09.2019 and 27.09.2019 requested the J&K Bank to allow pre-payment of outstanding balance in the LRD loan account of Rs. 300 crores without levying the prepayment penalty/penal interest, which request, however, came to be rejected by the Bank although, allowed the prepayment vide its letter dated 07.11.2019.

xix. It is being next stated that the J&K Bank on the instructions of ACB, Jammu got conducted a forensic audit through an independent chartered accountant firm in respect of LRD loan availed by the ATPL, whereupon conducting of said forensic audit, no fraud and/or diversion of funds out of the LRD loan amount of Rs. 300 crores or from ATPL came to be reported by the forensic auditor in its report dated 22.08.2019.

xx. It is being next stated that in the month of January, 2021, the ATPL executed lease agreements with Reliance Projects and Property Management Services Ltd. for the premises leased out to Future Retail Limited and Future Fashion Lifestyle Limited, which new agreements had better rentals of Rs. 64.35 per sq. ft. instead of Rs. 57.20 per sq. ft. per month executed with Future Group and in respect of the said new agreement/arrangement, the J&K Bank also issued no objection certificate dated 26.03.2021 to ATPL recognizing the execution of new lease agreements with Reliance Projects and Property Services Limited.

3. The petitioner herein has challenged the impugned FIR in the instant petition on the following grounds:

I. ***BECAUSE*** *the allegations in the Impugned FIR, even if taken at face value and assumed to be correct in their entirety, do not disclose the commission of the offences under Section 5(1)(d) r/w 5(2) of J&K PC Act r/w Section 120-B of RPC, against the Petitioner. The entire case of the prosecution in the impugned FIR either revolves around the innocuous anomalies in the sanctioning of the Loan by J&K Bank to the Company ATPL or seeks to question the business model adopted by the Company ATPL to run a mall. The FIR nowhere even remotely suggests that if any undue loss was caused to the J&K Bank or for that manner any undue gain was received by the Company ATPL. Rather, the loan account of the Company ATPL since inception has been a healthy and a performing asset for the Bank. The successful servicing of the loan account by the Company ATPL after commencement of business operations in the mall most evidently shows that no undue favour or benefit was handed out to the Company ATPL and instead the sanction of loan was based on cogent and reasonable financials proposed and shown by the Company ATPL at the time of sanction. The contents of the impugned FIR except for making vague allegations against the Company ATPL and its promoters and directors, does not disclose or attract any criminal offence.*

II. ***BECAUSE*** *the very registration of the Impugned FIR is actuated with mala fide and contrary to the findings of a forensic audit by an independent chartered accountant appointed by J&K Bank, at the instance of the ACB CK, which exonerated the Petitioner and found that there was no fraud and/or diversion of funds in respect of the LRD Loan.*

Allegations qua increase in the sanctioned loan amount i.e. from Rs. 258 crores to Rs. 300 crores.

III. ***BECAUSE*** *the allegation in the FIR qua the alleged increase in the sanctioned loan amount is concerned, the same is totally unsubstantiated and lacks merit. It is submitted that the it is an admitted case that J&K Bank had initially sanctioned a loan amount of Rs. 258 Crores against the proposal of Rs. 300 Crores vide sanction letter dated 28.12.2015. It is pertinent to mention that J&K Bank had unilaterally without giving any just cause* *or reason sanctioned only an amount of Rs. 258 Crores against the proposal of Rs. 300 Crores. The Company Ambience Towers Private Limited (ATPL) immediately thereupon vide letter dated 30.12.2015 had sought for modification of the sanctioned loan terms and prayed for sanction of Rs. 300 Crores as originally proposed. It is submitted that in the letter dated 30.12.2015 the Company had not only provided calculations and cogent reasons for showcasing their eligibility to avail a loan of Rs. 310 Corers but had also pointed out in clear terms that the amount of Rs. 258 Crores computed by the Bank suffers from an error as the Bank had failed to consider the quantum of security deposit being offered by the Company. It is submitted that the Company along-with its letter had even annexed a calculation sheet showing the correct financials and justification for the ask of Rs. 310 Crores. It is submitted that the Bank after the receipt of the letter dated 30.12.2015 had again carried out an exercise to scrutinise the loan proposal of the Company and upon fresh evaluation, the Bank was convinced about the eligibility of the Company to obtain a loan of Rs. 300 Crores. Accordingly, fresh sanction letter dated 02.02.2016 was issued by the Bank with modified terms of sanction. It is submitted that the allegations in the FIR that increase in the sanctioned loan amount was allegedly on account of a well-knit conspiracy between the Petitioner along-with other directors of the Company ATPL and unknown officials of the Bank is absolutely false and bereft of merit and the same is established from the fact that despite carrying out preliminary enquiry as mentioned in the FIR itself, the agency was unable to point out to any delinquent officer or for that matter any exchange of money between the Petitioner and the alleged officials of the Bank. On the other hand, the material placed on record in nature of communication exchanged between the Company and the Bank prior to the issuance of final sanction letter dated 02.02.2016 clearly brings out the reason and the cause for increase in the sanctioned loan amount from Rs. 258 Crores to Rs. 300 Crores. The FIR in question fails to disclose any cognizable offence and moreover seeks to portray simple commercial transactions as criminal wrongdoings.*

IV. ***BECAUSE*** *the Respondent despite conducting a preliminary enquiry before the registration of impugned*

FIR has failed to appreciate that the entitlement to LRD is derivative of various variables e.g. number of years of rent which is considered for discounting as in the present case entitlement of LRD Loan of Rs. 258 crore was worked out on the basis of rent and other receivables for 9 years and LRD loan of Rs. 300 crore was worked out on the basis of rent and other receivables for 12 years, rate of interest, amount of security deposit and likelihood of increase in rent receivable in future etc. Moreover, to grant or not to grant loan facility or evaluation and determination of the extent of loan to be sanctioned is a matter of policy and commercial wisdom and experience of professional and experts working with the lender bank and as such within the exclusive domain of the Bank. The Respondent by virtue of impugned FIR instead of investigating any offence is rather engaging in replacing the commercial wisdom of J&K Bank with that of itself, without even realising that the decisions taken by J&K Bank were based on commercial viability and expertise. The Respondent in the impugned FIR only seeks to question the decisions taken by the Bank qua the loan proposal of Company ATPL and thus Commercial decisions are being projected as criminal wrongs.

V. ***BECAUSE** the increase in the sanctioned loan amount to the Company ATPL was not a result of any criminal wrongdoing or conspiracy, rather it was a direct outcome of correct evaluation of the financials projected by the Company to the Bank. It is submitted that State Bank of India and PNB Housing Finance Ltd. evaluated the entitlement of LRD loan of Rs. 250 crore on the basis of rent and other receivables of 9 years and State Bank of Hyderabad and Punjab and Sind Bank had assessed the entitlement of Rs. 300 crore of LRD loan on the basis of rent and other receivables of 12 years and accordingly sanctioned their respective loans.*

VI. ***BECAUSE** even otherwise, the facts subsequent to the disbursement of loan such as maintaining the loan account as a regular account, no default in payment and most importantly the proposal by the Company in August and September, 2019 regarding pre-payment of the entire outstanding goes on to prove that the projected financials/revenues turned out to be absolutely correct and thus the same by no stretch of imagination were marred with any ulterior motives to secure an undue* *advantage. It is submitted that no loss whatsoever has been caused to the Bank for sanctioning LRD loan to the tune of Rs. 300 Crores to the Company ATPL as the same was based on robust calculations and correct financials.*

VII. ***BECAUSE*** *despite carrying out preliminary enquiry as mentioned in the FIR itself, the agency was unable to point out to any delinquent officer or for that matter any exchange of alleged consideration or money or availing of any peculiar gain/benefit from the Petitioner to any of the officials of the Bank. On the other hand, the material placed on record in nature of communication exchanged between the Company and the Bank prior to the issuance of final sanction letter dated 02.02.2016 clearly brings out the reason and the cause for increase in the sanctioned loan amount from Rs. 258 Crores to Rs. 300 Crores. The FIR in question fails to disclose any cognizable offence and moreover seeks to portray simple commercial transactions as criminal wrongdoings.*

VIII. ***BECAUSE*** *the LRD loan of Rs. 300 crore was got sanctioned from J&K Bank only to consolidate the total loan with one bank instead of four banks. Further although J&K Bank had sanctioned LRD loan of Rs. 300 crore but in any case, the total loan exposure of J&K Bank was only Rs. 150 crore in view of stipulation in the sanction of J&K Bank that outstanding loan of another company of Ambience Group of which ATPL is part of had to repay a loan of Rs. 150 crore in order to keep the total exposure of J&K Bank in Ambience Group within the stipulated amount of Rs. 650 crore.*

IX. ***BECAUSE*** *the loan was fully secured against the mortgage of immovable Shopping Cum Office Complex Property at 2B2, Twin District Centre, Rohini, Delhi which is valued more than Rs. 400 crore and having perfect marketable title. Further no fault has been alleged in title, mortgage and/or value of the property mortgaged to the Bank.*

Allegations qua lease deeds

X. ***BECAUSE*** *the condition to disburse the sanctioned loan amount after submission of registered lease deed was waived off/withdrawn by the competent authority of J&K Bank vide sanction dated 19.03.2016. It is submitted that the loan of Rs. 300 crore was disbursed in two tranches* *of Rs. 142.38 crore on 30.03.2016 and Rs. 157.62 crore on 31.03.2016 after signing and execution of proper loan documents in terms of sanction dated 02.02.2016 of J&K Bank and further there is no violation in disbursement of sanctioned loan of Rs. 300 crore. Therefore, the allegations in the Impugned FIR as to disbursement of loan without obtaining registered lease deeds by the officers/officials of J&K Bank BU, Ansal Plaza, New Delhi are completely baseless and unfounded.*

XI. ***BECAUSE*** *the allegations in the FIR with respect to non- submission of registered lease deeds and change in terms of lease in the registered lease deeds are solely based on presumptions and conveniently turns a blind eye to the business realities and the covenants of the registered lease deeds. It is submitted that terms of the registered lease deed executed with the Future Group reveals that though the amount of fixed lease rental was reduced from Rs. 103 Sq. ft. to Rs. 57.20 Sq. Ft., however the rights of the Company ATPL as well as the Bank continued to remain secured as the lease deed with Future Retail Limited (Big Bazaar) and Future Lifestyle Fashion Limited (Central) provided for lease rent at the rate of 4.5% & 9% of the Net Sales Value (NSV) respectively in case the same is more than the fixed rent @ Rs. 57.20 per sq. ft. It is submitted that the Company by providing the mechanism of revenue model for securing the best possible lease rental from the lessee i.e. the Future Group, ensured that the interest of the Bank is not jeopardised. It is submitted that even otherwise, Company ATPL annually remitted the shortfall to the Bank and thus at all times the Bank had received lease rent at the rate of Rs. 103 Sq. ft. i.e. the amount mentioned in the unregistered lease deed dated 22.11.2013. It is submitted that the Company ATPL since inception has been paying the Bank in terms of the rate mentioned in the 2013 unregistered lease agreement with Future Group and thus by no stretch of imagination it can be alleged that the Company ATPL or its promoters or directors had any intention far from culpable to cheat or cause any financial loss to the Bank. It is pertinent to mention that the payment of lease rental by the Company ATPL towards the shortfall was done on an annual basis. Thus, the Bank at no stage suffered any financial loss on account of change in the* *lease rentals in the final registered lease deeds submitted to the Bank. It is further submitted that the changes in the lease rental in the registered lease deed were on account of many business-related reasons. The said bona fide reasons were duly explained and communicated to the Bank by the Company vide letter dated 25.07.2018. It is submitted that the same reasons were reiterated by Future Group in their communication dated 16.11.2019 to J&K bank upon a query being raised by the auditors. Moreover, with shifting of lease of M/s Sindhu Trade Links Ltd. to Terrace Floor and Atrium Area resulted into increase in leasable area of the Mall and overall lease revenue of the Mall would have increased in case Terrace Floor and Atrium area would have been operationalized by M/s Sindhu Trade Links Ltd. Copy of the communication dated 25.07.2018 issued by the Company ATPL to the Bank qua change in the final terms of lease deed is annexed herein as Annexure P-XVIII Copy of the communication dated 16.11.2019 issued by Future Group is annexed herein as Annexure P-XIX*

XII. ***BECAUSE*** *the revocation of understanding with M/s Sindhu Trade Links, which entity was supposed to run a food court on the 9th floor of the mall is being given a criminal colour even though the same was purely a commercial decision of the Company ATPL which was taken keeping in view the long-term interest of the Company ATPL. The Company was constrained to revoke the understanding with M/s Sindhu Trade Links Ltd. as they did not come forward to execute the lease deed. The same space was thereafter allotted to HDFC Bank who was already occupying 5" Floor to 8th Floor and thus when the deal was executed for gth floor, it was natural for the lessee HDFC to negotiate for the same rate. Even otherwise it is basic knowledge that the commercials of running a food court cannot be at par with running a Bank and thus a higher rental was initially decided for M/s Sindhu Trade Links Ltd. It is submitted that the allegations as which finds mentioned in the FIR are absolutely frivolous on the face it as the same seeks to give a complete go-by to the business realities and commercials of running a mall.*

XIII. ***BECAUSE*** *the allegations relating to the manner of disbursement and terms of the loan agreement which amounts to second- guessing the commercial wisdom of*

J&K Bank are without any basis, and purely speculative on the part of the Respondent as there is no allegation in FIR that J&K Bank disbursed loans on terms which were more favourable to ATPL than the other borrowers of J&K Bank and/or lenders of ATPL. No violation of policy or guidelines of J&K Bank and/or Reserve Bank of India is alleged in the FIR. The same is not even alleged to be of any consequence, as no loss is caused and/or likely to cause to J&K Bank. Without prejudice, a mere irregularity in loan conditions or manner of disbursement does not amount to commission of criminal offences.

No financial loss whatsoever to J&K bank

XIV. ***BECAUSE*** *the allegations in the FIR are premature or suffers from reason and logic as the crux of the allegation is that the officials of the Bank conspired with the promoter and director of the Company ATPL to facilitate a loan of much higher amount than what the Company was eligible for and consequently accorded the company undue benefit of higher loan amount of Rs. 300 crores which the company was not entitled to and would not have the intention and/or capacity to repay the EMIs of interest and instalment of higher amount of loan. In complete contradistinction to the case set-up by the investigating agency, the truth of the matter is that the Company till the date of registration of FIR and even post that has been compliant of all the terms of the sanction and most importantly did not default on the repayment of the loan. It is submitted that the Company ATPL at all times had maintained a regular account and the same was only possible if the Company had rightly projected the potential and financials to the Bank on the basis of which the loan was sanctioned. It is submitted that the Company after registration of the present FIR and on account of bad publicity had even offered the Bank complete pre-payment of the entire outstanding loan vide letter and communications dated 03.08.2019, 17.09.2019, 23.09.2019 and 27.09.2019, however the same was not accepted by the Bank. The sequence of events since inception most evidently demonstrates that J&K Bank at no point of time suffered any loss or set back on account of the loan transaction in question and further the Company ATPL maintained the loan account* *without any default. It is submitted that in view of the facts and supporting documents as placed on record manifestly reveals that continuation of proceedings arising out of the present FIR will only be an exercise in futility or an academic exercise undertaken at the expense and cost of precious judicial time and money.*

XV. ***BECAUSE*** *the very registration of the Impugned FIR on the basis of alleged source report/probe appears to be mala fide, as there is no allegation of any loss to the bank or any person, nor any complaint by any person/whistle-blower, hence there appears to be no reasonable basis to have even initiated a preliminary inquiry, let alone register the Impugned FIR. The allegations in the Impugned FIR, even if taken at face value and assumed to be correct in their entirety (though vehemently denied), do not disclose the commission of the offences under Section 5(1)(d) r/w 5(2) of J&K PC Act r/w Section 120-B of RPC, do not justify a police investigation, and are so absurd and inherently improbable that no prudent person could have reached the conclusion that there is sufficient ground for proceeding against the Petitioner. The Impugned FIR is bad in fact and law as it is based on a mere inference of corruption, that too without any allegation of loss, let alone wrongful loss, to any person.*

XVI. ***BECAUSE*** *in the absence of ingredients of substantive offences of section 5(1)(d) r/w section 5(2) of the J&K PC Act being made out, the charge of conspiracy cannot be sustained on a standalone basis, and as such, the Impugned FIR deserves to be quashed.*

XVII. ***BECAUSE*** *even the possibility of loss in the future is negligible/nil because the value of property mortgaged and security of the loan is more than adequate to pay for the originally sanctioned and/or outstanding balance in the LRD loan account of ATPL.*

No criminal connivance or conspiracy between the management, officers/officials of J&K Bank and ATPL and its promoters/ directors, including the petitioner herein

XVIII. ***BECAUSE*** *not a single bank official has been identified in the Impugned FIR (which only mentions "concerned officers/officials), and only private accused persons have been named. It is submitted that the impugned FIR has* *been registered after carrying out a preliminary enquiry and thus if the source information received by the Respondent had any credibility, then the role of the officials of the Bank would have come to light. Further, it is submitted that no criminal conspiracy whatsoever was hatched among the Directors/ promoters of ATPL and the officials of J&K Bank because even as per the case of prosecution no guideline or regulation was flouted by the J&K Bank in granting loan to the Company ATPL and furthermore the conduct of the Company ATPL post grant of loan i.e. timely servicing of the loan account shows that the loan was sanctioned on correct commercials and financials and the rules were neither bent nor tweaked in favour of the Company ATPL and no special treatment was accorded to the Company ATPL by the Bank.*

XIX. ***BECAUSE*** *in the absence of ingredients of substantive offence of PC Act being made out, the charge of conspiracy cannot be sustained on a standalone basis, and as such, the Impugned FIR deserves to be quashed.*

XX. ***BECAUSE*** *the petitioner has repeatedly offered to repay the entire LRD loan to M/s J&K Bank vide its letters dated 03.08.2019, 17,09.2019, 23.09.2019 and 27.09.2019 subject to the waiver of pre-payment charges. Since the LRD loan is sufficiently secured and is regular and the EMIs are being regularly paid, J&K Bank refused to accept the refund of the entire LRD loan amount together with interest due. It is thus evident that there is no malafides in getting the LRD loan sanctioned and disbursed.*

XXI. ***That*** *mere allegation of sanctioning of the loans on the basis of unregistered lease agreements and non-submission of the registered lease deeds till 2018 is at best merely an irregularity No culpability could be attached or inferred by any of these alleged acts of the petitioner and/or bank officials.*

XXII. ***BECAUSE*** *allegations in respect of the loan from J&K Bank being obtained by corruption are ex-facie absurd and cannot form the basis of prosecuting the Petitioner. The Impugned FIR alleges that the J&K Bank loan was obtained pursuant to criminal conspiracy and connivance of officials of J&K Bank and promoter directors of ATPL. However, the loan was approved by the entire Board of J&K Bank after due consideration of* *all relevant factors. Hence, the allegations of conspiracy, corruption, etc. are ex-facie baseless.*

No direct allegation against the petitioner

XXIII. ***BECAUSE*** *the FIR at no point makes any substantial or direct allegation against the Petitioner and rather ropes him into the controversy by simply giving a vague allegation that he along- with other directors conspired with the officials of the J&K Bank to secure undue benefits for the company ATPL. It is submitted that the said allegation is not only vague but also lacks substance as no benefit whatsoever was derived by ATPL and further the FIR is completely silent as to how the Petitioner played a role in securing any undue advantage for the Company ATPL. Rather, the entire communication with respect to the Loan transactions is duly documented and each and every allegation as alleged in the FIR can be easily rebutted from those documents and thus the question of securing any gain does not arise. Further, it is submitted that in the case at hand the investigating agency had carried out a preliminary enquiry and it can be safely concluded that even during the said Preliminary Enquiry /purported verification of the alleged source report, the agency did not come across any official of the Bank who was allegedly conspiring with the Petitioner to give undue benefit to ATPL.*

XXIV. ***BECAUSE*** *the Impugned FIR is bad for failure to disclose any mens rea dishonest intent on the part of the Petitioner, as J&K Bank has not suffered any loss on account of the loan disbursed, and ATPL is duly paying/servicing the outstanding loan amount.*

XXV. ***BECAUSE*** *the Impugned FIR is bad in fact and law as it is based on a mere inference of corruption, that too without any allegation of loss, let alone wrongful loss, to any person.*

Suppression of exculpatory material and mala fide investigation.

XXVI. ***BECAUSE*** *the registration of the FIR is bad in fact and law, as the purported verification of an alleged source report clearly suppresses material facts and documents. It is submitted that the investigating agency carried out a preliminary enquiry/verification of its own volition and* *despite that, if material documents have been concealed or not even mentioned in the FIR then the same shows the mala fide and ulterior motives behind the registration of the present FIR.*

XXVII. ***BECAUSE*** *the Impugned FIR mala fidely suppresses the exculpatory forensic audit report, despite the same being carried out at the instance of the Respondent. The conclusions of the forensic audit report clearly state that:*

i. *There was no diversion of funds or fraud, and all disbursements were utilized as per the sanction terms.*

ii. *All proceeds received from the lessees were routed through the escrow account maintained with J&K Bank.*

iii. *There was no dilution of security mortgage.*

XXVIII. ***BECAUSE*** *the Impugned FIR and the alleged source report/probe on which it is based fail to account for the realities of running a mall, and mala fidely cherry-pick facts to suit a false narrative. This can be seen from the fact that even the most cursory probe/preliminary inquiry would have revealed that:*

i. *The allegation that HDFC Bank paid less lease rental than M/s Sindhu Trade Links Ltd. was to pay is absurd on the face of it, as even the most cursory probe/preliminary inquiry would reveal that M/s Sindhu Trade Links Ltd. was to operate a Food Court, the commercials for which would obviously differ from opening a bank office.*

ii. *HDFC Bank, which had initially given a letter of intent for lease of space from 5th floor to 9th floor later also required the 9th floor (initially allotted to M/s Sindhu Trade Links Ltd. and naturally paid the same rate it was paying for the 5th Floor.*

iii. *The increase in the loan amount from Rs. 258 Crores to Rs. 300 Crores was a legitimate act as the earlier computation by the bank was flawed as the Bank did not take into account the quantum of security deposit being offered by the Company ATPL;*

iv. *It is pertinent to note that none of the above changes are material post disbursal, as ATPL* *was and has been servicing the loan without any default.*

Thus, the business realities of running a mall have been completely ignored by the Respondent. Subsequent decisions which were not taken unilaterally by the Petitioner/ATPL cannot in any manner lead to an inference of conspiracy and corruption on their part.

XXIX. ***BECAUSE*** *the Impugned FIR as also the alleged probe/source report on which it is based, fails to account for the fact that LRD loans had been assessed by various lender banks including State Bank of Hyderabad, which had found ATPL to be eligible for a loan of Rs. 300 crores.*

XXX. ***BECAUSE*** *the Impugned FIR suppresses the fact that the State Bank of India had disbursed Rs. 100 crores, and PNB HFL had disbursed Rs. 50 crores to ATPL on the same documentation which was submitted to J&K Bank (which fact would have been obvious from even the most cursory/preliminary inquiry), and there is no probe into nor allegation of corruption/connivance with officials of SBI or PNB HFL.*

XXXI. ***BECAUSE*** *the allegation in the Impugned FIR that Registered Lease Deeds were not executed before disbursement of the J&K Bank LRD Loan is baseless and false because the terms of sanction were amended by the competent authority vide letter dated 19.03.2016. Further in the Impugned FIR it has been stated that registered lease deed was executed on 30.09.2015 but not furnished by the Petitioner but fails to note that the same was submitted in 2018 because of reasons duly explained to and accepted by J&K Bank.*

XXXII. ***BECAUSE*** *the Impugned FIR fails to disclose any cognizable offence let alone the offences alleged in the FIR. It is submitted that allegations as alleged are a product of conjectures and surmises and the contents of the FIR clearly reflects that the Preliminary Enquiry was either cursory at best and or mala fide at worst, as documents material to the allegations have either not been perused during the enquiry or have been suppressed in order to make out a false case against the Petitioner. The continuation of proceedings in the impugned FIR will result in gross injustice and would be an exercise in futility as the indisputable and sterling quality documents placed on record evidently demonstrates that even if FIR continues and* *consequently trial is conducted, there is no likelihood of it resulting in a conviction.*

4. **Status report** stands filed by the respondent herein on 28.10.2024 in compliance to order passed by this Court on 11.10.2024, wherein it has been, *inter alia*, stated that upon registration of FIR under challenge and during investigation, it came to fore that the J&K Bank had illegally sanctioned and disbursed loan worth crores of rupees in favour of ATPL while bypassing all norms and procedures in order to confer undue benefit upon the ATPL and the J&K Bank Officers/Officials in connivance with the ATPL modified the first term loan of Rs. 258.00 crores and increased the amount of loan to Rs. 300 crores against the discounting value of rentals, inasmuch as on the basis of unregistered lease deeds executed by M/s Future Group and M/s Sindhu Trade Links Ltd. with mala fide intentions despite the fact that the said M/s Sindhu Trade Links never occupied the space in the Mall or paid any rent, but, in fact, terminated the lease deed executed with ATPL and the space previously allotted to the said M/s Sindhu Trade Links came to be allotted to HDFC Bank at the rate of Rs. 45.59 per sq. ft. per month instead of Rs. 92.00 per sq. ft. per month and that the Officers/Officials of the bank abused their authority for pecuniary consideration under a well knit conspiracy hatched with the promoters of ATPL and sanctioned and disbursed the loan of Rs. 300 crores as against its entitlement of Rs. 195.89 crores as a consequence whereof, prima facie offences covered in the FIR were found established against the petitioner and the bank authorities.

It has been lastly stated therein the status report (Supra) that the investigation regarding ascertaining the individual role and responsibility of the bank officers/officials , who had remained associated with the sanction and disbursement of the LRD loan in favour of ATPL is in progress and will be concluded at the earliest.

Heard learned counsel for the parties and perused the record.

5. It is significant to mention here that upon coming up of this petition for consideration on 21.10.2022, this Court directed issuance of notice to the respondent and as an interim measure also provided that the Investigating Agency can proceed with the investigation of the case, however, charge-sheet shall be filed only after permission of the Court.

6. Before proceeding to advert to the case set up by the parties in their respective pleadings, it would be pertinent and significant to refer to the contents of the impugned FIR hereunder being relevant and germane to the controversy:

1. *On the basis of source report, a verification was conducted by the Anti-Corruption Bureau to look into the allegations that the officers/ officials of J&K Bank have illegally sanctioned and disbursed loan worth crores of rupees to a private beneficiary firm namely M/s Ambience Towers Pvt. Ltd. By passing all norms and procedures for sanctioning and disbursement of loans.*
2. *During probe, it came to fore that a Term Loan of Rs. 258.00 Cr was sanctioned by J&K Bank BU Ansal Plaza Delhi, on 28.12.2015 in favour of M/s Ambience Towers Pvt., Ltd. against future leasing /rental receipts at shopping cum office complex at plot no. 2B2, twin District Sector-10, Rohini Delhi. In order to confer more undue benefit upon the company, the concerned officers / officials of J&K Bank in connivance with the beneficiary firm subsequently modified the first term loan of Rs. 258 Cr sanction and increased the*

loan amount to Rs. 300.00 Cr vide letter No. JKB/ CHQ/ A&AP/ 16-2862 dated 02.02.2016 against discounted value of rentals calculated by J&K Bank as RS. 300 Cr. Verification conducted has revealed that lease agreement related to rentals of the firm was to be executed with three parties viz., M/s future Group (Big Bazar), M/s HDFC Bank and M/s Sindhu Trade links. Apart from other formalities, the Business Unit JK bank branch Ansal Plaza had to obtain and rely on registered lease deeds executed between the borrower company and the three parties mentioned above.

3. *On scrutiny of bank documents, it has come to fore that the beneficiary company's proposal for loan was recommended against i) unregistered lease deeds dated 22-11-2013 M/s Future group (BIG Bazar) reflecting lease rent (Future income) @ Rs. 103.00 per sq ft per month. (ii) a letter of intent of HDFC Bank dated 01-08-2014 with lease rent (future income) @ Rs. 45.59 per sq ft per month and (iii) unregistered lease deed dated 17-11-2014 with M/s Sindhu Trade Links with lease rent (future income) @ Rs. 92.00 per sq ft per month to M/s Ambience Towers. Out of the total loan amount of Rs. 300 Cr., Rs. 142.38 Cr. was disbursed on 30.03.2016 and Rs. 157.62 Cr. was disbursed on 31.03.2016. As per sanction letter dated 02.02.2016, there was a prerequisite condition from the bank that before disbursement of loan amount to the company, the Business Unit JK Bank Ansal Plaza New Delhi had to obtain registered lease deeds but the Bank at the time of disbursement of loan amount did not obtain either of the registered lease deed deliberately and with malafide intentions and resultantly on 29-06-2016 when company furnished registered lease deed in respect of HDFC Bank with rent @ Rs. 45.59 per sq. ft. per month, whereas no registered lease deeds in respect of Future Group and Sindhu Trade Links were furnished by the company to the bank till 2018 and the beneficiary company in connivance with the officers/officials of J&K Bank furnished registered lease deed in respect of only Future Group dated 30.09.2015 in 2018 with the rent rate @ Rs. 57.20 per sq. ft. per month which is about half of the rent @ Rs. 103.00 per sq. ft. per month mentioned in the unregistered lease deed on the basis of which Rs. 300.00 Cr. Loan had been sanctioned, however, M/s Sindhu Trade Links never occupied the space nor did not pay any rent. The lease deed with M/s Sindhu Trade Links was terminated later on and the space was allotted to HDFC Bank on the rates already mentioned in their lease deed which was Rs. 45.59 instead of the rent @ Rs. 92.00 per sq. ft. per*

month mentioned in the unregistered lease deed of M/s Sindhu Trade Links. This clearly proves nexus between the beneficiary company and the officers/officials of J&K Bank who have conferred undue benefit upon the beneficiary company. 4.

4. *Verification has further revealed that on the basis of registered lease deeds of Future Group and HDFC Bank, the company was entitled to obtain maximum of Rs. 195.89 Cr. instead of Rs. 300.00 Cr sanctioned by the officers/officials of J&K Bank in connivance with Raj Singh Gehlot, Shekhar Singh & Sumit Choudhary Promoter Directors of Ambience Towers Pvt. Ltd. In this way it is established that the management of J&K Bank at Corporate HQ Srinagar as well as officers/officials of J&K Bank office New Delhi and Business Unit Ansal Plaza New Delhi by abuse of their authority for pecuniary considerations under a well knit conspiracy hatched with Raj Singh Gehlot, Shekhar Singh & Sumit Choudhary Promoter Directors of Ambience Towers Pvt. Ltd., sanctioned and disbursed loan on higher side to the tune of Rs. 300.00 Cr in excess to its entitlement of Rs. 195.89 Cr in favour of M/s Ambience Towers Pvt. Ltd. The officers / officials J&K Bank in connivance with Promoter Directors of M/s Ambience Towers Pvt. Ltd. deliberately and dishonestly delayed to obtain registered lease deeds in respect of other two firms i.e. M/s Future Group and M/s Sindhu Trade Links as per quoted rates of rent which resulted in conferment of pecuniary advantage upon the company which was not deserving to obtain such huge loan amount.*
5. *Since the facts and the circumstances which have emerged during verification vis-a-vis scrutiny of records of the bank disclose commission of criminal misconduct by bank management at Corporate HQ Srinagar officers/officials then posed at Zonal Office Delhi / Business Unit Ansal Plaza Delhi and Raj Singh Gehlot, Shekhar Singh and Sumit Choudhary Promoter Directors of the beneficiary firm M/s Ambience Towers Pvt. Ltd. and others which constitute offences U/S 5(1)(d) of the J&K. P.C. Act Svt 2006 and r/w section 120-B RPC punishable u/s 5(2) of the Act. Consequently, a formal case FIR No. /2019 is registered in P/S ACB and investigation is entrusted to --------*

7. Before proceeding further in the matter, a reference to the offences covered in the impugned FIR **(Section 5(1) (d), Section 5 (2) of the**

J&K Prevention of Corruption Act, Svt. 2006 and Section 120-B RPC) would be appropriate hereunder:

> ***"5. Criminal misconduct.-***
> ***(1)*** *A public servant is said to commit the offence of criminal misconduct.*
> *............. (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
>
> ***Section 5 (2):*** *Any public servant who commits any offence of criminal misconduct as referred to in clauses (a), (b) and (e) of sub-section (1), shall be punishable, shall be punishable with imprisonment for a term which shall not be less than 2 years but which may extend to seven years and shall also be liable to fine and if he commits criminal misconduct as referred to in clauses (c) and (d) of subsection (1) shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine."*
>
> ***"Section 120-B***
> *(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."*

Perusal of Section 5 (1) (d) (Supra) reveals that ingredients of offence are that the accused should have been a public servant and should have used corrupt or illegal means or otherwise abused his position as a public servant and that he should have obtained for himself or for any other person any valuable thing or pecuniary advantage.

The words "abuse of his position as public servant' would connote that the officer does not act as a prudent man, but discords all the normal and statutory rules to accommodate third party and obtains benefit for him.

Further the use of words by "corrupt or illegal means" or by "otherwise abusing his position as public servant appearing in the Section (Supra) suggests dishonest element on the part of the public servant himself or while obtaining a valuable thing or pecuniary advantage for a third person and the words "otherwise abusing his position as public servant" has to be read in the same context and in the same degree or culpability as the words "corrupt or illegal means convey" i.e. to be read in juxtaposition with the words "corrupt or illegal means". The words "otherwise abusing his position as public servant also suggests that it does not confine merely to misuse of his position as a public servant, but such misuse has to be with a dishonest mind. The abuse of position by a public servant, thus, in order to come within the mischief of Section 5(1) (d) must necessarily be dishonest for obtaining a valuable thing or pecuniary advantage for himself or for any other person. In other words, mere misuse without dishonest intention is not abuse, i.e., misusing the position with dishonest intention would mean abuse and such dishonest intention can be inferred from the facts and circumstances of each case.

8. In so far as offence of criminal conspiracy contained in Section 120-B RPC is concerned, law is settled that there must have been an agreement between the persons, who are alleged to have conspired and that agreement should be either for doing an illegal act or for doing by illegal means. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of conspiracy. Levelling of an allegation of conspiracy without mentioning as to how, where and which of the conspirators hatched conspiracy and for what purpose or circumstances warranting inference of existence of conspiracy is not enough to constitute an offence of conspiracy, but an FIR should make out a prima facie case of conspiracy against accused persons as one cannot have the construction of fine superstructure without a foundation.

9. Before proceeding further in the matter, it would be advantageous and appropriate to refer to the ambit and scope of inherent power vested in this Court.

A reference in this regard to the judgment of Apex Court passed in case titled **State of Haryana and others vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335** would be relevant, wherein the Apex Court had elaborately considered the ambit and scope of Section 482 Cr. P.C. in the context of quashing the criminal proceedings and in para 102 laid down the following:

> *"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the*

ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*
3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

The Apex Court in this regard has also in case titled as **State of Karnataka vs. M. Devenderappa and another** reported in **2002 (3) SCC 89**, at para 6 held as under:

> *"**6**....All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."*

The Apex Court in case titled as **Mohammad Wajid and another vs State of UP and oth**ers reported in **2023 SCC Online SC 951** has also at para 34 in this regard observed as under:

> *"**34.** At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary*

pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation."

10. Thus, what emanates from the above principles of law is that the inherent power of this court saved under Section 482 Cr. P.C. does not confer any new power on the High Court, in that, it only saves the inherent power of this Court, which the court possessed before enactment of the Code of Criminal Procedure and it envisages three circumstances under which the inherent jurisdiction may be exercised, namely-

a) To give effect to an order under the Code,
b) To prevent abuse of process of court, and
c) To otherwise secure the ends of justice.

11. It has been a consistent view of the Constitutional Courts that it is neither possible not desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction and no legislative enactment dealing with procedure can provide for all cases that may possibly arise, thus suggesting that the the courts have inherent powers apart from provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in Section 482 Cr. P.C. which merely recognises and preserves the inherent power of the High Court to do the right and to undo the wrong in the course of administration of justice on the principle **"that when the law gives a person anything, it gives him that without which it cannot exist"** and that the inherent power is exercised *ex debito* justitiae to do real and substantial justice for the administration of which alone the courts exist and that the authority of court exists for advancement of justice and if any attempt is made to abuse the authority so as to produce injustice, the court has power to prevent abuse and that it would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice and that in exercise of powers, the court would be justified to quash any proceeding if it finds that the initiation/continuance of it amounts to abuse of process of court or quashing of these proceedings would otherwise serve the ends of justice.

12. Reverting back to the case in hand, it is an admitted fact that the impugned FIR stands registered on 29.07.2019 and alleged offences covered therein in the said FIR pertain to the loan transactions of the year 2015 and 2016.

13. A deeper and closer examination of the CD file produced by the counsel for the respondent, inasmuch as the status report (Supra) filed by the respondent on 28.10.2024, almost after a period of four years from the registration of FIR would reveal that the investigating agency has till date failed to collect any material worth the name connecting the alleged prime accused i.e. the bank officers/officials of the J&K Bank in the commission of alleged offences covered in the impugned FIR. No headway indisputably has been made by the investigating agency in order to find out involvement of the bank officers/officials in the commission of alleged offences in the first instance and in the second instance by the petitioner herein and the said prolonged and lethargic investigation in the impugned FIR cannot but said to be having an element of extreme emotional and mental stress and strain upon the petitioner herein, more so when there is no plausible explanation offered by the respondent herein for having carried on with the lethargic and prolonged investigation in the matter without there being any element of delay attributable to the petitioner herein.

14. The aforesaid approach of conducting the investigation by the respondents in the instant matter cannot but said to be as well a ground for quashing of impugned FIR. More so, in presence of law laid down by the Apex Court in case titled as **State of Andhra Pradesh vs. P. V. Pavithran**, reported in **(1990) 2 SCC 340** at para 7 has held as under:

> *7. There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the*

> *accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation*

The Apex Court further in case titled as **Pankaj Kumar vs. State of Maharashtra and others** reported in **2008 (16) SCC 117** at para 22 has held as under:

> *"**22.** It is, therefore, well settled that the right to speedy trial in all criminal prosecution is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well."*

Even otherwise also, perusal of the impugned FIR inasmuch as the incriminating material collected by the investigating agency during the course of investigation so far manifestly tend to show that the offences alleged to have been committed by the petitioner herein are not made out on a plain reading, in that, it is evident that the allegations levelled in the complaint instead seemingly are constituting at the most a procedural lapse committed by the bank officers/officials in discharge of their duties in the process of granting alleged enhanced loan in favour of the ATPL and significantly no loss whatsoever found till date to have been caused to the Bank, thus in no case constituting alleged offences covered in the impugned FIR, against the petitioner herein.

15. Based on inclusive consideration of facts and circumstances of the case summed up in the foregoing paras, the instant case cannot, but said to be warranting exercise of inherent power of this Court for quashing the impugned FIR for what has been observed, considered and analysed hereinabove.

16. **Resultantly, the instant petition succeeds, as a consequence whereof, the impugned FIR No. 16/2019 dated 29.07.2019 registered with Police Station, Anti Corruption Bureau, Central Kashmir for offences under Section 5(1) (d) read with Section 5 (2) of the J&K Prevention of Corruption Act read with Section 120-B RPC is quashed insofar as the petitioner is concerned**.

17. **Disposed of along with connected applications.**

(JAVED IQBAL WANI)
JUDGE

Jammu
20.12.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.