

**IN THE COURT OF SHRI ARVIND KUMAR:
SPECIAL JUDGE, (PC ACT) (CBI)-10:
ROUSE AVENUE DISTRICT COURTS: NEW DELHI**

In the matter of :

CNR No. : DLCT11-000083-2021
Case No. : CBI 14/2021
FIR No. : RC DAI 2015-A-0036
U/Sec. : 13(2) r/w 13(1)(e) of PC Act.
Branch : CBI/ACB/New Delhi.

CBI**Complainant**

Versus

NALIN KUMAR,
S/o late Sh. Kunwar Jamna Krishna,
R/o : D-013,
Gulshan Vivante Apartment,
Sec. 137, Noida.

.....**Accused**

ORDER ON CHARGE

16.08.2023

Brief facts as per prosecution are as under:-

1. The present case was registered as RC-36(A)/2015 on 04.11.2015 U/s 13(2) r/w 13(1)(e) of PC Act, 1988 against Nalin

Kumar, Deputy Commissioner, Customs, IGI Airport, New Delhi on the basis of a written complaint submitted by Sh. Alok Kumar Singh, Inspector, CBI, ACB, New Delhi, alleging therein that during the investigation of the case RC-21(A)/2015-DLI under section 120B r/w 420 IPC and Sec. 13(2) r/w 13(1)(d) of PC Act, 1988 against Sh. Atul Dixit, Commissioner, Customs and others, it was revealed, from the scrutiny of documents, articles and cash recovered from the house and lockers of the accused Sh. Nalin Kumar, that while working as Deputy Commissioner, Customs, IGI Airport, New Delhi during the period from 01.07.2013 to 22.08.2015 he was in possession of assets disproportionate to his known sources of income to the tune of Rs. 56,82,264/- which is 391.85% of his income.

2. It is stated that accused Nalin Kumar did M. Tech from IIT Delhi in the year 1991. Then, he joined ONGC in Mumbai, as Assistant Executive Engineer and worked upto December 1992. Thereafter, he joined Department of Customs and Central Excise as Appraiser (Customs) in 1993. Subsequently, he worked as Asstt. Commissioner, Deputy Commissioner and since 30.06.2015 as Joint Commissioner. He was compulsory retired from service under Rule FR 56(j) vide order No. C-50/49/2019-Ad.II dated 18.06.2019 issued by Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect Taxes & Customs). His father was a Civil Engineer in Northern

Railways and retired from Baroda House, New Delhi in the year 1990.

3. It is stated that accused Nalin Kumar got married to Ms. Ruchi Singhal in the year 1996 and got divorced in the year 2011 (prior to beginning of check period). Since accused Nalin Kumar had already got separated from Ms. Ruchi Singhal therefore, no assets, income and expenditure of Smt. Ruchi Singhal have been taken into account for calculation of DA of Nalin Kumar.

4. It is stated that Smt. Vijay Laxmi, is the mother of accused Nalin Kumar. She was found present in flat No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi at the time of searches on 12.08.2015. Since, she was living with his son Nalin Kumar, her assets, income and expenditure have been taken into account for calculation of disproportionate assets.

5. It is stated that accused Nalin Kumar amassed assets disproportionate to his income during the period from 01.07.2013 to 22.08.2015.

6. It is alleged that the cost of Plot No. E-51, measuring 251 square yard in PDA, Omaxe City, Patiala, Punjab in the name of Nalin Kumar, was mentioned as Rs.12.55 Lacs in the

FIR. That total payment of Rs.11,92,250/- was made toward the said plot during the year 2008. It has also been revealed that an amount of Rs.4236/- was paid on 19.05.2009 as penal interest on account of delay payment. The total payment of Rs. 11,96,486/- on account of this property is prior to the check period. The plot is still with Nalin Kumar. The said amount has been mentioned in Statement- A (the details of the assets at the beginning the check period) and subsequently in Statement - B (details of assets at the end of check period also).

7. It is alleged that a loan of Rs.5,20,408/- was sanctioned from HDFC Limited Munirka, Delhi and disbursed to Mr. Nalin Kumar vide loan agreement dated 31.03.2008 (prior to check period) through loan account no. 584834526 in respect of purchase of said property. It is also revealed that, Mr. Nalin Kumar has made a payment of Rs. 2,60,000/- from 01.07.2013 to 22.08.2015 toward EMI payment of the loan. Therefore, this loan payment was taken as expenditure in statement D (Details of expenditure during check period)

8. It is alleged that the Flat A-202, Block A, The Peoples Conservative CGHS Ltd., Plot No.-10, Sector-18, Dwarka, Delhi, was allotted to Smt. Ruchi Singhal in the year 2004 against the demand of Rs. 26,56,292/- and the said amount was paid towards this flat during the period from 2004 to 2012. For the calculation

of DA Rs.13.75 lacs have been taken towards value of this flat as 50% share as settlement between Smt. Ruchi Kumar and accused Sh. Nalin Kumar took place in the year 2010 on divorce. Therefore, Rs.13.75 lacs on account of the said flat has been shown in Statement - A and subsequently in Statement - B also.

9. It is alleged that accused Nalin Kumar obtained a loan of Rs. 13.75 lacs from India bulls in November, 2010 in his name and in the name of his mother Smt. Vijay Laxmi to clear the outstanding loan taken from ICICI Bank by accused Sh. Nalin Kumar.

10. It is alleged that the said loan amount of Rs. 13.75 lacs was sanctioned on 12.11.2010 by Indiabulls and repayment of Rs. 4,58,173/- was made during the check period. Thus, the said amount of Rs.4,58,173/- has been taken in Statement - D as expenditure.

11. It is alleged that a sum of Rs. 52,000/- toward security and maintenance charges against the said flat was paid during the check period. This amount has been taken in Statement - D as expenditure.

12. It is alleged that Flat No. 971, Second Floor, CAT-II, Pocket-GH-13, Paschim Vihar, New Delhi, was purchased by Sh.

K.J. Krishna, father of the accused in the year 1996 from K. Girija Subudhi. As per the said agreement, Sh. K.J. Krishna agreed to purchase the said flat for Rs. 4,01,696/-. As per the agreement to sale, the said amount was received by Smt. K.G. Subudhi from Sh. K. J. Krishna. It is also revealed that Sh. K.J Krishna expired on 22.12.2003.

13. That the documents collected include original conveyance deed dated 09.08.2010 made by DDA in favour of Smt. Vijay Laxmi from one Smt. Lajwanti for consideration value of Rs. 3,73,500/- registration fees of Rs.3,735/- stamp duty of Rs.14,940/- and pasting fee of Rs. 100/-. Therefore, the total amount of Rs. 3,92,275/- has been mentioned in Statement - A and Statement - B.

14. It is stated that the original documents of this flat were not found during the searches in the said flat where accused was residing alongwith his mother Smt. Vijay Laxmi. The documents of this flat were collected on 13.07.2016 during the investigation from Sh. Badri Narain Sharma. Shri Badri Narain Sharma had purchased property No.971, Second Floor, CAT-II, Pocket-GH-13, Paschim Vihar, New Delhi from Smt. Vijay Laxmi. As per the Sale Deed, the documents of the said flat were registered in the name of Sh. Badri Narain Sharma from Smt. Vijay Laxmi on 08.12.2015 i.e, after registration of the instant case.

15. It is alleged that during the house search of residential premises of accused Nalin Kumar at flat no. 971, 2nd floor, GH-13, Pachim Vihar, Delhi, a locker key bearing no. 686 was found on 12.08.2015 and subsequently locker no. 688L maintained with Metropolis Vaults Private Limited, Hauz Khas, New Delhi was operated on 13.08.2015. During locker operation, a cash amount of Rs.84,95,500/- was recovered in hard cash and the same was seized. The said amount for the purpose of DA Calculation has been taken in Statement - B as an asset of accused Sh. Nalin Kumar.

16. It is stated that accused Nalin Kumar has claimed that since his mother was living with him therefore, she asked him to sell the said property. The deal was stuck with Shri Badri Narain Sharma for the sale of the said flat for Rs.98 Lakhs and her mother received earnest money of Rs.9.8 lakhs on 5.5.2015 and subsequently Shri Badri Narain Sharma paid Rs.74.20 lakhs in the month of May and June, 2015 in five different installments. Thus, her mother had received Rs.84 Lakhs from Shri Badri Narain Sharma and subsequently, the said sale proceed was recovered from the locker.

17. That the claim made by accused Nalin Kumar is a concocted and afterthought in as much as that he claimed the said

amount from Shri Badri Narain Sharma in the month of April 2016, vide his letter dated 5.4.2016 which is after more than 7 months from the date of operation of locker. It clearly indicated that he cooked up a story to falsely justify the said amount to have been received from Shri Badri Narain Sharma.

18. It is stated that the above plea of accused Nalin Kumar was not found justifiable. During the locker operation, he could not explain the source of above said cash and the aforesaid deal is an afterthought.

19. It is alleged that an investment in Franklin Templeton Investment vide Account No. 0260007857982 was made by Nalin Kumar. It is alleged that investment of Rs.8000/- was made by Sh. Nalin Kumar on 16.6.2000 and the said investment remained till the end of check period. Therefore, this amount has been taken in Statement - B. It is further alleged that a dividend of Rs.1394.34/- was paid during the period from 01.07.2013 to 22.08.2015 i.e during the check period. But the same was not encashed and again invested by the company. The said amount of Rs. 1394.34 is neither considered as income nor in Statement - B.

20. It is alleged that on 24.09.2007 Sh. Nalin Kumar has opened saving bank account No.028801002898 with ICICI Bank, Meera Bagh, Paschim Vihar, New Delhi and the account has

balance of Rs. 28,343.36/- as on 01.07.2013. This amount has been taken in Statement – A. The credit balance was of Rs.49990.16/- as on 22.08.2015. This amount has been taken in Statement – B. Further, the credit of interest amount was of Rs.3801/- during the check period in the said account. This amount has been taken in statement - C.

21. It is alleged that an account No. 4047000100004174 with Punjab National Bank, New Customs House, New Delhi, was opened in the name of Nalin Kumar on 08.01.1997. The credit balance was Rs.12,058 as on 01.07.2013 and for Rs.13,258/- as on 22.08.2015. These amounts have been taken in Statement - A and Statement – B respectively. Credit of interest amount of Rs.1188/- during the check period has been taken in Statement - C.

22. It is alleged that Nalin Kumar has opened account No.20130780026 with SBI, Dwarka Branch, New Delhi on 04.10.2012. The credit balance was of Rs.1,78,665/- as on 01.07.2013 and Rs.2,11,169/- as on 22.08.2015 in the said account. The said amounts have been taken in Statement - A and Statement – B respectively. Credit of interest amount of Rs. 9809/- during the check period has been taken in Statement - C.

23. It is alleged that PPF account No. 30043875492 with

State Bank of India, is in the name of Sh. Nalin Kumar. The credit balance was Rs. 51,890/- as on 01.07.2013 and Rs.61,311/- as on 22.08.2015. The said amounts have been taken in statement A and B respectively. There was credit of Rs. 9,421/- on account of interest during the check period. The said amount has been taken in Statement - C.

24. It is alleged that Smt. Vijay Laxmi has invested Rs.50,000/- on 11.04.2011 in Shriram Transport Finance CO. Ltd. through Certificate no. 50014038 in the name of Smt. Vijay Laxmi and maturity amount was Rs. 67,910/- on 11.4.2014. The said investment and maturity amount and interest of Rs.17,910 is still lying with Shriram Transport Finance Co. Ltd. The investment amount of Rs. 50,000/- has been taken in Statement-A and Rs.67,910/- in Statement – B respectively. Benefit of Rs.17,910 has been re-invested with the same trading account.

25. It is alleged that Trading account has been opened in the name of Smt. Vijay Laxmi on 13.02.2013 with R. K. Stock Holding Pvt. Ltd., New Delhi,. It is revealed that during check period, a sum of Rs. 3,10,000/- was invested by Smt. Vijay Laxmi (mother of accused) with R. K Stock Holding Pvt. Ltd. She got Rs.10,30,418 on this investment from R.K Stock Holding Pvt. Ltd. as profit during the check period. Therefore, a sum of

Rs.7,20,418/- can be taken as income in Statement C.

26. It is alleged that an account No. 015501017020 with ICICI Bank, Punjabi Bagh, Delhi was opened in the name of Smt. Vijay Laxmi on 05.05.2004. The balance was Rs. 86490/- as on 01.07.2013 and Rs. 68,859/- on 22.08.2015. These amounts have been taken in Statement A and Statement B respectively. Credit of interest of Rs. 26,558 during the check period has been taken in Statement – C.

27. It is alleged that Fixed Deposit Account No. 015514101355 with ICICI Bank, Punjabi Bagh, Delhi has been opened in the name of Smt. Vijay Laxmi on 09.05.2011. The balance was Rs. 36,178/- as on 01.07.2013 and Rs. 43,831/- as on 22.08.2015. This amount 43,831/- has been taken as assets in Statement - B. The Interest of Rs. 7,653/- during the check period has been taken in Statement - C.

28. It is alleged that an account No. 20238071596 with Allahabad Bank, Civil Lines Branch, Moradabad (UP) has been opened in the name of Smt. Vijay Laxmi. An amount of Rs.8,23,219 was balance at the beginning of the check period. Hence, the same has been taken in statement A as Assets at the beginning of the check period. The balance was Rs.1,63,202/- as on 22.08.2015 in the said SB account. Hence the same has been

taken in statement B as assets at the end of the check period. The interest of Rs.78,908/- during the check period has been taken in Statement C.

29. It is alleged that three FDRs Nos. 50133551013, 50133551080 and 50133550972, each of Rs.1,50,000/- in the name of Smt. Vijay Laxmi with Allahabad Bank, Civil Lines Branch Moradabad (UP), were made on 01.12.2012 and the same were matured on 22.11.2014 i.e during the check period. Since the amounts in all three FDRs were invested prior to check period and all the three FDRs matured during the check period, therefore, the total maturity amount of all three FDRs for Rs.5,32,236/- has been taken in Statement - C.

30. It is alleged that there was credit balance of Rs.1,05,768/- as on 01.07.2013 and Rs.1,17,586/- as on 22.08.2015 in the bank account No. 4081000100022767 of Smt. Vijay Laxmi with Punjab National Bank, Paschim Vihar, Delhi. During the said period interest of Rs. 9,221/- was given in the said account. Credit balance has been taken in statement A and B and interest in Statement - C.

31. That Smt. Vijay Laxmi has a F.D. Account No. 408100PR00035344 in PNB, Paschim Vihar, Delhi and has credit balance of Rs.31,263/- as on 01.07.2013 and Rs.37,456/-

during the check period, which has been taken in Statement - B. The interest of Rs. 6193/- during the check period has been taken in Statement – C.

32. It is alleged that there was a credit balance of Rs.1,20,756/- as on 01.07.2013 and credit balance of Rs.10,17,161/- in the Saving Bank Account No.30425433825 with SBI, Jwala Puri Branch, New Delhi of Smt. Vijay Laxmi. During the said period interest of Rs.9,627/- was given in the said account. The credit balance has been taken in Statement - A and Statement - B and interest in Statement - C.

33. It is alleged that there was a credit balance of Rs.26,193/- as on 01.07.2013 and 32,472/- as on 22.08.2015 in the Special Term Deposit Bank Account No. 31477228570 of Smt. Vijay Laxmi held in SBI, Jwala Puri Branch. The interest of Rs.6279/- was given during the check period. Credit balance has been taken in Statement - A and Statement - B and interest in Statement – C.

34. It is alleged that Fixed Deposit Account No. 408100PU00004918 in the name of Smt. Vijay Laxmi with Punjab National Bank, Paschim Vihar, Delhi, was opened on 13.12.2013 by Smt. Vijay Laxmi with an account balance of Rs.90,000/-. There was a credit balance of Rs.1,03,382 as on

22.08.2015. The said amount has been taken in Statement - B. During the check period the interest of Rs.13,382/- has been taken in Statement – C.

35. It is alleged that the Fixed Deposit Account No. 408100PU00004909 in the name of Smt. Vijay Laxmi with Punjab National Bank, Paschim Vihar, Delhi, was opened on 13.12.2013 with balance of Rs.90,000/- by Smt. Vijay Laxmi. There was a credit balance of Rs.1,03,383/- as on 22.08.2015. The interest of Rs.13,383/- was given during the check period. Credit balance has been taken in Statement - B and interest in Statement – C.

36. It is alleged that the Saving Bank Account No. 01291530003639 in the name of Mr. Nalin Kumar with HDFC Bank, Janakpuri, Delhi, was opened on 13.06.2013 with Zero Balance by Sh. Nalin Kumar. There was confirmed balance of Rs. (-) 1,064.80/- as on 22.08.2015.

37. It is alleged that a search was conducted at H. No. 971, 2nd Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi, i.e. residential premises of Sh. Nalin Kumar on 12.08.2015. A cash amount of Rs.4,35,400/- was recovered from his house. Out of which Rs.4 lakh were seized at the time of search. However, the total amount of Rs.4,35,400/- has been taken in Statement - B. It

has particularly been mentioned in the said search list that Sh. Nalin Kumar could not produce source of the said cash amount.

38. As per inventory found during search at House No. 971, 2nd Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi. On the calculation of the same, the value of assets at the beginning of check period has been worked out to Rs.49,150/-. Hence, this amount has been taken in Statement - A. The total value of such assets in the inventory has been calculated for Rs. 66,650/- at the end of check period and it has been mentioned in Statement - B accordingly. This amount of Rs.66,650/- include amount of Rs.8,500/- of 3 fans found in garage of the said house.

39. It is alleged that the locker no. 181 at Allahabad Bank, Moradabad, U.P., jointly exists in the name of Sh. Nalin Kumar and Smt. Vijay Laxmi. This locker was operated on 18.08.2015 in the presence of two independent witnesses. During locker operation an amount of Rs.8,00,000/- in cash was recovered, which was taken into police possession. Accused Nalin Kumar was available at the time of locker operation. He signed the locker operation memo. He did not explain the source of the said amount of Rs. 8 lakh at the time of locker operation. Therefore, the said amount of Rs. 8 lakh recovered from the said locker has been taken into a account as asset at the end of check period and mentioned in the Statement - B.

40. In DA calculation, the amount of GPF and Taxes directly deducted from the gross salary are not considered and net income is calculated only after deduction of the amounts under these heads.

41. It is alleged that no loan or HBA etc. have been taken by Nalin Kumar from the Department during his service. While calculating his DA, salary for the month of August 2015 has not been included as the check period ends on 22.08.2015 and the salary for the month of August 2015 had accrued to him only after this date. The net salary income for the period from 01.07.2013 to 22.08.2015 comes to Rs. 14,35,092/-.

42. It is alleged that as per ITR filed by Smt. Vijay Laxmi for the Assessment Year 2014-2015, income was Rs.3,42,990/-, tax paid was 7518. The income is divided by 12 and then multiplied by 9 (July/13 to March/15), then it comes to Rs.2,57,242/- which is considered as income during the check period. As per ITR filed by Smt. Vijay Laxmi for the Assessment Year 2015-2016, income was Rs. 3,65,160/-, tax paid was 4651. Thus total income is Rs.7,08,150/- and total tax 12,169/- for aforesaid Assessment years.

43. Thus, based on the said ITR, income for the said period has been taken for Rs. 6,22,402/- (2,57,242+3,65,160/-).

This has been shown in Statement - C.

44. Further tax of Rs. 12,169/- paid for the said assessment year is taken in Statement - D of Expenditure.

45. The ITR of Smt. Vijay Laxmi for the assessment year 2013-14 indicated date of filing ITRs on 05.08.2013 and thus, tax amount of Rs.11,946/- has been considered as expenditure and mentioned in Statement - D.

46. The Income Tax Office, ward 41(3) Minto Road, Delhi vide his reply dated 04.07.2018 has confirmed that Smt. Vijay Laxmi has not filed ITRs for the Financial Year 2015-16.

47. It is alleged that Frankfinn Entertainment Company Pvt. Ltd. entered into lease agreement on 18.02.2008 with Smt. Vijay Laxmi with respect to Flat No. 612, Suneja Tower-II, District Centre Janakpuri West, New Delhi, taken on lease w.e.f 18.02.2008 on monthly rent @ Rs.17,450/-. Later on, an addendum to this lease agreement was executed between both the parties and the monthly rent was reduced from Rs. 17,450/- to Rs. 13,960/- w.e.f. 01.08.2009. All the payments of rent were made vide account payee cheques in favour of Smt. Vijay Laxmi.

48. It is alleged that M/s Frankfinn Entertainment

Company Pvt. Ltd. had paid total amount of Rs. 97,720/- to Smt. Vijay Laxmi on account of rent of the said property for the period from 01.04.2015 to 22.08.2015. This is based on the cheques provided by the company to Smt. Vijay Laxmi during the said period (13,960 x 7= 97,720/-).

49. It is alleged that Smt. Vijay Laxmi, attorney of Sh. Nitin Kumar has executed the said lease agreement. In the lease agreement, it is shown that Sh. Nitin Kumar is son of Smt. Vijay Laxmi. Thus, the property from which Smt. Vijay Laxmi has shown the rental income belongs to said Sh. Nitin Kumar.

50. It is alleged that there is another property in the name of Smt. Vijay Laxmi situated at Gadikhana, Katghar, Moradabad. She had claimed rental income from the said property, which address is also found mentioned in Account Opening Form of Smt. Vijay Laxmi maintained with Allahabad Bank, Civil Line Moradabad.

51. That tenant lived in the said house since September 2011 and paying rent of Rs. 2,500/- per month to Smt. Vijay Laxmi. It is to be mentioned here that the benefit of rental income prior to 01.04.2015 has been taken into account on the basis of ITRs of Smt. Vijay Laxmi. Therefore, Rs. 12,500/- has been considered as rental income of Smt. Vijay Laxmi during the

period from 01.04.2015 to 22.08.2015.

52. That Sh. Nalin Kumar made investment of Rs. 15,000/- on 07.04.2000 in Birla Sun Life Mutual Fund. This investment is still continuing. This investment of Rs. 15,000/- is taken in Statement - A and Statement - B.

53. That Sh. Nalin Kumar made investment of Rs. 8000/- in Birla Sun Life on 16.06.2000. That this investment is still continuing. Therefore, Rs. 8000/- has been taken in statement A and B. That there were income of Rs.2,940/- and Rs.5600/-from dividends from the said investment during the check period. Hence, this amount has been taken into account in Statement – C.

54. The details of salary and other emoluments received by accused Nalin Kumar during the check period reveal that his gross salary income from July, 2013 to 22.08.2015 is Rs.19,16,083/-. The salary income of Rs. 77035/- for the period from 01.08.2015 to 22.08.2015 has been included in the said gross salary which is wrong, as notional salary cannot be taken into account when the same is not received by the accused. The salary for the month of August, 2015 have been received at the end of August, 2015 and not on 22.08.2015 and therefore, this salary amount of Rs. 77,035/- which has been taken into account

for the month of August, 2015 has been deducted from the gross salary of Rs.19,16,083/- which comes to Rs. 18,39,048/-. The total amount paid on account of income tax and cess for the period from July, 2013 to July, 2015 comes to Rs. 1,72,831/- and after deducting this amount from the gross salary of Rs.18,39,048/-, it comes to Rs. 16,66,217/- and 1/3rd of this gross salary comes to Rs.5,55,405.6 (round off 5,55,406/-) which is taken as 1/3rd as expenditure on account of unverifiable expenditure.

55. It is alleged that during house search of accused Nalin Kumar on 12.08.2015 at Flat No.971, GH-13, Paschim Vihar, Delhi, many receipts pertaining to purchasing of various house hold articles were found. The amount bearing on them, accordingly, considered as expenditure in Statement - D. Total amount is to the tune of Rs.3,20,334/-.

56. It is alleged that Ms. Ananya Gupta, daughter of Nalin Kumar studied at Ecole Globale International Girls School, Dehradun during the check period. Ms. Ananya Gupta's fee in the school was paid by Nalin Kumar.

57. It is alleged that total amount of Rs.8,35,277/- was paid by Nalin Kumar towards education of his daughter Ms. Ananya Gupta during the check period i.e. w.e.f. 01.07.2013 to

22.08.2015.

58. It is alleged that Nalin Kumar has been maintaining a Policy No.123757791 with LIC commenced from 13.03.2007 in the name of Nalin Kumar. The date of Maturity of this policy is March 2026. Total premium of Rs.31,000/- was paid by Nalin Kumar during the check period towards the said period. This expenditure has been taken in Statement – D.

59. It is alleged that Nalin Kumar has been maintaining a Policy No.437901929 with Max Life Insurance Company Ltd. and a total premium of Rs.30,000/- was paid by Nalin Kumar during the check period towards the said policy. This expenditure has been taken in Statement – D.

60. It is alleged that Credit Card No.5239512022360008 in the name of Smt. Vijay Laxmi was issued on 10.5.2011 by ICICI Bank, West Avenue Road, Punjabi Bagh. There was expenditure of Rs.22,916.76 (round of Rs.22,917/-) through the said credit card during the check period. The details of payment made through credit card have been perused and it has been revealed that the payments were made to Amazon Service Tax, Max Health Care, interest charges etc. and therefore, the said amount has been taken as expenditure in Statement – D.

61. Thus, based on the above details, the assets at the beginning of check period, assets at the end of check period found in the name of accused Nalin Kumar and his mother Smt. Vijay Laxmi are mentioned hereunder in Statement - A and Statement - B respectively.

62. The details of income received by accused Nalin Kumar and his mother Smt. Vijay Laxmi are mentioned in Statement - C. The details of expenditure incurred by them during the check period have been given in Statement – D.

63. Details of Assets, income and expenditure of Nalin Kumar and his mother Smt. Vijay Laxmi are as under:-

64. Assets prior to the check period (Statement –A)

Sl. No.	Details of Assets	Amount (in Rs.)
1	Plot No. E-51, measuring 251 square yard in PDA, Omaxe City, Patiala, Punjab in the name of Nalin Kumar	11,96,486
2	Flat A-202, Block A, The Peoples Conservative CGHS Ltd., Plot No.10, Sector-18, Dwarka, Delhi in the name of Nalin Kumar.	13,75,000
3	Flat No.971, Second Floor, CAT-II, Pocket-GH-13, Paschim Vihar, New Delhi, in the name of Smt. Vijay Laxmi.	3,92,275
4	Investment in Franklin Templeton Investment vide Account No.0260007857982 in the name of Nalin Kumar	8000

5	Balance in saving bank account no.028801002898 in the name of Sh. Nalin Kumar maintained with ICICI Bank, 368, Meera Bagh, Paschim Vihar, New Delhi.	28,343
6	Balance in saving bank account no.4047000100004174 in the name of Nalin Kumar maintained with Punjab National Bank, New Customs House, New Delhi.	12,058
7	Balance in saving bank account no.20130780026 in the name of Nalin Kumar maintained with State Bank of India, Sector – 12 Dwarka Branch, New Delhi.	1,78,665
8	Balance in PPF bank account no.30043875492 in the name of Nalin Kumar maintained with State Bank of India, Meera Bagh Branch, New Delhi.	51,890
9	Investment in Shriram Transport Finance Co. Ltd. through Certificate no.50014038 in the name of Smt. Vijay Laxmi.	50,000
10	Balance in Saving Bank Account no.015501017020 with ICICI Bank, Punjabi Bagh, Delhi in the name of Smt. Vijay Laxmi.	86,490
11	Balance in Fixed Deposit A/c No.015514101355 in the name of Smt. Vijay Laxmi with ICICI Bank, Punjabi Bagh, Delhi.	36,178
12	Balance in SB account No.20238071596 in the name of Smt. Vijay Laxmi with Allahabad Bank, Civil Lines Branch Moradabad (UP).	8,23,219
13	Balance in Saving Bank Account No.4081000100022767 with Punjab National Bank, Paschim Vihar, Delhi in the name of Smt. Vijay Laxmi.	1,05,768
14	Balance in Fixed Deposit A/c No.408100PR00035344 in the name of Smt. Vijay Laxmi.	31,263
15	Balance in Saving Bank A/c No.30425433825 with SBI, Jawala Puri Branch, New Delhi in the name of Smt. Vijay Laxmi opened on 11.07.2008.	1,20,759

16	Balance in Term deposit bank A/c No.31477228570 in the name of Smt. Vijay Laxmi held in SBI, Jawala Puri Branch opened on 01.06.2012.	26,193
17	Investment towards Folio No.1020185537 in Birla Sunlife Mutual Funds in the name of Nalin Kumar	15,000
18	Investment towards Folio No.1020209293 in Birla Sunlife Mutual Funds in the name of Nalin Kumar	8,000
19	Cost of articles found during the search of Flat No.971, Second Floor, CAT-II, Pocket-GH-13, Paschim Vihar, New Delhi.	49,150
Total		45,94,737

65. Assets at the end of check period (Statement – B).

Sl. No.	Details of Assets	Amount (in Rs.)
1	Plot No.E-51, measuring 251 square yard in PDA. Omaxe City, Patiala, Punjab in the name of Nalin Kumar	11.96,486
2	Flat A-202, Block A, The Peoples Conservative CGHS Ltd., Plot No.10, Sector 18, Dwarka, Delhi in the name of Nalin Kumar	13,75,000
3	Flat No.971, Second Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi, in the name of Smt. Vijay Laxmi.	3,92,275
4	Cash amount recovered from locker No.688L maintained with Metropolis Vault, Hauz Khas, Delhi on 13.08.2015.	84,95,500
5	Investment in Franklin Templeton Investment vide Account No.0260007857982 in the name of Nalin Kumar	8000
6	Balance in saving bank account no.028801002898 in the name of Nalin Kumar maintained with ICICI Bank, 368, Meera Bagh, Paschim Vihar, New Delhi	49,990
7	Balance in saving bank account no.404700010004174 in the name of Nalin Kumar	13,258

	maintained with Punjab National Bank, New Customs House, New Delhi	
8	Balance in saving bank account no.20130780026 in the name of Nalin Kumar maintained with State Bank of India, Sector – 12, Dwarka Branch, New Delhi	2,11,169
9	Balance in PPF bank account no.30043875492 in the name of Nalin kumar maintained with State Bank of India, Meera Bagh Branch, New Delhi.	61,311
10	Investment in Shriram Transport Finance Co. Ltd. through Certificate no.50014038 in the name of Smt. Vijay Laxmi.	67,910
11	Balance in saving bank account no.015501017020 with ICICI Bank. Punjabi Bagh, Delhi in the name of Smt. Vijay Laxmi.	68,859
12	Balance in Fixed Deposit A/c No.015514101355 in the name of Smt. Vijay Laxmi with ICICI Bank, Punjabi Bagh, Delhi	43,831
13	SB account No.20238071596 in the name of Smt. Vijay Laxmi with Allahabad Bank, Civil Lines Branch Moradabad (UP)	1,63,202
14	Balance in Saving Bank Account No.4081000100022767 with Punjab National Bank, Paschim Vihar, Delhi in the name of Smt. Vijay Laxmi.	1,17,586
15	Balance in Fixed deposit A/c No.408100PR00035344 in the name of Smt. Vijay Laxmi.	37,456
16	Balance in Saving bank Account No.30425433825 with State Bank of India, Jawala Puri Branch, New Delhi in the name of Smt. Vijay Laxmi opened on 11.07.2008.	10,17,161
17	Balance in Term Deposit bank A/c No.31477228570 in the name of Smt. Vijay Laxmi held in SBI. Jawala Puri Branch, Delhi opened on 01.06.2012.	32,472
18	Balance in Fixed Deposit A/c	1,03,382

	No.408100PU00004918 in the name of Smt. Vijay Laxmi maintained with Punjab National Bank, Paschim Vihar, Delhi.	
19	Balance in Fixed Deposit A/c No.408100PU00004909 in the name of Smt. Vijay Laxmi maintained with Punjab National Bank, Paschim Vihar, Delhi.	1,03,383
20	Cash amount recovered during house search of H. No.971, 2 nd Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi	4,35,400
21	Cash amount recovered from Locker No.181 at Allahabad Bank, Moradabad U.P., in joint name of Smt. Vijay Laxmi and Nalin Kumar	8,00,000
22	Investment towards Folio No.1020185537 in Birla Sunlife Mutual Funds in the name of Nalin Kumar	15,000
23	Investment towards Folio No.1020209293 in Birla Sunlife Mutual Funds in the name of Nalin Kumar	8,000
24	Cost of articles found during the search of Flat No.971, Second Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi.	66,650
	Total	1,48,83,281

66. Income during the check period (Statement – C).

Sl. No.	Details of Assets	Amount (in Rs.)
1	Income from net salary received by Nalin Kumar during the period 01.07.2013 to 22.08.2015	14,35,092
2	Income of Smt. Vijay Laxmi as per the ITRs filed by her for the period 01.07.2013 to 31.03.2015	6,22,402
3	Rental Income of Smt. Vijay Laxmi of Rs.97,720/- from property 612, Suneja Towar-II, Distict Central Janakpuri West, New Delhi and of Rs.12,500/- from property situated at Gadikhana, Katghar, Moradabad for the period 01.04.2015 to 22.08.2015.	1,10,220
4	Interest accrued in saving bank account no.028801002898 in the name of Nalin Kumar	3,801

	maintained with ICICI Bank 368, Meera Bagh, Paschim Vihar, New Delhi.	
5	Interest accrued in saving bank account no.404700010004174 in the name of Nalin Kumar maintained with Punjab National Bank, New Customs House, Delhi.	1,188
6	Interest accrued in saving bank account no.20130780026 in the name of Nalin Kumar maintained with SBI, Sector 12, Dwarka Branch, New Delhi.	9,809
7	Interest accrued in PPF bank account no.30043875492 in the name of Nalin Kumar maintained with SBI, ICT,IGI Airport Branch, New Delhi.	9,421
8	Interest accrued in Saving Bank Account No.015501017020 with ICICI Bank, Punjabi Bagh, Delhi in the name of Smt. Vijay Laxmi.	26,558
9	Interest accrued in Fixed Deposit A/c No.015514101355 in the name of Smt. Vijay Laxmi with ICIC Bank, Punjabi Bagh, Delhi	7,653
10	Interest accrued in SB account no.20238071596 in the name of Smt. Vijay Laxmi with Allahabad Bank, Civil Lines Branch, Moradabad (UP)	78,908
11	Amount received on maturity of 3 FDRs nos.50133551013, 50133551080 and 50133550972 each of Rs.1,50,000/- in the name of Smt. Vijay Laxmi with Allahabad Bank, Civil Lines Branch, Moradabad (UP) on 01.12.2012.	5,32,236
12	Interest accrued in Saving Bank Account No.4081000100022767 with Punjab National Bank, Paschim Vihar, Delhi in the name of Smt. Vijay Laxmi.	9,221
13	Interest accrued in Fixed Deposit A/c No.408100PR00035344 in the name of Smt. Vijay Laxmi.	6,193
14	Interest accrued in Saving Bank A/c No.30425433825 with SBI, Jawala Puri branch, New Delhi in the name of Smt. Vijay Laxmi opened on 11.07.2008.	9,627
15	Interest accrued in Term Deposit bank A/c No.31477228570 in the name of Smt. Vijay Laxmi	6,279

	held in SBI, Jawala Puri branch opened on 01.06.2012.	
16	Interest accrued in Fixed Deposit A/c No.408100PU00004909 in the name of Smt. Vijay Laxmi maintained with Punjab National Bank, Paschim Vihar, Delhi.	13,382
17	Interest accrued in Fixed Deposit A/c No.408100PU00004909 in the name of Smt. Vijay Laxmi maintained with Punjab National Bank, Paschim Vihar, Delhi.	13,383
18	Investment towards Folio No.1020185537 in Birla Sunlife Mutual Funds in the name of Nalin Kumar.	5600
19	Investment towards Folio No.1020209293 in Birla Sunlife mutual funds in the name of Nalin Kumar.	2940
20.	Income from investment towards R.K. Stock Holdings Pvt. Ltd.	7,20,418
	Total	36,24,331

67. Expenditure during the check period (Statement-D).

Sl. No.	Items	Amount (in Rs.)
1	Non verifiable expenditure (1/3 rd of the gross income) in r/o Nalin Kumar.	5,55,406
2	Installment paid towards Loan account no.584834256 in the name of Nalin Kumar maintained with HDFC Limited, Munirka Delhi-67.	2,60,000
3	Repayment made by Nalin Kumar during the check period, towards loan taken from indiabulls.	4,58,173
4	Payment made to The Peoples Conservative CGHS Ltd. against security and maintained charge for the period from 01.7.2013 to August 2015 in respect of flat A – 202, CGHS Society, Dwarka, Delhi.	52,000
5	Income tax paid by Smt. Vijay Laxmi during the check period (As per ITRs for financial year 2013-14, 2014-15 and 2015-16) Rs.11946/- for FY 2013-	24,115

	14 Rs.7518/- for FY 2014-15 Rs.4651 for FY 2015-16.	
6	Retail Invoice No. DEL/RI/AC/0001/14-15 dated 14.04.2014 for GREE Split AC in the name of Nalin Kumar.	26,100
7	Receipt of M/s Kalki Interiors, 144 MP Mall, M P Block, Pitampura from Nalin Kumar against advance for Interior work consultancy for site A-202, Hare Krishna Apartment, Sector – 18, Dwarka, Delhi	25,000
8	Retail Invoice dated 15.05.2015 of M/s Fair Deal Enterprises, 1317, Desh Bhandu Gupta Road, Karol Bagh, New Delhi in the name of Nalin Kumar for purchase of articles mentioned in the invoices.	37,467
9	Retails Invoice dated 05.05.2015 for purchase of Cabinet Flush Handle.	6,277
10	Retail Invoice dated 25.04.2015 for purchase of article mentioned therein from M/s Laposs Hardware Pvt. Ltd., C-32/A, Mansarover Garden, New Delhi.	9,038
11	Four Invoices found during house searches of accused, of M/s Jaquar & Co. Pvt. Ltd. for purchase of article mentioned therein in the name of Nalin Kumar.	1,46,258
12	Original retail Invoice dated 04.04.2015 found during House search issued by M/s Desire Windows uPVC Doors & Window in the name of Smt. Vijay Laxmi.	16,875
13	Original retail invoices no.G05806 dated 20.10.2013 and invoice no.G05763 dated 19.10.2013 issued by M.L. Sharma & Co. (Construction) Pvt. Ltd. in the name of Smt. Vijay Laxmi.	21,430
14	Original invoice dated 21.05.2015 found during House search issued by Shri Balaji Glass and Pipe House in the name of Nalin Kumar.	31,889
15	Payment of fee to Ecole Global International Girls School, Dehradun, towards study of daughter Ms. Ananya Gupta (daughter of accused) for the period	8,35,277

	July 2013 to 22.08.2015.	
16	Payment made towards LIC Policy No.123757791 in the name of Nalin Kumar during the period July 2013 to 22.08.2015.	31,000
17	Premium towards in Policy No.437901929 maintained with Max Life Insurance Company Ltd., Branch office GO-2, Kailash Colony, New Delhi-48 in the name of Nalin Kumar.	30,000
18	Payment towards Credit Card number 5239512022360008 held in the name of Smt. Vijay Laxmi issued by ICICI bank.	22,917
Total		25,89,222

68. It is stated that on the basis of available record and data as mentioned above, the disproportionate assets found in possession of accused Nalin Kumar is as follows:-

69. Thus, the investigation has established disproportionate assets as under:-

Sl. No.	Head	Amount (in Rs.)
1.	Assets at the beginning of check period (STATEMENT A)	45,94,737
2.	Assets at the end of check period (STATEMENT B)	1,48,83,281
3.	Assets acquired during the check period (B-A)	1,02,88,544
4.	Income during the check period (STATEMENT C)	36,24,331

5.	Expenditure during the check period (STATEMENT D)	25,89,222
6.	Likely savings [income - expenditure]	10,35,109
7.	DA [Assets (B-A) - Likely Saving (C-D)]	92,53,435
8.	Percentage of DA= DA/INCOME ×100	255.31%

70. It is alleged that Nalin Kumar, during the check period 01.07.2013 to 22.08.2015 while working as Dy. Commissioner, had acquired assets to the tune of Rs.1,02,88,544/- and had incurred expenditure of Rs.25,89,222/- approx. and was found to be in possession of disproportionate assets amounting to Rs.92,53,435/- approx., during the check period which was disproportionate assets to his known sources of income to the tune of Rs.36,24,331/- which he could not satisfactorily account for. The total percentage of DA as per the above calculation is assessed at 255.31%.

71. Present chargesheet is filed for commission of offence by accused Nalin Kumar punishable under section 13(2) r/w 13 (1) (e) of the PC Act 1988 of the Prevention of Corruption Act, 1988.

72. It is stated that the sanction for prosecution in respect of accused Nalin Kumar is accorded under section 19 of PC Act,

1988 by the competent authority.

73. I have heard learned counsels for the parties.

Contentions of Ld. PP for CBI.

74. Learned counsel for CBI has submitted that at the stage of charge, only the documents submitted by the prosecution with the chargesheet or relied upon by the prosecution can be considered. It is also submitted that the documents, in relation to sale of property No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi, submitted by the accused are forged and manipulated and other documents, which the counsel for accused is referring to, are not reliable and based on afterthought defence and are not liable to be considered. It is also submitted that none of the unrelayed documents, which are being referred to, are of sterling quality and thus, cannot be considered at the stage of charge. It is also submitted that accused will get ample opportunities during the trial to prove his defence.

75. Ld. Counsel for CBI contended that accused Nalin Kumar has committed an offence under section 13 (2) read with section 13 (1) (e) of the Prevention of Corruption Act as the accused was found with assets amounting to Rs.92,53,435/- approximately during the check period which were disproportionate to his known sources of income which was to

the tune of Rs.36,24,331/- and the accused could not give satisfactory explanation regarding the said assets and the DA was found to be 255.31 %.

76. Ld. counsel for CBI further contended that a sum of Rs.84,95,500/- were found in the locker No. 688L, maintained with Metropolis Vault, Hauz Khas, Delhi and during the search the locker was operated on 13.08.2015 and no satisfactory explanation was given by the accused. It is submitted that the accused later on produced false and fabricated receipts to show that the said amount was taken by his mother from one Badri Narayan Sharma against the purchase of flat no.971, Second Floor, CAT-II, Pocket, GH 13, Paschim Vihar, New Delhi.

77. Ld. counsel for CBI further contended that sum of Rs.8,00,000 lacs were recovered from the locker no. 181 at Allahabad Bank, Moradabad, UP and no explanation was given by the accused when the said locker was operated on 18.08.2015 and later on, built up false explanation that said amount was contributed by him and other members of the family and was kept for the treatment of his sister, who had expired in 2014.

78. Ld. counsel for CBI further contended that a cash amount of Rs.4,35,400/- was found during the search of house no. 971, Second Floor, CAT-II, Pocket GH-13, Paschim Vihar, New Delhi and no explanation was offered by the accused and

later on, raised false explanation that said amount belong to his mother, who had withdrawn the said amount from time to time from her account during May, 2015 to July, 2015 for the purpose of renovation/construction work of Dwarka Flat, where the family was willing to shift.

79. Ld. PP for CBI has relied upon the judgments – (i) *Hem Chand v. State of Jharkhand, Crl. Appeal No. 479/2008*, (ii) *State of Tamilnadu by Inspector of Police v. N. Suresh Rajan & Ors., Criminal Appeal No. 22-23 of 2014*.

Contentions of Ld. Counsel for accused.

80. On the other hand, learned counsel for accused contended that the prosecution has produced certain documents pursuant to order dated 07.11.2022 passed by this court on the application filed by the accused under section 91 CrPC for production of documents. Learned counsel for the accused has submitted that these documents may be considered as the same are relevant and have bearing on the framing of charge. Learned counsel for the accused has also submitted that rent agreements were collected by CBI through Production-cum-Seizure Memos and letter dated 17.10.2016 was written by Shri Badri Narain to CBI explaining the sources of amount paid by him to Ms. Vijay Laxmi but have not been relied upon by CBI hence, the accused has filed application for production of these

documents and now, these documents are liable to be considered. It is submitted that some documents were enclosed by the accused alongwith his application dated 05.06.2016, addressed to SP, CBI seeking return of Rs.84,00,000/- seized by CBI from bank locker and Rs.8 lacs seized by CBI from joint locker of accused and his mother, Vijay Laxmi & Rs.4 lacs recovered during house search of accused and these documents have also been produced by CBI on the application of accused and are liable to be considered by the court. It is also submitted that there are certain statements of unrelieved witnesses, produced by CBI pursuant to order of this court on the application under section 91 Cr. PC filed by accused, are also liable to be considered at the stage of charge.

81. Ld. Counsel for accused contended that false case has been registered against the accused and the prosecution did not consider the reasonable explanation given by the accused regarding the amount recovered from his house and from two lockers and there is also some calculation errors, which led to filing of the present charge sheet.

82. Ld. Counsel for accused further contended that the CBI while calculating DA, has included assets, income and expenditure of the mother of the applicant/accused.

83. It is contended by the Ld. Counsel for the accused that

a sum of Rs.84,00,000 lying in the locker, was the cash received by Ms. Vijay Laxmi, mother of the accused from Shri Badri Narayan Sharma against the sale consideration of her property i.e. flat No. 971, Cat-II, Second Floor, Pocket GH-13, Paschim Vihar, New Delhi and this transaction is supported by various documents executed between Badri Narayan Sharma and Smt. Vijay Laxmi. It is submitted that number of receipts are on records and shows clearly that Shri Badri Narayan Sharma had paid the said amount in installments for which receipts were being executed by Smt. Vijay Laxmi from time to time and further, a sale deed was executed on 09.12.2015 in respect of aforesaid property and thus, it leaves no doubt regarding the said transaction and the explanation given by the accused regarding the aforesaid amount which was seized from the locker. It is also submitted that statement of Pramod Kumar (LW44) does not qualify to be expert opinion /expert evidence and need not be considered.

84. Ld. Counsel for accused contended that sum of Rs.4,35,400/- recovered from house of the accused was the amount, withdrawn by Smt. Vijay Laxmi from her account during the period from 2.06.2015 to 08.08.2015 for renovation/ construction of Dwarka flat, where the family of the accused wanted to shift.

85. Ld. Counsel for accused further contended that sum of Rs.8,00,000/- recovered from Locker no. 181, Allahabad Bank, Moradabad, UP, in the joint name of Vijay Laxmi and accused, was the amount contributed by the siblings and family members of the accused towards of surgery of his sister, Ms. Nisha Gupta, who was suffering from kidney problem and doctor has advised surgery, however, the surgery was delayed on the advice of specialist doctor of Ganga Ram Hospital, however, before such surgery could take place, sister of the applicant expired in 2014.

86. Ld. Counsel for accused also contended that a sum of Rs.32,52,228/- as shown in statement-A, assets at the beginning of the check period in the FIR were not considered by the IO in his final report, resulting in an increase in assets of the accused by Rs.32,52,228/-.

87. Ld. Counsel for accused has relied upon the judgments – *Union of India v. Prafulla Kumar Samal & Anr.* [(1979) 3 SCC 4]; *Sajjan Kumar v. Central Bureau of Investigation* [(2010) 9 SCC 368]; *State v. Dr. Anup Kumar Srivastava* (2017) 15 SCC 560; *Vasant Rao Guhe v. State of Madhya Pradesh* (2017) 14 SCC 442; *K. Veeraswamy v. Union of India & Ors.* [(1991) 3 SCC 655]; *K. Dhanalakshmi v. CBI*, 2023 SCC Online Del 105; *Sat Paul v. Delhi Administration*

(1976) 1 SCC 727.

88. I have gone through the material on record.

89. At the outset, I may state that it is settled law that at the stage of framing of charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for conviction of the accused. If the court is satisfied that a prima facie case is made out for proceeding further then the charge has to be framed.

90. In a case **Union of India v. Prafulla Kumar Samal** (supra) it was observed by the Hon'ble Supreme Court, in paragraph 10, as under:

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

91. A case under section 120B IPC r/w Section 420 IPC and section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was registered against the accused and other persons. On 12.08.2015 a search was conducted at the house of accused Nalin Kumar where the locker keys were found. On 13.08.2015 locker in the name of Nalin Kumar at Metropolis Vaults Private Limited, Hauz Khas, New Delhi, was operated and Rs.84,95,000/- were recovered. Thereafter, on 04.11.2015 an FIR was registered under sections 13(2) r/w 13(1)(e) of PC Act, 1988 against accused for possessing assets disproportionate to his known sources of income.

92. Before proceeding further, I will deal with the first contention of the accused regarding the documents which are produced by the prosecution pursuant to the order passed by this court on the application filed by the accused under section 91 Cr.PC. Some of these are unrelieved documents. The documents i.e. self attested photocopy of Rent Agreement of property No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi, have been seized by prosecution vide Seizure Memo dated 17.04.2018 but have not been relied upon by the prosecution. The Death Certificate of Ms. Nisha Gupta, Death Summary of Ms. Nisha Gupta, Copy of Sale Deed dated 09.12.2015 between Vijay Laxmi and Shri Badri Narain Sharma, Bayana Receipt dated 05.05.2015, Online receipt of TDS payment of Rs.98,000/- were sent by accused to CBI alongwith the letter dated 05.06.2016 for return of amount of Rs.84 lacs & 8 lacs seized from bank lockers and Rs.4 lacs seized during house search. Further, a copy of Sale Deed executed by Smt. Vijay Laxmi in favour of Mr. Badri Narain Sharma, were received by CBI from Sub Registrar in response to notice under section 91 Cr.PC given by CBI. There are certain unrelieved statement of witnesses produced by CBI in response to order dated 07.11.2022 passed by this court and a letter dated 17.10.2016 written by Shri Badri Narain Sharma to CBI produced by CBI pursuant to order dated 10.10.2022 whereby CBI was directed to produce unrelieved documents/unrelieved statements.

93. The Sale Deed, photocopy of Bayana Receipt, photocopy of online receipt of TDS payment (Form 26 QB) are the relied upon documents, filed by CBI with chargesheet. Rest of the documents i.e. Rent Agreement in respect of property No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi, Death Certificate of Ms. Nisha Gupta, Death Summary of Ms. Nisha Gupta, letter dated 17.10.2016 written by Badri Narain Sharma to CBI are the unrelieved documents and further the statements of some witnesses, namely, S/Shri Raj Kumar, Vijay Pal Singh, Jagdhari, Rajesh Prajapati, Mauj Saran Singh and statement of Smt. Vijay Laxmi, produced by CBI pursuant to order passed by this court on 07.11.2022, are the unrelieved documents.

94. Now, only question is whether these unrelieved documents can be considered at the stage of consideration of charge.

95. In the judgment, **Rukmini Narvekar v. Vijaya Satardekar & Ors.**, Criminal Appeal Nos.1576-1577 of 2008, the Hon'ble Supreme Court has observed:

“17. We have carefully perused the decision of this Court in the State of Orissa v. Debendra Nath Padhi (supra). Though the observations in paragraph 16 of the said decision seems to support the view canvassed by by Shri Rohatgi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court under section 482 of Cr.P.C and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be

necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case (supra). Thus we have to reconcile paragraphs 16 and 23 of the decision in State of Orissa v. Debendra Nath Padhi (supra). We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University, Sirsa & Anr., JT 2008(8) SC 621. As observed by this Court in Bharat Petroleum Corporation Ltd. & Anr. vs. N.R. Vairamani & Anr AIR 2004 SC 4778, observations of Courts are neither to be read as Euclid's formula nor as provisions of the statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

18. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.”

96. It has emerged from the aforesaid judgment that documents which are of sterling quality making the prosecution version absurd or preposterous and in such very rare and exceptional cases the defence material can be seen at the stage of

framing of charge.

97. As per accused the documents submitted by accused with his letter dated 05.04.2016 i.e. Death Certificate of Ms. Nisha Gupta, Death Summary of Ms. Nisha Gupta, some documents seized on 17.04.2018 i.e. the self attested photocopy of Rent Agreement of property No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi and a letter dated 17.10.2016 written by Shri Badri Narain Sharma to CBI, to explain the sources of payments made by him to purchase property no. 971, II Floor, Cat-II, Pocket GH-13, Paschim Vihar, New Delhi, should be considered by this court at the stage of charge.

98. These documents were submitted to show that Rs.84 lacs were lying in the locker of Nalin Kumar as the sale consideration of the property No. 971, IInd Floor, GH-13, Paschim Vihar, Delhi. No explanation was furnished by the accused when the said amount was seized. The explanation has been given by accused after 7 months of the said seizure of amount. Serious doubt has been raised regarding authenticity/genuineness of these documents by the prosecution as the major payments were made in cash before the registration of FIR.

99. Further, the documents regarding ailment of Ms. Nisha

Gupta, sister of accused, are not directly connected to Rs.8 lacs recovered from the locker in the joint name of accused Nalin Kumar and his mother, Vijay Laxmi. It is the accused, who is relating the above said documents to amounts recovered to justify the valid source of these amounts. As per accused, said Rs.8 lacs were contributed by his family members for operation of his sister. Further, the unrelieved statements are regarding receipt of rent in respect of Property No. 971, II Floor, Cat-II, Pocket GH-13, Paschim Vihar, New Delhi by Badri Narain after alleged purchase of said property and regarding selling of aforesaid property.

100. None of these unrelieved documents and statements of unrelieved witnesses, namely, S/Shri Raj Kumar, Vijay Pal Singh, Jagdhari, Rajesh Prajapati, Mauj Saran Singh and statement of Smt. Vijay Laxmi are of sterling quality to show that the prosecution version is totally absurd or preposterous nor I find this case in the category of rare and exceptional where the said defence material is liable to be considered at the stage of charge. The genuineness and authenticity of these documents are yet to be ascertained which can only be done during trial. No doubt, the accused will get ample opportunities to prove these documents. Accused may rely upon these documents in trial and may prove aforesaid documents during defence evidence. Thus, in view of the above, the contention of the Ld. Counsel for the accused is

liable to be rejected.

101. One of contention of the Ld. Counsel for the accused is that he has given explanation regarding the amount of Rs.84,95,500/- which were recovered from Locker No. 688L maintained with Metropolis Vault, Hauz Khas, Delhi on 13.08.2015. Despite that CBI has taken this amount as assets of accused.

102. As per accused, Smt. Vijay Laxmi, mother of the accused has executed a sale deed in favour of one Badri Narayan Sharma in respect of flat number 971, II Floor, Cat-II, Pocket GH-13, Paschim Vihar, New Delhi for a sale consideration of Rs.98 lacs. Shri Badri Narayan Sharma made the cash payments to the mother of accused i.e. Rs.9,80,000/- on 05.05.2015; Rs.15,00,000/- on 14.05.2015; Rs.20,00,000/- on 21.05.2015; Rs.5,00,000/- on 04.06.2015; Rs.15,00,000/- on 09.06.2015; and Rs.19,20,000/- on 16.06.2015 and by drafts of Rs.7,00,000/- on 05.12.2015, Rs.6,00,000/- on 08.12.2015 and cash Rs.2,000/- on 09.12.2015.

103. It is worthwhile to mention that when the said amount of Rs.84,00,000/- was seized from Locker No. 688L maintained with Metropolis Vaults Private Limited, Hauz Khas, New Delhi, no explanation was given by the accused regarding the said

amount and the explanation for this amount is given only on 05.04.2016. PW15, Shri Vidya Ratan and PW, 20 Shri Kailash Sahu have clearly stated that the accused has not furnished any explanation when the said amount was seized.

104. Further, the alleged payment of Rs.84,00,000/- was made from 05.05.2015 to 16.06.2015, in cash by Shri Badri Narain Sharma to the mother of the accused. These transactions do not inspire confidence inasmuch as different payments ranging from Rs.9.8 lacs to 19,20,000/- totaling to Rs.84,00,000/- were made in cash. It is difficult to understand why these payments were not made by cheques or by other modes. No reason has been assigned as to why such a huge amount is paid in cash. This in itself creates doubt on the explanation given by accused regarding said amount.

105. All the cash payments were shown to have been made before registration of FIR. Payments made subsequent to FIR are by draft on 05.12.2015 & 08.12.2015. Further, the sale deed was executed in respect of said property on 09.12.2015 i.e. after registration of the FIR and much after the seizure of the cash amount of Rs.84,95,500/- on 13.08.2015 from locker of accused. The entire transaction between Smt. Vijay Laxmi and Shri Badri Narain Sharma is full of suspicion. The said transaction, on the face of it, does not seem genuine. Accused

has raised a triable issue. The accused may lead evidence regarding said transactions to prove its defence.

106. Further, it is also very unlikely that the purchaser of the property would pay almost 85% of sale amount to the seller in cash before execution of sale deed of the property. Substantial amount i.e. Rs.74 lacs besides earnest money of Rs.9.8 lacs were paid by the purchaser of the property without sale documents being executed in his favour. Here, it also needs to be mentioned that this amount was lying in the locker of accused, and was not in the joint locker of his mother and accused. This fact further creates doubt on the said transactions. The accused being Deputy Commissioner in Custom, must be well informed regarding the limit of cash transaction which are prescribed as per rules.

107. Further, the report given by Shri Pramod Kumar, Chartered Accountant (PW44) shows Books of Account maintained by Shri Badri Narain Sharma are full of suspicion and total amount paid to Ms. Vijay Laxmi is also not shown in Books of Account. The aforesaid fact clearly shows that the CBI has rightly taken the said amount as assets of accused and has rightly observed that no plausible explanation has been furnished by the accused for this amount. The accused will get ample opportunity to prove its defence during trial.

108. Next contention of accused is that source of Rs. 8 lacs recovered from the Locker No.181, Moradabad, UP in the joint name of Vijay Laxmi and accused, was explained by the accused to CBI official, however this amount was taken as assets of the accused. The accused's explanation is that the said amount was contributory fund collected for the surgery of his sister, Ms. Nisha Gupta. The explanation given by the accused, on the face of it, appears incorrect. Smt. Nisha Gupta, sister of the accused was under treatment from 2010 and was on regular dialysis and no surgery as such was prescribed or conducted since the time she was detected this disease till she expired on 12.10.2014. There was no reason for the accused to keep the said money with him for the period of more than 10 months after death of his sister Nisha Gupta. Further, the accused did not give any justification when the amount was seized and said explanation given by the accused for the first time on 05.04.2016 The explanation given by the accused does not inspire even little confidence and prosecution has rightly taken this amount as his assets. The accused may prove his case during trial.

109. One more contention of the Ld. Counsel for the accused is that CBI has wrongly added a sum of Rs.4,35,400/-, recovered during house search of H. No. 971, II Floor, Cat-II, Pocket GH-13, Paschim Vihar, New Delhi, as assets of the

accused. It is contended that this amount belonged to his mother which she withdrew from her bank account during May 2015 to July 2015 for renovation / construction of Dwarka Flat.

110. It is noted that the accused has not given any explanation for this amount when the said amount of Rs.4,35,400/- was recovered from the house of accused on 12.08.2015. There is nothing on record to show that Dwarka Flat of the accused was under renovation / construction. The accused has to explain that the said amount was to be paid against any work or purchase of any article towards construction. In written submissions filed by accused on 23.05.2023, it is stated that the said amount was withdrawn by Vijay Laxmi from her account during May to July, 2015 for the purpose of construction/ renovation of Dwarka flat where they were intending to shift. This justification given by accused appears unbelievable. As per accused, mother of accused had already received Rs.84,00,000/- in cash from Sh. Badrinarayan for selling of Flat no. 971, IInd Floor, Cat-II, Paschim Vihar, New Delhi then withdrawal of further amount of Rs.4,35,000/- for renovation of flat / for personal requirement creates further doubt on these transactions. Thus, prosecution has rightly considered the said amount as assets.

111. The delay in giving explanation, in itself, creates

serious doubt on the defence of the accused.

112. Ld. Counsel for accused has raised one more contention that in the complaint (D1)/FIR while calculating the assets at the beginning of check period (Statement A) CBI has taken Rs.32,52,228/- as savings during 1994 till 30.06.2014. However, this amount has not been added in final report and thus, resulting in increase in assets of accused by Rs.32,52,228/-. It is submitted that similar figure of Vijay Laxmi should also have been taken and made part of the assets at the beginning of check period.

113. The complaint(D1)/FIR shows that sum of Rs.32,52,228/- was considered as amount towards 2/3rd salary of accused during the period 1994 till 30.06.2014.

114. Here, the contention of the counsel for CBI is that the complaint (D1)/FIR has mentioned the only rough/prima facie amount and Rs.32,52,228/- are taken as 2/3rd of salary w.e.f. 1994 to 30.06.2014 as savings. In the charge sheet, different savings of the accused have been considered for the check period of 01.07.2013 to 22.08.2015, thus there was no reason for considering aforesaid 2/3rd salary of the accused as savings. All the amount lying in the bank account, the lockers and invested in different schemes have been taken into account in

the charge sheet. Thus, there is no force in the contention of the counsel for the accused that this amount which was calculated as 2/3rd of salary of the accused during the period 1994 to 30.06.2014 should be considered as saving in the charge sheet.

115. In view of the above discussion, it is clear that accused Nalin Kumar, during the check period **01.07.2013 to 22.08.2015** while working as Dy. Commissioner, had acquired assets to the tune of Rs.1,02,88,544/- and had incurred expenditure of Rs.25,89,222/- approx. and was found to be in **possession of disproportionate assets amounting to Rs.92,53,435/-** approx., which was disproportionate assets to his known sources of income to the tune of Rs.36,24,331/-. Accused could not satisfactorily account for the disproportionate assets. The total percentage of DA as per the above calculation is assessed at 255.31%.

116. The judgments, cited by Ld. Counsel for accused, does not help his case.

117. The aforesaid facts and circumstances of the case, thus, gives rise to **grave suspicion** against accused warranting **framing of charge** for the offence under section 13 (1) (e) punishable under section 13(2) of the Prevention of Corruption Act, 1988.

118. Let the charge be framed against the accused accordingly.

ANNOUNCED IN THE OPEN COURT
On **16.08.2023**.

(ARVIND KUMAR)
Special Judge (PC Act) (CBI)-10
Rouse Avenue Courts Complex
New Delhi. (pk)