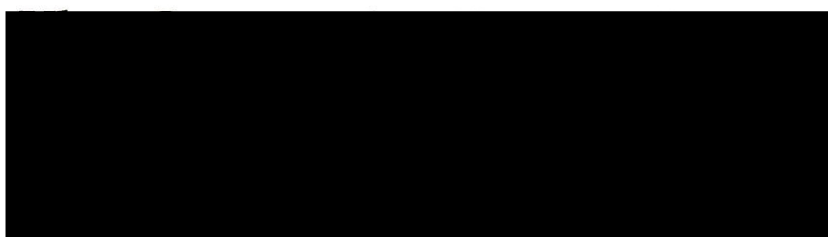


**BEFORE JUSTICE D.K. JAIN, FORMER JUDGE, SUPREME COURT OF INDIA
OMBUDSMAN, THE BOARD OF CONTROL FOR CRICKET IN INDIA**

REFERENCE 1/2021

**[Arising out of order dated 03.03.2021, passed by the Hon'ble High Court of
Judicature of Bombay in Interim Application No. 2527 of 2020 in Writ Petition (L)
No. 3130 of 2020 titled as Ankeet Anil Chavan v. The Board of Control for Cricket
in India]**

**In the matter of :
Mr. Ankeet Anil Chavan**



ORDER

1. By way of the Order dated 3rd March 2021, passed in Interim Application No. 2527 of 2020 (in Writ Petition (L) No. 3130 of 2020) titled as "Ankeet Anil Chavan v. The Board of Control for Cricket in India", the Hon'ble High Court of Judicature of Bombay has referred to the Ombudsman, The Board of Control for Cricket in India (for short "the BCCI"), the Representation dated 16th March 2020 made by Mr. Ankeet Anil Chavan (hereinafter referred as "the Applicant"), for consideration.
2. The Applicant had originally filed its Representation before the President, BCCI on 13th November 2019, inter-alia, praying for reduction in the quantum of punishment of life ban imposed upon him from playing or representing or associating with any activities of the BCCI or its affiliates, to a period of seven years from the date of the ban imposed by the Disciplinary Committee of the BCCI, vide Order dated 13th September 2013. The Representation was primarily based on the Order passed by the Ombudsman, in the case of Mr. S. Sreesanth on a reference made by the Hon'ble Supreme Court of India vide final judgment and Order dated 15th March 2019, (as clarified by subsequent Order dated 5th April 2019), passed

in Civil Appeal No. 2424 of 2019, titled as “Mr. S. Sreesanth Vs. The Board of Control for Cricket in India & Ors.” In that case, by Order dated 7th August 2019, the Ombudsman had modified the quantum of punishment of life ban imposed on Mr. S. Sreesanth to a period of seven years from the date of the ban imposed by the Disciplinary Committee of the BCCI.

3. Pending the consideration of the Representation, the Applicant made another similar Representation to the President, BCCI on 16th March 2020.
4. Having failed to evoke any response from the BCCI on his Representations, the Applicant filed the Writ Petition before the Hon’ble High Court, inter-alia, praying for setting aside of the life ban imposed upon him by the BCCI and restricting the ban only to a period of seven years from the date of the punishment order dated 13th September 2013.
5. The Writ Petition was disposed of by the Hon’ble High Court vide Order dated 15th September 2020, with a direction to the BCCI to decide the Representations filed by the Applicant.
6. However, subsequently, on an Interim Application being filed by the BCCI, the Hon’ble Court, vide Order dated 3rd March 2021, passed the following direction:

“i) Learned Ombudsman, BCCI to decide the Representation dated 16 March 2020 of the Petitioner-Ankeet Anil Chavan (‘Exhibit E’ to the Petition). Considering the age of the Petitioner, we request the learned Ombudsman to decide the Representation expeditiously and preferably within eight weeks from the date a copy of this order is placed (Sic) before him.

ii) The Interim Application to stand disposed of accordingly.”



7. Briefly stated, the facts necessary for the disposal of the Representation dated 16th March 2020 are as follows:

7.1 The Applicant is a registered player with the Mumbai Cricket Association, which is affiliated to the BCCI. He participated in an Indian Premier League (IPL) match held at Mumbai on 15th May 2013, representing Rajasthan Royals against Mumbai Indians. On the basis of secret information provided by the Central Investigating Agencies, on the morning of 16th May 2013, the Special Cell of Delhi Police arrested the Applicant along with other two players, one of them being, Mr. S. Sreesanth, on the suspicion of having indulged in spot fixing for monetary gains during certain matches of the IPL. Consequently, by Order dated 17th May 2013, the BCCI suspended the Applicant from all cricket activities and appointed a "Commissioner of Inquiry" (for short "the Commissioner") to look into the matter.

7.2 In a related development, in a Writ Petition [being Writ Petition(C) No. 318 of 2013], filed in public interest, the Hon'ble Supreme Court of India, directed the Commissioner to look into the irregularities during the IPL matches, and the individual aberrations or the errant behaviour of the players and submit its report to the BCCI within 15 days.

7.3 The Applicant was in the police custody for a period of eleven days and was thereafter, granted conditional bail for a period of seven days for his wedding. Subsequently, the Applicant was sent to the judicial custody.



7.4 The Commissioner submitted a Preliminary Report to the BCCI on 5th June 2013. On his release from judicial custody, the Applicant appeared before the Commissioner. His statement was recorded by the Commissioner on 24th June 2013. Thereafter, a Supplementary Report was submitted by the Inquiry Commissioner on the basis of the material collected and statement made by the Applicant. In the Report, it was stated that the allegations against the Applicant were corroborated by the recorded telephonic conversations between him and one Ajit Chandila and other bookies, and also the recovery of a sum of ₹2,00,000/- (Rupees two lakhs only) from his room. It was alleged that the Applicant had agreed to concede 12 runs in the second over of the match for monetary consideration of ₹60,00,000/- (Rupees sixty lakhs only), and the Applicant in fact conceded 15 runs in the second over, thus corroborating the allegations against him.

7.5 Consequently, disciplinary proceedings were initiated against the Applicant. In the written reply filed by the Applicant before the Disciplinary Committee, the Applicant denied having any telephonic conversation. Further, the Applicant explained the recovery of ₹2,00,000/- (Rupees two lakhs only) as his daily allowance received from Rajasthan Royals coupled with his own money. Upon consideration of his written reply, the Disciplinary Committee, vide its Order dated 13th September 2013, found the Applicant guilty under the following provisions:

- a. Articles 2.1.1, 2.1.2 and 2.1.3 of the Anti- Corruption Code of the BCCI (for short "the Code") for corruption;
- b. Article 2.2.3 of the Code for betting;



- c. Article 2.4.2 of the Code on failure to disclose to the Anti-Corruption Unit (ACU), BCCI, the full details of having been approached or being invited to engage in a conduct that would amount to breach of the Code; and
- d. Article 32 of the BCCI Memorandum, Rules and Regulations.

- 7.6 Accepting the Report of the Commissioner, the Disciplinary Committee, vide its Order dated 13th September 2013, banned the Applicant from playing or representing for life. It also ordered that during this period, he would not be entitled to be associated with any activities of the BCCI or its affiliates.
8. On the completion of investigation, a Charge Sheet was also filed by the Special Cell in the Delhi Police against the Applicant and Mr. S. Sreesanth, along with 40 others, including some players, under Sections 419/420/120B of the Indian Penal Code, 1860 (for short "the IPC") and Section 3/4 of the Maharashtra Control of Organised Crime Act, 1999 (for short "the MCOCA"). However, vide Order dated 25th July 2015, the Trial Court came to the conclusion that no prima facie case under the MCOCA or any other Penal Statute was disclosed against any of the accused persons and all of them were entitled to be discharged. Consequently, the Applicant was discharged from all the offences alleged to have been committed by him.
9. The Appeal filed against the Order of discharge is stated to be pending.
10. Upon receipt of the uncertified copy of the Order dated 3rd March 2021 passed by the Hon'ble High Court, forwarded by the BCCI on 9th March 2021, Notice dated 13th March 2021 was issued to the Applicant and the



BCCI to appear before the Ombudsman for personal hearing. The Applicant was granted four weeks' time to file Written Submissions along with the documents in support of his Representations. The BCCI was also directed to file its written response to the Representations within the same time.

11. Pursuant thereto, the Applicant filed his Written Submissions on 6th April 2021. However, no response to the Representations was filed by the BCCI.
12. The Applicant appeared before the Ombudsman along with his Counsel, Mr. Kishore Gaikwad, at the hearing held on 19th April 2021. However, the BCCI chose to ignore the notice.
13. At the outset, Mr. Kishore Gaikwad, Ld. Counsel appearing for the Applicant submitted that having regard to the scope of these proceedings and the limited prayer made in the Writ Petition, the Applicant is not questioning his conviction by the Disciplinary Committee and limits his relief to reduction in the quantum of punishment imposed by virtue of the Order passed by the Disciplinary Committee. It was pleaded that the Applicant was only seeking parity with the case of Mr. S. Sreesanth, whose quantum of punishment has been modified by the Ombudsman.
14. In support of his submissions that in a way the case of the Applicant is on a much better footing as compared to the case of Mr. S. Sreesanth, the Ld. Counsel highlighted the following additional mitigating factors:
 - i. The Applicant was known for his cool temperament and comes from a very humble background. He had never entered into any scuffle or dispute with his fellow players in



his cricket career, one of the aggravating circumstances pressed into service against Mr. S. Sreesanth;

- ii. At the time of the alleged incident, the Applicant was 27 years of age and had no knowledge of the bookie nexus or of the betting in the game of cricket and was not even remotely connected to it;
- iii. The Applicant can play in all three formats of the game as a left arm spinner, middle order batsman and a fielder and being 35 years of age, he can still play for a minimum of 5 more years in his sporting life; and
- iv. Being an employee of Air India, due to the life ban imposed on him, he cannot even play for his Employer.

15. Since in his Representations as also before the Hon'ble High Court, the Applicant has prayed for parity in punishment with the case of Mr. S. Sreesanth, it is unnecessary to burden the Order by making copious references to the broad principles of sentencing, enunciated by the Hon'ble Supreme Court in a catena of its decisions, as the same have already been referred to in extenso while dealing with the case of Mr. S. Sreesanth, which formed part of the Writ Petition as also the Representations. Nevertheless, reference to the decision of the Constitution Bench of the Hon'ble Supreme Court in *Bachan Singh vs. State of Punjab* (1980) 2 SCC 684, a locus classicus on the principles of sentencing, is inescapable. While emphasizing that the sentencing principle may not only be confined to the nature of the crime, but may also focus on the Criminal, the Hon'ble Supreme Court observed as follows:

"201As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to



the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because 'style is the man'....

(Emphasis supplied)”

16. In *Mukesh & Anr. Vs. State (NCT of Delhi) & Ors.* (2017) 6 SCC 1, a three-Judge Bench of the Hon'ble Supreme Court has also emphasised that awarding sentence is a matter of discretion of the Judge, which has to be exercised on a consideration of the circumstances, aggravating or mitigating, in each individual case. The principles of proportionality, deterrence and rehabilitation are also relevant factors, which have to be borne in mind while exercising discretion in sentencing.

17. At this juncture, it will also be profitable to refer to the decision of the Hon'ble Supreme Court in the case of *Mr. S. Sreesanth*, wherein the scope and purport of the relevant provisions of the Code has, thus, been explained:

“54. We, thus, have to look into Article 6 to find out the manner and procedure for imposing punishment/ sanction by disciplinary committee of the BCCI. We have noticed that various mitigating and aggravating circumstances have been noticed by this Court in different judgments while considering the sentencing policy under criminal jurisprudence. If we look into Article 6, Article itself enumerates aggravating and mitigating circumstances. Article 6 contains a heading 'Sanctions'. Para 6.1 provides that in order to determine the appropriate sanction that is to be imposed in each case, the disciplinary committee must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to. Article 6.1 is as follows:

“6.1 Where it is determined that an offence under this Anti-Corruption Code has been committed, the BCCI Disciplinary Committee will be required to impose an appropriate sanction



upon the participant from the range of permissible sanctions described in Article

6.2. In order to determine the appropriate sanction that is to be imposed in each case, the BCCI Disciplinary Committee must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to:

6.1.1 aggravate the nature of the offence under this Anti-Corruption Code, namely

6.1.1.1 a lack of remorse on the part of the Participant;

6.1.1.2 whether the Participant has previously been found guilty of any similar offence under this Anti-Corruption Code and/or any predecessor regulations of the BCCI and/or the ICC Anti-Corruption Code and/or anti-corruption rules of other National Cricket Federation;

6.1.1.3 where the amount of any profits, winnings or other Reward, directly or indirectly received by the Participant as a result of the offence(s), is substantial and/or where the sums of money otherwise involved in the offence(s) are substantial;

6.1.1.4 where the offence substantially damaged (or had the potential to damage substantially) the commercial value and/or the public interest in the relevant match(es) or event(s);

6.1.1.5 where the offence affected (or had the potential to affect) the result of the relevant match(es) or event(s);

6.1.1.6 where the welfare of a participant or any other person has been endangered as a result of the offence;

6.1.1.7 where the offence involved more than one participant or other persons; and/or

6.1.1.8 any other aggravating factor(s) that the BCCI Disciplinary Committee considers relevant and appropriate."

55. Further, Article 6.1.2 enumerates the mitigating circumstances. Articles 6.1.2, 6.1.2.1 to 6.1.2.9 are as follows:



“6.1.2 mitigate the nature of the offence under the Anti-Corruption Code, namely:

6.1.2.1 any admission of guilt (the mitigating value of which may depend upon its timing);

6.1.2.2 the participant’s good previous disciplinary record;

6.1.2.3 the young age and/or lack of experience of the participant;

6.1.2.4 where the participant has cooperated with the Designated Anti-Corruption Official (or his/her designee) and any investigation or demand carried out by him/her;

6.1.2.5 where the offence did not substantially damage (or have the potential to substantially damage) the commercial value and/or the public interest in the relevant match(es) or event(s);

6.1.2.6 where the offence did not affect (or have the potential to affect) the result of the relevant match(es) or event(s);

6.1.2.7 where the Participant provides Substantial Assistance to the Designated Anti-Corruption Official (or his/her designee), that result in the Designated Anti-Corruption Official (or his/her designee) discovering or establishing an offence under this Anti-Corruption Code by another Participant or another cricket Participant bound by such regulations or that results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another Participant or other third party;

6.1.2.8 where the participant has already suffered penalties under other laws and/or regulations for the same offence; and/or

6.1.2.9 any other mitigating factor(s) that the BCCI Disciplinary Committee considers relevant and appropriate.”

56. The Anti-Corruption Code which has articles containing mitigating and aggravating circumstances are necessarily to be taken into consideration while imposing punishment/sanction under Article 6. Article 6.2 contains table in three columns, (i) Anti-Corruption Code of Offence; (ii) Range of permissible period or ineligibility and (iii) additional discretion to impose a fine. It is useful to extract entire Article 6.2 to the following effect:

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6.2 Having considered all of the factors described in Articles 6.1.1 and 6.1.2, the BCCI Disciplinary Committee shall then determine, in accordance with the following table, what the appropriate sanction(s) should be:

ANTI CORRUPTION CODE OF OFFENCE	RANGE OF PERMISSIBLE PERIOD OF INELIGIBILITY	ADDITIONAL DISCRETION TO IMPOSE A FINE
Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption)	A minimum of five (5) years and maximum of a life time	AND, IN ALL CASES: the BCCI Disciplinary Committee shall have the discretion to Impose a fine on the participant upto a maximum of the value of any Reward received by the Participant directly or indirectly, out of or in relation to the offence committed under this Anti Corruption Code.
Articles 2.2.1, 2.2.2 and 2.2.3 (Betting)	A minimum of two (2) years and a maximum of five (5) years	
Articles 2.3.1 and 2.3.3 (as it relates to an offence under Article 2.3.1) Misuse of inside information)	A minimum of two (2) years and a maximum of five (5) years	
Articles 2.3.2 and 2.3.3 (as it relates to an offence under Article 2.3.2) (Misuse of inside information)	A minimum of six (6) months and a maximum of five (5) years	

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Articles 2.4.1 and 2.4.2 (General)	A minimum of one (1) year and a maximum of five (5) years	
Articles 2.4.3 and 2.4.4 (General)	A minimum of six (6) months and a maximum of two (2) years	

57. In the present case life ban has been imposed on the appellant on offences under Article 2.1.1., 2.1.2, 2.1.3 and 2.14(corruption), for which as per second column a minimum of five years and maximum of life time ineligibility is provided for. Whether in case where offence under Article 2.1.1, 2.1.2, 2.1.3 and 2.1.4 is proved, the disciplinary committee is obliged to award a life time ban. The answer has to be that life ban cannot be imposed in all cases where such offences are proved. When range of ineligibility which is minimum five years, maximum life ban is provided for, the discretion to choose either minimum or maximum or in between has to be exercised on relevant factors and circumstances.

58. The disciplinary committee's order dated 13.09.2013 does not advert to the aggravating and mitigating factors as enumerated in Article 6.1.1. and 6.1.2. Without considering the relevant provisions of Anti-Corruption Code the disciplinary committee has imposed life time ban which sanction cannot be held to be in accordance with the Anti-Corruption Code itself. The disciplinary committee had not even adverted to Article 6.1.1 and 6.1.2 which enumerates the aggravating and mitigating circumstances. When the Anti-Corruption Code itself mandates consideration of relevant factors and this Court in Board of Control for Cricket in India (supra) had laid down that the disciplinary committee of the BCCI is empowered to impose appropriate sanction in terms of Article 6 of the Code upon consideration of relevant factors, without considering the relevant factors imposition of maximum punishment cannot be sustained. Apart from factors as noted above the subsequent conduct of the appellant also shows obedience to BCCI. Initially when the life time ban was imposed on 13.09.2013, appellant has not even challenged



the said order, it was only after the appellant was discharged from the criminal case on 25.07.2015 and when the appellant got opportunity to play and participate in the Scotland Premier League on e-mail was sent through Kerala Cricket Association on 11.01.2017. It was only thereafter when No Objection Certificate was not granted to the appellant and the BCCI refused to modify the ban, writ petition was filed in February 28, 2017 in the Kerala High Court.

(Emphasis supplied)”

18. It is also pertinent to note that in the case of Mr. S. Sreesanth, in its Order dated 15th March 2019, the Hon'ble Supreme Court has ruled that sanctions under Article 6 of the Code are akin to sentencing in the Criminal Jurisprudence. Further, the question that was posed by the Hon'ble Court for consideration of the Ombudsman in that case was whether any aggravating and mitigating factors, as enumerated in Articles 6.1.1 and 6.1.2 of the Code exist, not warranting life ban on Mr. S. Sreesanth for committing offences under Articles 2.1.1, 2.1.2, 2.1.3, 2.1.4 of the Code, when range of permissible period of ineligibility for the said offences is minimum of five years and maximum of life time. It was on consideration of the bundle of circumstances, as pressed into service by Mr. S. Sreesanth and the BCCI that the Ombudsman had rendered the decision, modifying the sentence awarded to him.
19. As noted above, in his Writ Petition before the Hon'ble High Court and before the Ombudsman, the Applicant has sought parity with the case of Mr. S. Sreesanth and no more. Therefore, the short question falling for consideration in the instant case is whether there are any aggravating circumstances, which disentitle the Applicant to the relief prayed for in the Representations.



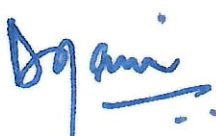
20. It is not in dispute that both Mr. S. Sreesanth and the Applicant faced disciplinary proceedings under identical provisions of the Code and similar punishments were awarded to both of them on the recommendation of the Disciplinary Committee.
21. Pertinently, in the case of Mr. S. Sreesanth, his plea for award of lessor punishment was strongly opposed by the BCCI before the Hon'ble Supreme Court as well as before the Ombudsman, but in the instant case, there has been no resistance on the part of the BCCI either before the Hon'ble High Court or before the Ombudsman. So much so, as noted above, the BCCI has neither filed any response to the Notice issued in these proceedings nor has even appeared before the Ombudsman at the time of personal hearing.
22. In view of the afore noted factual background, the Ombudsman has examined the matter in light of the Order passed by the Ombudsman in the case of Mr. S. Sreesanth, where all the aggravating and the mitigating circumstances, as enumerated in Article 6.1.2 of the Code have been elaborately considered. Apart from the fact that there is no resistance by the BCCI to the Representations filed by the Applicant, which had initiated the disciplinary action against the Applicant, the mitigating circumstances, as enumerated in Articles 6.1.2.2, 6.1.2.4 and 6.1.2.5, respectively, which were found to be attracted in Mr. S. Sreesanth's case are attracted in the instant case as well. Therefore, having arrived at the said conclusion, there is no reason why the Applicant should be treated differently on the question of award of punishment.
23. Resultantly, the Applicant's Representation dated 16th March 2020 deserves to be accepted, granting him parity with Mr. S. Sreesanth, as



prayed for before the Hon'ble High Court. The Ombudsman is of the view that it would be in the interest of justice, to restrict the ban on the Applicant from participating in any kind of Commercial Cricket or from associating with any activities of the BCCI or its affiliates, to a period of seven years with effect from 13th September 2013, i.e. the date from which, the period of ban was imposed by the Disciplinary Committee.

24. The Reference is answered accordingly.

3rd May 2021


JUSTICE D. K. JAIN
OMBUDSMAN, BCCI