IN THE COURT OF VINOD YADAV: SPECIAL JUDGE (PC ACT) CBI-15: ROUSE AVENUE COURTS COMPLEX: NEW DELHI

FIR No.: RC No.2182021A0007
Bail Matters No.5/2022 & 11/2022
CBI V/s AKIL AHMAD & Ors. **[Bail Applications of (i) Mahim Pratap Singh Tomar (A-3); and (ii) Sunil Kumar Verma (A-6)]**
PS: CBI/AC-III
U/s 7, 8, 9 & 10 of PC Act, 1988 r/w Section 120-B IPC

15.01.2022

THROUGH WEBEX VIDEO CONFERENCING

Present: Shri Neetu Singh, Ld. PP for CBI alongwith IO, Inspector Dinesh Kumar.

Shri Ramesh Gupta, Ld. Senior Advocate for A-3 Mahim Pratap Singh Tomar and A-6 Sunil Kumar Verma/applicants alongwith Shri Vishal Gera, Ms.Jyoti Verma, Shri Rohit Yadav, Ms.Vijya Singh and Kumar Saraswat, Advocates.

COMMON ORDER

These are two applications, both filed under Section 439 Cr.P.C on behalf of A-3 Mahim Pratap Singh Tomar and A-6 Sunil Kumar Verma, seeking regular bail in the matter. Both the said bail applications are being disposed off by way of a common order, as the facts involved in the matter are common.

2. I had heard arguments advanced at bar on the aforesaid two bail applications on 14.01.2022. However, on account of I being suffering from bad throat and cold, the order could not be dictated. The order is being dictated and pronounced today.

3. The learned senior advocate for both the applicants has very vehemently argued that the main accused person namely Devendra Jain (A-4) has already been granted bail by this Court vide order dated 07.01.2022 and the

petition filed by CBI under Section 439 (2) Cr.P.C against the said order is listed for consideration before the Hon'ble High Court of Delhi on 22.01.2022.

4. (i) Before adverting to the arguments advanced bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 30.12.2021 on the basis of "**source information**" that A-1 Akil Ahmad, being Regional Officer of National Highways Authority of India (in short "NHAI") was in the habit of demanding and accepting illegal gratification from NHAI contractors for clearing their pending bills and for issuing Provisional Commercial Operations Date (in short "**PCOD**") for completed projects.

(ii) On 30.12.2021 A-1 had demanded illegal gratification from A-2 Retnakaran Sajilal, General Manager of M/s Dilip Buildcon Private Limited, having its registered office at Plot No.5, Chuna Bhatti, Kolar Road, Bhopal, Madhya Pradesh-462016 (hereinafter referred to as "**DBL**") with respect to project under "**Bangalore-Chennai Expressway Package 1 & 2**", being undertaken by DBL in Karnataka. A-4/Devendra Jain being Executive Director of DBL had approved payment of Rs.20,00,000/- (Rupees Twenty Lakhs Only) for being paid to A-1 towards illegal gratification. After approval by A-4, said illegal gratification of Rs.20.00 lakhs was delivered at the Delhi residence of A-8 Anuj Gupta for being finally paid to A-1. During trap proceedings, said amount of Rs.20.00 lakhs was recovered from Delhi on 30.12.2020. Further, cash amount of Rs.4.00 lakhs was also recovered from the premises of A-1.

5. A-1 to A-6 and A-8 have already been arrested in the matter and they all are lying remanded to judicial custody till 22.01.2022. It is argued that the telephones of both the applicants as well as the relevant record has already been seized. In the search conducted at the house of A-3/Mahim Pratap Singh Tomar, a sum of Rs.3.71 Crores has been recovered, which is not at all connected with the case. It is emphasized that keeping money at his house/residence by an

accused person is not an offence, unless and until the appropriate forum finds it to be against the law or the proceeds of any crime. As far as A-6/Sunil Kumar Verma is concerned, from him nothing has been recovered. It is very vociferously emphasized that CBI has not been able to impute knowledge to both the applicants that the money recovered from A-8 was meant for A-1.

6. It is also emphasized that both the applicants have been found to be "**Covid positive**" during police custody remand. In addition, A-3 has been suffering from "**jaundice**".

7. It is further emphasized that the intercepted communications which have the corroborative value has already been seized. The applicants have throughout co-operated in the investigation.

8. It is argued that the applicants were not given notice under Section 41(A) Cr.P.C. It is next argued that the entire evidence with regard to the source information/FIR in the matter stands collected by the CBI. The intercepted conversation and Whatsapp messages have already been taken into possession. The applicants have given their voice-samples and as such they are deemed to have cooperated in the investigation. It is very vociferously contended that the investigation in this case cannot traverse beyond scope of FIR.

9. (i) It is next contended that during the course of investigation, the investigating agency has thoroughly searched the house and office premises of the applicants and also seized the computer, mobile phone and various data pertaining to accounts ERP/electronic data from the applicants and now no further recovery is to be effected from them. The investigation in the matter is all documentary in nature. The learned senior counsel further made a strong pitch by submitting that applicants are not a flight risk and this Court is duty bound to strike a balance between the individual's right to personal freedom and right of

investigating agency to investigate.

(ii) It is strenuously emphasized that both the applicants have impeccable family background and they have been falsely roped in the matter with ulterior motive and vengeance, so as to satisfy the greed of their business rivals by harming their reputation and there is no *mens rea* on their part. It is claimed that applicants have clean past antecedents.

10. The learned senior Advocate has further very vehemently argued that the entire evidence in the matter is documentary which already stands collected by CBI and no useful purpose would be served by keeping the applicants in detention. The reliance has been placed upon several decisions to emphasis the point that mere gravity of the offence is no ground to deny bail to an accused when nothing further is to be recovered from him. He has also referred to the decisions wherein the Hon'ble Superior Courts have been pleased to deprecate the pre-trial detention of the accused persons. I will advert to the decisions a little later.

11. In the reply filed by CBI, it has been stated that the mobile numbers had been kept on surveillance and the calls were recorded, which contained the conversation(s) between the accused persons related to demand and delivery of bribe amount. It is further stated that the investigation revealed that A-6 is an employee of A-7, i.e M/s DBL, who was directed by A-3 to deliver the gratification amount at Delhi in pursuance to demand made by A-1 to A-2. Pursuant thereto, A-6 had collected bribe amount from a "**Hawala Operator**" after producing note of Rs.10/- as token and handed over the same to A-8, to be delivered to A-1.

12. I have given thoughtful consideration to the arguments advanced at bar.

13. It is a matter of record that both the applicants have been found to be "**Covid positive**". The jails in Delhi are already over-crowded. It is also admitted position on record that both the applicants were not given/served Notice under Section 41 (A) Cr.P.C. It is not the case of CBI that the applicants have not co-operated in the investigation. It is a matter of record that CBI has already investigated the matter as per the "**source information**". The CBI cannot afford to go beyond the "**source information**". The recovery in the matter has already been effected.

14. As regards the recovery of Rs.3.71 Crores from A-3, it is apparent from record that Income-Tax authorities have already been informed to this effect and they are seized of the matter. The CBI has to prove that A-3 had directed A-6 to deliver the sum of gratification amount of Rs.20.00 lakhs to A-8 and they were conscious of the fact that the said amount was towards bribe amount. The law so far is fairly settled that the accused persons cannot be kept in custody as a measure of punishment without trial. Merely because an economic offence has been alleged against the accused, he does not become dis-entitled for grant of bail if the substantial evidence has already been collected. In "**Dataram Singh V/s State of Uttar Pradesh And Ors.**", Crl. Appeal No. 227 /2018 (Arising out of S.L.P. (Crl.) No. 151 OF 2018), decided on 06.02.2019, the Hon'ble Supreme Court has been pleased to observe as under:

> *xxxxx*
> *5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons. MANU/SC/1183/2017 : (2017) 10 SCC 658.*
>
> *xxxxx*

15. In "**Bhadresh Bipinbhai Sheth vs State of Gujarat & Ors.**", Criminal Appeal Nos. 1134-1135 of 2015 [arising out of Special Leave Petition (Crl.) Nos. 6028-6029 of 2014], decided on 1 September, 2015, it has been observed as under:-

> *xxxxx*
> *21. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.*
>
> *23. (ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail appli cation, the remarks and observations of the arresting officer can also be properly evaluated by the court.*
>
> *(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction*

stage or post-conviction stage.

xxxxx

16. In "**R. Vasudevan V/s CBI", Bail Application No.2381/2009**, decided on 14 January, 2010, the Hon'ble High Court of Delhi has been pleased to observe as under:-

> *xxxxx*
> *11. No doubt, the offence of corruption is a serious offence and has eaten the vitals of our system more so when it is done by persons who are holding positions of power and authority. But still the question which needs to be considered dispassionately and objectively at this stage is that as to whether in a given case the petitioner who is alleged to have committed the offence under the Prevention of Corruption Act deserves to be enlarged on bail or not. No doubt the grant of bail in a non-bailable offence is a matter of discretion which the Court has to exercise judicially but at the same time the bail should not be denied to an accused only as a matter of punishment. There are two paramount considerations which the Court has to consider while enlarging the accused on bail. First as to what is the gravity of the offence and whether the accused would submit himself to processes of law or not? Secondly will the grant of bail endanger the fair investigation or the holding of a fair trial or in other words will the accused tamper with evidence.*
> *xxxxx*
>
> *xxxxx*
> *14. I am of the considered opinion that the petitioner is holding a high position, or is influential, or is resourceful works as a double edged weapon which can cut both ways. The position, the status and the influence of an accused person can no doubt be a ground for denial of bail in a case where the apprehension expressed by the investigating agency is genuine and where there are sufficient prima facie reasons to believe that he would influence the witnesses or tamper the evidence to deny the bail to him, but at the same time such a status, position can also be valid consideration to show that the accused has roots in the society and is therefore not going to run away from the processes of law.*
> *xxxxx*

17. In "**H.B. Chaturvedi V/s CBI**", Bail Appln. No.572/2010 and Crl. M. (Bail) 459/2010, decided on 31.05.2010 by Hon'ble High Court of Delhi, it has been further held as under:-

> *xxxxx*
> *12. Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.*
>
> *xxxxx*

18. In "**Sushil Ansal V/s Central Bureau of Investigation**", decided on 01.08.1997, in Criminal Miscellaneous Appeal No. 2186 of 1997 it has been clarified as under:-

> *xxxxx*
> *(6) Reliance is also placed in the decision in the case of* ***Bhagirathsinh Jadeja Vs. State of Gujarat****, MANU/SC/0052/1983: 1984 CriLJ160 and contended that if there is no prima-facie case, there is no question of considering other circumstances, but even where a prima-facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with the prosecution evidence.*
>
> *xxxxx*

19. In "**P. Chidambaram V/s Central Bureau of Investigation**", Criminal Appeal No. 1603 of 2019 (arising out of SLP (Crl.) No. 9269 of 2019) and Criminal Appeal No. 1605 of 2019 (arising out of SLP (Crl.) No. 9445 Of 2019), decided on 22.10.2019 the Hon'ble Supreme Court has categorically clarified as under:-

> *xxxxx*
> *26. As discussed earlier, insofar as the "flight risk" and "tampering with evidence" are concerned, the High Court held in favour of the appellant by holding that the appellant is not a "flight risk" i.e. "no possibility of his abscondence". The High Court rightly held that by issuing certain directions like "surrender of passport", "issuance of look out notice", "flight risk" can be secured. So far as "tampering with evidence" is concerned, the High Court rightly held that the documents relating to the case are in the custody of the prosecuting agency, Government of India and the Court and there is no chance of the appellant tampering with evidence.*
>
> *xxxxx*

20. Having considered the submissions made hereinabove, in the totality of the facts and circumstances of the case, both the applicants, i.e A-3 Mahim Pratap Singh Tomar and A-6 Sunil Kumar Verma are admitted to bail, on their furnishing a Personal Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) each, with one surety in the like amount each, to the satisfaction of learned Duty Judge/learned CMM/learned Duty MM, subject to the following conditions:

(i) That the applicants shall not try to contact directly or indirectly the co-accused persons and witnesses. They shall not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case so as to disuade him from disclosing true facts to the Court or to the investigating agency or tamper with the evidence.

(ii) The applicants shall not leave the country without prior permission of the Court.

(iii) The applicants shall cooperate in the investigation and attend the proceedings before the IO in Delhi as and when called for.

(iv) The applicants shall intimate about the mobile phone number(s) being used by them to the IO and shall keep the same operative all the time and send their pin-location to IO every day.

21. Nothing stated hereinabove shall tantamount to expression of opinion on the merits of the case.

22. The applicants are further directed to furnish Annexure-B in terms of decision of the Hon'ble High Court of Delhi in case titled as "**Sunil Tyagi V/s Govt. of NCT of Delhi & Anr.**" Passed in Crl. M.C. No. 5328 of 2013, dated 28.06.2021.

23. Both the bail applications stand disposed off in above terms.

24. A copy of this order be placed in both files.

25. A copy of this order be sent to Superintendent Jail concerned as well as to learned counsel(s) for the applicants through electronic mode.

26. Dasti as well.

(Announced through Webex Video-Conferencing)

VINOD YADAV Digitally signed by VINOD YADAV Date: 2022.01.15 13:57:00 +05'30'

(VINOD YADAV)
SPECIAL JUDGE (PC ACT) CBI-15
ROUSE AVENUE COURTS COMPLEX: NEW DELHI
15.01.2022