

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 296/2012**

% Reserved on: 8th May, 2012
Decided on: 15th May, 2012

A KRISHNA REDDY

..... Petitioner

Through: Mr. N.K. Kaul, Sr. Advocate with Mr.
G. Tushar Rao, Mr. Rajesh Anand,
Mr. Akhand Pratap and Mr. Vibhu,
Advocates.

versus

CBI

..... Respondent

Through: Mr. Dayan Krishnan, Spl. Counsel
with Mr. Nikhil A. Menon, Advocate.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner seeks bail in RC No. DAI/2010/A/0044 under Section 120B read with Section 420 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (in short PC Act).

2. Learned counsel for the Petitioner contends that the Petitioner has been in custody since 20th August, 2011. The charge-sheet has already been filed. Co-accused who have major role have already been granted bail. However, the Learned Trial Court dismissed the bail application of the Petitioner. Even if the allegations as set out in the FIR are taken on their face value, the only allegation against the Petitioner is that he raised bogus wage bills amounting to Rs.3,11,60,000/-. On the face of it the said allegation is incorrect as everybody knew that because of paucity of time work had to be done at war footing and the Petitioner managed to collect the

labourers from various States and got the work done in a record time so that the event was a success. The bail application of the Petitioner has been dismissed by the Learned Special Judge for the reason that the Petitioner indulged in influencing the witness. The Petitioner denies having influenced the prosecution witness. Even assuming the facts against the Petitioner, the said prosecution witness Harish Kumar Walia has not alleged anything against the Petitioner, rather he has stated that 300-400 persons were arranged for AKR constructions from Hyderabad and the said prosecution witness even as per his statement under Section 161 Cr.P.C. is not a witness to the payments made. As regards the allegations of abscondence leveled by the CBI, it is stated that mere abscondence is not enough to deny the bail. Further, the Petitioner was only availing the remedies available to him and after exhausting remedies available to him upto the Hon'ble Supreme Court, he surrendered before the Learned Special Judge. Further, even if an accused is not available and non-bailable warrants are issued to arrest him, the same cannot be a ground to deny him bail for all times to come. Reliance is placed on *Sanjay Chandra Vs. CBI (2012) 1 SCC 40*; *R. Vasudevan Vs. CBI 166 (2010) DLT 583*; *Subhash @ Nati Vs. State Govt. of NCT of Delhi Bail Application No. 431/2010 decided 9th April, 2010* and *Ruchi Talreja Vs. State Bail Application No. 1830/2011 decided on 13th March, 2012*. The trial is likely to take some time and thus bail be granted to the Petitioner.

3. Learned counsel for the CBI on the other hand contends that the availability of the accused for trial and not influencing the witness is a twin essential requirements to be seen at the time of grant of bail. The Petitioner

has failed on both the counts. The Petitioner initially joined the investigation for two dates i.e. 11th February, 2011 and 12th February, 2011. He was also asked to join the investigation on 13th February, 2011 when instead of appearing he sent a letter that his wife was unwell. When a raid was conducted at the house of the Petitioner at Hyderabad on 31st March, 2011, the Petitioner was not found at his house but was stated to have gone to Madhya Pradesh. The Petitioner had filed an anticipatory bail application before the Hon'ble High Court of Andhra Pradesh which was dismissed vide order dated 28th March, 2011. The CBI clarified its stand that the Petitioner was a suspect and not merely a witness. Thus, the contention that the Petitioner was joining the investigation and was only a witness, as he was not named in the FIR, is wholly unfounded. On 29th March, 2011 application for issuance of non-bailable warrants was filed by the CBI before the Learned Special Judge which was allowed, and on 23rd May, 2011 the Learned Special Judge declared the Petitioner a proclaimed offender in terms of Section 82 Cr.P.C. The Petitioner filed anticipatory bail applications before the Special Judge and this Court which were dismissed. On 9th August, 2011 the Learned Special Judge was pleased to pass an order for attachment of the immovable properties of the Petitioner. On 17th August, 2011 the Petitioner withdrew the Special Leave petition before the Hon'ble Supreme Court and surrendered before the Learned Trial Court on 20th August, 2011. In view of the serious allegations against the Petitioner and the fact that the Petitioner absconded, declared a proclaimed offender and was found tampering with the evidence, no case for grant of bail is made out.

4. I have heard learned counsel for the parties. Briefly the case of the prosecution is that though the Petitioner claims that he entered into a contract for laying down underground cables with M/s. Gem International, however he could neither produce the persons who did the work nor the muster rolls and only invoices and bills raised were shown. Statement of witnesses have been recorded, who have shown that they in fact did the cabling work for the Timing, Scoring and Result (TSR system) in the Commonwealth Games. Further statements of PW-28 and PW-31 recorded by the CBI shows that no work was done by the Petitioner's company for laying the cables. The Petitioner has not been able to show documents to substantiate his claim that he arranged the labour, which performed the work. It is apparent that the Petitioner's company was used as a front office for siphoning the money. No doubt, the Petitioner is involved in a part of the entire controversy which related to grant of tender to Swiss Timing Limited for the Timing, Scoring and Result system to be made operated at Commonwealth Games ousting all other competitors.

5. Undoubtedly, the main accuseds have already been granted bail. However, in the case of main accuseds there were no allegation of either absconsion or tampering with the evidence. As regards absconsion, it may be noted that the Petitioner surrendered after availing his remedies upto the Hon'ble Supreme Court and in the mean time he was declared a proclaimed offender and his properties were attached. There can be no dispute that every person has a right to access to justice. Thus, the Petitioner not surrendering to custody while he was seeking legal remedies cannot be treated adverse to him. However, the primary reason for the rejection of

Petitioner's bail by the Learned Trial Court was the fact that the Petitioner was found tampering with the evidence and influencing the witness. This fact came to light at the time of hearing of the anticipatory bail application of the Petitioner before the Learned Special Judge when one prosecution witness was found assisting the counsel for the Petitioner to address arguments. On pointing out by the Investigating Officer, the witness PW-10 Harish Kumar Walia stated that he was looking after the interest of the Petitioner. At this stage it would be relevant to note the observations of the Learned Special Judge in the order dated 15th June, 2011 passed at the time of hearing of the bail application -

“20.As per the CBI, the accused/applicant is likely to influence the witnesses if he is admitted to anticipatory bail at this stage. The apprehension of CBI is not unfounded. During the course of arguments a person assisting the Ld. Counsel for the accused was pointed out by the IO as one of the witness of the prosecution in this case. On inquiry he told that his name was Harish Kumar Walia and he admitted that he was witness No. 10 on behalf of CBI in this case. On further inquiry as to why he was present in the court on the said date with the Ld. Counsel for the accused, he submitted that he was looking after the work of accused/applicant in Delhi at the time of Commonwealth Games and he also knew the partners of M/s Gem International hence he was present in the Court with Ld. Counsel for the accused. Then he submitted that he was ready to withdraw from the Court and he walked out of the court. This incident itself shows that even on the day when accused/applicant A.K. Reddy has not been granted anticipatory bail, one of the witness namely Harish Kumar Walia has been already approached by him and the said witness was taking care of the case of the accused/applicant in Court. I am of the considered view that if this accused/applicant is granted anticipatory bail there is strong likelihood that he will influence

the other witnesses also. Hence he is not entitled to anticipatory bail.”

6. As per the statement of PW-10 Harish Kumar Walia he was employed by the Petitioner before the Commonwealth Games for overseeing the work of laying down of the cables. PW-10 himself has stated that it was a temporary cable work and the job of PW-10 was to guide and supervise the work of providing cable connectivity for the equipment and score boards and one connection to OVR. PW-10 stated that his job was virtually temporary in nature. It would be, thus, seen that despite the fact that the work had concluded much ahead of October, 2010 when the Commonwealth Games were held, PW-10 was still under the influence of Petitioner and was watching his interest by assisting counsel at the time of hearing of the bail application of the Petitioner.

7. As regards learned counsel for the Petitioner’s reliance on *Sanjay Chandra(supra)*, it may be noted that though it is well settled that the pretrial custody is not punitive in nature but necessity demands that some unconvicted persons should be held in custody pending trial, in order to secure their attendance and to ensure that they do not tamper with the evidence.

8. I do not find any merit in the contention of the learned counsel for the Petitioner that PW-10 does not state anything against the Petitioner, and thus even if assuming that the Petitioner has influenced him the same would not be detrimental to the prosecution case. The statement of PW-10 is not exculpatory qua the Petitioner and thus in view of the fact that the Petitioner

was found influencing the witness, I do not find any ground to grant bail to the Petitioner.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 15, 2012
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