

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 125/2022 & CRL.M.A. 482/2022

Reserved on : 21.01.2022
Date of Decision : 23.02.2022

IN THE MATTER OF:

CBI Petitioner
Through: Mr. Nikhil Goel, SPP for CBI with Mr.
Vinay Mathew, Advocate

Versus

DEVENDRA JAINRespondent
Through: Mr. Ramesh Gupta, Sr. Advocate with
Mr. Vijay K. Singh, Mr. Vishal Gera,
Ms. Vijaya Singh, Mr. Kumar Shashwat
Singh Sawno & Ms. Gunjan Chowksey,
Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 482 Cr.P.C. read with Section 439(2) Cr.P.C. on behalf of the petitioner/CBI seeking setting aside of the orders dated 06.01.2022 and 07.01.2022 passed by the learned Special Judge (PC Act), CBI-15, Rouse Avenue Courts, New Delhi in the case arising out of RC No.218/2021/A0007 registered under Sections 7/8/9/10 of the Prevention of Corruption Act, 1988 (as amended

in 2018) read with Section 120B IPC at P.S. CBI/AC-III, Delhi.

2. Insofar as prayer clause (a) is concerned, the same was not pressed having become infructuous.

3. The facts of the case, as noted by the learned Special Judge, are as under:-

“3. (I) ...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 Manger 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/applicant 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.

4. Thereafter simultaneous raids were conducted at the premises of A-1 Akil Ahmad, A-2 Retnakaran Sajilal, A-3 Mahim Pratap Singh Tomar, Applicant/A-4 Devendra Jain as well as A-5 Uma Soni. All the aforesaid accused persons except A-5 were also arrested on 31.12.2021 and the material available at their Offices was taken into possession by various CBI teams. On 30.12.2021, the applicant was there in Cochin alongwith his family members where he is stated to have gone for his treatment of naturopathy. He was picked up alongwith one of his relatives

from his hotel room and taken to the office of CBI at Katari Kadavu, Kullar Post, Cochin, during the intervening night of 30-31/12/2021, where purportedly he was given notice u/s 41A Cr.PC to attend the CBI office at 9:00 AM on 31.12.2021 and where ultimately he was arrested at 11:00 AM. He was produced before Chief Judicial Magistrate, Ernaculam from where he was brought to Delhi CBI Office on transit remand. He was produced before the Ld. Special Judge, who remanded him to police custody and from time to time his police custody has been extended till today. The two mobile phones of applicant have already been taken into possession by CBI. Similarly, the search and seizure was effected on the houses of other accused persons and the relevant material therefrom has been taken possession of and brought to Delhi.”

4. Mr. Nikhil Goel, learned SPP for the petitioner/CBI, contended that the impugned order suffers from the vice of having being passed for extraneous reasons. It was submitted that the learned Judge failed to take into consideration the *prima facie* involvement of the respondent, the severity of the offence, the likelihood of the respondent influencing the witnesses in the event of his release on bail, and the effect of such release on the investigation of the case, which is pending.

Learned SPP further submitted that as per the narration of facts in the FIR, the respondent, being Executive Director and CEO of *M/s Dilip Buildcon Private Limited* (hereinafter, referred to as 'DBL') is the main accused. It was averred that besides the recovery of the bribe amount of Rs.20 lacs from *Anuj Gupta*, Chartered Accountant at Delhi, large amounts of cash were recovered from others as well, including employees of DBL. While Rs.3.71 Crores were recovered from accused/*Mahim Pratap Singh Tomar*, AGM, DBL, Delhi, a recovery of Rs.50 lacs in cash and approximately 4 kgs. of gold bars and jewellery (worth Rs.2.2 Crores) was made from the locker of *Akil Ahmad*, Regional Officer, NHAI, Bangalore. It was also submitted that both *Sunil Kumar Verma* and *Mahim Pratap Singh Tomar* were working at

DBL under the respondent.

5. It was further submitted that while passing the impugned order, the learned Special Judge mistakenly placed reliance on the aspect of issuance of notice to the respondent under Section 41A Cr.P.C., even though the provision was not attracted. It was stated that while the trap proceedings were being conducted in Delhi on the evening of 30.12.2021, a CBI Officer at Cochin carried out search proceedings at the hotel where the respondent was staying alongwith his family. However, the concerned Officer at Cochin erroneously gave notice to the respondent under Section 41A Cr.P.C. It was urged that regardless of the notice given to the respondent under Section 41A Cr.P.C., the grounds of arrest were communicated by the Delhi office to the Cochin office on the intervening night of 30-31.12.2021, resulting in arrest of the respondent at Cochin on 31.12.2021. Learned SPP further submitted that despite having gone through the case diary containing all the relevant information, the learned Special Judge observed that there was non-compliance of Section 41A Cr.P.C.

6. Learned SPP also assailed the findings recorded in the impugned order, insofar as it was noted by the Court that the respondent has cooperated in the investigation and that all the material has already been collected. It was submitted that the FIR having been registered only on 30.12.2021, the investigation was pending at the time of passing of the impugned order and the respondent needs to be confronted with co-accused persons, including *Uma Soni*.

Insofar as the medical condition of the respondent is concerned, it was submitted that he does not suffer from any serious ailment and

Tourette Syndrome, from which he is stated to be suffering, is only a neurological condition of no grave emergency.

7. In support of his submissions, learned SPP placed reliance on the decisions of the Supreme Court in Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation reported as **(2018) 16 SCC 299** & Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation reported as **(2013) 7 SCC 439**.

8. Mr. Ramesh Gupta, learned Senior Counsel for the respondent, on the other hand, defended the impugned order. It was stated that as per the FIR, the source information was received qua accused/*Akil Ahmad*, to the effect that he was demanding and accepting illegal gratification from various contractors. Insofar as DBL is concerned, the allegations were that a demand of illegal gratification was made on 30.12.2021 by *Akil Ahmad* from *Retnakaran Sajilal*, General Manager, DBL, Bangalore. It was submitted that the only role assigned to the respondent is of approving a payment of Rs.20 lacs in favor of *Akil Ahmad*, whereafter the same was allegedly arranged and paid by the other employees at DBL.

9. So far as the notice issued to the respondent under Section 41A Cr.P.C is concerned, it was submitted that the same was issued to the respondent by the concerned officer on the intervening night of 30-31.12.2021, requiring him to appear before Anti-Corruption Branch, CBI, Cochin at 9 a.m. on 31.12.2021. However, on the said day, the respondent was arrested at 11 a.m., in complete violation of the provision as well as of the decision of the Supreme Court in Arnesh

Kumar v. State of Bihar and Another reported as **(2014) 8 SCC 273**. It was further submitted that the averment regarding communication of grounds of arrest to the Cochin office on the intervening night of 30-31.12.2021 is an afterthought, as in none of the remand applications filed on behalf of the petitioner/CBI, any mention of communication of grounds of arrest was made. In fact, the first two remand applications were silent on the factum of any alleged interception.

10. While referring to the order dated 01.01.2022, it was submitted that at the time of grant of remand, the concerned Court had also observed that the remand sought for 10 days by the petitioner/CBI was excessive and thus, remand of only 04 days i.e., till 05.01.2022 was granted. On 05.01.2022, an application for extension of respondent's remand for 07 days was moved again, however, by way of the order passed on 06.01.2022, only one day's PC remand was granted.

11. It was further submitted that during the search and raid proceedings conducted at the hotel and house of the respondent, no incriminating material was recovered. The respondent was not even in Delhi at the time of the trap proceedings. Further, the Laptop and Mobile Phone of the respondent have been seized and he has also voluntarily given his voice samples. The search and seizure proceedings have also been conducted at all the offices of DBL and the respondent is not required for any investigation.

12. It was also submitted that the respondent has joined the investigation as and when directed to do so. After being granted bail on 07.01.2022, the respondent had reported to the Investigating Officer on

08.01.2022, on which date, he was told that as per the report of sample taken during custody, he had tested positive for COVID-19. Thereafter, the respondent continuously provided his location details to the Investigating Officer. In pursuance of the notice dated 19.01.2022, the respondent also joined the investigation on 20.01.2022 and supplied all the documents asked for.

13. Insofar as the respondent's medical condition is concerned, it was stated that he is aged about 48 years and suffers from *Tourette Syndrome*, due to which he is afflicted with 'sleep apnoea'. The respondent also suffers from *type 2 diabetes* and has to undergo continuous *Positive Airway Pressure (PAP)*. His oxygen level abruptly goes down during sleep, for which he is stated to be under medical treatment.

14. I have heard learned counsels for the parties and perused the entire material placed on record.

15. Before proceeding to analyze the facts of the present case, it is deemed apposite to recapitulate the legal position on principles that must weigh with a Court while determining whether or not bail should be granted to an accused.

16. In Mahipal v. Rajesh Kumar alias Polia and Another reported as (2020) 2 SCC 118, the Supreme Court has highlighted the difference between principles that shall be borne in mind while determining the correctness of an order granting bail vis-à-vis the principles that shall apply to cases where cancellation is sought of bail already granted.

Relevant extract from the judgment is reproduced hereunder:-

“13. The principles that guide this Court in assessing the correctness of an order passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v Ashis Chatterjee. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held : (SCC pp. 499-500, paras 9-10)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. ...The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the

nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

xxx

16. *The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In Neeru Yadav v. State of U.P., the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. (as the learned Chief Justice then was) held : (Neeru Yadav case, SCC p. 513, para 12)*

“12. ...It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail

have not been taken note of bail, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record.”

17. While alluding to the decision in Anil Kumar Yadav v. State (NCT of Delhi) and Another reported as **(2018) 12 SCC 129**, the view taken in Mahipal (Supra) has been reiterated by the Supreme Court in Bhoopendra Singh v. State of Rajasthan and Another reported as **2021 SCC OnLine SC 1020**.

18. Coming back to the present case, it is noted that reliance has been placed on behalf of the petitioner/CBI on the decisions in Y.S. Jagan Mohan Reddy (Supra) and Asian Resurfacing (Supra), where it has been noted by the Supreme Court that economic offences constitute a class apart and need to be visited with a different approach in matters of bail.

19. From a perusal of the FIR in question, it is apparent that *Akil Ahmad* had demanded illegal gratification from *Retnakaran Sajilal* on 30.12.2021 with respect to a project of DBL in Karnataka. After approval of payment of Rs.20 lacs by respondent/*Devendra Jain*, *Retnakaran Sajilal* had directed *Mahim Pratap Singh Tomar* to pay the

aforesaid amount to *Anuj Gupta* at Delhi. In pursuance, the amount was carried by *Sunil Kumar Verma* to be paid to *Anuj Gupta*, who allegedly received the same for *Akil Ahmad*.

20. The role assigned to the present applicant is of granting approval of the payment of Rs.20 lacs to *Akil Ahmad* which, notably, has come in the disclosure statements. It is also apparent from the record that nothing was recovered from or at the instance of the respondent.

Further, the respondent has already handed over his Laptop and Mobile Phone and has also given his voice samples. It is not disputed that after being released, the respondent had tested positive for COVID-19, whereafter, he was given a notice dated 19.01.2022 to join investigation on 20.01.2022, and on the said date, he duly joined the investigation.

21. During the course of submissions, a contention was raised regarding the issuance of notice under Section 41A Cr.P.C. to the effect that the same was wrongly given to the respondent as the material collected by that time did not warrant issuance of such notice. It was also submitted on behalf of the petitioner that communication of grounds of arrest on the intervening night of 30-31.12.201 was reflected in the case diary which was also seen by the Sessions Court, however, learned Senior Counsel for the respondent contested the submission and a perusal of the impugned order also does not support the same. Further, this aspect is not stated in any of the remand applications.

Be that as it may, this Court cannot lose sight of the fact that a notice under Section 41A Cr.P.C. was indeed given to the respondent, asking him to join the investigation on 31.12.2021 at 09:00 a.m. and the

applicant was placed under arrest at 11:00 a.m. It was also informed that the respondent was asked to join the investigation on 24.01.2022.

22. It was contended on behalf of the petitioner that the accused/*Akil Ahmad* was habitual of demanding bribe from contractors and so, there is a larger conspiracy involved which needs to be unearthed. But till date, no other material besides what is already part of case records has been placed on record to substantiate the allegation.

23. Notably, one of the grounds of challenge of the impugned order is that sustained custodial interrogation of the respondent is required, so he may be confronted with co-accused persons, including *Uma Soni*. However, this Court is of the opinion that in view of the role assigned to the respondent and in the absence of any other material to substantiate the allegations levelled, the ground raised is without any merit.

24. So far as the recovery of money from *Sunil Kumar Verma & Mahim Pratap Singh Tomar* is concerned, the case has reportedly been referred to the Income Tax authority, which is in seizure of the same. The accused persons, namely *Sunil Kumar Verma, Retnakaran Sajilal, Uma Soni, & Mahim Pratap Singh Tomar*, have already been released on regular bail and the relevant orders have not been challenged by the petitioner/CBI till date.

25. Keeping in view the foregoing, this Court is of the view that the order granting bail does not suffer from any kind of perversity. No ground is made out to cancel the bail granted to the respondent. However, to ensure the respondent's availability during the trial, it is

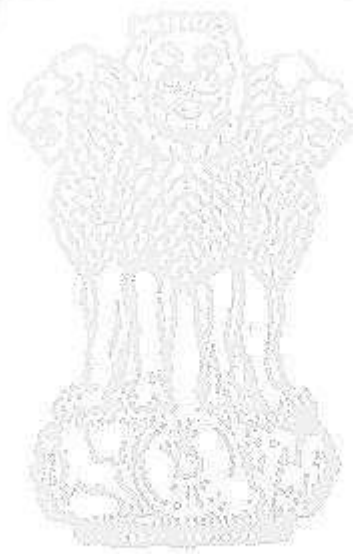
directed that in addition to the bail conditions imposed by the Court below, the respondent shall also surrender his Passport with the concerned Investigating Officer/CBI official within a period of 01 week from the date of this judgment.

26. The petition is dismissed in the above terms. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 23, 2022

p'ma/v



सायमेव जयते