

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

+ **BAIL APPLN. 279/2022**

% Reserved on : 09.02.2022
Date of Decision : 23.02.2022

IN THE MATTER OF:

ANUJ GUPTA

..... Petitioner

Through Mr. Amit Sharma, Sr. Advocate with Mr.
Akshay Chandra, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

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

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present bail application has been filed under Section 439 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No.RC2182021A0007 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. Mr. Amit Sharma, learned Senior Counsel appearing for the applicant, submitted that the applicant, who is a qualified Chartered Accountant (CA), was arrested on 31.12.2021, whereafter he was remanded to police custody till

08.01.2022, and ever since 09.01.2022, he is in judicial custody. It was further submitted that as per the prosecution case, the applicant's phone was on surveillance, however no transcript of any conversation has been placed on record to back-up the allegation that the applicant was aware of the facts or involved in any other illegal activity. Rather, there is no record of any call between the applicant and the accused/*Akil Ahmad*, except one call which was made by the applicant at the instance of the CBI officials and another call which was received by the applicant from *Akil Ahmad* during the trap proceedings, after recovery of the bribe money, which is hit by Section 162 Cr.P.C.

3. Learned Senior Counsel further submitted that on 30.12.2021, when accused/*Sunil Kumar Verma* met the applicant to hand over the bag containing Rs.20 lacs for the accused/*Akil Ahmad*, the applicant had no knowledge of the nature of the transaction and/or the fact that the bag he was receiving contained payment towards bribe to *Akil Ahmad*. It was also urged that the case of the applicant is on a better footing than that of co-accused persons *Retnakaran Sajilal*, *Devendra Jain* and *Mahim Pratap Singh Tomar*, and on the same footing as that of accused/*Sunil Kumar Verma*, who have already been released on regular bail vide orders dated 07.01.2022, 15.01.2022 and 17.01.2022.

4. While referring to the bail rejection order dated 21.01.2022 passed by the learned Special Judge (PC Act), CBI-15, Rouse Avenue Courts, New Delhi, it was submitted that the same suffers from non-application of judicious mind, inasmuch as the learned Judge made a general observation that the applicant's conduct was unprofessional and he being a qualified/professional Chartered Accountant is supposed to guide his clients to receive only lawful payments, which should then be reflected by him in their ITRs. It was further submitted that

in the transaction in question, there was no opportunity for the applicant to react or to act in accordance with his profession.

In connection with the observations made by the Trial Court on the aspect of '*Triple test*' while rejecting bail application of the applicant, it was contended that the applicant being a professional Chartered Accountant is not a flight risk and the possibility of his tampering with evidence does not exist, as all documents/electronic records relevant to the case, including voice samples, have already been seized. It was also urged that while in custody, the applicant has co-operated in the investigation.

5. Mr. Nikhil Goel, learned SPP for the CBI, on the other hand, vehemently opposed the bail application. It was submitted that the applicant has been a Chartered Accountant for the accused/*Akil Ahmad* as well as his wife. It was further submitted that only the co-accused persons who were involved in the process of giving of bribe have been released on bail, however, the applicant and the accused/*Akil Ahmad*, for whom the applicant accepted the bribe, have been denied the relief.

It was also submitted that on the day of the trap, two calls were exchanged between the applicant and the accused/*Akil Ahmad*. At the time of first call, the applicant stated '*samaan mil gaya*', to which *Akil Ahmad* responded by saying '*ok*'. Thereafter, *Akil Ahmad* called back the applicant, at which time the applicant stated '*20 lakh mil gaye*' and *Akil Ahmad* again replied with '*ok*'. Further, the applicant was caught red-handed with the bribe amount of Rs.20 lacs and certain jewellery articles were also seized. Learned SPP contended that the case at hand involves a larger conspiracy, as the accused/*Akil Ahmad* was in the habit of demanding bribe and the applicant was his CA. He also submitted that during investigation, the transcripts of WhatsApp chat messages have been recovered,

although on a specific query, it was informed that there is no mention of any bribe in the same.

6. While placing 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, learned SPP also submitted that the alleged offence being serious in nature and considering the professional capabilities of the applicant, his release is likely to impact further investigation, as he may tamper with the evidence.

7. In rebuttal, learned Senior Counsel appearing for the applicant re-emphasised that the applicant had no knowledge that what was handed over to him by accused/*Sunil Kumar Verma* for the accused/*Akil Ahmad* was actually bribe money. He urged that there is no evidence on record/document to show that the applicant was aware of the source of the money brought by accused/*Sunil Kumar Verma* or the fact that it was a payment towards 'bribe'.

It was reiterated that the CBI has not placed on record any transcript of conversation between the applicant and the accused/*Akil Ahmad*. Further, it was submitted that the place where raid was conducted and from where jewellery articles were recovered is, in fact, the registered office of the applicant's brother, who runs a jewellery business and has already claimed the articles as belonging to him. Learned Senior Counsel, on instructions, also submitted that the applicant is ready and willing to surrender his Passport.

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

9. At the outset, it is noted that the relevant factors to be taken into account while considering a bail application have been reiterated by the Supreme Court recently in Anil Kumar Yadav v. State (NCT of Delhi) and Another reported as **(2018) 12 SCC 129** in the following words:

“17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.”

10. In Y.S. Jagan Mohan Reddy (Supra) and Asian Resurfacing (Supra), 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. In the present case, a perusal of the material placed on record would show that the FIR in question came to be registered on 30.12.2021 on the basis of source information that one *Akil Ahmad*, Regional Officer, National Highway Authority of India (hereinafter, referred to as the ‘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 for completed projects. On 30.12.2021, *Akil Ahmad* demanded illegal gratification from one *Retnakaran Sajilal*, General Manager, *M/s Dilip Buildcon Pvt. Ltd.* (hereinafter, referred to as to ‘DBL’) with respect to the project executed by DBL in Karnataka. In pursuance, accused/*Devendra Jain*, Executive Director, DBL approved payment of Rs.20 lacs for accused/*Akil Ahmad*, whereafter the said amount was delivered to the office of the present applicant by accused/*Sunil Kumar Verma* on the instructions of accused/*Mahim Pratap Singh Tomar*. During the trap

proceedings, the aforesaid amount was recovered from a black colour bag lying beneath a table of the cabin/office belonging to the present applicant.

11. On a specific query from the learned SPP for CBI as to whether there exists any call or transcript of any conversation between the applicant and the accused/*Akil Ahmad*, apart from the calls exchanged during the trap proceedings, the answer was given in the negative. Concededly, even in the recovered WhatsApp messages, no mention of any bribe or bribe amount was found. It has been alleged in the FIR that accused/*Akil Ahmad* was in the habit of asking for illegal gratification, however learned SPP, on instructions, informed that apart from the present case, no other case has been registered against him or the present applicant.

12. It has also come on record that the mobile phone and laptop of the applicant have been seized and he has also given his voice samples.

13. Reportedly, different amounts have been recovered from the accused persons. The CBI is stated to have recovered an amount of Rs.3.71 crores during the investigation from co-accused/*Mahim Pratap Singh Tomar*, who has already been released on bail. An intimation regarding the same is stated to have been given to the Income tax authorities. The co-accused persons, namely *Retnakaran Sajilal*, *Sunil Kumar Verma* and *Uma Soni* have also been granted bail. Except the order dated 07.01.2022, whereby co-accused/*Devendra Jain* was admitted to regular bail, no other order granting bail to co-accused persons has been challenged till date.

14. Insofar as the observation by the Trial Court, that the applicant is likely to tamper with the evidence as he is a Chartered Accountant, is concerned, the Supreme Court in P. Chidambaram v. Central Bureau of Investigation reported as **(2020) 13 SCC 337** has observed as follows:-

“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.”

15. The present applicant, a Chartered Accountant, is stated to be a resident of Delhi, having deep roots in society. Besides, it was submitted by the learned Senior Counsel appearing for the applicant that the applicant is ready and willing to surrender his Passport. The same, in the opinion of this Court, alongwith appropriate conditions, can secure the applicant’s presence during the trial and allay any apprehension regarding him being a flight risk.

16. Keeping in view the facts and circumstances of the case, this Court is inclined to release the present applicant on bail during the pendency of the trial. Accordingly, it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/ Duty M.M./concerned Court and also subject to the following further conditions :-

- i) The applicant shall join the investigation as and when directed to do so.
- ii) At the time of furnishing the bail bonds, the applicant shall furnish his mobile number which he would keep operational at all times during the pendency of the trial and in case of change of contact/residential details, the same shall be promptly brought on the record.

- iii) The applicant shall not directly/indirectly try to get in touch with any prosecution witness or even attempt to tamper with the evidence.
- iv) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
- v) The applicant shall surrender his passport, if not already done. The applicant shall not leave the territorial jurisdiction of India without prior permission of the Trial Court.

17. The bail application is disposed of in the above terms.

18. A copy of the order be communicated electronically to the concerned Trial Court as well as to the concerned Jail Superintendent for information and necessary compliance.

19. Copy of the order be also uploaded on the website forthwith.

20. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 23, 2022/v

[Click here to check corrigendum, if any](#)