

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

+ **Bail Application No.882/2011**

% Reserved on: 27th July, 2011

Decided on: 2nd August, 2011

Anil Kumar Madan Petitioner

Through: Mr. N. Hari Haran, Adv.

versus

Central Bureau of Investigation Respondent

Through: Mr. Dayan Krishnan with
Mr. Gautam Narayan, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. By this application, the Petitioner seeks anticipatory bail in case RC-DAI-2010-A-0044 for offences under Section 120B read with Sections 420/467/468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Learned counsel for the Petitioner contends that the allegation of the CBI that the Petitioner in conspiracy with M/s Swiss Timing Ltd., Switzerland (in short 'STL') and M/s AKR Construction Ltd. (hereinafter referred to as 'AKR') entered into fraudulent contract thereby embezzling Government money is totally unfounded. The Petitioner had no contract whatsoever with either the Organizing Committee (OC) of the Common Wealth Games nor was involved in the Expression of Interest (EOI) or Request for Proposal (RPF). The Petitioner was engaged by STL as a sub-contractor subsequent to an agreement entered into with OC for Timing Scoring Mechanism (TSM). As a matter of fact, there was no conspiracy even between the STL and the two accused named in the FIR as the bid was not finalized by the members of OC named in the FIR but by various Committees. The bid was first shortlisted by a four member Committee at a pre-qualification bid stage. Since the conditions were very stringent and all venues were to be covered simultaneously, only two companies had applied. Thereafter financial bid was approved by the Finance Sub-Committee, which consisted of 12 persons out of which 8 persons were serving IAS officers. None of the members of the Committee have been made as accused. In the contract entered into between the OC and the STL, there is no bar that sub-contractors cannot be engaged for the work. The Petitioner's firm M/s Gem International is a sub-

contractor, whose contract was entered into much later than the contract between STL and OC. Since the work was enormous, the Petitioner Company further entered into a sub-contract with AKR for civil work of laying the cables. The Petitioner's Company raised invoices and STL paid the amount in accordance with the invoices. The Petitioner had received payment only in August, 2010 while the works were going on. Learned counsel points out that despite that fact that it had entered into a sub-contract with AKR for laying the cables, however, still there was enormous work, which was technical in nature like presentation, field outlay, precision timing, conducting test events, operation of all installations, transportation of installations from Government warehouses to the venues and thereafter repacking and sending them back, maintaining safety conditions and score board operation plan etc.

3. Reliance is placed on *Bodhraj v. State of J&K*, (2002) 8 SCC 45 to contend that principles applicable in a case of conspiracy are not made out in the present case. Reliance is also placed on *Sureshchandra Ramanlal v. State of Gujarat and another*, (2008) 7 SCC 591 to contend that the Petitioner's case is similar as that was before the Hon'ble Supreme Court and thus, he is entitled to anticipatory bail.

4. Learned Special Public Prosecution on the other hand contends that the case of the prosecution demonstrates a conspiracy being hatched pursuant to

which initially an attempt was made to award the contract to M/s STL by nomination, and thereafter the contract was awarded to STL on the basis of tailor made conditions so as to oust all other competitors at the pre-qualifying stage. It is stated that EOI was issued without any inputs from the concerned division i.e. Technology Functional Area, mentioning that “only Swiss Timing-Omega meets out above all criteria”. Thereafter, RFP was issued on 1st October, 2009 and the conditions framed thereunder were so as to further restrict competition in favour of STL. In order to preclude any other company except STL from clearing the pre-qualification stage, the RFP conditions were altered in a non-transparent manner on 4th October, 2009 on the written directions of Mr. V.K. Verma through his note dated 3rd October, 2009. In response to the RFP, 2 bids were received, one from STL and the other from M/s MSL, Spain (MSL). In a pre-meditated manner MSL was wrongfully eliminated at the pre-qualification stage, thus, making the process virtually a single tender. STL was awarded the contract at exorbitant rate of ₹107 crores causing huge undue loss to the Government of India.

5. The ground taken for ill health of the Petitioner is totally unfounded as the documents enclosed show otherwise. As regards the operation of Retina conducted at Switzerland, the doctor in the email addressed to the Petitioner himself has stated that there was no urgency and surgery could be planned

according to the professional agenda during the period when the Petitioner was a bit less busy. As regards the ailment that the Petitioner is suffering from Ankylosing Spondylosis, reference is made to the discharge summary of Fortis Escorts dated 23rd January, 2011 which shows that no treatment of Ankylosing Spondylosis was done and the Petitioner's complaint at the time was only of snoring churring sleep, disturbed sleep, recurrent awakening during sleep and choking sensation at night. After examination, the condition of the Petitioner was found to be stable.

6. It is also contended by learned Special Prosecutor that during investigation it has been revealed that M/s Gem International, whose partners are Anil Kumar Madan and P.D. Arya, was acting as some sort of agents/associates of M/s STL in the matter of dealing with the Organizing Committee and huge amounts were transferred by M/s STL to M/s Gem International on the pretext of its carrying out some sub-contractual work relating to provision of TSR solution for CWG D2010. M/s Gen International received at least ₹23 crores from STL on the basis of generic, vague, lump sum and incorrect invoices, which do not contain rates, quantities or details of works carried out by them. It has further been revealed that the invoices are false and are not based on genuine commercial transactions.

7. I have heard learned counsel for the parties. The first and foremost contention of the Petitioner regarding his health being one of the grounds for grant of bail deserves to be rejected. The email of Prof. Wolfensberger Thomas sent to the Petitioner on 19th April, 2011 regarding retina detachment of the Petitioner due to PVR (proliferative vitreoretinopathy) shows that though the retinal detachment was very advanced and longstanding with PVR and cicatricial reaction had taken place after the successful surgery. The Petitioner had been advised the second surgery. It is further stated that nevertheless the situation did not look extremely urgent to the doctor and according to him, surgery could be planned according to the professional agenda during a period when the Petitioner was a bit less busy. Thus, there was no urgency shown to get the second operation of retinal detachment to be conducted.

8. As regards the ailment of Ankylosing Spondylosis, a perusal of the discharge summary from Fortis Escorts shows that the Petitioner was admitted on 22nd January, 2011 and discharged on 23rd January, 2011 with complaint of snoring churring sleep, disturbed sleep, recurrent awakening during sleep and choking sensation at night. After all the tests conducted, the patient was found to be stable. No document has been annexed to show that the Petitioner is immobilized because of the ailment of Ankylosing Spondylosis. A few

photographs of the Petitioner in various postures are annexed, however, they also do not show that the Petitioner is not in a position to stand or walk without an attendant. As a matter of fact, the evidence shows otherwise. The Petitioner not only went to Switzerland for his treatment but also travelled to Jharkhand when games were organized over there. The reliance of the Petitioner on *Sureshchandra Ramanlal (supra)* is misconceived because in the said case the Appellant before the Hon'ble Supreme Court was bedridden and could not even stand without two attendants. A perusal of the photographs of the Petitioner and the activities he is performing do not show that he is bedridden.

9. The Petitioner initially responded to the notices, i.e., when search were conducted, he was present and was interrogated. The Petitioner was getting treatment from 'Centre for Sight' at Delhi in January, 2011, however, after the searches conducted at his residence in February, 2011, he went to Switzerland to get himself treated. Even after coming back from Switzerland, he has avoided investigation. The Petitioner did not appear pursuant to a notice issued on 4th April, 2011 ostensibly on the ground that he had gone for treatment to Switzerland. However, as per the objections filed to the order of proclamation, the Petitioner had returned to India on the 4th April, 2011. Further for a notice for appearance on the 27th April, 2011, it was replied that

the Petitioner is not in Delhi. Learned counsel for the CBI has pointed out an affidavit of the Petitioner filed in WP(Crl.) No.596/2011, which was sworn in on 27th April, 2011 demonstrating that the Petitioner was, thus, in Delhi.

10. The Petitioner and co-accused P.D. Arya were authorized representative of M/s STL and thus, it cannot be said that the Petitioner's firm was merely a sub-contractor and had no role to play in the initial transaction. A perusal of the statement of witnesses i.e. PW1, PW2 and PW3 shows that the Petitioner along with co-accused P.D. Arya and other officers of STL visited the stadia even in 2009 along with the officers of Organizing Committee. The pre-bid conference in respect of TSR was attended by the Petitioner on behalf of M/s STL. In fact, the bid was also submitted by Mr. A.K. Madan. As regards awarding of sub-contract to AKR though learned counsel for the Petitioner has strenuously argued that the invoices were raised, however, they were found to be bogus as invoices had been raised even in respect of game of shooting though the contract of laying of cables in respect of shooting was not awarded by the Committee but by the Sports Authority of India. The Petitioner being a partner of M/s Gem International contends that there was no bar to a sub-contract, however, the contract entered between the OC and M/s STL clearly stated that before entering into a sub-contract, the party will take prior approval/intimation to the Committee. The initial attempt of the

OC was to award the contract to M/s STL by nomination. However, when a number of complaints were received from persons like Smt. Sunita Goyal, the tender conditions were prepared in a clandestine manner so as to exclude all other companies. Even after the request for proposal (RFP) was published, amendments were made therein fraudulently. As per the statement of witnesses, the Petitioner and his co-accused P.D. Arya were frequenting the office of OC even in 2009 prior to the initiation of the procurement process for the system.

11. The Petitioner has not cooperated in the investigation. Though charge sheet has been filed, however, on the basis of additional evidence required to be collected from the Petitioners, supplementary charge sheet may be required to be filed. Reliance of the Petitioner on the decision rendered in *Bodhraj (supra)* is misconceived as on the basis of evidence collected at this stage it cannot be said that no case for conspiracy is made out.

12. In view of these facts, I do not find it to be a fit case to grant anticipatory bail to the Petitioner. The application is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 02, 2011
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