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THE HIGH COURT OF DELHI AT NEW DELHI

**Reserved on: 14.11.2011
Pronounced on: 16.11.2011**

- + BAIL APPLN. 1510/2011
ASHOK ARGAL Petitioner
Through Mr. Sandeep Sethi, Sr. Adv.
with Mr. Anurag Ahluwalia,
Adv.
Versus
STATE Respondent
Through Mr. Pawan Sharma, Standing
Counsel with Ms Laxmi
Chauhan and Mr. Harish
Prabhaker, Advocates.
Ms Fizani Husain, APP
and Ms Jasbir Kaur, APP
DCP Ashok Chand, ACP
Rajendra Bakshi, Crime
Branch Ms Madhu Sharma for
respondent No. 2 & 3
- + BAIL APPLN. 1506/2011
MAHABIR SINGH BHAGORA Petitioner
Through Mr. Siddharth Luthra, Sr. Adv.
with Mr. Bhupender Yadav,
Mr. Abhay Verma and Ms
Amrita Prakash, Advocates.
versus
STATE Respondent
Through Mr. Pawan Sharma, Standing
Counsel with Ms Laxmi
Chauhan and Mr. Harish
Prabhaker, Advocates.
Ms Fizani Husain, APP
and Ms Jasbir Kaur, APP
DCP Ashok Chand, ACP
Rajendra Bakshi, Crime
Branch
- + BAIL APPLN. 1507/2011
SOHAIL HINDUSTANI Petitioner
Through Mr. Rajiv Nayyar, Sr. Adv. with
Mr. Ajay Digpaul and Ms
Neeru Gupta, Advocates.

	versus	
STATE		 Respondent
	Through	Mr. Pawan Sharma, Standing Counsel with Ms Laxmi Chauhan and Mr. Harish Prabhaker, Advocates. Ms Fizani Husain, APP and Ms Jasbir Kaur, APP DCP Ashok Chand, ACP Rajendra Bakshi, Crime Branch
+ BAIL APPLN. 1508/2011 SUDHEENDRA KULKARNI		 Petitioner
Through		Mr. Mahipal Ahluwali with Mr. Shubhashis Parik Soren, Advocates.
	versus	
STATE		 Respondent
	Through	Mr. Pawan Sharma, Standing Counsel with Ms Laxmi Chauhan and Mr. Harish Prabhaker, Advocates. Ms Fizani Husain, APP and Ms Jasbir Kaur, APP DCP Ashok Chand, ACP Rajendra Bakshi, Crime Branch
+ BAIL APPLN. 1509/2011 FAGGAN SINGH KULASTE		 Petitioner
Through		Mr. Maninder Singh, Sr. Adv. with Mr. Anil Soni, Mr. Vishrov Mukherjee, Mr. Shivam Chaudhary and Mr. Nitin Kaushal, Advocates.

versus

STATE	 Respondent
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	Through	Mr. Pawan Sharma, Standing Counsel with Ms Laxmi Chauhan and Mr. Harish Prabhaker, Advocates. Ms Fizani Husain, APP and Ms Jasbir Kaur, APP DCP Ashok Chand, ACP Rajendra Bakshi, Crime Branch
+ BAIL APPLN. 1563/2011 SANJEEV SAXENA		 Petitioner
	Through	Mr Ajay Burman, Adv.
versus		
STATE		 Respondent
	Through	Mr. Pawan Sharma, Standing Counsel with Ms Laxmi Chauhan and Mr. Harish Prabhaker, Advocates. Ms Fizani Husain, APP and Ms Jasbir Kaur, APP DCP Ashok Chand, ACP Rajendra Bakshi, Crime Branch

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

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

M.L. MEHTA, J.

1. By this common order, I shall dispose of anticipatory bail petition of petitioner Ashok Argal under section 438 Cr. P.C. and regular bail petitions of the petitioners Mahavir Singh Bhagora, Sohail Hindustani, Sudheendra Kulkarni, Faggan Singh Kulaste and Sanjeev Saxena under section 439 Cr.P.C.

2. FIR No. 14/2009 under section 7/8/12/13(1)(d) of the Prevention of Corruption Act read with section 120-B IPC came to be registered at Police Station Crime Branch against the present petitioners. All petitioners except petitioner Ashok Argal are in Judicial Custody.

3. For better understanding some relevant facts can be mentioned. A special session of Lok Sabha was to be convened on 21.07.2008 by the Prime Minister to seek the trust of the House. There were media reports that there is going to be large scale defections from non-UPA parties at the centre and talk was going on that there is going to be horse-trading. On the day of debate on the motion of confidence in the council of Ministers, the petitioners Ashok Argal, Mahavir Singh Bhagora and Faggan Singh Kulaste came to the Lok Sabha with two bags of currency notes which they took out and started placing on the table of the House. The Hon'ble Speaker took note of the complaints made by the Members regarding alleged offer of money to them in connection with voting in the Motion of Confidence. He had assured the leaders to look into the matter. Subsequently, on 25.07.2008, these three MPS made a joint statement before the Hon'ble Speaker wherein they stated as to the manner of their having been approached by intermediaries of power brokers and

their having decided to expose the mastermind of Cash for Vote racket. The CNN-IBN News Channel designed a whistle blowing sting operation. The petitioners Sudheendra Kulkarni and Suhail Hindustani were also associated in the sting operation. The petitioner Sanjeev Saxena gave ₹ 1.00 crore to each of three petitioners MPs. The entire episode was recorded by CNN-IBN News Channel team on camera at the residence of petitioner Ashok Argal. On the same day, i.e. on 22.07.2008 at about 4 pm, the petitioner MPs took out the bag and displayed the money in the House of the Parliament. It was in this background that the Hon'ble Speaker, Lok Sabha, appointed an Inquiry Committee. All petitioners have been charge-sheeted under different provisions of PC Act read with Section 120B of IPC.

4. I have heard learned Senior Counsels for the petitioners and also the learned Standing Counsel for the State. Before proceeding to take note of the submissions of learned counsels for the petitioners, it may be stated that learned Standing Counsel for the State stated having no objection to the grant of regular bail to all the petitioners who are in Judicial Custody. With regard to petitioner Ashok Argal, it was stated by the learned Standing Counsel that since he is participating in the investigation and his custodial interrogation was not required, the State had no

objection to his release on anticipatory bail. Despite this submission made by the learned Standing Counsel for the State, the learned Senior Counsels for the petitioners desired to submit on the merits of the case of each petitioner.

5. It was the common submission of learned counsels for the petitioners that there is nothing on record to show that there was any *mens rea* on the part of any of the petitioners to conspire with each other or with the bribe givers to accept bribe. The learned Senior Counsels for the petitioners submitted that the motive of this entire episode was to expose the horse-trading which was to take place in the Trust Motion in the Parliament. That being the only motive of the petitioners, the organizing of sting operation could not be described as criminal conspiracy. Apparently, there does not appear to be any reason to disagree with the learned counsels for the petitioners. If there was any conspiracy between the petitioners, inter se or with bribe givers, they would not have associated themselves with the CNN-IBN News Channel and exposed themselves to the act of taking money before the camera. I have gone through the entire voluminous charge-sheet, but could not find any *prima facie* evidence on record of demand and acceptance of illegal gratification by the three MPs. The submission of learned

counsels for the petitioners that since it was to be a sting operation, the matter could not have been reported to the police or any authority is also worth considering and has its own merit. Further, admittedly, there was neither any tampering nor editing in the video/audio recording done by the CNN-IBN team. This fact was so confirmed by the report of CFSL. None of the petitioners was beneficiary of the amount received by the three MPs from petitioner Sanjeev Saxena. In fact, it was the prosecution's own case that the MPs did this act to entrap Congress and Samajwadi Party so as to expose them. If the intention of the petitioner MPs was to receive bribe, they would have done so and kept the amount so received silently instead of producing the same in Parliament immediately thereafter. If, that was so, even according to the prosecution the basic requirement of *mens rea* to accept and receive bribe so as to (bring it) within the ambit of Prevention of Corruption Act was lacking on the part of all the petitioners. All the star witnesses of the prosecution in their statements under section 161 Cr. P.C have stated this incident to be string operation and none of them has stated acceptance of illegal gratification by the petitioner MPs.

6. The Parliament itself was supreme and competent enough to take action against its Members. If there was any such

allegation of acceptance of illegal gratification by the three MPs, it would have taken some action against them. Admittedly, no action was taken by the Parliament except that of appointing a Parliamentary Inquiry Committee. It is noted that some of the members of the Inquiry Committee have also given dissenting views with regard to the recommendation of initiation of action against the petitioners.

7. With regard to petitioner Sudheendra Kulkarni, it may be noted that he was not a public servant and he was neither the giver or the taker of money and was also not present at the time of alleged negotiations. His role is of introducing MPs petitioners and CNN-IBN team and thus his role was similar to that of the team of CNN-IBN against which there is no charge of any kind. The role of petitioner Sohail Hindustani was that of a whistleblower and engineering string operation.

8. With regard to petitioner Sanjeev Saxena, it may be noted that his role, *prima facie*, appeared to be that of carrier or courier. He was not beneficiary of the amounts paid to the three MPs. He is in JC since 17.07.2011 and investigation in the matter is complete and his custodial interrogation is admittedly no more required.

9. In view of all this, all the petitioners who are in jail namely Faggan Singh Kulaste, Mahabir Singh Bhagora, Sudheendra

Kulkarni, Suhail Hindustani and Sanjeev Saxena are entitled to be released on bail. Consequently, these petitioners are directed to be released on bail on their furnishing personal bond in the sum of ₹2.00 lakh each with one surety each in the like amount to the satisfaction of the court concerned. Similarly, petitioner Ashok Argal who was admittedly participating in the investigation and his custodial interrogation was not required, is also entitled to be granted anticipatory bail. Consequently, it is directed that in the event of his arrest, petitioner Ashok Argal shall be released on anticipatory bail on his executing personal bond in the sum of ₹2.00 lakh with one surety in the like amount to the satisfaction of the IO/SHO concerned.

10. The bail granted to all the petitioners shall be subject to the condition that they shall join the investigation as and when required by the Investigating Officer.

11. It is made clear that nothing contained in this order shall amount to expression of opinion on the merits of the case.

12. The petitions stand disposed of.

13. Dasti.

**M.L. MEHTA
(JUDGE)**

November 16, 2011
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