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HIGH COURT OF DELHI : NEW DELHI

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BAIL APPL. NO. 1610/2011

Date of Decision : 16.12.2011

SIDDHARTHA BEHURA

..... Petitioner

Through: Mr. Aman Lekhi, Sr. Adv. with
Mrs.Meenakshi Lekhi, Mr.Pramod
Jalan, Mr.Vedanta Varma,
Mr.Himanshu, Ms.Srishti Saxena,
Advocates.

Versus

CBI

..... Respondent

Through: Mr.Mohan Parasaran, ASG with
Ms.Sonia Mathur, Standing Counsel
for CBI.
Mr.Rajesh Chahal, DSP, CBI in
person.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This order shall dispose off an application filed by the petitioner, Siddhartha Behura (A-2), the former Secretary, Department of Telecommunications, for grant of regular bail in respect of 2G Spectrum Scam cases,

which was registered vide FIR No.RC DAI-2009(A)-0045 by the Central Bureau of Investigation (CBI).

2. Briefly stated, the facts of the case are that on 21.10.2009, Anti Corruption Branch of CBI had registered the aforesaid FIR on the allegations of criminal conspiracy and criminal misconduct against the unknown officials of Department of Telecommunications, Government of India and some unknown private persons/companies and others, under Section 120B IPC read with Section 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "the Act") in respect of allotment of Letters of Intent, Unified Access Services (hereinafter referred to as 'UAS') Licenses and 2G Spectrum by the Department of Telecommunications. CBI had filed the first charge-sheet on 02.04.2011 in the Court of learned Special Judge, Patiala House Courts, New Delhi against A.Raja, the then Minister of Communications and Information Technology (A-1),

Siddhartha Behura, the then Secretary, Telecom (A-2), R.K.Chandolia (A-3), the then P.S. to the Minister, Shahid Balwa and Vinod Goenka, Directors, M/s Swan Telecom Pvt. Ltd. (A-4 and A-5 respectively). M/s Swan Telecom Pvt. Ltd (A-6), Sanjay Chandra, Managing Director, M/s Unitech Wireless Tamil Nadu Ltd. (A-7), M/s Unitech Wireless Tamil Nadu Ltd. (A-8), Gautam Doshi, Group Managing Director of Reliance, ADA Group (A-9), Surendra Pipara, Group President of Reliance, Anil Dhirubhai Ambani Group (A-10), Hari Nair, Sr.Vice President of Reliance, ADA Group (A-11) and M/s.Reliance Telecom Ltd. (A-12).

3. A supplementary charge-sheet was filed on 25.04.2011 in the Court of learned Special Judge for offences under Section 120B IPC read with Section 7/11/12 of the Act against some additional accused persons in which the present petitioner was not named. After filing of the

charge-sheet, charges have been framed against all the accused persons.

4. The charges against the petitioner are essentially three in nature. The first charge, against the petitioner and other 16 accused persons, including A.Raja(A-1) and R.K.Chandolia(A-3), is that they all conspired to commit offences under sections 409/420/468/471 IPC and section 7 or section 11 read with section 12/13(2) read with section 13(d) of the Act. The second charge, which has been framed against the present petitioner, along with A-1, is for a substantive offence of breach of trust under section 409 read with section 120B IPC. The third charge, which is alternatively, framed against the petitioner and the A-1 is for cheating under section 420 read with section 120B IPC. In the charge-sheet, the petitioner (A-2) is stated to be core conspirator along with A-1 and A-3.

5. The case is presently going on, for recording of prosecution evidence and I have been given to understand that statements of some of the witnesses have already been recorded by the prosecution. The present application for grant of regular bail of the petitioner was taken up along with the bail applications of the other five co-accused persons, A-13 to A-19, (except the companies). Mr.Aman Lekhi, learned senior counsel, was heard partially along with the other counsel, who had appeared for that set of accused persons, however, as the cases of those accused persons were treated as a separate class in itself on account of two reasons; firstly that those five accused persons were not public servants and, secondly, in their case the CBI had not opposed the grant of bail, therefore, they were heard and disposed of vide a separate order on 28.11.2011, while as the present case was segregated to be dealt with separately. Arguments were heard afresh in the present case after

disposal of the bail applications of the aforesaid five accused persons and the submissions, which were made by Mr.Lekhi, learned senior counsel, for grant of bail to the petitioner, were essentially the following:

- (i) The first and the foremost submission, which was made by Mr.Lekhi, learned senior counsel for the petitioner for grant of bail to the present petitioner, was that he is to be treated at par with the other co-accused persons, who have already been extended the benefit of bail both by the Supreme Court as well as by this Court. It has been contended by the learned senior counsel that the FIR is common, the charges for conspiracy to commit an offence under section 409/420/468/471 IPC etc. are also common to all the accused persons. Further, the Apex Court, while considering the bail applications of the five co-accused persons, had dealt with the facts of the case and severity of charges in the light of maximum punishment imposable as a whole and yet extended the

benefit of grant of bail to the said accused persons by invoking the principle of presumption of innocence in their favour. The Apex Court had also observed that the bail is the rule and the jail an exception. On the basis of same analogy, this Court has also extended the benefit of grant of bail to the five accused persons, namely, A-13 to A-19 (except where accused were companies) on the same principles without going into the minute dissection of the order passed by the Apex Court. It was urged by the learned senior counsel, Mr.Lekhi, that on the principle of comity and uniformity at the stage of grant of bail, no distinction could be made to grant the bail to the petitioner by simply contending that he was a 'public servant'. It was contended by him that this kind of distinction between a 'private' and a 'public person' is invidious, which cannot be permitted to be done so as to deny the benefit of bail. It has been contended by Mr.Lekhi that Apex Court has not made any distinction of

an accused person being a 'public servant' or 'private person' especially in the light of the fact that the common charges have been framed against all the 17 accused persons. Extending this argument further, it was contended by Mr.Lekhi that so far as section 409 IPC is concerned, a perusal of the said section would show that it is not only applicable to 'public servants' alone, but it is applicable to a banker, merchant or an agent, who need not be necessarily a 'public servant'. Therefore, this kind of distinction, which is rather discriminatory, cannot be permitted to be done by the State and a prosecuting agency, so as to deny the benefit of grant of bail to the petitioner. It was contended that so far as the question of punishment in the case of conspirator as against the actual perpetrator is concerned, the same is equal and no distinction can be made, while considering the bail to one as against the other.

(ii) It was next contended by Mr.Lekhi that a perusal of the charges, which have been framed against the petitioner, are that he has been charged for an offence under section 409 read with section 120B along with A-1 and alternatively he has been charged for an offence of section 420 read with 120B IPC. It was contended that the prosecution itself is not clear as to whether the petitioner is alleged to have committed the offence of breach of trust or the offence of cheating. Mr.Lekhi has stated that, no doubt, the offence under section 409 IPC carries life imprisonment as against the offence under section 420 IPC, which carries a maximum sentence of seven years, but in the event of an accused being charged alternatively for two offences, the lesser of the two offences is to be taken for the purpose of imposition of punishment on him and for this purpose he has relied upon Babu Ram Vs. Emperor, **AIR 1937 ALL. 754** and Hira Lal Vs. Emperor, **AIR 1917 ALL. 29**.

(iii) It was next contended by Mr.Lekhi, learned senior counsel, that so far as the petitioner is concerned there are no allegations of having taken illegal gratification or obtaining any valuable consideration or committing abetment of these two offences, which may be punishable under sections 7 or 11 of the 'Act'. It is also stated that so far as the petitioner is concerned, there is no allegation that he had any role in the alleged giving or taking of the bribe of ₹200 crores nor has he benefited in any manner whatsoever from the allocation of 2G Spectrum or Unified Access License. It is urged that all that the petitioner had done was to implement the policy, which was framed much prior to his transfer in the Department of Telecommunications on 01.01.2008. In this regard, the learned senior counsel has drawn the attention of the Court to certain correspondence, which had taken place between the officials of the Government, prior to 01.01.2008 in order to show so far as the

petitioner is concerned, he has absolutely no role to play in the question of formulation of policy of first cum first serve basis and was only implementing the same in terms of the directions of the Department.

- (iv) Next, it was contended by Mr.Lekhi, that the petitioner has already been in custody for almost 10 months and, thus, being incarcerated for the longest period and the fact he is not an influential person or has no political influence or clout, to influence the witnesses, he may not be denied the benefit of bail as has been extended to other persons, as the trial is going to last for quite some time. It is also contended that he has roots in the society and, therefore, he is not likely to flee from the processes of law and since the charge-sheet has already been filed, the evidence is already underway, no useful purpose would be served by keeping the petitioner incarcerated and, therefore, it was prayed that he may be extended the benefit of grant of bail.

(v) Lastly, it was contended by Mr.Lekhi that most of the evidence against the petitioner, as in the case of other co-accused persons is documentary in nature and whatever evidence is in the shape of an oral evidence it will only support the defence of the petitioner and he would like the witnesses to testify on the same line on which their statements, under section 161 Cr.P.C., have been recorded. Thus, in totality of circumstances, the learned counsel has prayed for grant of bail to the petitioner.

6. As against this, Mr.Mohan Parasaran, learned Additional Solicitor General, has vehemently opposed the grant of bail to the petitioner. He has contended that so far as the petitioner is concerned, his case cannot be clubbed to that of the 10 accused persons, who have been extended the benefit of bail either by Supreme Court or by this Court. It is urged by him that none of the persons, who were extended the benefit of bail is a 'public servant'

while as the petitioner admittedly was working as Secretary to the Department of Telecommunications and, thus, was a 'public servant' and in that capacity, he was expected to maintain a high standard of probity, which he failed to maintain and this has caused wrongful loss to the exchequer, although it may not have caused wrongful gain to the petitioner. So far as the question of fleeing from the processes of law or possibility of tampering with the witnesses is concerned, the learned ASG actually did not make any forceful submission, in this regard, except that the petitioner may influence the witnesses, if he is released on bail so far as the official witnesses are concerned, whose statements have been recorded under section 161 Cr.P.C. It was also contended by the learned Additional Solicitor General that the petitioner's case is distinguishable from that of the other 10 accused persons, therefore, he cannot be extended the benefit of bail.

7. I have carefully considered the respective submissions and gone through the judgments cited by the learned counsel for the petitioner as well as the statements of the witnesses.
8. Without referring to any specific judgment, which has been pronounced by the Apex Court from time to time including the latest in the case of Sanjay Chandra Vs. CBI in CrI.Appeal No.2178/2011, there is no denial of the fact that the grant of bail in non-bailable cases is a matter of discretion with the Courts, which has to be exercised judicially by the Court and for exercise of the said discretion, the following factors (some of which may seem overlapping) have to be taken into consideration:
(i) the nature of the allegations and the kind of evidence which has been gathered by the prosecution; (ii) the maximum punishment, which the offence carries, which the accused may be liable to be visited, if he is convicted; (iii) the nature of the gravity of the offence,

the circumstance in which the offence is purported to be committed; (iv) the position and the status of the accused with reference to the victim; (v) the reasonable possibility of the accused being secured at the trial and any likelihood of his tampering with the evidence, which will also depend on the nature of the evidence whether documentary or oral; and (vi) larger interests of the society or the State and similar other circumstances depending on the facts and peculiarity of each case.

9. No doubt, on the top of all these, two important considerations, which have to be borne in mind by the Court is that there is a presumption of innocence in favour of the accused and the Court has also to be cognizant of the fact that the bail is the rule and jail is the exception, in as much as, the denial of bail impairs the personal liberty of the accused.
10. Keeping in view the aforesaid broad parameters, I intend to deal with the submissions, which have been raised by

the learned senior counsel for the petitioner for the grant of bail.

11. The first and foremost submission, which has been made by Mr.Lekhi is the question of parity, which has been opposed by the learned Additional Solicitor General. If one goes through the order of the Apex Court, no doubt, it has granted the bail to five accused persons despite the fact that it had taken note of the overall charges, which were framed against the accused persons, including that of criminal conspiracy to commit an offence of breach of trust or cheating by observing that admittedly if the offence, which is alleged to have been committed by the said accused persons, if proved, then it is of a serious enormity, having the potential to disturb the economy of the country and yet it granted the bail to the said accused persons it could not be said that the observations passed by the Apex Court in the said order, *ipso facto*, without any application of mind must be

applied to the case of the present petitioner whose case is stated to be distinguishable by the learned ASG on the sole ground of being a 'public servant'. I do not agree with Mr.Lekhi that simply on the ground of parity either of the Apex Court or that of the order passed by this Court, the petitioner deserves to be extended the benefit of bail automatically. If that be the intention of the Apex Court, then the Apex Court itself would have made an observation in this regard and this Court would have, had no difficulty in granting bail to the present petitioner. I, therefore, feel that merely on the principle of parity, the petitioner is not entitled to the grant of bail. Apart from this, there is a subtle difference between the set of cases, who have been released on bail and the present accused. No doubt, the present petitioner, along with sixteen others, has been charged in common for criminal conspiracy to commit the offence of breach of trust, cheating, forging a document and using forged document

as genuine, etc. but the petitioner has been separately and substantively charged along with A-1 for an offence under section 409 for breach of trust by a 'public servant' read with section 120B and alternatively under section 420 for cheating read with section 120B IPC along with the principal accused, A-1.

12. The question, therefore, would arise, what is the distinguishable feature, which makes the case of the petitioner different than the one of the ten co-accused persons, who have been extended the benefit of bail by the Courts. In this regard, I feel that the petitioner being a 'public servant' was under a higher degree of probity and duty as he was holder of a public trust and, therefore, he was expected to discharge his duties with a more sense of responsibility, transparency and integrity. It may be pertinent here to mention that the offence of breach of trust is a highly aggravated form of breach of

trust, which carries maximum punishment of life imprisonment.

13. I am cognizant of the fact that the Apex Court has repeatedly pointed out that while considering the bail application of any accused person, the Court should refrain from analyzing the evidence gathered by the investigating agency minutely but, at the same time, it has also been observed that some kind of birds eye view of the evidence for the purpose of assessing the role of the accused person in a given case is inevitable.
14. Seen, in the light of these, observations, if one analyses the role of the petitioner, who was admittedly a public servant it was expected to be of him that he would act as a rudder of a plane. If A-1 can be said to be a kingpin or a pivot of the alleged conspiracy to commit the offence of breach of trust and cheating then certainly the role of the petitioner/A-2 and that of A-3, the other co-accused, has been that of a propeller of giving effect to the said idea of

committing the offence of breach of trust or cheating so far as the allocation of 2G Spectrum or Unified Access Services is concerned. Prima facie, there is ample evidence, in this regard, that the three persons, namely, A-1, the petitioner/A-2, and A-3 have been the core of the conspiracy in implementation of the policy of first come and first basis in a distorted manner so as to cause benefit to specific parties. In this regard, I have gone through the statements of Sh.A.K.Srivastava/PW-1, DDG (Access Service); Sh.Nitin Jain/PW-2, DDG (Data Services); Sh.R.K.Gupta/PW-3, the then ADG (AS); Sh.R.P.Agarwal/PW-20, the then Wireless Adviser, Deptt. of Telecommunications; Sh.R.J.S.Kushwaha/PW-21, JWA(Licensing); Sh.B.B.Singh/PW-26, the then DDG (LF); Mr.Nripendra Mishra/PW-30, the then Chairman, TRAI; and Sh.P.K.Mittal/PW-50, the then DDG (AS-II) and one thing, which emerges from their statements, is very clear that the petitioner has been a perpetrator of

the illegal design of A-1 and, therefore, his role was distinguishable from the ten accused persons, who have been granted the bail and were beneficiary of that illegal act.

15. Another aspect, which is very interesting, in this case, is the fact that it has come in the statements of some of the witnesses that when this illegal and nefarious conspiracy of causing wrongful gain to certain private parties was being executed by A-1 with the help of co-accused A-2 and A-3, who were the two public servants, two employees of Department of Telecommunications, who had withstood like a rock and did not accede to the wishes of these core conspirators, it was the present petitioner, who was instrumental in getting them firstly transferred from the Department in order to remove the obstruction and to implement the illegal design of the 2G Spectrum being allocated to private persons and Unified Access Services allocated for ulterior considerations.

16. Mr.Lekhi has tried to urge this point that although these two public persons were transferred to North East Region of the Department of Telecommunications, but it was at the instance of the present petitioner, who was the Head of Department of Telecommunications, that they were transferred back to Delhi in a different section. I feel this is only an argument, which is being taken advantage of by the learned senior counsel out of desperation on account of the fact that there is no denial of the fact that the transfer of these two persons from the Department to North Eastern Region, who were posing stringent threat to the illegal design and execution thereof by A-1 with the help of A-2 and A-3 that they were firstly shifted out from the Department and in order to placate their ruffled egos and that of other officials of the Department they were brought back to Delhi but in a different Department, so that while remaining in Delhi their goodwill is generated yet they could not offer any

resistance to the illegal design of the petitioner. Therefore, I do not feel that the case of the petitioner cannot, *ipso facto*, be treated at par with that of the accused persons and he can be extended the benefit of grant of bail on the principle of parity.

16A. I do not agree with the contention of Mr.Lekhi for parity on the question of sentence also. In law, though the argument of the learned senior counsel may seem to be very attractive that the conspirator is entitled to the same punishment to which the principal perpetrator may be entitled but while considering the exercise of discretion of grant of bail, the Courts do make a distinction between the perpetrator of a crime and an accessory though both the perpetrator and the accessory are qua each other accomplices. To illustrate this, in a case of murder, if there are four or five persons, who may have conspired together by different means; one devising the conspiracy, second procuring arms, third

providing the logistic support, fourth providing escape route while the fifth actually firing the shot, which has culminated into the death of the victim certainly the case of the actual perpetrator and the kingpin of the conspiracy, who has fired the shot will be distinguishable as compared to the other four accused persons and he may be denied the benefit of bail as compared to the others, who are only simply accessories. Therefore, this distinction of all the persons being responsible for the same punishment is in my view is not tenable because admittedly the role of the petitioner is that of a core group consisting of A-1 to A-3 as well as who are the actual perpetrators, while as the remaining persons were only accessories in the same, whose cases are distinguishable.

17. Two things are very important to mention here that offence of breach of trust of public servant carries a maximum of life sentence and so far as the offence under

section 420 IPC is concerned that carries a maximum sentence of seven years. It is correct that the learned senior counsel has cited two judgments of Allahabad High Court, where in a case, where alternative charge has been framed against a person there are observations to the effect that the lesser of the punishment may be imposed on the petitioner but that is only a consideration at the time when the guilt of the accused is said to have been proved and that may not be a very relevant factor at the time when the question of consideration of bail is being examined by the Court, therefore, I do not attach too much of credence to the two judgments which have been relied upon by the learned senior counsel, in this regard.

18. Therefore, in the light of above facts, the severity of allegations and evidence, which have been gathered by the present petitioner is enormous, which will fully show that his role was completely entrenched in the entire

conspiracy as well as the substantive offence, i.e., breach of trust by a public servant, which makes his case completely distinguishable from that of other co-accused persons.

19. The next argument, which Mr.Lekhi had vehemently urged, is that in the entire charge sheet there is no allegation that the petitioner had taken illegal gratification nor it is the case of the prosecution that the petitioner had amassed any personal wealth disproportionate of his known sources of income and, therefore, he is being made only a scapegoat, being the Head of the Department of Telecommunications.
20. I do not agree with this contention of the learned counsel for the petitioner. Though, apparently, there is no personal gain to the petitioner but that question will be unfolded during the course of trial. In any case, in a case of breach of trust, the personal gain is totally irrelevant. What is required in proving, prima facie, the allegation,

under section 409 of the IPC is that a person must have a dishonest intention. Section 24 of the Indian Penal Code defines the word 'dishonest'. A thing is said to be done by a person dishonestly, if it results in wrongful gain to himself or causes wrongful loss to the other person, therefore, it is not necessary that there must be a wrongful gain to the delinquent or the accused person. It is sufficient in law, if an accused has caused wrongful loss to the complainant. This is precisely the case in hand. The petitioner may not have gained out of the entire transaction but he has certainly caused a wrongful loss to the public exchequer and if one goes by the allegations in the charges then this wrongful loss to the exchequer is allegedly to the tune of ₹7105 cores though that figure is also debatable regarding the actual loss having been suffered by the exchequer. Accordingly, this contention of Mr.Lekhi is also without any merit although on the face of it seems to be very attractive.

21. In the light of the aforesaid facts, the very first parameter, which is important for grant of bail, namely, the severity of accusation and the prima facie evidence gathered by the prosecution and the quantum of sentence which it carries, the petitioner does not deserve the grant of the discretion of bail. Further, the case of the petitioner is distinguishable from the facts of the ten co-accused persons, who have been extended the benefit of bail by the Apex Court and as well as by this Court because they were not public servants, while as the petitioner was a 'public servant', thus, expected to meet a higher standard, probity, transparency and trustworthiness in discharge of his duties, which he was holding as a public trust.
22. The next question, which arises, is as to whether the petitioner would be available to face the trial or flee from the processes of law. In this regard, it must be admitted that neither there has been any opposition or contention

raised by the learned ASG that the petitioner, if he is enlarged on bail, will flee from the processes of law, therefore, even otherwise, the petitioner being a member of Indian Administrative Service and having settled permanently in and around Delhi, I do not feel that there was any apprehension expressed by the prosecution or any reason to doubt that he would flee from the processes of law.

23. A connected point, which arises for consideration, is as to whether, if the petitioner is released on bail whether there is any likelihood of his tampering with the evidence or create conditions, which are not conducive to the fair trial. In this regard, the contention of Mr.Lekhi has been that out of all the accused persons, the petitioner is the most low profile, poorly placed, without any influence and he hardly has any capacity to influence the witnesses and, therefore, this may not be a ground for denial of benefit to the petitioner. Mr.Mohan Parasaran, learned

ASG, also did not raise any serious contention that if the petitioner is enlarged on bail then it may create a threat to the holding of a fair trial or that he may influence the witnesses.

24. Although, there has been no real challenge raised by the prosecution, in this regard, and the fact remains that apparently the petitioner is not a very high profile accused as the others, who have been enlarged on bail, but the submission of the learned counsel that the petitioner is having no potential to influence the witnesses cannot be accepted blindly on its face value. The petitioner has been a member of elite bureaucracy. All the witnesses, whose statements have been recorded by the prosecution, no doubt, have to prove documents but, at the same time, they have also orally testified against the petitioner, which implicates him in the crime.
25. In this regard, one is also tempted to refer to the fact that the petitioner had proximity with A-1 and this has

also come by way of oral evidence in as much as the petitioner was posted as an Additional Secretary in the Department of Environment, when his mentor, A-1, was posted there as a Minister. Similarly, the factum of the oral orders, having been issued from time to time so as to permit the A-1, the main conspirator, to have a free hand in the execution of his illegal design, have been issued by the present petitioner, like fixation of four counters so as to defeat the policy of "first cum first serve" and implement it in a manner so as to benefit certain pre-determined parties or that the officials of the Department of Telecommunications, who is transferred out of the Department on the oral orders of the Secretary, DoT, clearly shows that there is a likelihood that in case the petitioner is released on bail he will try his best to subvert the trial by influencing the witnesses, who have testified against him especially to the extent to which their statements against the petitioner are oral. I,

therefore, feel this is a ground, which goes against the petitioner.

26. The last but not the least, the learned senior counsel for the petitioner has pressed the medical reason of his wife as the ground for grant of bail. No doubt, the petitioner's wife has been suffering from a dreaded disease but it is not of such a nature, at this stage, which would immediately move the Court to release the petitioner on interim bail even at this stage because she seems to have already undergone the surgical intervention or presently, she is taking the Chemotherapy treatment. I, therefore, for the present, consider it to be, not a ground so pressing, so as to warrant the grant of interim bail to the petitioner, at this stage.

27. In view of the aforesaid observation, I feel the following facts emerge very prominently in order to deny the benefit of bail to the petitioner:

- (I) That the petitioner cannot claim the benefit of parity with the other co-accused persons merely without any application of mind by the Court in as much as the role of the petitioner as a 'public servant' was expected to be different than the other accused persons. A public servant was under a greater obligation to discharge his functions as a holder of public trust with transparency, probity and to watch the interests of the public exchequer, which he failed to do.
- (II) That, the allegations against the petitioner and the nature of evidence, which has been gathered against him, is very serious and if proved, it will entail life imprisonment for an offence under section 409 IPC.
- (III) That, no doubt, merely because Doctrine of Presumption of Innocence is in favour of the petitioner and grant of bail is the rule and the

denial being an exception, it cannot be said that the petitioner's role in the entire gamut of facts can be overlooked, keeping in view the severity of charges, the quantum of punishment so as to defeat the larger public interests. Admittedly, this is a case, where it impinges the personal liberty of the petitioner but it has been taken away with due processes of law.

(IV) That, there is no threat of the petitioner fleeing from the processes of law but certainly there is a reasonable apprehension or likelihood of the petitioner influencing the witnesses especially of the Department of Telecommunications, as he has been a member of an elite bureaucracy for such a long time that their influence is of a pervasive, even though he may not be a high profile accused.

(V) That, the petitioner was one of the main perpetrators of the entire commission of offence,

along with A-1 and A-3, being the 'public servant' and, therefore, constituting the core of the conspiracy, who have to be dealt with differently in comparison to the other accused persons.

28. For the reasons mentioned above, I dismiss the bail application of the petitioner.
29. Expression of any opinion, hereinabove, may not be treated as an expression on the merits of the case as these are the tentative view formed only for the purpose of deciding the present bail application.
30. Dasti to the counsel for the parties.

DECEMBER 16, 2011
SS

V.K. SHALI, J.