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

\+ **BAIL APPLN. No.1268/2013, BAIL APPLN. No.1273/2013, BAIL APPLN. No.1274/2013 & BAIL APPLN.No.1255/2013**

Reserved on: 04.09.2013
Date of decision: 27.09.2013

IN THE MATTERS OF:

\+ **BAIL APPLN. 1268/2013**

MAHESH KUMAR ..... Petitioner

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Ravi Nayak, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Ms. Rajdipa Behura, Spl. P.P.for CBI with Ms. Nidhi Sharma and Ms. Monica Gupta, Advocates.

AND

\+ **BAIL APPLN. 1273/2013**

N. R. MANJUNATH ..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Sudhir Makkar and Mr. Manu T. Ramachandran, Advocates.

versus

STATE THROUGH C B I ..... Respondent

Through: Mr.R.V. Sinha, Standing Counsel, CBI

AND

+ BAIL APPLN. 1274/2013

SANDEEP GOYAL ..... Petitioner

Through: Mr. Anil Sapra, Senior Advocate with Mr. Pawan Narang, Mr. Gaurang Kanth and Mr. Rahul Kumar, Advocates

versus

C B I ..... Respondent

Through: Mr.R.V. Sinha, Standing Counsel, CBI

AND

+ BAIL APPLN. 1255/2013

VIJAY SINGLA ..... Petitioner

Through: Mr. U.U. Lalit and Mr. Rakesh Tiku, Senior Advocates with Mr. Puneet Mittal and Mr. Vivek Ojha, Advocates

versus

C.B.I. ..... Respondent

Through: Ms. Rajdipa Behura, Spl. PP for CBI with Ms. Nidhi Sharma and Ms. Monica Gupta, Advocates

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The present common order shall decide the bail applications of Mr. Mahesh Kumar (petitioner in Bail Application No.1268/2013),

Mr. N.R. Manjunath (petitioner in Bail Application No.1273/2013), Mr. Vijay Singla (petitioner in Bail Application No.1255/2013) and Mr. Sandeep Goyal (petitioner in Bail Application No.1274/2013), arising out of Charge-sheet No.3/2013 dated 2.7.2013 for the offences under Section 120B IPC read with Sections 7, 8 & 12 of the PC Act, 1988 in case FIR No.RC-2172013A0004.

2. The brief facts of the case registered by the respondent/CBI on 3.5.2013, are that it had received information that Mr. Mahesh Kumar (accused No.1), Member (Staff), Railway Board, was in regular contact with Mr. N.R. Manjunath (accused No.2), Managing Director of M/s. G.G. Tronics India Pvt. Ltd., and was trying to get a posting as Member (Electrical), Railway Board by illegal and wrongful means.

3. As per the charge-sheet, Mr. Mahesh Kumar and Mr. N.R. Manjunath were in contact with a private businessman/industrialist by the name of Mr. Sandeep Goyal (accused No.3), a resident of Panchkula, Haryana, who had given an assurance that he was in a position to get the aforesaid work done for them through his contacts with Mr. Vijay Singla (accused No.4), also a resident of Chandigarh, who happened to be the nephew of Mr. Pawan Kumar Bansal, the then Railway Minister, Central Government, by using his personal influence for pecuniary gratification. It has been alleged that for making efforts to get the posting of choice for Mr. Mahesh Kumar, Mr. Sandeep Goyal

had demanded an illegal gratification to the tune of ₹10.00 crores from Mr. Mahesh Kumar, through Mr. N.R. Manjunath. The aforesaid demand raised by Mr. Sandeep Goyal was accepted by Mr. Mahesh Kumar and it was agreed that ₹5.00 crores would be paid in cash before the appointment and the balance amount of ₹5.00 crores after his appointment as Member (Electrical), Railway Board.

4. As per the respondent/CBI, Mr. N.R. Manjunath and two other accused, namely, Mr. Rahul Yadav (accused No.6) and Mr. Sameer Sandhir (accused No.7), both businessmen/industrialists, who were having dealings with the Railways, thought that if they would manage to get Mr. Mahesh Kumar posted as Member (Electrical), Railway Board, they would stand to gain in their business. In fact, the charge-sheet states that Mr. Mahesh Kumar had promised Mr. N.R. Manjunath, Mr. Rahul Yadav and Mr. Sameer Sandhir that if appointed to the aforesaid post, he would oblige them by extending official favours to them. Based on the aforesaid assurance given by Mr.Mahesh Kumar, Mr. N.R. Manjunath had agreed to arrange a sum of ₹2.00 crores for paying the illegal gratification to Mr. Sandeep Goyal, by approaching other businessmen/industrialists who had dealings with the Railways for garnering the said funds. It is alleged that for executing this plan, Mr. Sandeep Goyal had demanded an illegal gratification of ₹2.00 crores to be paid immediately and he had

agreed that the balance amount could be paid after Mr. Mahesh Kumar was appointed to the post of Member (Electrical), Railway Board.

5. According to the charge-sheet, the aforesaid offer was being vigorously pursued by Mr. N.R. Manjunath, Mr. Sandeep Goyal and Mr. Vijay Singla. In the meantime, Mr. Mahesh Kumar came to be appointed as Member (Staff), Railway Board on 18.4.2013. When Mr.N.R. Manjunath, Mr. Sandeep Goyal and Mr. Vijay Singla realized that they could not manage the desired appointment for Mr. Mahesh Kumar, the latter asked Mr. N.R. Manjunath and Mr. Sandeep Goyal to explore another option and manage for him the additional charge of S&T Directorate from the portfolio of Member (Electrical), Railway Board alongwith the additional charge of General Manager, Western Railways.

6. Finally, on 30.4.2013, Mr. N.R. Manjunath had allegedly informed Mr. Sandeep Goyal that 25% of the illegal gratification would be paid to him if the second option referred to hereinabove was executed and on the same day, Mr. N.R. Manjunath conveyed the said instructions to Mr. Sandeep Goyal and informed him that he was arranging a sum of ₹1.00 crore immediately.

7. Just to complete the chain, there are two other persons against whom the charge-sheet has been filed by the respondent/CBI, though they were not named in the FIR, namely Mr. C.V. Venugopal (accused No.9) and Mr. M.V. Murali Krishnan (accused No.10). Mr. C.V. Venugopal is stated to be working as a Manager (Marketing and Planning) in G.G. Tronics India Pvt. Ltd, Bangalore (a company of which Mr. Mr. N.R. Manjunath is the Managing Director). He is also stated to be the Managing Director of M/s. Venkateshwara Nirman Pvt. Ltd, New Delhi (a company from whose account, an amount of ₹10.00 lacs was withdrawn for purposes of payment of the illegal gratification to Mr. Vijay Singla).

8. The allegation leveled against Mr. C.V. Venugopal is that not only was he aware of the efforts being made by Mr. Mahesh Kumar and Mr. N.R. Manjunath for ensuring the former's posting as Member (Electrical), Railway Board, he was also actively involved in making arrangements for forwarding the illegal gratification to Mr. Vijay Singla and Mr. N.R. Manjunath. As regards Mr. M.V. Murali Krishnan (accused No.10), he is stated to be a Director of a company by the name of M/s. Efftronics Systems Pvt. Ltd, Vijayawada, which had contributed a sum of ₹25.00 lacs for the very same purpose.

9. Apart from the aforesaid accused, the respondent/CBI has named one Mr. Ajay Garg (accused No.5), a partner in M/s Industrial

Equipment Company, Chandigarh, who is stated to be a close friend of Mr. Vijay Singla and Mr. Sandeep Goyal, and was allegedly playing an active role for fixing and finalizing the bribe amount between Mr. N.R. Manjunath and Mr. Vijay Singla for the appointment of Mr. Mahesh Kumar as Member (Electrical), Railway Board.

10. The accused No.6 named in the charge-sheet is Mr. Rahul Yadav, a Director of M/s. Venkateshwara Nirman Pvt. Ltd., New Delhi, who was allegedly acting on the directions of Mr. N.R. Manjunath and was actively involved in arranging the money, which was delivered on behalf of Mr. Mahesh Kumar to Mr. Vijay Singla. Additionally, Mr. Rahul Yadav was allegedly involved in arranging vehicles, drivers and two of his employees to go and deliver the bribe money to Mr.Vijay Singla in Chandigarh on 3.7.2013.

11. Mr. Sushil Daga (accused No.8), had allegedly connived and actively associated with Mr. Rahul Yadav and one Mr. Sameer Sandhir(accused No.7) and as per the prosecution, there were several calls between him and Mr. N.R. Manjunath and Mr. Manoj Garg for funding the posting of Mr. Mahesh Kumar and he had allegedly contributed ₹4.68 lacs to the bribe money.

12. It is the case of the respondent/CBI that in the aforesaid manner, Mr. Mahesh Kumar and Mr. N.R. Manjunath had mobilized a sum of ₹90.00 lacs out of which, a sum of ₹50.00 lacs was contributed by Mr. N.R. Manjunath, ₹25.00 lacs by Mr. M.V. Murali Krishnan, ₹5.00 lacs by Mr. Sushil Daga and ₹10.00 lacs was withdrawn from the account of M/s. Venkateshwara Nirman Pvt. Ltd. for being paid to Mr.Vijay Singla at Chandigarh.

13. A perusal of the charge-sheet reveals that on 2.5.2013, Mr.Sandeep Goyal had telephoned Mr. N.R. Manjunath enquiring about the money and the latter had agreed to deliver a sum of ₹90.00 lacs at Chandigarh on the very next day. On 3.5.2013, the sum of ₹90.00 lacs was dispatched through two persons arranged by Mr. Rahul Yadav and Mr. Sameer Sandhir on the directions of Mr. N.R. Manjunath, who was acting for and on behalf of Mr. Mahesh Kumar. When the said amount was being delivered in the official premises of Mr. Vijay Singla at Chandigarh, a team of officers from the respondent/CBI had raided the said premises and recovered a sum of ₹89,68,000/- in the presence of Mr. Vijay Singla and Mr. Sandeep Goyal.

14. Thereafter, Mr. Mahesh Kumar (accused No.1) was arrested on 3.5.2013, and Mr. N.R. Manjunath (accused No.2), Mr. Sandeep Goyal (accused No.3), Mr. Vijay Singla (accused No.4), Mr. Rahul Yadav

and Mr. Sameer Sandhir, were arrested on 4.5.2013, Mr. Ajay Garg (accused No.5) was arrested on 7.5.2013 and Mr. Sushil Daga was arrested on 19.5.2013, and all of them were remanded to judicial custody. The charge-sheet in the present case came to be filed on 2.7.2013. The petitioners and the other co-accused had filed applications for grant of bail before the Special Judge, CBI, but vide order dated 12.07.2013, the applications of the petitioners were rejected. Thereafter the petitioners have approached this Court for being enlarged on bail.

15. As the arguments addressed by the counsels for the petitioners have overlapped to a large extent, to avoid repetition, they are being summarized hereinafter.

16. Mr.U.U. Lalit, Mr.Rakesh Tiku, Mr.Arvind Nigam, Mr.Sandeep Sethi and Mr. Anil Sapra, learned Senior Advocates appearing for the petitioners had submitted that their clients had completed over 100 days in custody and despite the fact that the charge-sheet was filed on 2.7.2013, the learned Special Judge, CBI had erroneously proceeded to reject their bail applications on 12.7.2013. They had argued that the prosecution has set up an extremely convoluted case against the accused which was not substantiated by the statements of Mr. Vijay Mittal, Chairman, Railway Board and of Mr. Pawan Kumar Bansal, the

then Railway Minister, as recorded by the CBI, copies whereof have been placed on record.

17. Reference was particularly made to the statement of the Chairman, Railway Board who had stated that though he knew that Mr. Vijay Singla is the nephew of Mr. Pawan Kumar Bansal and he was a frequent visitor to the Ministry of Railways, personally he had never interacted with him and nor had Mr.Singla met him. The Chairman of the Railway Board had also stated that as per his recollection, the issue of posting of Mr. Mahesh Kumar as Member (Electrical), Railway Board was discussed with the Railway Minister several times, but as the said post was not vacant at the relevant time, not much emphasis was laid thereon.

18. Similarly, reference was made by learned counsels to the statement of Mr. Pawan Kumar Bansal, the then Railway Minister, who had stated that proper procedure had been followed for the appointment of Mr. Mahesh Kumar as Member (Staff), as he had fulfilled the eligibility criteria and upon discussion with the Chairman, Railway Board as to the appointment of Mr. Mahesh Kumar (General Manager, Western Railway) for the post of Member (Electrical), Railway Board, the Minister had informed the former that there was no vacancy for Member (Electrical), and the decision for selection to the posts of Chairman Railway Board, Member (Staff), Member (Traffic),

Member (Mechanical), that were going to fall vacant on 30.4.2013, would be taken only when the time would be ripe. The Railway Minister had further stated that Mr. Vijay Singla was not involved in his official deliberations and official decisions and could not influence them and he did not have any knowledge about the meeting allegedly arranged at his official residence between Mr. Mahesh Kumar, Mr. N.R. Manjunath and Mr. Sandeep Goyal at the instance of Mr. Vijay Singla, when he was staying there on 7.4.2013.

19. It was canvassed that the only vacancy that had arisen at the relevant point in time was that of Member (Staff), Railway Board and since Mr. Mahesh Kumar had been duly appointed to the said post, there is no basis for the respondent/CBI to have charged the petitioners for allegedly arranging bribe money for his appointment as Member (Electrical) and even if there was any such plan, as alleged, it stood aborted when Mr. Mahesh Kumar was appointed as Member (Staff), Railway Board.

20. Learned counsels for the petitioners had further contended that once the charge-sheet had been filed by the respondent/CBI on 2.7.2013, no further investigation is required to be conducted for detaining their clients in custody for an indefinite period which would be in gross violation of Article 21 of the Constitution of India. They had referred to the order dated 12.8.2013 passed by the Special Judge

whereunder, three other accused, namely, Mr. Rahul Yadav (accused No.6), Mr. Sameer Sandhir (accused No.7) and Mr. Sushil Daga (accused No.8) had been granted bail and submitted that no distinction can be drawn between the aforesaid persons and the petitioners in the present cases for denying them similar relief. Additionally, it was submitted that there was no likelihood of any of the petitioners tampering with the evidence more so when the tape-recorded evidence had already been forwarded to the CFSL and simply because the respondent/CBI had approached the Special Judge on 12.8.2013 and sought two months' time to verify the voices recorded in the tapes, can hardly be a ground to further detain the petitioners in judicial custody.

21. It was submitted that the custodial interrogation of the petitioners had already been undertaken by the CBI and it had taken into custody the suspected documents and articles and now there is no justification for keeping any of the petitioners in judicial custody. Lastly, it was urged that the maximum period of sentence contemplated for the offence under the provisions invoked in the charge-sheet may extend upto five years and there have been instances where the accused have been charged with graver offences and where the sentence was upto seven years and yet they were

granted regular bail. Therefore, the petitioners herein being on a better footing, ought not to be treated any differently.

22. Mr. Arvind Nigam, Senior Advocate had adverted to the statement of the Chairman, Railway Board and the then Railway Minister that the appointment of Mr. Mahesh Kumar as Member (Staff), Railway Board, was approved as early as on 18.4.2013 and he had argued that assuming, without admitting that there was a conspiracy hatched by the co-accused as alleged by the prosecution, the same had been abandoned on the date of the appointment of Mr.Mahesh Kumar as Member (Staff). He contended that the observations of the learned Special Judge, CBI while rejecting the applications of the petitioners for seeking regular bail that they are influential persons who can tamper with the evidence and can influence the witnesses, is based on mere *ipse dixit* and simply because charges have not yet been framed in the case cannot be a ground to deny them bail. It was further submitted that a person on bail is in a better position to defend himself during the trial and this consideration ought to weigh with the Court while deciding the present applications.

23. On merits, it was argued that the material available with the respondent/CBI against the petitioners are recorded conversations and it is a settled legal position that the said conversations cannot be

treated as primary evidence for purposes of conviction, but only as corroborative evidence and therefore, there is least possibility of convicting the petitioners for the offences charged. To buttress the said submission, Mr.Arvind Nigam, Senior Advocate had referred to the decisions of the Supreme Court in the cases of Bhagirathsinh s/o Mahipat Singh Judeja Vs. State of Gujarat reported as **(1984) 1 SCC 284 and** Ram Singh and others Vs. Col.Ram Singh reported as **1985 (Supp) SCC 611.**

24. The individual background and special circumstances of each of the petitioners were separately highlighted by their respective counsels to urge that they are entitled to be enlarged on bail.

25. In the case of Mr. Mahesh Kumar, Mr.Arvind Nigam, Senior Advocate had stated that he is 58 years old and a public servant and there is no allegation that there is any likelihood of his absconding during the trial. Mr. Mahesh Kumar is stated to be a permanent resident of Delhi and his family includes his wife, mother, mother-in-law and two children, both working abroad, and being the only child, he has the sole responsibility of caring for his 82 years old mother. Further, there is no other criminal case pending against the said petitioner, except for the present case.

26. Coming to Mr. N.R. Manjunath, Mr. Sandeep Sethi, Senior Advocate appearing on his behalf had stated that his client is the Managing Director of M/s. G.G. Tronics India Pvt. Ltd., a company that employees about 250 persons and the business affairs of the company are completely dependent upon the said petitioner. He submitted that there was no allegation levelled against Mr. Manjunath that he is a beneficiary of any largesse from any of the accused; there is no primary evidence against him; he was not arrested from the spot, no recovery was made from him and nor has the CBI alleged that any Railway contract had been granted to his company in the past or was likely to be awarded in the future. It was further submitted that Mr. Manjunath has clean antecedents and he has neither been convicted in any criminal case, nor is any case pending against him in a criminal court.

27. The health condition of Mr. Manjunath is also stated to be delicate. In this regard, the report of the Medical Board, constituted at AIIMS in compliance of the orders passed by the Special Judge, CBI, was referred to wherein, his medical history was taken note of. As per the report, in the year 2007, he had been operated for lumbar disc and complaint of recurrent lumbar spine pain. Based on his MRI, the Board had observed in the report that there were degenerative changes at multiple levels in the lumbar spine of Mr.Manjunath.

28. On behalf of Mr. Vijay Singla, Mr. U.U. Lalit, Senior Advocate had submitted that his client is 46 years of age and is the Managing Director of a Public Limited Company listed on the Bombay Stock Exchange. He is a married man and has one child of 15 years and is residing with his family at Chandigarh, Haryana. He has clean antecedents, is not involved in any other criminal case and has deep roots in the society and therefore, is unlikely to flee from justice.

29. Appearing on behalf of Mr. Sandeep Goyal, Mr. Anil Sapra, Senior Advocate had submitted that his client is 44 years of age and is a businessman working for gain and residing at Chandigarh, Haryana, with his wife and a minor son, who are solely dependent on him. It was submitted that he has clean antecedent and no criminal case is pending against him and nor is he a previous convict.

30. Lastly, learned Senior Advocates appearing for all the four petitioners had stated that the prosecution has cited ninety witnesses and has filed a number of documents that shall take a very long time for examination during the trial. It was also pointed out that the report of the CFSL in respect of the voice samples sent for comparison by the respondent/CBI has yet to be received and therefore, it was unlikely that the trial could commence in the near future and in such circumstances, the petitioners' continued custody is no longer

required. To substantiate the submissions made hereinabove, reliance was placed on the following decisions:

(i) Mahabir Prasad Verma vs. Dr. Surinder Kaur, **(1982) 2 SCC 258**,

(ii) Bhagirathsinh vs. State of Gujarat, **(1984) 1 SCC 284,**

(iii) Vinod Khatri vs. State (CBI), **2004 (72) DRJ 472**,

(iv) R. Vasudevan vs. CBI, New Delhi, **2010 (166) DLT 583, and**

(v) Sanjay Chandra vs. Central Bureau of Investigation, (**2012) 1 SCC 40.**

31. *Per contra*, Ms. Rajdipa Behura and Mr. R.V. Sinha, learned counsels for the respondent/CBI had vehemently contested the grounds urged by the petitioners for grant of bail and contended that Mr. Mahesh Kumar, who is a public servant, is the pilot of the conspiracy hatched by him in connivance with private persons and some of them were suppliers of equipment to the Railways and he had taken money from them on an assurance that he would be in a position to extend them official favours in return of his being appointed to the post of Member (Electrical), Railway Board. It was stated that in expectation of being appointed as a Member (Electrical), Railway Board, Mr. Mahesh Kumar & Mr.Manjunath had arranged for illegal gratification to be passed on to Mr. Vijay Singla and in furtherance to

the said conspiracy, all the four accused had arranged a meeting with Mr. Vijay Singla on 7.4.2013 at the official residence of the then Railway Minister, Mr. Pawan Kumar Bansal.

32. Later on, when Mr. Mahesh Kumar had gathered the impression that the post of Member (Electrical), Railway Board was not coming his way, he had approached Mr. N.R. Manjunath to see that he be assigned the additional charge of S&T Directorate and General Manager, Western Railway and in exchange, he had lured Mr. N.R. Manjunath and Mr. Sandeep Goyal with a promise to award lucrative Railway tenders to them.

33. The Court was informed that there is sufficient evidence available against all the petitioners herein which includes their telephonic conversations that had been intercepted, and the said conspiracy had culminated on 3.5.2013 when the CBI had raided the office of Mr. Vijay Singla at Chandigarh where he was found present on the spot and was caught red-handed accepting bribe money from Mr. Sandeep Goyal.

34. It was urged on behalf of the respondent/CBI that in the present case, the conspiracy was a continuous one and even after his appointment as Member (Electrical), Railway Board, Mr. Mahesh Kumar had made continuous efforts to get the additional charge of

S&T and General Manager, Western Railways. It was contended that once the Special Judge, CBI had taken cognizance of the offences, this was not the stage to go into the merits of the case. Learned counsels had urged that the petitioners cannot claim parity with two other co-accused, namely, Mr.Dharmender Kumar and Mr. Vivek Kumar, who had been granted bail by the Special Judge as their role was that of couriers who had carried the bribe amount on the directions of Mr. Rahul Yadav, as against the role of the petitioners herein who are the main accused and were actively involved in the conspiracy.

35. It was argued on behalf of the respondent/CBI that if the court enlarges the petitioners on bail, then there is a reasonable apprehension that they may influence the witnesses as they have high contacts in the society, particularly, Mr. Mahesh Kumar (accused No.1). Mr. R.V. Sinha pointed out that at the time of his arrest, Mr.Mahesh Kumar was holding the post of Member (Staff), Railway Board and being a very high ranking officer in the Railways, holding a post equivalent to a Secretary level bureaucrat in the Government of India, he could very well try and influence the employees of the Railways, some of whom have been cited by the prosecution as witnesses in the case. As regards the medical prescriptions of Mr. N.R. Manjunath, Mr.Sinha submitted that most of the said prescriptions bear a date prior to his being taken into custody and after her was

examined by the Medical Board, AIIMS, they had recommended that he did not require any surgical intervention and would only need physiotherapy for treating his back.

36. Coming to Mr. Sandeep Goyal, Mr. R.V. Sinha had argued that the said accused is a close friend of the main accused, Mr. Vijay Singla and was known to Mr. N.R. Manjunath. He submitted that Mr.Sandeep Goyal had an active role in arranging and conducting the meetings between the parties and he was actually caught by the raiding team of the CBI at the office premises of Mr. Vijay Singla at the time of the delivery of the bribe money.

37. Ms. Rajdipa Behura, learned Advocate for the CBI had strenuously urged that Mr. Vijay Singla is not entitled to grant of bail as there is great likelihood that being highly placed in the society, he can influence the witnesses to the detriment of the prosecution. It was contended that merely because the charge-sheet has been filed in the present case, cannot give any advantage to the petitioners because charges have yet to be framed and if so inclined, the trial court can direct further investigation under Section 173(8) Cr.P.C. and looking at the magnitude and the gravity of the offence, the petitioners are not entitled to be enlarged on bail.

38. The Court has carefully considered the arguments advanced by the counsels for the parties and examined the records and the case law cited by them. The only point for consideration in the present petitions is whether the petitioners herein have been able to make out a case for being enlarged on regular bail, in a matter where they have allegedly committed the offence under the Prevention of Corruption Act.

39. The gravamen of the charges levelled against the petitioners is that Mr.Mahesh Kumar(accused No.1), in concert with the other accused had entered into a conspiracy to achieve a common object which was to mobilize bribe money and ensure his appointment as Member(Electrical), Railway Board, and later on when he came to be appointed as Member(Staff) Railway Board, to manage to carve out for him the additional charge of S&T Directorate from the portfolio of Member (Electrical), and of G.M. Western Railways. As a part of the said conspiracy, Mr. Mahesh Kumar and Mr.N.R.Manjunath had roped in Mr.Sandeep Goyal, who was a close friend of Mr.Vijay Singla, nephew of the then Railway Minister, Mr.Pawan Kumar Bansal, and Mr.Singla had agreed to use his personal influence in exchange of pecuniary gratification for achieving the said object.

40. Having perused the charge-sheet, *prima facie* it cannot be contended that the respondent/CBI has failed to make out a case of conspiracy for the offences punishable under Section 120-B IPC read with Sections 7, 8 and 12 of the PC Act. In any event, at this stage, the allegations levelled by the prosecution have to be taken on their face value. The Court must also ensure that there is no pre-judging and no prejudice is caused to either side, and the merits of the case must be left to be decided by the trial court [Ref: Puran Etc. Vs. Rambilas & Anr. **(2001) 6 SCC 338,** Ram Govind Upadhyay Vs. Sudarshan Singh and Ors. (**2002) 3 SCC 598** and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr, **2004 (7) SCC 528]**.

41. The overriding considerations for grant of bail have been a subject matter of discussion in several decisions of the Supreme Court and High Courts and the essence of the discussion is that while exercising its powers under Section 439 of the Cr.P.C., the Court ought to take into consideration various parameters including the nature of the charge, the nature of the evidence, the seriousness of the offence, the punishment that a person may be liable to suffer if convicted, the likelihood of polluting the course of justice by an accused who seeks enlargement on bail by interfering in the fair investigation or fair trial. Of equal significance are the antecedents of the applicant, his position and the status vis-à-vis the victim and the witnesses, the likelihood of

his fleeing from justice or of repeating the offence. However, there can be no straitjacket formula for exercising such discretion and each case has to be examined on its own facts. The aforesaid parameters are therefore not exhaustive but only indicative of the factors that ordinarily weigh with the Court while exercising the special powers conferred upon it under Section 439(1) Cr.PC.

42. Pertinently, the discussion on the object of bail dates back to the early part of the twentieth century when the High Court of Calcutta had held in the case of Nagendra Nath Chakrabarthi vs King-Emperor reported as **AIR 1924 Cal. 476** that the object of bail is to secure the attendance of the accused at the trial and the proper test to be applied while considering whether bail should be granted or refused is whether there is a probability of the accused appearing to take his trial. It was held that it cannot be disputed that bail is not to be withheld as a punishment and grant of bail is the rule and refusal is the exception and further, a presumably innocent person must have his freedom to enable him to establish his innocence. At the end of the day, the facts and circumstances of each case will govern the exercise of judicial discretion in granting bail (Ref: Gurbaksh Singh Sibbia etc vs. State Of Punjab reported as **1980 AIR 1632**).

43. Heavy reliance was placed by the learned counsels for the petitioners on a recent decision of the Supreme Court in the case of Sanjay Chandra (supra) to urge that in the said case, the investigation was complete and the charge-sheet had been filed, and the maximum punishment prescribed for the offence for which the accused was booked, was of seven years, whereas in the present case, the maximum punishment prescribed for the offence alleged against the petitioners may extend upto five years and therefore the petitioners are better placed than the petitioner in the aforesaid case.

44. In the case of Sanjay Chandra (supra), the Supreme Court had examined the concept and philosophy of bail, as was considered in the case of Vaman Narain Ghiya v. State of Rajasthan reported as **(2009) 2 SCC 281**, wherein it was observed that bail may be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners and at the same time, involves participation of the community in administration of justice. The following observations made by the Supreme Court while discussing the object of bail, are apposite:-

> "21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. **The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an**

accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. **In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.**

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. **In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act.** Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice.

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27. **This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.**

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40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. **The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.**

41. **This Court in <u>Gurcharan Singh and Ors. Vs. State</u> AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses.** Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. **When the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.** Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case." (emphasis added)

45. In a later decision in the case of Dipak Shubhashchandra Mehta v. CBI, reported as **2012 (4) SCC 134**, while reiterating the observations made in the case of Sanjay Chandra (supra), the Supreme Court had observed as below:-

> "18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. **The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.**" (emphasis added)

46. There is no getting away from the fact that the rot of moral depravity is ravaging the very fabric of the nation and ominous clouds of corruption are looming large on the economic horizon of the country. The groundswell against perversion of integrity is gathering force and is reverberating at all levels of the society. In this background, in cases where corruption is indulged in by persons

holding high positions of power and bestowed with authority, judicial rectitude demands that public interest be kept on a high pedestal. At the same time, the Court must not lose its objectivity or go overboard. It is required to maintain an even handed approach while exercising its judicial discretion in a case where it is alleged by the prosecution that the accused have committed an offence under the Prevention of Corruption Act and the said accused approach the Court for relief against deprivation of their personal liberty.

47. While deciding whether the petitioners herein should be enlarged on bail or bail should be denied to them, the factors to be taken into consideration have already been enumerated above. Both, the seriousness of the charge and the severity of the punishment are also a relevant consideration while examining the bail applications. In the present case, the charge is that of a conspiracy between the accused who were allegedly working in tandem to mobilize illegal gratification to secure a plum post for the main accused, Mahesh Kumar (accused No.1) in exchange of pecuniary advantage that was agreed to be extended to Mr. Vijay Singla (accused No.4) so that official favours extended by Mr.Mahesh Kumar could flow to the benefit of the other accused. The maximum punishment prescribed by the Legislature for the said offence is imprisonment that may extend to five years.

48. Coming to the next factor to be taken into consideration, which is whether the petitioners being influential persons can tamper with the evidence and influence the witnesses, as was noticed by the learned Special Judge, CBI at the time of rejecting their bail applications on 12.07.2013, the background and credentials of each of the four petitioners has to be taken into consideration. In the present case, it has been contended by the learned counsels for the respondent/CBI that all the petitioners, particularly, Mr. Mahesh Kumar, Mr. N. R. Manjunath and Mr. Vijay Singla are persons enjoying immense power and position and they are capable of influencing the witnesses. The flipside of the aforesaid argument is that the very same fact that the petitioners are holding high positions/status in the society in itself acts as a safeguard and guarantee for them that they would stand their trial and not attempt to flee from the process of law. At the end of the day, the guiding factor for enlarging an accused on bail is to secure his presence to take the judgment and serve the sentence if indicted by the court. The vocation, family background, antecedents and social circumstances of the petitioners are not found to be unfavourable and they show that the petitioners have roots in the society and they are unlikely to evade the legal process or fail to turn up during the trial.

49. The apprehension expressed by the prosecution that the petitioners are likely to influence the witnesses or tamper with the evidence has to be seen in the light of the evidence brought out in the course of the investigation and the witnesses cited by the prosecution. In the present case, having regard to the fact that the nature of the evidence gathered by the investigating agency is mainly in the form of telephonic conversation, i.e., electronic evidence and recovery of cash, apart from other circumstantial evidence, this Court is of the opinion that the likelihood of the petitioners attempting to erase the evidence appears to be quite remote. In the present case, not only is the investigation complete, the charge-sheet has also been filed and the recordings of the telephonic conversation that are in the custody of the prosecution have already been forwarded to the CFSL for analysis.

50. As for influencing the witnesses, out of a list of ninety witnesses cited by the prosecution, except for a handful of witnesses, who are employed with the Railway Ministry, all the remaining witnesses are official witnesses. That Shri Mahesh Kumar was a Member (Staff), Railway Board is not considered sufficient ground to arrive at a conclusion that he would dissuade the witnesses, who are working with the Railways from deposing against him, more so when he has been suspended from service. In any case, no allegation has been levelled against any of the petitioners that they had interfered in the course of

the investigation or had extended any threats to the prosecution witnesses or intimidated them in any manner. The contention of the learned counsels for the respondent/CBI that the trial court is well entitled to direct further investigation in the case under Section 173(8) of the Cr.PC is considered rather tenuous for insisting on the continued incarceration of the petitioners. Furthermore, the investigating agency is well entitled to approach the court for seeking cancellation of the bail order if it is able to demonstrate that the petitioners have attempted to influence the witnesses or otherwise tried to thwart the course of justice in any manner.

51. Another important factor that the Court must not overlook while deciding the bail applications is the likelihood of delay in the conclusion of the trial. The Supreme Court has often taken a view that when there is delay in the trial, bail should ordinarily be granted to the accused though the said consideration should not be applied mechanically to all cases. (Ref: Vivek Kumar Vs. State of U.P. reported as **2000 (9) SCC 443**, Babba @ Shankar Raghuman Rohda Vs. State of Bihar reported as **2005(11) SCC 569** and State of Kerala v. Raneef reported as **2011 (1) SCC 784**].

52. Considering the present scenario, where the prosecution has cited ninety witnesses, filed a number of documents and the report of the CFSL in respect of the voice samples sent for comparison shall

admittedly take about two months' time, there does not appear any possibility of the trial commencing in the near future. It is also relevant to note that by now the petitioners have remained in custody for about one hundred and forty days, if reckoned from 03/04.05.2013. This Court is therefore of the opinion that no useful purpose shall be served by detaining the petitioners in jail for an indefinite period as that would be an antithesis of the principles of personal liberty enshrined in Article 21 of the Constitution of India and would amount to punishing them on the assumption of their guilt.

53. Accordingly, it is directed that the petitioners shall be enlarged on bail on their furnishing a personal bond in the sum of ₹5 lacs each, with two sureties each of the like amount to the satisfaction of the Special Judge, CBI, subject to the following conditions:

(i) The petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any authority.

(ii) The petitioners shall not tamper with the evidence or influence the witnesses or make any attempt to thwart the trial of the case.

(iii) The petitioners shall surrender their passports before the Special Judge, CBI, if not already surrendered.

(iv) The petitioners shall remain present before the trial court on the dates fixed before it unless they have been exempted by the Special Judge, CBI with prior permission.

54. If any of the petitioners violate any of the conditions of bail, then the respondent/CBI shall be at liberty to approach the Court for seeking cancellation of the bail order.

55. The petitions are disposed of.

DASTI to the parties.

(HIMA KOHLI)
JUDGE

SEPTEMBER 27, 2013
sk/rkb