

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

+ BAIL APPLN. 1762/2013

Reserved on: 21.11.2013

Date of decision: 11.12.2013

IN THE MATTER OF:

DR. KEWAL KRISHNA SOOD

..... Petitioner

Through: Mr. Karan Pal Singh, Advocate

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Ms. Rajdipa Behura, Spl. PP for the
CBI with Ms. Nidhi Sharma, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The present petition has been filed by the petitioner under Section 439 Cr.PC for grant of bail in case FIR No.RC.BD1/2009/E/0019 entitled CBI vs. Dr. Kewal Krishna Sood and Others registered under Sections 420/467/468/471/120-B/34 IPC by the CBI at New Delhi.

2. The allegations against the petitioner, who is the promoter of a company by the name of M/s Raghubir Hospital Pvt. Ltd. (hereinafter referred to as 'the hospital'), are that he had dishonestly availed of a term loan of ₹6.50 crores from the State Bank of India (SBI),

Commercial Branch, New Delhi for the purpose of setting up a 150 bedded hospital at Ghaziabad, UP, by submitting forged proforma invoices and receipts issued by a medical company by the name of M/s Gaurav Medical Equipments. Between 01.03.2007 to 15.06.2007, the bank had disbursed the term loan to the tune of ₹5.63 crores to the hospital and a substantial part of the loan amount had been disbursed for purchasing two machines namely, C.T. Scan system for ₹1.19 crores and MRI system for ₹2.44 crores. However, in March, 2009, when the bank officers visited the office of M/s Gaurav Medical Equipments, it transpired that there was no such company operating from the given address and nor was there any clue about its whereabouts.

3. As per the prosecution, the loan disbursement made by the bank in the name of M/s Gaurav Medical Equipments was routed through a bank account of the said firm that had been opened by the petitioner as a proprietor of the said firm, with a bank at Ghaziabad and upon receiving the funds into this account, the same had been siphoned off by him for personal gain. Similarly, the amounts that had been disbursed by the SBI between 01.03.2007 to 20.03.2007 in favour of a construction company, namely, M/s Anubhav Construction Co. were deposited in an account opened by the said firm with the very same

bank at Ghaziabad and the petitioner's son, Shri Anubhav Sood turned out to be the proprietor of the said company and the authorized signatory of the said bank account, which had been introduced by the petitioner himself. Thus, the investigations revealed that both the aforesaid firms were non-existent and were not registered with the Sales Tax Department, Ghaziabad.

4. A perusal of the charge-sheet reveals that the present case was registered by the respondent/CBI on the basis of a written complaint received from the SBI regarding the alleged fraud of ₹6.44 crores. After the investigations were concluded, the FIR came to be registered on 16.09.2009 and the charge-sheet was filed on 16.11.2010. The charge-sheet had named the petitioner herein as accused No.1, the hospital as accused No.2, Mr. Anubhav Sood (the petitioner's son) as accused No.3 and Shri Hemant Sharma, an employee of the petitioner, as accused No.4. Charges were framed against the accused persons on 08.11.2012. The prosecution had cited forty one witnesses and out of the said list, ten of the witnesses were public witnesses. Recording of the prosecution evidence had commenced on 03.12.2012 and as on date, twelve witnesses have been examined.

5. Learned counsel for the petitioner submitted that during the pendency of the trial, the petitioner had filed applications for grant of bail before the trial court on different occasions but all the said applications had been turned down, the last rejection order having been passed by the learned ASJ on 02.09.2013 (Annexure P-3). He stated that the petitioner had been arrested on 28.10.2010 and by now, he has remained in judicial custody for over three years. As for his vocation and background, learned counsel submitted that the petitioner is a doctor by profession and he was practicing at Ghaziabad for the past twenty five years, his wife had expired in the year 1992, he has two children, one of them being accused No.3 in the charge sheet, who was a juvenile at the relevant point in time and had been acquitted by the Juvenile Justice Board. The petitioner's son is now working in a private establishment and is residing at Noida. The second issue of the petitioner is a daughter, who is a college student and is residing at a hostel. To substantiate his submissions that the petitioner has deep roots in the society, learned counsel submitted that he has one brother and two sisters. While his brother is stated to be a businessman running two factories in Ghaziabad, his one sister is married to a doctor, who is posted in and residing in Ghaziabad and the second sister is also married to a doctor.

6. Learned counsel for the petitioner further pointed out that on 13.9.2013, a supplementary charge-sheet has been filed by the respondent/CBI in which one more person, Shri J.P. Singh has been named as an accused. Alongwith the supplementary charge-sheet, the prosecution has cited sixteen more witnesses. He had submitted that the case was listed before the Special Judge, CBI on 24.10.2013 for arguments on the supplementary charge-sheet and for obtaining clarifications from the CBI with regard to the involvement of some officers of the SBI and it shall take a long time for the evidence to recommence after the trial court hears the arguments on charge against the accused No.5 on the basis of the supplementary charge-sheet and passes an order.

7. It was thus urged that the petitioner's vocation, his antecedents, family background and social circumstance amply demonstrate that he has deep roots in the society and is unlikely to evade the legal process or fail to turn up during the course of the trial and further in view of the fact that the supplementary charge-sheet has been filed by the respondent/CBI as recently as in September, 2013, it is apparent that it shall take a long time for the trial to conclude and in this duration, the petitioner cannot be detained in judicial custody as it amounts to infringement of his personal liberty

under Article 21 of the Constitution of India. In support of his submissions, learned counsel had relied on the decisions of the Supreme Court in the cases of R.D. Upadhyay vs. State of Andhra Pradesh and Ors., reported as **(2000) 10 SCC 255** and Sanjay Chandra vs. CBI, reported as **(2012) 1 SCC 40**.

8. Learned Special PP for the respondent/CBI had opposed the bail application and referred to the Status Report filed by the CBI to urge that the petitioner has committed a serious economic offence by obtaining disbursements from the SBI on the basis of forged invoices of supplier companies and has cheated the bank by diverting the term loan funds for purposes other than those for which it was sanctioned. She stated that the petitioner has withdrawn an amount of ₹4,61,50,500/- out of the disbursement of ₹5.63 crores and during the pendency of the case, he had submitted forged property documents to the SBI knowing very well that the said immovable property had already been mortgaged with some other banks, from whom he had availed credit facilities. Lastly, it was stated that if he is released on bail, there is every likelihood of the petitioner tampering with the evidence or fleeing from the country.

9. The Court has perused the charge-sheet, considered the status report filed by the CBI and heard the arguments advanced by the counsels for the parties. As has been repeatedly held in a number of judicial pronouncements, the principal object of bail is to secure the attendance of the accused at the trial and ensure that he does not flee from justice. At the same time, an accused must not be deprived of his personal liberty and held in custody during trial in anticipation of his conviction unless the interest of the society demands otherwise or there is material to show that he will use his liberty to subvert justice or tamper with the evidence.

10. It is an undisputed position that in the present case, the investigation has already been completed and two sets of charge-sheets have been filed. The first charge-sheet was filed by the CBI against the petitioner and three other accused on 16.11.2010 and a supplementary charge-sheet came to be filed against another accused on 13.09.2013. Charges in respect of the first charge sheet were framed against the petitioner vide order dated 08.11.2012 and out of forty one witnesses cited by the prosecution in the first list of witnesses, twelve witnesses have already been examined before the Special Judge, CBI. At that stage, a supplementary charge-sheet came to be filed by the CBI on 13.9.2013 and alongwith the said charge-

sheet, sixteen additional witnesses have been cited. Now the case is stated to be at the stage of arguments on charge in respect of the supplementary charge-sheet and for furnishing clarifications with regard to involvement of some officers of the SBI.

11. The nominal roll of the petitioner was called for by the court. As per the said nominal roll, the petitioner was taken into judicial custody on 28.10.2010 and as on 12.11.2013, the period undergone by him as an undertrial was three years, fourteen days. By now, the petitioner would have remained in judicial custody for a period of three years and one and a half months.

12. The petitioner's son has filed an affidavit detailing *inter alia* the family details and the professional background of the petitioner. The court has considered the petitioner's social and financial background that reveals that he has roots in the society, having been a medical practitioner at Ghaziabad for the past 25 years, and has a family comprising of a son and a daughter. Learned counsel for the petitioner had submitted that if released on bail, the petitioner shall reside with his son at Noida and be available on each and every date of hearing of the case. It is a matter of record that a supplementary charge-sheet has been filed by the CBI in September 2013 and the prosecution has added sixteen more witnesses to its original list of

forty one witnesses and only twelve witnesses have been examined till date. The trial has been stalled for the present as the trial court shall first hear arguments on charge in respect of the accused No.5 named in the supplementary charge sheet. It therefore does not appear that the trial shall conclude expeditiously.

13. The nature of the documentary evidence gathered by the prosecution in the course of the investigation reveals that most of the said documents relate to banking transactions, which are already in the custody of the prosecution and as the transactions involved in the present case are banking transactions, most of the witnesses cited by the prosecution are officers from different banks and government departments. In such circumstances, there is little likelihood of the petitioner being able to use his influence over the said witnesses or tamper with the evidence.

14. Except for expressing an apprehension, no specific incident of threat extended by the petitioner or his family members to any of the witnesses or of tampering with the evidence has been levelled against him. This Court is therefore of the opinion that the petitioner having remained in judicial custody for over three years and a supplementary charge-sheet having been filed by the prosecution as recently as in

September 2013, there does not appear any possibility of the trial being concluded in the very near future.

15. Accordingly, the present petition is allowed. The petitioner is admitted to bail subject to his furnishing a personal bond in the sum of ₹1 lac with two sureties of the like amount each to the satisfaction of the trial court and subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case. If he proposes to remain absent on any date, then he shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, he shall immediately give intimation to the appropriate court and request that he may be permitted to be present through the counsel.
- (iii) He will not dispute his identity as the accused in the case.
- (iv) He shall surrender his passport, if any (if not already surrendered), and in case he is not a holder of the same, he

shall swear an affidavit to that effect before the learned Special Judge, CBI.

16. If the petitioner violates any of the conditions of bail, then the respondent/CBI is at liberty to approach the Court for seeking cancellation of the bail order.

17. The petition is disposed of.

DASTI.

(HIMA KOHLI)
JUDGE

DECEMBER 11, 2013
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