

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 17th September, 2014

+ BAIL APPLN.1238/2014 & CrI.MB 1109/2014 & CrI.MA
11156/2014
P K TEWARI Petitioner
Through: Mr. Sidhartha Luthra, Senior
Advocate with Mr. Madhav
Khurana and Mr. Aalam Nijjar,
Advocates.

versus
C B I Respondent
Through: Ms. Sonia Mathur, Standing
counsel for CBI with Inspector
R.K. Singh
Ms. Savita Singh, Advocate for
the complainant

+ BAIL APPLN. 1246/2014 & CrI. MB 11154/2014 & CrI. MB
1117/2014
ANAND TIWARI Petitioner
Through: Mr. Sidhartha Luthra, Senior
Advocate with Mr. Madhav
Khurana and Mr. Aalam Nijjar,
Advocates

versus
C B I Respondent
Through: Ms. Sonia Mathur, Standing
counsel for CBI with Inspector
R.K. Singh
Ms. Savita Singh, Advocate for
the complainant

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA
J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common order, I shall dispose of two bail

applications being bail application No.1238/2014 filed by Sh. P.K. Tewari and bail application No.1246/2014 filed by Sh. Anand Tewari, inasmuch as, both the applications have been moved in case RC No. RCBDI/2013/E/009.

2. The case has been registered on the basis of complaint received from General Managar, SBI against M/s. Century Communication Ltd. (M/s.CCL), petitioners Sh. P.K. Tewari, CMD and Anand Tewari, Director, Mrs. Meena Tewari, Abhishek Tewari and other unnamed employees of the company for having caused wrongful loss of Rs.64.17 crores to the bank. Total eight FIRs were registered against the petitioner and the companies promoted by them. Charge sheets were filed in three cases for various offences under Indian Penal Code and Prevention of Corruption Act, 1988 while investigation is pending with regard to remaining five FIRs.

3. Mr. Sidharth Luthra, learned Sr. Advocate for the petitioner submitted that the only ground on which the CBI is seeking the custodial interrogation of the petitioners is to recover the originals of two invoices of M/s. Avital Electronics Limited, which are allegedly in the custody of the petitioner, however, as per the sanctioned letter

issued by SBI, original invoices had to be submitted to the Bank without which no money could be disbursed. Therefore, original invoices had been submitted to SBI by CCL. SBI itself has written a letter to CBI confirming that the original invoices have been misplaced by it. Despite the fact that the CBI was in possession of this letter, the same was not disclosed either before the learned Additional Sessions Judge or before this Court, even though the petitioner asked for production of the letter. It was only when an application was filed before this Court that the CBI in its reply for the first time accepted that it had the said letter and thereafter handed over the same in sealed cover to the Court. Earlier, the petitioner had joined investigation and traced out some of the original invoices of M/s. Avitel Electronics which were seized in another FIR. Now CBI is claiming that it needed to interrogate the petitioner in order to discover the utilization of fund for purchase of gold. However, an affidavit was filed before the learned Additional Sessions Judge along with a chart recording that the petitioner had handed over details of the gold and cash seized by the Income Tax Department. Hence on this ground also no interrogation is required. Moreover,

after the grant of interim protection, the petitioner has not only joined but also cooperated in the investigation. List of dates have been submitted for showing as to how many times, the petitioners have joined investigation. Moreover, out of a total 280 invoices, pertaining to all the banks, the petitioner handed over 228 invoices to the CBI and informed that 50 invoices had been seized by Income Tax Authorities. Therefore, only 2 invoices were left and now it has come on record that the two invoices have been lost by the Bank. It was further submitted that there was no intention to cheat on the part of the petitioner. Out of Rs. 7 crores advanced to CCL as of today only a sum of Rs.27,74,115/- is payable which the petitioners are ready and willing to deposit in two instalments. Till September, 2011 all the companies to whom various banks had advanced money were servicing all the loans. It is only when the CBI filed a complaint that the banks stopped granting funds to the petitioners' companies which led to paucity of funds and it was only then that the banks began to declare the companies as Non Performing Assets. It was further submitted that the petitioner P.K. Tewari is suffering from acute ulcerative colitis and hypertension and the petitioner Anand Tewari is

suffering from Cirrhosis of the liver. As such, the petitioners be released on bail.

4. The application is opposed by the learned standing counsel for CBI who referred to the averments made in the complaint against the petitioners for showing the seriousness of the allegations against them. It was submitted that out of TERM Loan-I of Rs.7 crores, an amount of Rs.4,71,40,000/- was disbursed by Bank on 29th March, 2004 by way of a demand draft favouring M/s.Avitel Electronics Ltd. shown as a supplier of software for Media Industry. Investigation reveals that M/s.Avitel Electronics Ltd. is a fictitious company through which the funds have been diverted. The promoters/Directors of M/s. CCL used fake invoices of M/s.Avitel Electronics Ltd. to induce the bank to part with funds at the time of disbursement of the Term Loan. It was further submitted that accused P.K. Tewari, CMD vide letter dated 8th January, 2004 requested the State Bank of Indore to sanction Rs.10 crores as part finance for setting up a digital studio at Mumbai. Accused Anand Tewari vide letter dated 19th March, 2004 submitted status report to Bank with regard to Mumbai Project and requested for disbursal of amount of Rs.4 crores against Term

Loan-I. Registrar of Companies, Delhi and Haryana vide letter dated 2nd January, 2004, confirmed that M/s.Avitel Electronics is fictitious company as not registered with ROC. The registration No. U72900DL2000PTC108642 used for the purpose of opening of bank account of M/s.Avitel Electronics Ltd. was in fact allotted to M/s. Northway Electronics Pvt. Ltd. The amount of Rs.4,71,40,000/- disbursed by Bank was credited in the account of M/s.Avitel Electronics Ltd. on 6th April, 2004 and on the same day these funds were retransferred into different account of M/s.CCL which was credited through DDs issued on the requisition of Anand Tewari of M/s. Avitel Electronics Ltd. Ms. Sona Debnath, an employee of M/s. CCL during investigation stated that the invoices of M/s.Avitel Electronics were signed by her in the assumed name of “M Jain” at the instance of accused P.K.Tewari. It was urged that the fraudulent acts committed by CCL and its director and other employees are highly prejudicial to the financial interest of Bank as they have caused wrongful loss to the complainant bank and corresponding wrongful gain to themselves. Reference was also made to the affidavit filed by SBI that outstanding balance as on date of M/s. CCL amounts to

Rs.64,16,89,773.32.

5. As regards two original invoices, it was submitted that the role of the bank officials is being investigated. Moreover, the accused have failed to give the details/end use of Rs.8 lacs which was withdrawn in cash from the accounts of M/s. Avitel Electronics Ltd. and had to explain the purchase and disposal of primary gold worth Rs.5.67 crores and use of cash withdrawal of Rs.4crores from Cash Credit Account of M/s. CCL.

6. It was further submitted that accused P.K. Tewari has been arrested by CBI on 3rd September, 2014 in RC-5/E/2012. As such, it was submitted that the accused do not deserve to be released on bail.

7. Needless to say, while considering the application for grant of anticipatory bail, the Court has to consider the gravity and seriousness of the allegations levelled against the petitioners. According to CBI, inquiry revealed that M/s. Avitel Electronics Limited is a fictitious company and the company is not registered with the ROC, Delhi and Haryana. A sum of Rs.4,71,40,000/- was credited on 5th April, 2004 in the account of M/s. Avitel Electronics Limited and on the same day, it was transferred to various accounts of CCL. It is also the case

of CBI that the accused had got the loan on the basis of false and fabricated invoices of M/s. Avitel Electronics Ltd. and dishonestly diverted the funds for purposes other than it was sanctioned. There is also statement of Sona Debnath, an employee of M/s. CCL who signed the invoices of M/s. Avitel Electronics in the assumed name of 'M. Jain' at the instance of accused P.K. Tewari.

8. Needless to say, the allegations against the accused persons as to the *modus operandi* adopted by them for securing loan in the name of fictitious company and then diverting the funds to CCL are very serious and grave in nature. That being so, the mere fact that they have joined the investigation number of times *ipso facto* is not sufficient to release them on bail.

9. Accordingly the bail applications are dismissed.

Pending applications, if any, also stand disposed of.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 17, 2014

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