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

Date of Decision: March 12, 2015

+ (i) **BAIL APPLN. 1604/2014 & CrI.M.(B). 10287/14, 15113/14**

ANCA MARIA NEACSU Petitioner
Through: Mr. Maninder Singh, Mr. Dinhar
Takiar, Ms. Aekta Vats and Mr.
Jagmeet Randhawa and Mr.
Prateek Sisodia, Advocates

versus

C B I Respondent
Through: Mr. Narender Mann, Special
Public Prosecutor for CBI with Mr.
Manoj Pant and Ms. Utkarsha
Kohli, Advocates with Inspector
R.S. Solanki (AC-II), CBI

+ (ii) **BAIL APPLN. 1680/2014 & CrI.M.A.10112/14**

WG COMMANDER (RETD) KOKA RAO Petitioner
Through: Mr. Amerendra Sharan, Senior
Advocate, with Mr. Amit Anand
Tiwari and Mr. Abhinandan
Banerjee, Advocates

versus

C B I Respondent
Through: Mr. Narender Mann, Special
Public Prosecutor for CBI with Mr.
Manoj Pant and Ms. Utkarsha
Kohli, Advocates with Inspector
R.S. Solanki (AC-II), CBI

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In the above-captioned two bail applications, petitioners seek bail in RC No. AC1/2012/A0012 titled *CBI v. Abhishek Verma & Ors.* under Sections 120-B of IPC read with Section 3 of the *Official Secrets Act, 1923* and Section 380 of *IPC* by claiming that the investigation of this case is complete and petitioners are in custody for the last about 2 ½ years, therefore, further detention would serve no purpose as the trial of this case is likely to take time.

Since the above captioned two applications arise out of common RC, therefore, they were heard together and by this common judgment, they are being disposed of.

At the hearing, learned senior counsel for petitioner-*Koka Rao* had submitted that petitioner-*Koka Rao* is a senior citizen and the only allegation against him is that hard-copy of the hand written notes of the Projects of Air Force purportedly to be in handwriting of petitioner-*Koka Rao* was sent to CBI by *Mr. C. Edmonds Allen* from USA and CBI had sought opinion on it from Ministry of Defence and the opinion received from Ministry of Defence is that the possession of these documents brings this case under the *Official Secrets Act, 1923* as the possession of such documents is prohibited under the *Official Secrets Act*.

It is pointed out that the soft copy or the computer copy from which it was generated i.e. hard-disc, is not forthcoming and so, in view

of Section 65B of the *Evidence Act*, the evidence put up against petitioner-*Koka Rao* is inadmissible. This was refuted by learned Special Public Prosecutor for CBI, who had submitted that the specimen handwriting of petitioner-*Koka Rao* was taken and was sent for expert opinion and the opinion received is that the handwritten notes are in the handwriting of petitioner-*Koka Rao* and so, Section 3 of the *Official Secrets Act* is attracted. This was disputed by learned Senior Counsel for petitioner-*Koka Rao*, who had submitted that Section 3 of the *Official Secrets Act* does not apply because this document has not been labelled to be a secret document in the charge-sheet filed.

It was pointed out by learned counsel for petitioner-*Koka Rao* that petitioner-*Koka Rao*'s name does not figure in the FIR in question and he has co-operated in the investigation of this case. It was pointed out that petitioner-*Koka Rao* is suffering from major health problems.

It was thus submitted that petitioner-*Koka Rao* is in custody for last more than two years and four months and the investigation of this case is complete *qua* petitioner-*Koka Rao* and so, he deserves bail.

Mr. Narender Mann, learned Special Public Prosecutor for respondent-CBI had submitted that the statement of *Mr. C. Edmonds Allen* has been recorded by the Enforcement of Directorate in which he has clearly stated that he had sent the hard copy of the hand-written notes of the Projects of Air Force to the CBI. On behalf petitioner-*Koka Rao*, it was pointed out that *Mr. C. Edmonds Allen* is neither a witness nor the complainant. Learned Special Public Prosecutor had further submitted that the letter of request has been already forwarded through proper channel to *Mr. C. Edmonds Allen* and his response thereto is awaited.

Learned counsel for petitioner-*Anca Maria Neacsu* had vehemently submitted that no case is made out against petitioner-*Anca Maria Neacsu* as this petitioner neither had obtained nor collected nor communicated any secret information and merely because she is the Founder Director of *M/s. Ganton India Pvt. Ltd.*, would not make her liable for the offence in question.

During the course of hearing, learned counsel for petitioner had submitted that petitioner-*Anca Maria Neacsu* is aged about 36 years and is suffering from various ailments and there is no sufficient evidence against her to justify her detention in jail for 2 ½ years and so, she deserves bail.

Learned counsel for petitioner-*Anca Maria Neacsu* had further submitted that no Certificate under Section 65B of *the Evidence Act* was sent alongwith purported incriminating documents and so, the documents relied upon cannot be taken into consideration to deny bail to petitioner-*Anca Maria Neacsu*. To submit so, reliance was placed upon Apex Court's decision in *Anvar P.V. Vs P.K. Basheer and Ors.* 2014 (10) SCALE 660.

At that stage, Mr. Narender Mann, learned Special Public Prosecutor, had submitted that Section 15 of the *Official Secrets Act* raises the statutory presumption against Founder Director of *M/s. Ganton India Pvt. Ltd.* as the said company had transmitted the information regarding secret defence documents to *Mr.C. Edmonds Allen* and it is for petitioner-*Anca Maria Neacsu* to rebut the statutory presumption against her. Mr. Narender Mann, learned Special Public Prosecutor, had also drawn the attention of this Court to Document No.9 in the charge-sheet

to submit that the letter of 7th September, 2012 by Deputy Registrar of Companies, NCT of Delhi & Haryana reveals that 20% of share of *M/s. Ganton India Pvt. Ltd.* is owned by petitioner-*Anca Maria Neacsu*. Attention of this court was drawn to paragraphs No. 16.5 to 16.7 and 16.10 of the charge-sheet to highlight the role played by petitioners.

The role of petitioner-*Koka Rao* as spelt out in the charge-sheet is as under: -

“16.10 It has also been revealed during investigation that document at Sl. No. 7 above, is scanned copy of the Hand written notes of Projects of Air Force (P-80 to 99 of Annexure “A”) which pertains to Indian Air Force. The said hand written notes pertain to revenue procurement of various Directorates of Air HQ and the information contained in it is sensitive in nature. During investigation Wg Cdr (Retd) Kota Rao was called to join the investigation. His specimen handwritings were taken and were sent to GEQD for comparison with questioned documents. The GEQD has given a positive opinion in respect of the authorship of the said document having been written by Wg Cdr (Retd) Koka Rao who was working for M/s Ganton India Pvt. Ltd. The same was handed over to Shri Abhishek Verma by Wg Cdr (Retd) Koka Rao, while he worked for M/s Ganton India Pvt. Ltd., with dishonest intention to benefit from this deal in an unauthorized and illegal manner. Shri Abhishek Verma, communicated the same to unauthorized persons with dishonest intention, whereby the

same were also received by Mr. C. Edmonds Allen from Shri Abhishek Verma, through “Skype”. This document/information was relating to the Defence matters of India and were containing the information which may be directly or indirectly useful to the enemy country and the disclosure of the same to unauthorized persons may be prejudicial to the security and integrity of India and may adversely affect relations with foreign countries.”

As regards the role of petitioner-Anca Maria Neacsu, it is highlighted in the following paragraphs of the charge-sheet: -

“16.5 Investigation has revealed that Shri Abhishek Verma had been introduced to one Mr. C. Edmonds Allen, a US National, through Mr. Stephen Karolyi in early 2000. Mr. C. Edmonds Allen a professional ESCROW agent, on request of Shri Abhishek Verma, agreed to become his escrow agent, to handle and invest \$205 Million which he was said to have in a trust in Liechtenstein in LGT Bank (Liechtenstein Global Trust). Accordingly, Mr. C Edmonds Allen and Shri Abhishek Verma entered into a Escrow Agreement on 05.04.2000 and the same was amended on 11.02.2004. M/s Ganton Ltd. USA, was set up by Mr. C. Edmonds Allen as per request and direction of Shri Abhishek Verma in March, 2005. Mr. C Edmonds Allen was the only person on the Board of Directors and he was designated as President. This was followed by formation of the company M/s Ganton India Pvt. Ltd., on 09.10.2009 at

New Delhi with 99.99% equity share holding of M/s Ganton Ltd. USA. As per the statement of Mr. C. Edmonds Allen made before the Asst. Director, Directorate of Enforcement, this was a front company of Shri Abhishek Verma, Mrs. Anca Maria Neacsu was the founder Director of M/s Ganton India Pvt. Ltd. The other Directors of the company were Shri Jitendra Kumar Garg, (Advocate), Shri Vikki Chaudhary, Shri Arjun Arora, during different periods. Later Mr. Cladon Edmonds Allen was also made a nominee Director.

16.6 Investigation also revealed that the employees of M/s Ganton India Pvt. Ltd. included ex-Indian Defence Officers and foreigners. As per the Investigation conducted, it has also come on record that Shri Abhishek Verma was controlling the affairs of the company. It is pertinent to mention here that neither Shri Abhishek Verma nor Mrs. Anca Maria Neacsu or M/s Ganton India Pvt. Ltd. were capable of receiving the information documents in any capacity. Shri Abhishek Verma was using the email idsmr.abhishekverma@gmail.com, evaherzigova@gmail.com, manager@ganton-limited.com, and callabhishekverma@yahoo.com etc., for making communication. The email dated 22-11-2011 and 01.12.2011 from mr.abhishekverma@gmail.com and manager@intercompanymail.com respectively, shows that Shri Abhishek Verma had been using the emails and other

modes of communication to give directions to his employees. Shri Abhishek Verma had elaborate electronic communication setup based on internet. Shri Abhishek Verma and Mr. Anca Maria Neacsu, Director M/s Ganton India Pvt. Ltd., in conspiracy with each other and other known/unknown persons, got the secret information/copies of documents related to the three wings of Indian Defence Forces, obtained from Ministry of Defence/Defence establishments for any purpose prejudicial to the safety and interest of India and employed the internet infrastructure (including "Skype" and email) to communicate the secret and sensitive documents/information to unauthorized persons. All these documents/information were relating to the Defence matters of India and were containing the information which may be directly or indirectly useful to the enemy country and the disclosure of the same to unauthorized persons being prejudicial to the security and integrity of India and may adversely affect relations with foreign countries. That copies of some such documents also came to Mr. C. Edmonds Allen via email/Skype from Shri Abhishek Verma or Ms. Anca Maria Neacsu.

16.7 Investigation further revealed that Shri Abhishek Verma, with the help of others, including Mrs. Anca Maria Neacsu and Wg Cdr (Retd) Koka Rao his employee, obtained and communicated the documents as mentioned at Sl. No. 1 and 2 above i.e., the "Summary of Upgrade

package” (P-26) and the “Annual Acquisition Plan 2004-06” (P-42 to 45) which pertain to the Indian Air Force (IAF)/ Air Wing of the Ministry of Defence. The document “Summary of Upgrade package” was the attachment to the email dt. 31.12.2009 of Mr. Gill Golan an employee of M/s Ganton India Pvt. Ltd., which was sent to one Paul Parmar, along with two other attachments. There is another email dt. 07.12.2009, from Gill Golan to Paul Parmar which shows the activities undertaken by Mr. Gill Golan, in respect of M/s Elbit Systems. These emails also disclose that one Mr. Enud Manor of M/s Elbit Systems was coming to Delhi on 08.12.2009 which he did and during his visit to Delhi, he met Shri Abhishek Verma and Mr. Yosef Raveh.”

A copy of the detailed statement of *Mr. C. Edmonds Allen* is in question-answer form and it needs no reproduction for the reason that the role of petitioners herein has been already summed up in the charge-sheet as referred to above.

Upon considering the submissions advanced by both the sides and the material on record, I find that it would be premature for this Court to opine that Section 3 of the *Official Secrets Act, 1923* is not attracted to the facts of this case. The admissibility of the documents relied upon by the prosecution is not required to be minutely examined at this stage in the light of Apex Court’s decision in *Anvar (supra)*. The stage to do so, would be after the arguments on charge are heard.

Petitioner-*Anca Maria Neacsu* is the Founder Director of M/s. Ganton India Private Limited and in view Section 15 of the *Official*

Secrets Act, 1923, she is required to rebut the statutory presumption raised against her at the charge stage. The gravity of the offence is such which dissuades this Court to exercise its discretion to grant bail to both petitioners at this stage. Such a view of being taken on the basis of afore-referred statement of *Mr.C. Edmonds Allen (Annexure P-8, pages 122 to 166)*.

In light of the aforesaid, both these applications are dismissed while refraining to comment upon merits of this case lest it may prejudice petitioners at the time of hearing on the point of charge.

The above-captioned two bail applications and the pending applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 12, 2015
rs/s