IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 386 OF 2017

Bal Krishna Batra .....Applicant

V/s.

Central Bureau of Investigation and another ....Respondents

WITH
CRIMINAL BAIL APPLICATION NO. 433 OF 2017

Yogesh Shyamkrishna Agarwal ….Applicant

V/s.

The State of Maharashtra and another ….Respondents

Mr. A. H. H. Ponda a/w Mr. S. R. Garud i/b
Jayakar and Partners Advocate for Applicant in BA 386 of 2017.
Mr. A. P. Mundargi, senior counsel i/b Mr. Amol Patankar
Advocate for Applicant in BA 433 of 2017.
Mr. Anil Singh senior counsel i/b
Sandesh Patil for Respondent no. 1
Mr. M. G. Patil APP for the State in BA 386 of 2017.
Mr. R. M. Pethe APP for the State in BA 433 of 2017.

CORAM : SMT. SADHANA S. JADHAV, J.

CLOSED FOR ORDER ON: 14th MARCH, 2017.

PRONOUNCED ON : 17th MARCH, 2017.

PC :

1) Heard. These are applications under section 439 of Code of Criminal Procedure, 1973. Applicants herein are arrested on 23/01/2017 in case no. RC BSM 2015 E 0006 dated 29/07/2015 for offence punishable under sections 120 (B) r/w 409 of the Indian Penal Code and under section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

2) The house search was conducted by Respondent C.B.I. Both applicants were produced before the Special Judge on 24/01/2017. Charge-sheet under section 173 (2) of Code of Criminal Procedure, 1973 was filed before the Special Judge. At the same time, an application was also filed by Respondent C.B.I. informing the Special Court that Respondent is conducting further investigation under section 173 (8) of Code of Criminal Procedure, 1973 against the accused persons with regard to the outcome of Letter Rogatory as contemplated under section 166 (A) of Code of Criminal Procedure, 1973. Respondent C.B.I. had filed an application praying before the Special Court that the accused/applicants be remanded to judicial custody. Applicants are in

custody for the last 50 days and are praying for enlargement on bail.

3) On 29/07/2015, Ms. Varsha Verma officiating as P.I. of C.B.I., Mumbai lodged a report at the police station alleging therein that unknown officers of I.D.B.I. had shown undue favour to M/s. Kingfisher Airlines Limited in the matter of sanctioning and disbursement of STL of Rs. 150 Crores on 07/10/2009, Rs. 200 Crores on 04/11/2009 and Rs. 750 Crores on 27/11/2009 despite weak finance, negative net worth and low credit rating of the borrower company and despite the fact that M/s Kingfisher Airlines had not satisfied the norms stipulated in Corporate Loan Policy of the bank. It is also alleged that Kingfisher had utilized the said amount for clearing their existing debts with other bank/lenders. It is alleged that the applications were submitted through A. Raghunathan, C.F.O. of M/s. Kingfisher Airlines and the said loans were sanctioned pursuant to the meetings between Vijay Mallya and C.M.D. of IDBI Bank. Hence, officers of IDBI were charge-sheeted for offence punishable under sections 120 (B) r/w 409 of the Indian Penal Code and under section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988.

4) It is the case of the prosecution that applicant Bal Krishna Batra in Criminal Bail Application No. 386 of 2017 was working as Head Infrastructure Corporate Group of I.D.B.I. Bank whereas applicant Yogesh Agarwal in Criminal Bail Application No. 433 of 2017 was officiating as Chairman and Managing Director as per the office order dated 22/11/2017. The accused Mr. O.V. Bundellu was working as Deputy Managing Director. It is the case of prosecution that in April 2009, State Bank of India had sanctioned loan of Rs. 500 Crores to M/s. Kingfisher Airlines Limited. The credit requirement was Rs. 2,000 Crores. The remaining amount were to be tied up with other public sector banks. United Bank of India, Bank of Baroda had sanctioned Rs. 150 Crores. On 01/10/2009, Mr. Vijay Mallya approached I.D.B.I. Bank soliciting finance to the tune of Rs. 950 Crores as Corporate Loan. The application was pending for consideration. In the meanwhile, on 07/10/2009, application for short term loan was filed by Mr. Mallya seeking loan of Rs. 150 Crores. In the meeting dated 05/10/2009 & 06/10/2009, short term loan was sanctioned. During the period 09/10/2009 to 14/10/2009 short term loan was disbursed by I.D.B.I. Bank in favour of Vijay Mallya. On 04/11/2009, third application was filed by the same company soliciting loan

of Rs. 200 Crores. Some of the officers had contended that there was risk factor in disbursing the loans to Kingfisher Company on the basis of negative net worth, low current ratio and net losses suffered by the company over the previous two years. The loan was approved by accused Yogesh Agarwal. According to the prosecution, interest accumulated on the previous loan was overdue and yet a fresh loan was sanctioned. It is the case of the prosecution that the loans were sanctioned and disbursed by the officials of I.D.B.I. without following the mandatory norms of the Reserve Bank of India and it was an arbitrary decision of the C.M.D. and D.M.D. Financial norms and regulations were violated and entire transaction was completed by 24/12/2009.

5) The respective counsel for the applicants submit, that besides merits of the matter, the incarceration of the applicants amounts to punitive detention. It is also argued that despite the fact that applicants had co-operated with the investigating agency to the best of their capacity, applicants have been taken into custody after concluding the investigation against them in particular. It is also submitted that on 23/01/2017, no notice was given to applicants that they

are summoned or taken in custody for giving them a copy of the charge-sheet which is to be filed against them. It is also submitted that the date of offence relates back to the year 2009-2010. The F.I.R. was lodged in the year 2015. Investigation against the applicants is completed by 22/01/2017 and it is at this stage that applicants are detained in custody.

6) As on today, respective counsel submit that applicants herein had co-operated with the investigating agency although no notice was issued under section 41 (A) of Code of Criminal Procedure, 1973 and therefore, at the stage of filing of the charge-sheet, applicants could not have been taken into custody without giving notice that investigation is completed and charge-sheet is to be filed on the next day. It is also submitted that applicants are charge-sheeted for offence punishable under section 120 (B) r/w 409 of the Indian Penal Code and section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988. It is submitted that section 409 of the Indian Penal Code is triable by Magistrate of First Class. It is also submitted that section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 is also punishable up to 7 years and therefore, applicants after being in custody for more than 50

days deserve to be enlarged on bail.

7) Needless to state that offence will be triable by the Special Court constituted under the Prevention of Corruption Act, 1988.

8) As far as applicant Bal Krishna Batra is concerned, it is submitted that an inquiry was pending against the applicant before the Central Vigilance Commission and by a letter dated 03/11/2010, Central Vigilance Commission had arrived at a conclusion not to pursue the matter further. The office memorandum of the Central Vigilance Commission reads as follows:

"**OFFICE MEMORANDUM**

SUB: Complaint against Shri. B. K. Batra, ED & Group Head-Corporate Banking, IDBI Ltd.

The undersigned is directed to refer to the IDBI letter no. 144/Vig (B-12) dated 08.09.2010 on the above subject.

2. In view of the position explained by CVO, the Commission has decided not to pursue the matter further.

3. Receipt of this OM may be acknowledged".

9) The said office memorandum has not been disputed by C.B.I. nor it is

the case of the prosecution that the respondent had approached the Central Vigilance Commission thereafter. Needless to reiterate that the transaction/sanction and disbursement of loan in favour of Kingfisher is of the year 2009-2010.

10) It is submitted by the learned counsel for the applicants that it is in view of the fact that Central Vigilance Commission had exonerated the applicant, charge-sheet has been filed after the retirement of Mr. Bal Krishna Batra as it would not be necessary to obtain sanction for prosecution. Applicant Mr. Bal Krishna Batra has retired on 31/07/2016 and applicant Mr. Yogesh Agarwal is retired in June 2010 and the charge-sheet is filed on 24/01/2017. At this stage, it is pertinent to note that although the applicants had not fled from India and were available for investigation, a “look out notice” was issued against applicants. This Court has verified from senior counsel Shri. Anil Singh and upon instructions it is submitted that the applicants had not fled from India and neither had evaded to co-operate with the investigating agency.

11) The learned senior counsel for the respondent submits that section 13 (1) (d) of Prevention of Corruption Act, 1988 is punishable up to 10 years and fine and therefore, the argument that since offence is punishable up to 7 years, applicants be enlarged on bail is unfounded. The learned senior counsel appearing for respondent-C.B.I. submits that the offence committed by the applicants is an economic offence. That there is not only loss to State exchequer but loss to the general public as the amount that has been allegedly misappropriated by fugitive accused is also public money and therefore, taking into consideration the seriousness and gravity of the offence, applicants do not deserve to be enlarged on bail. It is pertinent to note that amendment to section 13 (2) substituting the word “which may extend to three years” is substituted by Act of 2014.

12) The learned counsel for the applicants submit that no retrospective effect can be given as in the present case, offence is pertaining to the year 2009-2010. The learned counsel for the applicants further submit that Mr. O. V. Bundellu has been enlarged on bail and the order enlarging Mr. O. V. Bundellu on bail is not challenged and has therefore, attained finality.

13) The learned senior counsel appearing for respondent-C.B.I. submits that the applicant Mr. Bal Krishna Batra was working as Group Head-Corporate Banking on the date of incident and that he was delegated the powers of Deputy Managing Director vide order dated 29/05/2009 till 26/11/2010, he assumes superior position to Mr. O. V. Bundellu and therefore cannot claim parity. At this stage, the learned counsel for the applicants submit that in the present case, all the accused i.e. office bearers of IDBI are being tried with the aid of 120 (B) and therefore, no such distinction can be drawn. The learned counsel for the applicants have also drawn the attention of this Court to the fact that Mr. Bal Krishna Batra has been confirmed on the post of D.M.D. only after the sanction was accorded in favour of Kingfisher.

14) Be that as it may, today the core issue before this Court is as to whether further incarceration of the applicants is warranted after completion of investigation against them and after filing of the charge-sheet. Moreover, investigating agency is carrying out further investigation in respect of Letter Rogatory and fugitive Vijay Mallya. The court also cannot be oblivious of the

fact that F.I.R. is filed on 29/07/2015. As far as applicant Yogesh Agarwal is concerned he has retired in June 2010. He is a senior citizen. It is submitted on behalf of the applicant Yogesh Agarwal that sanction of loan in favour of Kingfisher was an unanimous decision of the Board of Directors of IDBI and he alone cannot be held responsible for the same. It is also submitted that Board of Directors had failed to foresee the doomsday of Kingfisher Airlines or that Vijay Mallya would cheat banks.

15) The minutes of the 61st meeting of Executive Committee held on 27/11/2009 shows that Directors who were present while sanctioning the loan, while accepting the proposal to relax the norm of minimum internal credit rating of 'BBB' or equivalent for selection of new clients and sanction of corporate loan of Rs. 750 Crores to Kingfisher Airlines on terms and conditions indicated at Appendix shows that Mr. O. V. Bundellu was D.M.D. & Group Head – Retail Banking at the relevant time. Mr. S.K.V. Srinivasan was at the relevant time officiating as Head-transaction banking group. The learned counsel for the applicants submit that Mr. O. V. Bundellu has been granted bail by the Special Court and therefore the learned counsel submit

that by virtue of doctrine of parity, applicants also deserve to be enlarged on bail.

16) In the case of **Dipak Shubhashchandra Mehta *V/s.* Central Bureau of Investigation and another [(2012) 4 Supreme Court Cases 134]** the Hon'ble Apex Court has observed as follows:

> *"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 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".*

17) In the case of **Sanjay Chandra *V/s.* Central Bureau of Investigation [(2012) 1 Supreme Court Cases 40]** the Hon'ble Apex Court has observed as follows:

"In the instant case, we have already noticed that the "pointing finger of accusation" against the appellant is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering with the 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 Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

The Apex Court has further observed that:

"The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right ofliberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends

respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual".

18) The Hon'ble Apex Court after considering all the preceeding Judgments of the Hon'ble Apex Court in cases of **Kalyan Chandra Sarkar v. Rajesh Ranjan [(2005) 2 SCC 42], Gudikanti Narasimhulu v. Public Prosecutor [1978 (1) SCC 240], Babu Singh v. State of U.P. [(1978) 1 SCC 579], Moti Ram v. State of M.P. [(1979) 4 SCC 47], Vaman Narain Ghiya v. State of Rajasthan [(2009) 2 SCC 281]** and other judgments has issued certain guidelines to the High Courts while considering the applications under section 439 of Code of Criminal Procedure, 1973. The guidelines need to be adhered to and considered in the present case.

19) In the present case, respondent is unable to substantiate the contention as to why further incarceration of the applicants is imperative after filing of the charge-sheet. At the time when they were presented before the Magistrate also, respondent-investigating agency had sought for judicial custody and

therefore, it cannot be said that the interrogation of the present applicants would be necessary. In any case, after initial 15 days of judicial custody, C.B.I. cannot pray for police custody for the purpose of interrogation as is held in the case of **Central Bureau of Investigation, Special Investigation Cell-I *Vs.* Anupam J. Kulkarni [1992 AIR 1768]**. The case rests upon documentary evidence and there would be no question of tampering of evidence moreso when both applicants have retired on superannuation. It is in these circumstances that this Court is of the opinion that applicants deserve to be enlarged on bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and further restricted to case no. RC BSM 2015 E 0006 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

20) At this stage, the learned counsel for the applicants pray for provisional cash bail. The prayer is granted.

ORDER

(i) Applications are allowed.

(ii) Applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 1 Lac each with one or more local solvent sureties in the like amount.

(iii) Applicants be enlarged on provisional cash bail of Rs. 1 Lac each for a period of four weeks from today, during the period of four weeks, applicants shall furnish surety bonds.

(iv) Applicants shall mark their presence before investigating agency-C.B.I. on first Sunday of each month till framing of the charge.

(v) Applicants shall deposit their passport in the concerned court and shall not leave India without prior permission of the Court.

(vi) Applicants shall furnish their permanent address, cellphone no./landline no. to the concerned Court.

(vii) Applications stand disposed of.

(SMT. SADHANA S. JADHAV, J.)

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