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

Date of Decision: February 27th, 2017

\+   BAIL APPLN. 197/2017

PARVESH JAIN ..... Petitioner

Through Mr.Sidharth Luthra, Sr. Adv. with Mr.Ajay Jain, Adv. with Mr.Pranay Jain, Adv. & Mr.Aastha Chopra, Adv.

versus

CBI (STATE) ..... Respondent

Through Mr.Sanjeev Bhandari, Spl. P.P. for CBI with Mr.Girraj, Investigating Officer.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S. TEJI, J

1. The present bail application has been filed under Section 439 of the Code of Criminal Procedure by the petitioner for the grant of regular bail in FIR No.RC 04(A)/2015/CBI/AC-III/ND, under Sections 120B read with 420/467/468/471 IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

2. The facts, as emerging from the record, are that the FIR of the instant case was registered by the CBI on 04.11.2015 on the basis of a written complaint made by Mr.Rajender Singh, Dy. General Manager of IDBI Bank Limited against the accused Parvesh Jain, proprietor of M/s Jain Tex & Fab, Smt. Ruchi Jain,

wife of Parvesh Jain and unknown persons for causing a loss of Rs.10 crores to IDBI Bank Limited by way of criminal conspiracy, impersonation, cheating, forgery and criminal misconduct by public servants. It was alleged that accused Parvesh Jain had applied to IDBI Bank for take over and enhancement of sanctioned cash credit limit of Rs.3.25 crores by State Bank of India in August, 2008. Cash credit limit of Rs.4.30 crores was sanctioned to him by IDBI Bank on 20.10.2008. The said limit was renewed and enhanced to Rs.6.30 crores on 04.07.2009 and it was further enhanced to Rs.10 crores on 24.05.2010. It was further alleged that four properties were mortgaged as collateral security by accused Parvesh Jain, his wife Ruchi Jain being third party guarantor and Ujagar Singh Gill. The loan account of accused Parvesh Jain was turned into a Non-Performing Asset (NPA) on 29.07.2011. It was found that on the property mortgaged by Ujagar Singh Gill, a multi-storey building was constructed. It was alleged that Ujagar Singh Gill had expired in 1993. Property bearing No.F-54, Jagatpuri, Delhi in the name of accused Parvesh Jain had another claimant, namely, Ramesh Tayal. It was further alleged that accused Parvesh Jain and Ruchi Jain presented an impersonator as Ujagar Singh Gill.

3. After the completion of charge sheet, CBI filed the charge

sheet against accused Parvesh Jain, Ruchi Jain and 12 officers of IDBI Bank Limited.

4. Arguments advanced by the learned Senior Counsel for the petitioner/accused as well as learned Special Public Prosecutor for the CBI were heard.

5. Argument advanced by the learned Senior Counsel for the petitioner is that the petitioner is in custody since 14.09.2016 and has spent about five months in custody. It is further submitted that the Will claimed to be executed by Ujagar Singh Gill was forged and the property developer had constructed flats on the plot no.13, Shalimar Garden Extension-I which was alleged to be mortgaged by Ujagar Singh Gill in favour of the Bank. It has also come on record that the death certificate relied upon by the CBI was forged and fabricated. It was further argued that the charge sheet was filed on 14.12.2016 and the petitioner is entitled to statutory bail under Section 167(2) Cr.P.C. It is further submitted that in the present case, there are allegations of criminal misconduct by public servants for which Section 13 of the P.C. Act has been added, but the sanction for prosecution of public servants has not been taken by the CBI which debars the Court into taking cognizance as provided under Section 19 of the P.C. Act.

6. Per contra, learned Special Public Prosecutor for the CBI has

vehemently opposed the grant of bail to the petitioner/accused on the ground that there are specific allegations against him and his wife that they mortgaged the properties on the basis of forged and fabricated documents. It is further submitted that one impersonator was introduced by the accused as Ujagar Singh Gill who allegedly mortgaged his property with the bank and subsequently it was found that flats were already constructed on it. It is further submitted that the accused persons committed criminal conspiracy, cheating, forgery and impersonation and grant of bail to the accused may result in tampering of the evidence.

7. As per the allegations levelled and the documents placed on record, accused Parvesh Jain disposed of a mortgaged property situated at 1542-A, Gandhi Nagar, Delhi to a third person. The net worth certificate submitted by the accused to IDBI Bank were found to be not genuine. It is further alleged that accused and his wife presented an impersonator as Ujagar Singh Gill with forged documents. Property situated at F-54, Jagat Puri, Delhi mortgaged by the accused to IDBI Bank was fond to be on the basis of fake documents. During investigation, it was revealed that accused got issued another PAN on the basis of different date of birth, address, alteration in his name and father's name. It has also been revealed that Ujagar Singh Gill who was the third party guarantor had

already expired who had allegedly mortgaged his property while availing the enhancement of cash credit limit. The cash credit limit was enhanced to Rs.10 crores on the basis of forged and fabricated documents.

8. In view of the above allegations, this Court is of the considered opinion that the petitioner/accused is not entitled for the grant of bail on merits of the case.

9. Proviso to Section 167(2) of the Cr.P.C. provides that an accused has to be released on bail if the investigation is not completed or no charge sheet is filed after the expiry of statutory period. The Magistrate has no power to remand an accused for further custody beyond the period prescribed in Section 167(2) of the Cr.P.C. To be released on bail because of the default of filing of the charge sheet within the statutory period is a valuable right of the accused and the said right can be exercised only on furnishing of bail as per proviso to Section 167(2) of the Code. The said right of an accused is an indefeasible right and is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable on the charge sheet being filed.

10. The contention of the learned Senior Counsel for the petitioner that the petitioner is entitled to statutory bail as per Section 167(2) of the Cr.P.C. is not acceptable for the reasons that

the accused is in custody since 14.09.2016 and the charge sheet in the instant case was filed on 14.12.2016 well within the specified period of 90 days as provided in Section 167(2) of the Cr.P.C.

11. The next limb of argument of the learned Senior Counsel for the petitioner is that the matter is not proceeding with as sanction under Section 19 of the P.C. Act, for the prosecution of accused persons has not been obtained, that is why the trial court is unable to take cognizance and frame charge.

12. On the other hand, learned counsel for the CBI has submitted that applying for the grant of sanction and its accord takes time as it involves certain procedures. In the present case, the letter for the grant of sanction against the public servants was sent to the competent authority on 12.12.2016 and the period prescribed for the grant of sanction under Section 19 of the P.C. Act is three months.

13. Section 19 of the P.C. Act, 1988 provides for seeking previous sanction for launching prosecution against a public servant. It provides that no court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 of the Act allegedly committed by a public servant except with the previous sanction of the competent authority.

14. The Hon'ble Apex Court in the case of ***Subramanian***

Swamy v. Manmohan Singh and another (2012) 3 SCC 64 has extensively gone through the question of grant of sanction as provided under Section 19 of the P.C. Act. In this case, it was observed as under :

> "In my view, Parliament should consider the constitutional imperative of Article 14 enshrining the Rule of Law wherein "due process of law" has been read into by introducing a time-limit in Section 19 of the PC Act, 1988 for its working in a reasonable manner. Parliament may, in my opinion, consider the following guidelines:
>
> (a) All proposals for sanction placed before any sanctioning authority empowered to grant sanction for prosecution of a public servant under Section 19 of the PC Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.
>
> (b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.
>
> (c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."

15. As per the guidelines framed in the case of ***Subramanian Swamy*** (supra), the proposal for sanction placed before the sanctioning authority must be decided within a period of three months of the receipt of the proposal and if the same is not possible, an extension of one month may be allowed. In the present case, as submitted by the learned counsel for CBI, the proposal for sanction had been sent to the authority concerned on 12.12.2016, meaning thereby the decision on the same was to be taken by the competent authority by the mid of March or by the mid of April if the extended period of one month was added.

16. In view of the above discussion, facts and circumstances, this Court is of the considered opinion that the trial court is required to wait for taking cognizance uptill the mid of April, 2017, as per the guidelines given by the Hon'ble Apex Court in the case of ***Sumramanian Swamy*** (supra) for deciding the proposal of sanction.

17. In view of the above discussion, this Court is not inclined to grant bail to the petitioner and the same is dismissed at this sage.

18. However, the petitioner would be at liberty to move a fresh application before the trial court keeping in view the observations made by the Hon'ble Apex Court as quoted above in the case of ***Subramanian Swamy*** (supra).

19. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

20. With aforesaid observations, the present bail application stands disposed of.

P.S.TEJI, J

FEBRUARY 27, 2017
dd