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

% Judgment reserved on : 24th July, 2018
Judgment delivered on:04thSeptember, 2018

\+ **CRL.M.C. 3238/2018& CRL. M.A. 11556/2018**

CENTRAL BUREAU OF INVESTIGATION .....Petitioner

versus

UPENDRA RAI ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr Aman Lekhi,Additional Solicitor General with Ms. Rajdipa Behura, Spl. P.P. for CBI with Mr. Philomon Kani, Ms. Kriti Handa, Ms. Hansika Sahu, Ms. Damini K. and Mr. Ashrya Behura, Advocates with Mr. Ashish Pareek, DSP.

For the Respondent : Mr. N. Hariharan, Sr. Advocate with Mr. L.B. Rai, Mr. Arjun Mukherjee, Mr. Kartik Rai and Mr. Mohit Kumar Sharma, Advocates.

CORAM:-
HON'BLE MR. JUSTICESANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Central Bureau of Investigation (CBI for short) has filed this petition impugning order dated 08.06.2018 whereby the Special Judge–CBI has granted bail to the respondent.

2. A case was registered on 01.05.2018 under sections 120 B and 420 Indian Penal Code, 1860read with sections 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988. It is alleged by the

petitioner/CBI that searches conducted at the residential premises of the respondent resulted in recovery of incriminating documents against him.

3. On 03.05.2018, respondent was arrested by CBI. On 04.05.2018, respondent was produced before the Special Judge and after perusal of the case diary, was remanded to police custody till 07.05.2018. On 07.05.2018, Police custody of the respondent was extended till 09.05.2018. On 09.05.2018, respondent was sent to judicial custody till 23.05.2018.

4. On 18.05.2018, the first bail application filed by the respondent was dismissed on the ground that the investigation was still at the initial stage and the investigation agency deserves to be given a fair opportunity to investigate, considering the nature of offences. On 23.05.2018, the SpecialJudge extended the judicial custody till 06.06.2018.

5. On 06.06.2018, judicial custody was extended for a further period of 15 days till 20.06.2018 on the ground that investigation was still pending and investigation agency needed further time to complete the investigation.

6. On 08.06.2018, by the order impugned herein, the SpecialJudge allowed the second bail application of the respondent on the ground that approximately 38 days had passed and since the matter was under

investigation and initial stage had definitely passed and accordingly bail was granted to the respondent.

7. Mr Aman Lekhi Additional Solicitor General of India contended that, after perusal of the case diary produced by the investigating officer, the court on 06.06.2018 had extended the judicial custody till 20.06.2018, however by the impugned order dated 08.06.2018 the Special Judge, ignoring her earlier order dated 06.06.2018, granted bail to the respondent which was not warranted. He further contends that the reasons given by the Special Judge for grant of bail are not sustainable or substantiated from the record as well as the case diary produced by the investigating officer.

8. Learned Additional Solicitor General further contended that as investigation was still at an initial stage, no circumstances existed for grant of bail to the respondent. He submitted that investigation conducted so far has *inter alia* revealed that respondent had submitted forged and fabricated documents for the issuance of security pass for all the airports across the country, which was a serious national threat. Further, investigation has *inter alia* revealed that petitioner was involved in money laundering, dubious financial transactions through shell companies, cash dealing with public servants in various government departments and found in possession of highly sensitive government information, which could not be in his possession without connivance of government servants. It is contended that he was

acquainted and in touch with several officials and investigation was going on to unearth the larger conspiracy.

9. It is submitted that grant of bail to the Respondent after just 36 days of his arrest, considering the serious nature of allegations of fraud and laundering of huge sums of money, was not warranted. As the investigation was still at the nascent stage and material pointing out to grave action was surfacing, releasing him on bail would scuttle investigation and he would influence witnesses, tamper with, and destroy evidence. Case Diary Records of investigation were produced by CBI for perusal.

10. Per Contra, learned senior counsel for the Respondent contended that the offences mentioned in the FIR include offences under the Prevention of Corruption Act and till date public servants allegedly involved in the commission of offence, in conspiracy with the accused, have not been identified. Further that since the remand of the respondent to judicial custody, he has not been interrogated by the CBI. He submits that the initial stage of the investigation hasclearly passed and no incriminating material has been recovered against the respondent to warrant any further incarceration.

11. Learned Senior Counsel further submits that the respondent cannot be incarcerated in anticipation of discovery of identity of the unknown public servants allegedly involved in the commission of offence. He further contends that most of the evidence is in the form

of documents and the same are already in the custody of CBI and the apprehension that the respondent may influence witnesses is general and not specific.

12. Reliance has been placed on the judgments of the Supreme Court in *Ramcharan versus State of M.P.* (2006) 1 SCC (Cri) 511, *Mahant Chand Nath Yogi & Another Versus State of Haryana* (2003) 1 SCC 326 to contend that bail once granted can be cancelled on existence of cogent and overwhelming circumstances but not on reappreciation of facts of the case.

13. The reasoning given by the Special Judge in the impugned order for granting bail to the respondent is as under:

> *"It is a matter of record that identity of the public servants allegedly involved in conspiracy with the accused, has , not surfaced till date. It is also a matter of record that neither the accused has been interrogated by the CBI in judicial custody even once, nor any further recovery or seizure has been made through him. Every passing day in the judicial custody will grant a fresh ground to the accused and the fact that approximately 38 days have been passed since the matter is under investigation, the "initial stage of the investigation" has definitely been passed which was the main ground for dismissal of the first bail application of the accused. Accused can't be kept in judicial custody in anticipation of discovery of identity of the unknown public servants involved in the commission of offence. Most of the evidence is in the form of documents which are in the custody of CBI. Apprehension of CBI that the accused may influence the witnesses, is general and not specific."*

14. The Trial Court has given seven reasons for grant of bail, i.e. : (i) *identity of the public servants allegedly involved in conspiracy with the accused, has , not surfaced till date,* (ii) *neither the accused has been interrogated by the CBI in judicial custody even once,* (iii)*nor any further recovery or seizure has been made through him,* (iv)*"initial stage of the investigation" has definitely been passed,* (v) *Accused can't be kept in judicial custody in anticipation of discovery of identity of the unknown public servants involved in the commission of offence,* (vi) *most of the evidence is in the form of documents which are in the custody of CBI*and (vii)*apprehension of CBI that the accused may influence the witnesses, is general and not specific.*

15. Perusal of the Case Diary Records of investigation shows that investigation had *inter alia*allegedly revealed that the respondent was acquainted with senior officials of Bureau of Civil Aviation and had used his acquaintances as well as false and forged documents to obtain Airport Entry Pass. The identity of one of the officials who had played a role in obtaining the Airport Entry Pass had been unearthed, however investigation into the role of others was still underway. Investigation had revealed that officials had used their official dominating position to influence the decision for issuance of Airport Entry Pass.

16. Respondent was allegedly in possession of highly sensitive government information. The source of that information including the identity of government officials and the role played by them was

under investigation. Text messages and data allegedly recovered from his mobile phone *inter alia* show that respondent was acquainted and in touch with various IAS, IPS and IRS officials. Record also allegedly shows that respondent has tried to influence decision of various officials of various departments and used his acquaintances for the said purpose.

17. Investigation has also allegedly revealed that respondent had entered into dubious financial transactions through shell companies to channelize cash. Investigation was being conducted into cash dealings with public servants in various government departments. Respondent is alleged to have forged documents and sale agreements to justify cash transaction.

18. Statement of witnesses, who were allegedly involved with the respondent in channelizing cash, have been recorded and they have alleged that they were threatened by persons to depose falsely before CBI and have been advised to destroy evidence and their mobile phones.

19. Perusal of the Case Diary Records of investigations shows that none of the reasons mentioned by the Trial Court are sustainable. The reason given by the trial court that identity of the public servants allegedly involved in conspiracy with the accused has not surfaced is clearly contradicted from the record. Alleged involvement of public servants had surfaced and some of the officers had even been named

and investigation was on for identifying the others and determining their role.

20. The reasons that neither the accused has been interrogated by the CBI in judicial custody even oncenor any further recovery or seizure has been made through him, is not sustainable, as investigation was at a nascent stage and statement of witnesses was being recorded and new facts were being unearthed and fresh evidence was surfacing. Merely because accused was not interrogated or recovery made from him, would not *per se*be a ground justifying grant of bail. Court would have to examine other material and record of investigation.

21. The finding of the trial court that *"initial stage of the investigationhas definitely been passed"* is clearly not borne out from the record. On the contrary, record reveals that investigation was still at the initial stages as fresh material was being unearthed showing alleged involvement of the respondent in other offences of serious nature.

22. The finding of the Trial Court that most of the evidence is in the form of documents which are in the custody of CBI is also incorrect and not sustainable. The nature of allegations, statement of witnesses and material recovered; clearly shows that further investigation was warranted and evidence *inter alia*documentary was being recovered.

23. Further, on perusal of the record and the statement of witnesses recorded, it is seen that the reasoning of the Trial Court that the

apprehension of CBI that the accused may influence the witnesses, is general and not specific is also not sustainable. Evidence collected, *inter alia,* text messages allegedly recovered from the respondent's mobile phone and statement of witnesses shows that the respondent has tried to influence decisions of officials and witnesses and further attempted to destroy and tamper evidence.

24. The trial court has clearly ignored material that was available on record and erred in granting bail to the respondent, at this stage. The impugned order is clearly not sustainable.

25. The judgments of the Supreme Court in *Ramcharan versus State of M.P.* (supra) and *Mahant Chand Nath Yogi (supra)* relied upon by the Respondent are not applicable in the facts of the present case.

26. As noticed above, the trial court has failed to examine cogent material that was available in the form of Case Diary Records. Respondent is alleged to be involved in very serious and grave offences that are a challenge to the civil society and a threat to the security of the nation. He is not only allegedly involved in offences under the IPC but also under the Prevention of Corruption Act. Respondent is also alleged to be involved in money laundering and black money generation. Financial/monetary crimes undermine the rule of law and the entire economic system of the nation. He is alleged to have indulged in these offences in connivance with government

officials.

27. In view of the above, the impugned order dated 08.06.2018,granting bail to the respondent, is set aside. The application of the Respondent for grant of bail is dismissed.Since the impugned order was stayed by interim order dated 18.06.2018, Respondent is directed to be formally taken in custody in this Case.

28. It is clarified that this court has neither considered nor expressed any opinion upon the merits of the allegations and the material/evidence allegedly collected, against the respondent.

29. The petition is disposed of in the above terms.

30. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

September 04, 2018
HJ