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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1742/2018

PRAFUL JAIN(PRESENTLY IN JC)

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with
Mr. Sunil Kumar Singh, Mr. Shadman
Siddiqui, Mr. Sachin Chaudhary,
Ms. Aastha Khanna, Mr. Karan Khanuja and
Mr. Vikram Jit Saini, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Narender Mann, Special Public
Prosecutor and Mr. Manoj Pant, Advocate
with Inspector Avinish Kumar AC-I/CAI).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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09.08.2018

On the last hearing the Court had recorded inter alia:

“.... The petitioner was arrested and sent to the police custody for ten days in RC No. ACI 2018 A 0012, dated 01.07.2018, Police Station CBI, AC-I, New Delhi, under sections 120B of the Indian Penal Code, 1860 read with sections 7, 8, 10 and 12 of the Prevention of Corruption Act, 1988, and thereafter he is in judicial custody since 01.07.2018. The petitioner contends that he is unfairly accused of influencing decisions in the grant of government contracts for constructions to be carried out at Kochi; that the company which was granted the contract is not owned by the petitioner and he has no financial interest in it; that the petitioner's own company M/s Jain Builders, based in Ajmer, did not apply for the bid; yet he is accused of negotiating the

payments of Rs.40 lacs as first instalment to the public servant for grant of the tender to M/s Asian Constructions. The money was stated to have been transmitted through his father and was to be delivered through courier to the public servant. The person, who delivered the money through courier, has been arrested. His father too has been arrested, but now released on bail. It is the petitioner's case that he and his father being equally placed as co-accused, with similar allegation of complicity, he should be treated like his father and should also be released on bail. He contends that the prosecution's entire case would be based on the documentary evidence, which would be with the Investigating Agency, over which the petitioner cannot have any say or sway.

The learned counsel for the respondent submits that the petitioner may influence the persons, whose evidence is to be recorded. The latter are persons who would have been the beneficiaries of the tender if it was so awarded.

In view of the above, the Court is of the prima facie view that the petitioner's father, who is more or less equally placed with him, has been released on bail, the petitioner should be treated on parity. In any case, he cannot possibly influence the process of recording of evidence of the witnesses, who are mainly officials.

At this stage, Mr. Mann, the learned counsel for the respondent seeks time to obtain instructions apropos the grounds on which the other co-accused had been enlarged on bail.

At his request, list on 09.08.2018.

The petitioner may place on record such orders on which he wishes to rely upon....”

Mr. Narender Mann, the learned Special Public Prosecutor for the CBI opposes the bail application and states that petitioner's father Mr. Subodh Jain was not granted bail on merits, but partly on his medical condition and the fact that his role in the alleged crime was of a different

nature than what has been ascribed to the petitioner.

Mr. Vikas Pahwa, the learned Senior Advocate for the petitioner refutes the said argument with reference to the order dated 18.07.2018 granting bail to Mr. Subodh Jain, which reads as under:-

“6. Subodh Jain is the applicant and is father of accused Praful Jain as well as the partner in M/s Jain Builders, It is submitted by Ld. Counsel for the applicant that his alleged role cannot be equated with the other accused persons as he had not been actively participating in the business for last many years due to his ill health. He is stated to be suffering from Diabetes and had undergone Angioplasty in the year 1999 and 2005.

7. Per contra, it is submitted by Ld. Prosecutor that the offence alleged is serious in nature and the applicant had actively participated for payment of bribe. As further submitted, nature of evidence collected against him is serious which is consisting of the recorded conversation. If admitted on bail, applicant/accused may tamper with the evidence and may also influence the witnesses, besides that his chances of fleeing away from justice cannot be ruled out. It is submitted by Ld. Counsel for applicant that the applicant is willing to surrender his passport with 10 to rule out any such possibility.

8. Verification report with regard to the ailment of appellant has been placed on record. It is reported that the applicant is suffering from Type-2 Diabetes which only requires regular medication and regular follow up which is common condition and can be managed with diet control and medicines. Past history of heart disease for which applicant/accused had undergone Angioplasty could not be verified for the documents having been weeded out. The power of attorney was also sent for verification which had been executed by the applicant in favour of his son Praful Jain with regard to operation of the business which has been verified to be a genuine document. In terms of the allegations, as already noted, the role assigned to applicant is regarding arrangement of money at asking of his son for payment of bribe. He

is stated to be in custody for the last 18 days and is not required for further investigation.”

The learned Senior Counsel further submits that it has been the prosecution case that the role of the father was of an active participant in the affairs of the company; this aspect was considered by the Trial Court and despite the said allegation of criminality the Trial Court granted him bail on merits. He contends that the petitioner's role is alleged to be identical, therefore, he be treated equally; that of the seven accused, one was never arrested and of the remaining six, two had been granted bail, one was on interim bail till today and the other was granted regular bail. That, interestingly the person accused of having received the monies, too has been released on bail.

Having considered the rival contentions, the Court is of the view that, insofar as the role assigned to the petitioner as well as his father is *prima facie* more or less the same, the petitioner should be and is granted bail on parity with his father, subject to his furnishing a personal bond of Rs. 10 lacs with two sureties of the like amount to the satisfaction of the Trial Court, subject to the conditions that he will not leave the country and if he possesses a passport, the same shall be deposited before the Trial Court; he shall keep his mobile phone number operational at all times and shall not change it without informing the Investigating Officer; he shall not conduct himself in any manner which will be prejudicial to the case of the prosecution and shall join the investigations as and when so called by the Investigating Officer.

A copy of this order be given *dasti* to the learned counsel for the

parties under signature of the Court Master.

AUGUST 09, 2018
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NAJMI WAZIRI, J.