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

%   Reserved on: 3rd December, 2018
Decided on: 11th December, 2018

+   **BAIL APPLN.2326/2018**

UPENDRA RAI   ... Petitioner
Represented by: Mr.Siddharth Luthra, Sr.Advocate with Mr.Sidharth Aggarwal, Mr.Arjun Dewan, Mr.Arjun Mukherjee, Mr.Shehryar Khan, Ms.Jhanvi Dubey and Ms.Sowjhanya Shantanam, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION   .... Respondent
Represented by: Mr.Nikhil Goel, SPP, CBI with Mr.Gurpreet Hora and Mr.Ashutosh Ghade, Advocates

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioner seeks bail in case FIR No.RC-217-2018 A 0004 CBI-AC-II under sections 120-B/384 IPC and Section 8 of the Prevention of Corruption Act (in short 'PC Act').

2. Learned senior counsel for the petitioner submits that since the petitioner is not a public servant no public servant has been found to be involved, Section 8 of the PC Act is not attracted. Further, offence punishable under Section 384 IPC entails a punishment of imprisonment for a period of maximum three years and the petitioner has been in custody now since 10th July, 2018, thus he be released on bail.

3. Learned Senior counsel for the petitioner has taken this Court through the contents of the FIR and states that the status report filed by the CBI relies on facts which are not founded in the FIR nor part of investigation. Despite the fact that the petitioner was in custody in another FIR and orders were passed in favour of CBI to interrogate the petitioner, no efforts were made to carry out the investigation and after the release on bail in the other case, the petitioner was arrested in this case. Charge-sheet having been filed petitioner is no more required for the investigation which is based primarily on the documentary evidence. Reliance is placed on the decision of the Hon'ble Supreme Court in the judgment reported as 2018 SCC OnLine SC 1216 *Babji Vs. State of Andhra Pradesh*.

4. Learned counsel for the CBI opposing the bail application contends that not only charge-sheet for offences punishable under Section 120-B read with Section 384 IPC and Section 8 of the PC Act has been filed, the petitioner's antecedents do not warrant bail as he indulges in tempering of the evidence. Reliance is placed on the decision of this Court in Crl.M.C.3238/2018 when bail granted to the petitioner by the learned Special Judge, CBI on 8th June, 2018 was cancelled by a Coordinate Bench of this Court on a petition under Section 482 Cr.P.C. filed by the CBI before this Court. He contends that observations of the Coordinate Bench of this Court would be binding in the present case as well.

5. The above noted FIR was registered on the complaint of one Balvinder S.Malhotra, Director of M/s.White Lion Real Estate Developers Pvt. Ltd., Mumbai who alleged that the petitioner approached one Kapil Wadhawan, a relative of the promoter of M/s.White Lion Real Estate Developers Pvt. Ltd. Hiten Sakhuja, portraying himself to be a broker of the

Income Tax Department and various other government departments. He impressed on Kapil Wadhawan that he is a senior journalist and has worked with Tehelka, Star TV and is connected to big media houses. The petitioner claimed that he had sensitive information from the Income Tax department relating to the raids to be conducted on the companies related/associated with M/s.White Lion Real Estate Developers Pvt. Ltd. and that action could be initiated against them under the new Benami Act. He threatened that he had the potential to tarnish the image of the associated companies and their promoters due to his media connections. Thus, Kapil Wadhawan met the petitioner at his residence in Greater Kailash Part-I where Kapil Wadhawan was shown a big bunch of documents of the Income Tax department wherein action was contemplated against a number of companies including those related/associated with M/s.White Lion Real Estate Developers Pvt. Ltd. The petitioner demanded huge money to settle the matter with the Income Tax department as also to avoid adverse media reporting. Succumbing to his pressure, a consultancy agreement was entered into on 3rd October, 2017 between M/s.Upendra Rai & Associates and M/s.White Lion Real Estate Developers Pvt. Ltd. with effect from 1st October, 2017 to 30th September, 2018 pursuant whereto a sum of ₹15,19,50,000/- (excluding GST and TDS) was paid to Upendra Rai's account from the account of the company. Later, after making enquiries the complainant realized that the petitioner is a habitual blackmailer, a tout in various government departments including the Income Tax department and hence, they terminated the consultancy agreement with the petitioner. However, the petitioner continued to threaten them.

6. In the Status Report filed by the CBI, besides reiterating the allegations as noted above, it is stated that another FIR has been registered by the CBI against the petitioner being RC No.217-2018 A 0003 under Sections 420 and 120-B IPC read with Section 13(2) and 13(1)(d) of the PC Act wherein charge-sheet has been filed and the order granting bail by the learned Additional Special Judge has been set aside by this Court on 4th September, 2018 observing that the allegations against the petitioner are serious in nature and there is a reasonable apprehension that the petitioner would influence the witnesses. Further ECIR/03/HIU/2018 has also been recorded by the Enforcement Directorate under Sections 3 and 4 of the Prevention of Money Laundering Act (in short 'PMLA Act').

7. Admittedly, as per the charge-sheet, though the petitioner claimed that he had connections with the Income Tax department, collected copies of documents of the Income Tax department to threaten the complainant, and was to purportedly liason with officers of the Income Tax department, however as per the charge-sheet, no public servant has been named as an accused nor any public servant found involved in the conspiracy.

8. Section 8 of the PC Act reads as under:

> ***"8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.*** *— Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State*

or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

9. While dealing with Section 8 of the PC Act, Hon'ble Supreme Court in *Babji*'s case (supra) held as under:

> *6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as confirmation of the seat in the Indian Airlines, there may be persons in the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4, to induce a public servant to get the confirmation of the ticket, the conviction of the appellant under Section 8 of the PC Act cannot be sustained. In the result the appeal is allowed and the appellant is acquitted."*

10. As noted above, thus Section 8 of the PC Act does not require that the solicitation or receipt of gratification for inducing the public servant to do an act or to do a favour or render some service has to be against a specifically

named or identified public servant. The moment the petitioner accepts the gratification for the purpose as mentioned in Section 8 PC Act irrespective that the same was in conspiracy with a public servant or was transmitted to a public servant, the person would be said to have committed offence under Section 8 of the PC Act. Thus, prima facie the plea of learned Senior counsel for the petitioner that no offence under Section 8 PC Act is made out and the only offence made out being Section 384 IPC on the allegations which is punishable up to three years imprisonment deserves to be rejected.

11. Learned counsel for the CBI has heavily relied upon the decision of the Coordinate Bench judgment in Crl.M.C.3238/2018 wherein this Court set aside the order dated 8th June, 2018 passed by the learned Special Judge granting bail to the petitioner. Findings of the Coordinate Bench on the aspects as contended by learned counsel for the CBI are as under:

> *"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 CBIand (vii)apprehension of CBI that the accused may influence the witnesses, is general and not specific.*
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> *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 once nor 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 investigation has 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."

12. As opposed to RC No.217-2018 A 0003 under Sections 420 and 120-B IPC read with Section 13(2) and 13(1)(d) of the PC Act in the present case the petitioner has been in custody since 10th July, 2018, charge-sheet has since been filed and as stated by learned counsel for the CBI, no public servant has been identified to be involved with the petitioner in the present FIR. No material in the form of text message etc. has been placed on record to show that the petitioner has been influencing the witnesses in the present FIR. Though the earlier FIR i.e. RC No.217-2018 A 0003 is an overarching one relating to number of transactions, the present RC is confined to the complaint of one Balvinder S.Malhotra wherein the petitioner resorted to extortion from the directors of the company M/s.White Lion Real Estate Developers Pvt. Ltd. threatening them of action by the Income Tax department and a potential threat of tarnishing the image due to media connections resulting in the complainant entering into a consultancy agreement. Thus, the conditions as noted by the Coordinate Bench of this Court in RC No.217-2018 A 0003would not be applicable to the facts of the present case.

13. Considering the fact that the petitioner has been in custody for nearly five months now and the trial is likely to take some time, this Court deems it fit to grant bail to the petitioner on his furnishing a personal bond in the sum of ₹1 lakh with two sureties of the like amount to the satisfaction of the learned Trial Court, further subject to the condition that :

(i) the petitioner will not leave the country without the prior permission of the Court concerned;

(ii) in case of change of residential address, the petitioner will intimate the same to the Court concerned by way of an affidavit;

(iii) the petitioner will not influence any witness or tamper with the evidence of the prosecution; and

(iv) the petitioner will visit the concerned Investigating Officer on the first Monday of every month at 4.00 p.m.

14. Petition is disposed of.

15. Order dasti.

(MUKTA GUPTA)
JUDGE

DECEMBER 11, 2018
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