IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 02nd April, 2018
Date of decision:06th July, 2018

BAIL.A 2440/2017

B. RAMACHANDHIRAN ..... Appellant

Through Mr. R.K. Khanna & Mr. Satish Tamta, Sr. Advs. with Mr. Naveen Malhotra, Adv.

versus

CBI ..... Respondent

Through: Mr. Ripu Daman Bhardwaj, SPP for CBI

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant Shri B. Ramachandhiran seeks the grant of anticipatory bail under Section 438 of the Cr.PC, 1973 and under Section 482 of the Cr.PC, 1973 in relation to the case registered vide RC No.09(A)/2017/CBI/AC-III dated 16.09.2017 in the case titled CBI Vs. Col. Ajay Kumar Singh & Ors. under Sections 7, 8 & 12 of the PC Act, 1988 r/w Section 120B Indian Penal Code, 1860 submitting to the effect that the applicant is a law abiding citizen and has joined the investigation and was present during the search conducted by the officials of the CBI and has denied the allegations before the CBI as also all the allegations levelled in the

RC. He further submits that he is the Chairman of the Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry and has roots in the society and his arrest would cause humiliation and in terms of the verdict of the Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar & Anr. AIR 2014 (8) SCC 273 no arrest ought to be made only because the offences are non bailable and cognizable and lawful for the public officer to do so which is one thing as the justification for the exercise of the same is quite different. The applicant has submitted that he is not required for any custodial interrogation and that all other accused persons had already been granted bail by the Court of Special Judge, CBI during the investigation though they had remained in custody for some period. *Inter alia* the applicant had submitted that he is a victim of a large conspiracy and is a prominent figure in the State of Tamil Nadu and is willing to join the investigation and his mobile has also already been seized by the Investigating Agency and apart from the same, he has been suffering from severe health issues such as diabetes, hyper-tension and is constantly on medication and that in terms of the verdict of the Hon'ble Supreme Court in Sanjay Chandra Vs. CBI (2012) 1 SCC 40 where a person is alleged to have committed an offence punishable only to the extent of seven years, he or she ought ordinarily to be enlarged on bail. The applicant has also submitted that there is no chance of his absconding from the course of justice and there is no scope for his tampering with the evidence or witnesses in any manner. *Inter alia* the applicant has submitted that the allegations levelled against the applicant relate to his having given one installment of an alleged illegal gratification demanded by the co-accused persons i.e. public servants in lieu of providing services as mentioned in the RC for the sake of Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry and that the gravity of those cases cannot be equated with that of the applicant, inasmuch as the applicant had nothing to do with the other applicants arrested.

2. The allegations levelled against the applicant as submitted by the applicant himself through his application are to the effect that the petitioner allegedly arranged Rs.10 lakhs for the public servants i.e. Col. Ajay Kumar Singh and Santosh Kumar as alleged illegal gratification through hawala channels at Delhi and the said amount was received by the co-accused Sushil Kumar on behalf of Col. Ajay Kumar Singh (AK Singh) and Santosh Kumar and there was a conversation between Col. AK Singh and Santosh Kumar and the applicant/petitioner herein qua which the applicant stated that he had never offered any bribe to these persons and the amount recovered from his premises i.e. Rs.1.64 crores had been duly accounted for and was a collection of fees of the medical college about which the CBI had been apprised. The applicant had thus submitted that there is no allegation sufficient to bring him within the ambit of culpability under Sections 7, 8 & 12 of the PC Act, 1988. It has further been submitted on behalf of the applicant that he being the Chairman of the Sri Venkateshwara Medical College

Hospital and Research Centre, Pondicherry, had been falsely implicated in the instant case.

3. Notice of the application was issued to the CBI and the CBI vehemently opposed the prayer and filed a reply under signatures of Mr. Suresh Kumar, DSP, CBI, AC-III, New Delhi to the effect that the application for anticipatory bail be rejected.

4. Through the said reply it was submitted by the CBI that Col. AK Singh, Army Medical Coprs, Santosh Kumar, LDC of MCI, Shri Susheel Kumar, Shri Sachin Kumar, Shri B. Ramachandhiran, Chairman of Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry, i.e., the applicant herein and other public servants had leaked/shared all sensitive information and helped private persons with respect to some administrative matter regarding inspections, approvals etc. related to the medical college being dealt with by the MCI and for that reasons all the accused persons were in constant touch with each other. As per the report submitted by the CBI, Shri Susheel Kumar, a private person collected an amount of Rs.10 lacs from Shri Vinod Kumar Singhal, a private person and hawala operators which amount of money was meant for Shri Santosh Kumar and Col. AK Singh.

5. As per the report, during the investigation, Shri Susheel Kumar was apprehended on 16.09.2017 after he collected the bribe amount of Rs.10 lacs from Shri Vinod Kumar Singhal which amount of money was recovered from a jute bag being carried away by him.

6. During the investigation Col. AK Singh, Shri Santosh Kumar, Shri Susheel Kumar, Shri Sachin Kumar, Md. Javed Khan and Md. Khizaar Abas were arrested. The CBI further submitted that the petitioner was not cooperating with the investigation and there was sufficient evidence against him and that he had made various telephonic conversations with Col. AK Singh and Santosh Kumar which established that the bribe money was arranged in lieu of receipt of various sensitive information regarding Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry from the said two persons.

7. In view of the submissions that were made on 29.11.2017 in the instant case on behalf of the CBI by the learned SPP for CBI that there are telephonic conversations recorded between the complainant and two other accused persons i.e. the public servants Col. AK Singh and Santosh Kumar which pin pointed that the applicant was indulging in arranging receipt of gratification for receiving of administrative approval and secret information in relation to the inspection and assessment of Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry to the Chairman it was thus considered essential that the said transcript was perused and the CBI was directed to file the same. During the said proceedings dated 29.11.2017, the applicant admitted the seizure memo prepared by the CBI in relation to receipt of Rs.1.64 crores in cash on 16.09.2017 from the club where he was residing at Chennai but stated that the same was not any ill gotten money.

8. Placed on record is an affidavit dated 07.12.2017 of the applicant/petitioner submitting that before the trial Court two documents had been placed, one a certificate dated 15.09.2017 issued by the Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry wherein it was categorically mentioned that Rs. 1.62 crores was sent by the medical college of the petitioner for the purpose of depositing the amount in Rama Chandra Educational Trust CC A/c No.915030061724538 with Axis Bank Ltd. at its Corporate Banking Branch, Chennai. He also explained that there were receipts of the BTF voucher for the collection of fees/Mess/Hostel fees collected from three colleges i.e. Indrani College of Nursing, Sri Venkateshwara Dental College and Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry and that all these colleges function in the same campus.

9. Along with the affidavit was placed on record the certificate dated 15.09.2017 of the Cashier for Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry stating to the effect that a sum of Rs.1.62 crores had been received from medical college students, Dental College students, Nursing College students towards tuition fees, hostel & mess fess and hospital income through the registered office of his Chairman Shri B. Ramachandhiran i.e. the petitioner herein for purpose of depositing the amount in the Rama Chandra Educational Trust CC A/c

No.9150300061724538 with the Axis Bank Ltd. at its Corporate Banking Branch, Chennai.

10. Along with the affidavit and the document annexed as Annexure-2 is the explanation put forth by the petitioner before the CBI qua seizure of sum of Rs.1,64,71,071/- on 17.09.2017 stating categorically that the sum of Rs.1,62,00,000/- had been brought from the Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry in order to deposit the same in CC account of M/s Rama Chandra Educational Trust with Axis Bank Ltd., Chennai and that the balance sum of Rs.2,71,075/- was the amount kept by Shri B. Ramachandhiran and Mrs. R Radha for their personal needs, which amount was accumulated over a period of time, out of salary, rent and agricultural income.

11. *Inter alia* the applicant submitted that both Shri B. Ramachandhiran and Mrs. R. Radha were income tax assesses and filed returns regularly and showed income of Rs.50 lakhs per annum.

12. As per the FIR registered in the instant case under Sections 7, 8 & 12 of the PC Act, 1988 registered on 16.09.2017, the Medical Council of India (MCI), a Government of India regulatory body maintains uniform standards of medical education and recommends recognition/de-recognition of medical qualifications of medical institutions of India apart from performing other regulatory functions and that in the instant case, as per reliable information received that Shri Santosh Kumar, an LDC in the MCI was in

regular contact with the Chairman of the Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry and residing at 4, 42nd Street, 6th Avenue, Ashok Nagar, Chennai for sharing sensitive information and helping with respect to some administrative matter in relation to the inspection and approvals etc. related to the medical college being dealt with by the MCI. As per the FIR, the investigation revealed that Shri Santosh Kumar was also in touch with Col AK Singh of Army Medical Corps and Col AK Singh was empanelled as an assessor with the MCI for inspecting various medical colleges. The FIR further states that Col. AK Singh and Santosh Kumar who were public servants were in connivance with the petitioner herein and Shri Susheel Kumar and Shri Sachin, private persons and were running a racket of leaking sensitive information with respect to inspections, recognition of courses, number of seats, notices and other similar administrative matters being dealt with by the MCI against various medical colleges and institutions and were engaged with the owners of these medical institutions for obtaining periodical illegal gratification and that as per the information received at the time of registration of the FIR of 16.09.2017, the petitioner was likely to deliver another instalment of illegal gratification to Col. AK Singh and Shri Santosh Kumar through Hawala channels at Delhi soon.

13. In terms of order dated 29.11.2017 r/w order dated 12.12.2017, the CBI placed on record the transcript of conversations between the period 13.08.2017 to 15.09.2017 with the RC having been

registered on 16.09.2017. The said conversations are between Shri Santosh Kumar, the applicant/petitioner herein and Col. AK Singh of whom Col. AK Singh and Santosh Kumar are public servants. Apart from the same, the CBI has also placed reliance *inter alia* on the cash book of the Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry to contend that on the date 15.09.2017, a sum of Rs.9 lakhs was deposited in the account of the petitioner and an amount of Rs.6 lakhs was also deposited on the same date which were deposited in cash in the Axis Bank account of the college bearing account no.915020065609537. The CBI also placed reliance on the said cash book of the Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry for the period 01.09.2017 to 30.09.2017 showing the deposit of cash of Rs.9,00,000/- into Axis Bank A/c No.915020065609537 i.e. the college account on 15.09.2017 and Rs.6,00,000/- in cash also being deposited in the said account on 15.09.2017 and the payment of Rs.1,62,00,000/- as shown to have been transferred and a sum of Rs.32,76,000/- being cash received towards ICON-Nursing College and a sum of Rs.25,00,000/- being paid in cash to SV Dental Hospital paid by Roopkumar, Deputy Warden to be paid to Durai Raj for the document sent by the MCI to New Delhi also all on 15.09.2017.

14. The conversations between the period 13.08.2017 to 15.09.2017 between Shri Santosh Kumar, LDC, Shri B. Ramachandhiran and Col. AK Singh, of whom Shri Santosh Kumar and Col. AK Singh

Army Medical Corps, were empanelled as the assessor with the MCI for inspecting the various medical colleges, are conversations which the CBI contends relate to the negotiations of payment of illegal gratification by the applicant/petitioner to the public servants i.e. Shri Santosh Kumar and Col. AK Singh for leakage of sensitive information for according requisite recognition to six departments of the Sri Venkateshwaraa Medical College Hospital and Research Centre, Pondicherry. The CBI also submits that the conversation dated 13.08.2017 at 17:03:15 hrs between Santosh, LDC and the applicant/petitioner allegedly relates to the public servant Shri Santosh, LDC of the MCI giving information of inspection of the college and that the conversation of the date 13.09.2017 between Col. AK Singh and the applicant Shri B. Ramachandhiran is to the effect that:

"Call No.55 dated 13.09.2017 at 09:07:22 from Call ID 21-214083-0-31-20170913-090722 to AK Singh and the ID OF AK Singh 8527111766

AK Singh:	*Hai sir morning sir AK*
BR:	*Hai good morning doctor good morning*
AK Singh:	*How are you*
BR:	*Hai I am fine fine doctor, how are you*
AK Singh:	*How are the things going on good sir*
BR:	*Ya ya everything is going well doctor*
AK Singh:	*Ya and Ortho also will come to know today sir, sir, sir*

BR:	*OK OK OK*
AK Singh:	*Ya*
BR:	*OK very nice very good*
AK Singh:	*So that is the sir and rest approximately two into six*
BR:	*OK*
AK Singh:	*Two was left last time due sir*
BR:	*Ya ya*
AK Singh:	*And two also far surgery reorganization sir, so this if you can't it will be kind and generous sir everything of your college will be regulated sir because this is not.*
BR:	*OK OK*
AK Singh:	*Ya ya just we matlab, we sir going in a very very good way now '**hain na**' (in hindi)*
BR:	*OK*
AK Singh:	*Is it now, is it back on track sir*
BR:	*Ok*
AK Singh:	*So when you come sir that to get those sir 'hain na'. whatever I will do sir 'hain na' sir*
BR:	*Ok fine fine doctor fine **h** (in hindi)*
AK Singh:	*Ya right sir, right sir and ortho I will be sending it sir today sir.*
BR:	*Ok fine fine **h** (in hindi)*

AK Singh: *Ya take care*

BR: *thank you doctor, thank you doctor, thank you,"*

contending that this conversation relates to a demand of a bribe made by the co-accused Col. AK Singh from the petitioner i.e.

2 x 6 = 2 for each subject.

15. The conversation dated 13.09.2017 at 19:25:15 hrs between Col. AK Singh and B. Ramchandhiran relates to Col. AK Singh purportedly asking the petitioner to come to Delhi and saying that everything would be taken care of and '***recognition***' was also positive and that the petitioner need not worry.

16. The conversation dated 15.09.2017 at 14:20:59 hrs, vide call no. 57 relates to the purported conversations between Col. AK Singh and the petitioner to indicate that **'some'** had to be given to some people qua which the applicant had stated that he would make arrangements qua which Col. AK Singh had stated that if the applicant could do so, it would be better.

17. The applicant/petitioner vide affidavit dated 20.02.2018 submitted that the officials of the CBI had visited the college on 21.12.2017, 22.12.2017 and 23.12.2017 and had randomly called 15 students from each of the colleges and verified the facts whether they have deposited cash in view of the receipts or not and their parents were also contacted on telephone calls and verification was done and all the students had confirmed that they had deposited cash in terms of receipts placed on record and that the officials of the CBI had

made enquiries from the principal of the college as well as from other staff i.e. account manager, accountant and cashier and cash vouchers from August to September, 2017 were taken into possession by the Investigation Officer and they had also taken the staff attendance register into his possession as well as the cash book and bank statements which were seized by the Investigation Officer at Pondicherry were of the three colleges. The applicant also submitted that the amount of Rs.1.62 crores was collected by him from the medical college on 15.09.2017 during his visit to the college for the purpose of depositing the same into the account of Rama Chandra Educational Trust in CC A/c No.915030061724538 with the Axis Bank Ltd. at its Corporate Banking Branch, Chennai into the loan account of the trust. The applicant further submitted that from the date 03.01.2018, he was never summoned by any official of the CBI for any investigation and he was always willing to join the investigation.

18. The status report dated 23.02.2016 (**ought to read as 23.02.2018**) submitted by the CBI states to the effect that the verification was conducted in terms of order dated 12.12.2017 of this Court qua directions to the CBI to verify the averments made in the affidavit filed by the petitioner herein relation to the recovery of Rs.1,62,00,000/- having been made from his house on 16.09.2017 and it was reported by the CBI that during the course of verification, the original receipts pertaining to Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry, Sri

Venkateshwara Dental College and Indrani College of Nursing were checked and seized and thereafter the entries of each of the receipts were checked from the cash ledger of the concerned medical college and the relevant entry of each receipt was reflected/mentioned in the ledger of the concerned medical college and during the course of verification, a total of 34 students of the Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry, Sri Venkateshwara Dental College and Indrani College of Nursing were examined and they disclosed during examination that they had made payment in favour of the respective college and confirmed that they had made payment and they had also confirmed their signature on the respective receipt memo in question. The said status report also states to the effect that during the course of verification all cash books of Sri Venkateshwara Medical College for the period August, 2017 to October, 2017 and the vouchers regarding payment and receipt for the above said period were collected and that from the perusal of the cash book for the month September, 2017, it was revealed that there was an opening balance/cash-in-hand of Rs.53,11,040.14/- as on 01.09.2017 and the closing balance as on 30.09.2017 was Rs.1,25,888.14. The said status report also states that the perusal of the cash book of Sri Venkateshwara Medical College for the date 15.09.2017 revealed that the payment of Rs.1,62,00,000/- was shown to be transferred in favour of M/s Rama Chandra Educational Trust from the account of Sri Venkateshwara Medical College and after the transfer of Rs.1,62,00,000/- there was a credit entry of Rs.32,76,000/- as cash in the account of Sri Venkateshwara Medical College regarding the receipt of cash from the account of Indrani College of Nursing and similarly, there was another credit entry of Rs.25,00,000/- regarding the receipt of cash from Sri Venkateshwara Dental College in the account of Sri Venkateshwara Medical College and it was thus submitted on behalf of the CBI that the amount of Rs.1,62,00,000/- had already been shown to be transferred in favour of Rama Chandra Educational Trust and after that the entries of Rs.32,76,000/- and Rs.25,00,000/- were shown to be received from the account of Indrani College of Nursing and Sri Venkateshwara Dental College respectively on 15.09.2017 and these two entries were after the entry of Rs.1,62,00,000/-. It was further submitted in the said status report that Shri B. Ramachandhiran claimed in the affidavit that he had received an amount of Rs.1,62,00,000/- from the medical college students, Nursing College students and Dental Medical College students on account of tuition fee, hostel and mess fee for depositing the amount in the account of M/s Rama Chandra Educational Trust accounting bearing no.915030061724538 with the Axis Bank, Chennai and Shri B.Ramachandhiran claimed that he had received a sum of Rs.32,76,000/- and 25,00,000/- from Indrani College of Nursing and Sri Venkateshwara Dental College respectively. It has been further submitted through the said status report by the CBI that if this particular transaction of the entry of the amount of Rs. 32,76,000/- and 25,00,000/- from Indrani College of Nursing and

Sri Venkateshwara Dental College respectively were genuine, it ought to have been mentioned prior to the entry of Rs.1,62,00,000/- which thus created a doubt in the mind of the Investigating Agency.

19. As per the said status report, during the course of verification of the cash book of Sri Venkateshwara Dental College for the period August, 2017 to October, 2017, the voucher regarding payment and receipt for the said period were also collected and from the verification of the said cash book for the month of September, 2017, it was revealed that there was an opening balance/cash-in-hand of Rs.1,19,438/- as on 01.09.2017 and a closing balance as on 30.09.2017 was Rs.17,258/- and that the receipt memo as claimed by Shri B.Ramachandhiran i.e. the petitioner herein in his affidavit was also mentioned in the cash book of the Sri Venkateshwara Medical College and it was thus revealed that as on 15.09.2017, there was a cash-in-hand of Rs.2,04,907/- as per the cash book and that an amount of Rs.25,00,000/- as cash amount were shown to be transferred from the account of Sri Venkateshwara Dental College to Sri Venkateshwara Medical College account on 15.09.2017 and that in this regard a payment voucher of Rs.25,00,000/- was not prepared by the officials of Sri Venkateshwara Dental College and that as per the record, vouchers had been prepared for each payment/transaction but the voucher of Rs.25,00,000/- was not available on the record, which thus created a doubt.

20. It was further submitted though the said status report that during the course of verification the cash book of Indrani College of Nursing for the period August, 2017 to October, 2017 was also collected and that the vouchers regarding payment and receipt for the above said period were collected and that the perusal of the cash book for the month of September, 2017 revealed that there was an opening balance/cash-in-hand Rs.19,22,685/- as on 01.09.2017. It was further stated that the closing balance as on 30.09.2017 was Rs.2,89,943/-. The entry of receipt memo as claimed by Sh. B. Ramachandhiran in his affidavit is mentioned/shown in the cash book of Indrani College of Nursing. It revealed that cash amount of Rs. 32,76,000/- was shown to be transferred from the account of Indrani College of Nursing in the account of Sri Venkateshwaraa Medical College account on 15.09.2017. In this regard, the payment voucher for Rs. 32,76,000/- was not prepared by the official of Indrani College of Nursing. As seen from the record, the vouchers have been prepared for each payment/transaction but the voucher of Rs. 32,76,000/- is not available on record, which it was submitted creates a doubt.

21. It was further stated in the said status report of the CBI to the effect that during the course of investigation, the procedure regarding issue of the cash receipt, handling of cash etc. was also ascertained from the cashier of Sri Venkateshwaraa Dental College, Indrani College of Nursing and Sri Venkateshwaraa

Medical College. In this regard, the statement of the relevant Cashier/ Accountant was also recorded. It was disclosed by the cashier of the concerned Medical College that the cash receipt memo had been prepared in two copies, one for the student and one for college records and that the student used to sign both copies in respect of regarding deposit of the cash. During the course of examination, the cashier disclosed that whenever the cash was deposited by the students the same is deposited in the Bank and that the Bank A/c of all the three colleges is with Axis Bank Pondicherry. As per the status report of the CBI this fact was also stated to be established from the cash book of the above said colleges. The cash was deposited on the same day or the next day in the Bank, after having the receipt as per the cashier. The cashier also disclosed that there is no provision to keep the cash in the college. On being asked specifically regarding, transfer of cash of Rs. 32,76,000/-, Rs. 25,00,000/- and Rs. 1,04,24,000/- involved in this case the cashier is stated to have disclosed that as per the direction of Sh. B. Ramachandhiran, i.e., the petitioner herein, they kept the amount with them and subsequently, on 15.09.2017 transferred the same to the account of M/s Ramachandra Educational Trust. It was submitted by the CBI that the statement of the cashier was contradictory to itself, as he had earlier stated that they used to deposit the cash in the Bank on the same day. It was further submitted that thus, there was no physical cash with the cashier but as per the Cash Book, there was cash in the Cash Book and it was thus submitted in view of the above, it appeared that the entry of Rs. 1,62,00,000/- was an after thought made in the cash book of concerned Medical College, after registration of the said case, in order to adjust the amount of cash so recovered during the course of search.

22. It was further submitted through the said status report that in order to verify the authenticity regarding issuance of the receipt memo by the concerned cashier the attendance register of the above said three colleges were also scrutinized and certified copies of the same was collected. The attendance of the concerned cashier/accountant was checked who issued/prepared the receipt Memo on that particular day which revealed that the concerned cashier who prepared/issued the receipt memo was available on that day.

23. The status report however submits that Sh. B. Ramachandhiran, i.e., the petitioner herein claimed that he received Rs. 1,62,00,000/- from the cashier Sh. P. Venkatesan of Sri Venkateshwaraa Medical College on 15.09.2017 at Puducherry and it was submitted that there is an Axis Bank also available at Pondicherry itself and there was no such requirement to carry such a huge amount from Pondicherry to Chennai and the same was not meaningful, as there is core banking system in the Bank and the amount could have been deposited at Pondicherry itself. The CBI also found during verification that the petitioner was also maintaining a bank account of Sri Venkateshwara Medical College, Sri Venkateshwara Dental College, Indrani College of

Nursing with Axis Bank at Pondicherry and thus the said cash amount could have been deposited in the bank and it was submitted that not depositing the cash at Pondicherry, creates further doubt.

24. As per the status report of the CBI, during the course of verification, Sh. R. Krishnakumar, Assistant Vice President, Corporate Banking Operations, Axis Bank, Chennai was examined and he disclosed that M/s Rama Chandra Educational Trust is maintaining an Overdraft A/c, Term Loan Accounts and Bank Guarantee Limits with their Branch. M/s Rama Chandra Educational Trust was availing certain facilities from State Bank of India, State Bank of Travancore, State Bank of Patiala and State Bank of Hyderabad currently under consortium arrangement on terms and conditions and that the Axis Bank had taken over the entire facilities availed by M/s Rama Chandra Educational Trust from the State Bank of India and its Associate Bank in the year 2015.

25. As per the said status report, Axis Bank, Chennai sanctioned Rs.91.05 crores M/s Rama Chandra Educational Trust (Rs. 10 crores secured overdraft, Rs.12.33 crores Bank Guarantee, Rs. 3.76 crores Term Loan-I, Rs.15.96 crores Term Loan-II, Rs. 49 crores Term Loan-III) in the year 2015 and it was disclosed that the proceeds of the loan amount, so sanctioned by Axis Bank in favour of M/s Rama Chandra Educational Trust is being recovered from the O.D. A/c no. 915030061724538 and that there were

standing instructions through the system to recover the loan amount from the O.D. A/c no.915030061724538 automatically and that the due date of the instalment of the term loans falls on the 30th day of every month. As per the status report, Sh. R. Krishnakumar Assistant Vice President, Corporate Banking Operations, Axis Bank, Chennai disclosed that as on 16.09.2017, there was a credit balance of Rs.11,147.12/- in the O.D. Account and apart from this the Overdraft limit of Rs.10 crores was also available in the said O.D. Account and that there was sufficient balance in the O.D. account as on 16.09.2017 in order to recover the loan amount as well as the loan amount in principle and interest in respect of all the loans.

26. As per the status report, Sh. R. Krishnakumar, Assistant Vice President, Corporate Banking Operations, Axis Bank, Chennai disclosed during the course of investigation that any person can deposit cash in any Branch of Axis Bank and that Sh. B. Ramachandhiran could have also deposited cash at Axis Bank, Pondicherry.

27. It was further submitted on behalf of the CBI, that Sh. R. Krishnakumar, Assistant Vice President, Corporate Banking Operations, Axis Bank, Chennai disclosed that M/s Ramachandra Educational Trust had never deposited cash on account of repayment of loan in O.D. Account no. 915030061724538 i.e. Rs.1,00,000/- except only once on 10.11.2016.

28. As per the status report, Sh. R. Krishnakumar, Assistant Vice President, Corporate Banking Operations, Axis Bank, Chennai informed the CBI that there was no proposal on behalf of the petitioner for repayment of adjusting/closure of term loan taken by M/s Ramachandran Educational Trust with their Branch and it was thus submitted on behalf of the CBI that the transaction in question appeared to be an after thought after registration of this case.

29. During the course of submissions that were made on behalf of the CBI it was submitted that as on 22.12.2017 LOCs have already been issued in relation to the applicant.

30. Vide his affidavit dated 03.03.2018, the petitioner further submitted to the effect that the officials of the CBI visited the college on 21.12.2017, 22.12.2017 and 23.12.2017 and conducted the investigation and submitted their report to the Court on 24th February 2018 supplying a copy to them and that they got the copy of the status report on 28th February 2018. It was submitted thus by the petitioner that the status report indicated the payments deposited by the students and the signature on the receipts were confirmed by the students to the officials of CBI during the course of verification, which has been accepted and pointed out in the status report of the CBI in para 9 and it submitted that was clear that the amount of Rs.1.62 crores was collected from the college students only. It was further submitted that the status report reveals that on verification of cash book by the Investigation Officer of CBI, it has been confirmed that Rs.1.62 crores had been transferred

to Ramachandra Educational Trust, Chennai Centre, Puducherry and it was submitted that this also confirmed the genuineness of the cash movement from Shree Venkateshwara Medical College, Puducherry to Ramachandra Educational Trust, Chennai as per the status report in para 11. The petitioner also submitted that as per the cash book entries it was also confirmed that a sum of Rs.32.76 lakhs had been transferred from the Indrani College of Nursing and Rs.25.00 lakhs from Shri Venkateshwaraa Dental College on 15/09/2017 and that as the cash transfer from the Dental College and Nursing College and payment to Ramachandra Educational Trust had taken place at the same time, the accountant first entered the payment made to Ramachandra Educational Trust and then entered the receipt entry while entering in the Computer and further the closing balance as on 15th September 2017 was confirmed as Rs.54,616/- which was correct. It was further submitted by the petitioner that as per para No. 12 of status report of CBI it is mentioned that as the printout of voucher or receipt was not available for Rs.25.00 lakhs received from Shri Venkateshwara Dental College the same created a doubt and that in para no. 13 of the status report, it was also mentioned that printout of voucher/receipt was not available for Rs.32.76 lakhs received from Indrani College of Nursing which also created another doubt qua which it was submitted by the petitioner that these transactions are reflected in the books of accounts and the investigating officer has also accepted the same in his status report and only the printout of voucher/receipt had not been taken as there is only one Accounts

Manager handling all the three college accounts which three colleges are functioning in the same campus and all the college transactions are viewed in the computer by the accounts manager and that each college had strong steel almirahs with locker facilities which accommodate daily cash balances in the accounts department and that all the colleges are monitored by Security staff round the clock. The petitioner has further submitted that during the month of August and September, 2017, the students used to deposit cash which was planned to be transferred to Chennai and to be deposited directly into the bank account of Ramachandra Educational Trust which was being operated in Chennai in order to pay towards the loan account. The petitioner further submitted that whenever the overdraft is utilized they are to pay interest and in order to avoid interest, they planned to deposit the cash into the Ramachandra Educational Trust account and as they had cash surplus after meeting out their cash expenses, they planned to deposit the cash in the Chennai bank account. Further as per the loan sanction letter we can pay advance EMI whenever funds are available. The petitioner further reiterated that the entire amount of Rs.1.62 crores was collected from the college students at Puducherry and was sent to Chennai to be deposited in the Loan accounts of Ramachandra Educational Trust with the Axis Bank Limited, Chennai.

31. Vide his affidavit dated 19th March, 2018, the petitioner further submitted to the effect that he has already appeared on 3 days at

the CBI Head Quarters at New Delhi and has co-operated for investigation and has also been present during the investigation conducted at his college at Pondicherry for 3 days and has fully co-operated in investigation but that he was not informed in advance of the visit of the CBI team to Chennai on 14.03.2018 and due to his prior schedule at his college, he was in Pondicherry on 14.03.2018 and had instructed his staff to co-operate for investigation. The petitioner assured to co-operate in the investigation in all aspects in future. *Inter alia* the petitioner submitted that their lender M/s Axis Bank Ltd., Chennai had issued a letter dated 19.03.2018 calling remission of the funds for the loan instalments and interest on or before 31st March, 2018 and it was submitted by the petitioner that this brought forth the genuineness of the funds brought to Chennai for remitting into the loan account of Axis Bank and the petitioner also submitted the letter received from the bank.

ANALYSIS

32. On a consideration of the rival submissions put forth on behalf of either side, it is essential to observe that the offences punishable under Section 7, 8 & 12 of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code, 1860 as of date are not punishable beyond a period of 7 years each. Furthermore, Section 7 of the Prevention of Corruption Act, 1988 makes a public servant who takes gratification other than legal

remuneration in respect of an official act, culpable and likewise under Section 8 of the said enactment taking gratification by corrupt or illegal means to influence a public servant is made culpable. *Per se* Section 7 applies to public servants and Section 8 makes a person who accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whether 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 disfavor to any person, or to render or attempt to any service or disservice to any person, culpable. The applicant/petitioner *per se* is not a public servant and furthermore, is not alleged to have received any illegal gratification and rather is alleged to have been part of a conspiracy with conversations recorded allegedly to contend that he was negotiating payment of a bribe to the co-accused Col. AK Singh and an LDC Santosh Kumar of the Medical Council of India in order to obtain recognition for six subjects in his medical college. At the most, the provisions of Section 12 of the Prevention of Corruption Act, 1988 may be brought into play which relates to punishment for abetment of the offences punishable under Section 7 & 11 of the Prevention of Corruption Act, 1988 which is an offence punishable to the extent of five years and also to a fine. The offence punishable under Section 120-B of the Indian Penal Code, 1860 of the Indian Penal Code, 1860 of the person being a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or more, where no express provision is made in the Code for such a conspiracy, can be punished in the same manner as if he had abetted such an offence and thus even this offence, if proved against the petitioner, would not be punishable for a period beyond seven years of imprisonment. It is essential to observe that all the other public servants arrested in the instant case have already been released on regular bail, though they had been arrested previously. In the instant case, the applicant has sought the grant of anticipatory bail submitting to the effect that he has his roots in the society and that he is a married man, with ailments of his wife and himself as well as ailment of his mother-in-law and that apart from the same, it is essential to observe that the offences alleged against the co-accused are also yet to be established.

33. As regards the conversations alleged between the co-accused Col. Ajay Kumar Singh and Santosh Kumar who is an LDC and the petitioner/applicant herein, which conversations have been adverted to hereinabove, it is essential to observe that though they bring forth a suspicion in relation to the complicity of the petition, presently at the stage of grant of anticipatory bail, there appears no reason to disbelieve the claim of the petitioner that he shall not abscond and shall not free from justice.

34. The contention raised on behalf of the State that a sum of Rs.1.62 crores in cash was recovered from the residence of the appellant

and that the same has not been accounted for, is sought to be explained by the petitioner herein as having been received towards the payment of fees from students and the status report that has been submitted by the State, vouches the factum of payment of fees by students of Sri Venkateshwara Medical College, Sri Venkateshwara Dental Medical College and Indrani College of Nursing and also the entry for the amount of Rs.1.62 crores is shown in the Cash Book of Sri Venkateshwara Medical College of which the petitioner/applicant is the Chairman and of this Rs.32,76,000/- and Rs.25,00,000/- were received from Indrani College of Nursing and Sri Venkateshwara Dental Medical College. Though, the CBI seeks to contend that there are misgivings in relation to the said entries as the receipts from Indrani College of Nursing and Sri Venkateshwara Dental Medical College ought to have been mentioned prior to the entry of Rs.1,62,00,000/- and that in fact, the applicant had ill gotten money- the same are aspects which require a trial.

35. As laid down by the Hon'ble Supreme Court in **"ARNESH KUMAR VS. STATE OF BIHAR AND ANOTHER" (2014) 8 SCC 273B,** to the effect:-

> "7.1 *From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before*

arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2 The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3 In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause(1) of Section 41 Cr.P.C."

36.The verdict of the hon'ble Supreme Court in "**GURBAKSH SINGH SIBBIA AND ORS. VS. STATE OF PUNJAB" (1980) 2 SCC 565** lays down vide para 8 to the effect:-

"*8. No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-froid, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973",*

making it apparent thus, that there has to be a careful exercise of the powers under Section 438 of the Cr.P.C., 1973.

37. Likewise, the verdict of the Hon'ble Supreme Court in "**SANJAY CHANDRA VS. CENTRAL BUREAU OF INVESTIGATION" (2012) 1 SCC 40** which relates to a case in which there were allegations against the petitioner thereof being involved with public servants in the 2G scam case, wherein

allegedly a lot of amount of the public exchequer was involved, it was nevertheless observed by the Hon'ble Supreme Court to the effect:-

> "*37. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in Prahlad Singh Bhati v. NCT, Delhi thus: (SCC pp.284-85, para 8)*
>
> *"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words 'reasonable grounds for believing' instead of 'the evidence' which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt",*

which is reiteration of the principles laid down in "**Prahlad Singh Bhati vs. NCT Delhi" (2001) 4 SCC 280.**

38. In the instant case, as observed elsewhere herein the other co-accused including public servants are on bail, the recovery of the alleged ill-gotten money has already been effected from the accused/petitioner qua which the petitioner has put forth an explanation which has to be put to trial, the conversations between the petitioner and the other co-accused persons have already been intercepted. As to whether the conversations resulted into any actual benefit also to the petitioner or to his college has not been brought forth so far on the record. The petitioner apparently has his roots in the society and is the Chairman of Sri Venkateshwara Medical College Hospital and Research Centre, Pondicherry. Apparently the guidelines laid down in **"ARNESH KUMAR VS. STATE OF BIHAR AND ANOTHER" (2014) 8 SCC 273B,** vide para 5 to the effect:-

"5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in Cr.P.C. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the public officers who lack sensitivity or act with oblique motive",

ought not to be overlooked.

CONCLUSION

39. Taking the totality of the circumstances of the case into account in the event of arrest, the petitioner is thus allowed to be released on anticipatory bail on his filing a bail bond in the sum of Rs.5 lakhs with one surety of the like amount to the satisfaction of the learned Trial Court subject with the directions that he shall not leave the country, shall join the investigation of the case as and when required and shall not tamper with the evidence in any manner.

40. The application is disposed of accordingly.

ANU MALHOTRA, J

JULY 06, 2018/vm/NC