* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 11.09.2019

% *Pronounced on : 19.09.2019*

\+ **BAIL APPLN. 1180/2019 & Crl. M. (B) 990/2019**

MR. DEEPAK TALWAR ..... Petitioner

Through: Mr. Kapil Sibal, Sr. Adv. with Ms. Gauri Rishi, Ms. Meenakshi Chaterjee, Mr. Jayant Mohan, Ms. Srishti Juneja and Mr. Nikhil Rohatgi, Advs.

Versus

ENFORCEMENT DIRECTORATE ..... Respondent

Through: Mr. Aman Lekhi, ASG, Mr. Amit Mahajan, CGSC with Mr. Ritwiz Rishabh, Ms. Shivani Misha, Mr. Ujjwal Sinha, Ms. Malika Hiremath, Advs. along with Mr. Rajiv Ranjan, AD for ED.
Mr. Rajat Bhatia, AEO.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

O R D E R

Crl. M. (B) 990/2019

Dismissed as not pressed.

BAIL APPLN. 1180/2019

1. This is an application filed under Section 439 Cr.P.C on behalf of the petitioner for grant of regular bail in ECIR No. HQ/13/2017 dated 17.08.2017 U/s 420/120B IPC, Sec. 13(2) r/w 13 (1) (d) P.C. Act & Sec.3/4 PMLA, 2002 registered at P.S. Enforcement Directorate 6th Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

2. Briefly stated, ECIR bearing No. HQ/13/2017 was registered on 17.08.2017 by respondent ED on the basis of predicate offence registered by CBI vide RC-DAI-2017-A-0022 dated 29.05.2017 U/s 420, 120B IPC and 13 (2) r/w 13 (1) (d) PC Act.

3. According to the FIR, the Officials of Ministry of Civil Aviation, NACIL, Air India by abusing their official position as public servants and by receiving illegal gratification, in conspiracy with other public servants, private domestic and foreign air lines, made the national carrier i.e. Air India, give up profit making routes and profit making timings in favour of national and international domestic and foreign private airlines, which resulted in huge loss of market share to the national carrier and led to pecuniary benefits to private domestic and foreign air lines**;** that foreign airlines were given unrestricted entry to India and major routes were given to them without

taking any reciprocal benefits to Air India. Despite warnings that these actions would result in heavy loss of market share to national carrier, the public servants of MOCA, continued to act dishonestly in order to confer pecuniary advantage to the private, domestic and foreign airlines; that the routes were allocated by public savants of Civil Aviation Ministry in pursuance to a criminal conspiracy and on the directions of Civil Aviation Ministry, Air India withdrew its services from many profit making routes and gave away its routes to private and foreign operators without taking any reciprocal benefits. This act resulted in private airlines taking all profitable routes and a bigger market share of Air India.

4. The petitioner himself used his proximity to various government officials, public servants and politician. He exploited his relationship with them, took undue advantage and obtained favourable air traffic rights for Emirates, Air Arabia and Qatar Airlines. Petitioner himself claimed in a PPT presentation titled "DTA Your India Advisor" (RUD-20), the outcomes of his endeavours he achieved for his clients which include Airbus, Emirates, Fraport, Air Arabia, Air Asia, Onair, Dnata etc. The said Power Point presentation was recovered from one of the premises associated with the petitioner. In lieu of the favours three airlines namely Emirates, Air Arabia and Qatar Airways made huge payment to petitioner which were credited in the

account of M/s Asia Field Ltd. and M/s Gilt Assets Management Ltd. which are the companies controlled by the petitioner and his son Aditya Talwar. The airlines wise payments made to the entities controlled and beneficially owned by Deepak Talwar (petitioner) is detailed as follows :

<table>
<tr><th>S. No.</th><th>Concerned Airlines & Date of Payment</th><th>Amount received in (USD)</th><th>Date of MOU between India and respective country for the air traffic rights</th><th>Recipient Bank and Account No.</th><th>Name of Account Holder.</th></tr>
<tr><td>1.</td><td>Qatar Airways 27.02.09</td><td>USD 9,679,984</td><td>06.02.09</td><td>Bank of Singapore no. 401554</td><td>Asia Fields Limited</td></tr>
<tr><td>2.</td><td>Emirates through Rahim Ali 03.06.08</td><td>USD 23 Million</td><td rowspan="3">23.04.08</td><td>Bank of Singapore no. 402373</td><td>Gilt Asset Management</td></tr>
<tr><td>3.</td><td>Emirates through Rahim Ali 05.08.08</td><td>USD 11 Million</td><td>Bank of Singapore no. 402373</td><td>Gilt Asset Management</td></tr>
<tr><td>4.</td><td>Emirates through Rahim Ali 04.11.08</td><td>USD 11 Million</td><td>Bank of Singapore no. 401554</td><td>Asia Fields Limited</td></tr>
<tr><td>5.</td><td>Air Arabia 26.06.08</td><td>USD 5,874,980</td><td>09.06.08</td><td>Bank of Singapore no. 401554</td><td>Asia Fields Limited</td></tr>
</table>

5. The said amount was received in dollars which when converted into Indian Rupees comes to Rs. 272,01,93,483/-. Out of this total amount Rs. 127,69,23,483/- has been received in the

accounts of M/s Asia Field Limited and further investigation is underway to trace the flow of fund amounting to Rs. 144,32,70,000/- received in the accounts of Gilt Asset Management Limited from those airlines.

6. Money moved through various layers to finally land in M/s Wave Hospitality Pvt. Ltd., which finally acquired Hotel Holiday Inn, Aerocity, Delhi. Investigation indicated the commission of offence of PML Act as defined u/s 3 r/w section 70 punishable u/s 4 of the PML Act. The company of the petitioner M/s Track India Pvt. Ltd was linked to Qatar Airbase and Air Arbia to work as General Sales Agent which is the documentary evidence.

7. Proceeds of crime were transferred to M/s Asia Field Ltd. through various Indian and Offshore entities controlled and beneficially owned by petitioner viz Wave Index Pvt. Ltd., Asia Pack Alternative Investment Pvt. Ltd., IDFS Trading Pvt. Ltd. All these companies subsequently invested, in Wave Hospitality Pvt. Ltd. thus integrated the proceeds of crime, which was then utilized in acquiring hotel Holiday Inn, Aerocity, Delhi. The proceeds of crime were also laundered through M/s Gilt Assets Management Ltd.

8. I have heard the Ld. Sr. counsel for the petitioner and Ld. ASG for the respondent and given my due consideration to the matter.

9. The Ld. Sr. Counsel for the petitioner has argued on the lines of his bail application. He further urged that the petitioner is an international consultant and is engaged in felicitating foreign direct investment in India through various MNCs and business houses. It has been primarily argued by the Ld. Sr. counsel for the petitioner that the charge sheet in respect of the predicate offences has not been filed so far, therefore, the proceedings in the instant case rests on the presumption of commission of scheduled offence and the generation of “proceeds of crime” therefrom. It is further urged by the Ld. Sr. Counsel for the petitioner that there are no chances of petitioner absconding and fleeing from justice as his passport is already seized by the respondent. It is further urged by him that the investigation in respect of the petitioner is complete as per the respondent and therefore, there are no chances of the petitioner tampering with the evidence. It is further urged that the petitioner is in J.C. since 31.01.2019.

10. Ld. Sr. Counsel for the petitioner has relied upon the following judgments :

1. State of Maharashtra Vs. Nainmal P Unjali Shah and Another, (1969) 3 SCC 904.
2. Babu Singh & Others. Vs. State of U.P., (1978) 1 SCC 579.

3. Phoolan Devi Vs. The State of U.P. and Ors., 1997 All LJ 1883, 1997 SCC OnLine All 1140.

4. Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Another, (2004) 7 SCC 528.

5. Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40.

6. Nikesh Tara Chand Shah Vs. Union of India,(2018)11 SCC 1.

7. Sameer M. Bhujbal Vs. Assistant Director, Directorate of Enforcement and Anr., Bail Application No.286 of 2018.

8. Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement, M. CR.C. No.34201/2018.

9. Rohit Tandon Vs. Directorate of Enforcement, Bail Application No. 437/2018.

10. Upendra Rai Vs. Directorate of Enforcement, 2019 SCC Online Del 9086.

11. The respondent has filed reply to the bail application stating categorically that the applicant / petitioner has direct involvement in the commission of scheduled offence U/s 420/120B IPC. He being the middleman negotiated and lobbied with foreign airlines. It is further stated in the reply that the investigation in the case has revealed that bilateral meetings held between India and UAE/Qatar resulted in wrongful loss to Air India and substantial gain to the airlines of UAE/Qatar. It is further stated that the entities controlled by the petitioner directly or indirectly

received exorbitant amounts from the foreign airlines, namely Air Arabia, Qatar Airlines and Emirates, which are proceeds of crime. The petitioner owned and managed M/s Track India Pvt. Ltd which was the General Sales Agent for Qatar Airways and Air Arabia and there is ample evidence to show the complicity of the petitioner in the commission of offence of money laundering. It is further stated that the petitioner is the controller and beneficial owner of M/s Asia Fields Limited with his family and associates and this company has received proceeds of crime amounting to Rs. 127 crores approximately from foreign based airlines and these proceeds of crime have been placed, layered and integrated through various Indian and offshore entities and Hotel Holiday Inn, Aerocity Delhi has been acquired.

12. It is further stated in the reply that the investigation is ongoing in relation to the proceeds of crime laundered through M/s Gilt Asset Management Ltd. where the petitioner received Rs. 144 Crores approximately which amount is the proceeds of crime. It is further stated that the petitioner is an influential man and he took undue advantage of his proximity with various Government officials, public servants and politicians to obtain favourable air traffic rights for foreign airlines. It is stated that the petitioner has deliberately evaded the process of law in India and, has not co-operated in the investigation, his son has also evaded the process of law and took citizenship of Antigua and

Barbuda in October, 2017 to escape the law of land. It is further stated that the petitioner is involved in the commission of grave economic offence and his release on bail would be detrimental to further investigation which is at a crucial stage.

13. Ld. ASG for the respondent has relied upon the following judgments :

1. Prasanta Kumar Sarkar Vs. Ashish Chatterjee and Anr., [(2010) 14 SCC 496]
2. D.K.Basu Vs. State of W.B., [(1997) 1 SCC 416]
3. CBI Vs. Anupam J. Kulkarni, [(1992) 3 SCC 141]
4. Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Anr. [(2013) 3 SCC 77]
5. Royal Medical Trust and Anr. Vs. Union of India and Anr. [(2017) 16 SCC 605]
6. State of Bombay Vs. S.L.Apte [AIR 1961 SC 578]
7. Sangeetaben Manhendrabhai Patel Vs. State of Gujrat and Anr.[(2012) 7 SCC 621]
8. Sanjay Chandra Vs. CBI [(2012) 1 SCC 40]
9. Virupakshappa Gauda and Anr. Vs. State of Karnataka and Anr. [(2017) 5 SCC 406]
10. Vinod Bhandari Vs. Assistant Director, Directorate of Enforcement [Manu/MP/0618/2018]
11. Sameer M. Bhujbal Vs. Assistant Director, Directorate of Enforcement [Bombay High Court-Bail Application 286/2018]

12. Nikesh Tara Chand Shah Vs. Union of India & Anr. [(2018) 11 SCC 1]

13. Finance Act 2018

14. Y.S.Jagan Mohan Reddy Vs. CBI [(2013) 7 SCC 439]

15. CBI Vs. Vijay Sai Reddy [(2013) 7 SCC 452]

16. Nimmagadda Prasad Vs. CBI [(2013) 7 SCC 466]

17. State of Bihar and Anr. Vs. Amit Kumar [(2017) 13 SCC 751]

14. The Ld. ASG for the respondent has also argued on the lines of the reply /counter affidavit filed on behalf of the respondent to the bail application. He also submitted that the petitioner is a habitual offender and is accused of various cases in India and abroad. It has also been argued that the investigation qua the public servants is still underway and there is ample evidence to connect the money transferred in the account of M/s Asia Field Ltd. and Guilt Asset Management Ltd. with the petitioner and his son. He further urged that there is likelihood of petitioner / accused fleeing from justice and he is already tampering with the evidence despite being in custody. In support of this contention the Ld. ASG has sought to rely upon diaries of proceedings of investigation and handed over a copy of diaries of proceedings of investigation in a sealed cover to the Court for perusal while seeking to maintain confidentiality in respect of these diaries.

15. It is further submitted by him that the contention of the counsel for the petitioner that the investigation qua the petitioner is complete is misplaced as the petitioner is involved in a commission of grave offence and he is a key link to unearth the entire modus operandi adopted by him and his release on bail would be detrimental to the further investigation of the case which is at a crucial stage and if enlarged on bail, the petitioner would dispose of the proceeds of crime accumulated in the foreign bank accounts and offshore entities linked to the petitioner. It is further urged by the Ld. ASG that even though the passport of the petitioner is with the respondent still there are good chances of the petitioner fleeing from justice and not submitting himself to the Courts of Law in India which is evident from his past conduct and record of the investigation and also the fact that his son is already a citizen of Antigua and Barbuda.

16. I have perused the judgments relied upon by both the sides. There is no dispute with regard to the propositions of law laid down in the said judgments with regard to the grant and non grant of bail. However, every criminal case turns on its own facts and circumstances. As far as the question of the petitioner fleeing from justice and not submitting to the jurisdiction of the Courts/investigating agency cannot be brushed aside lightly, in view of the past conduct and record of the investigation and also

the fact that his son is a citizen of Antigua and Barbuda and is a co-accused in this case.

17. The gravity of the offence committed by the petitioner is quite evident from the material placed on record. In the instant case there are allegations against the petitioner of money laundering to the extent of Rs. 272,01,93,483/- out of which till date only an amount of Rs. 127,69,23,483/- could be unearth and further investigation is underway to trace the flow of rest of the fund amounting to Rs.144,32,70,000/- received in the accounts of Guilt Asset Management Limited.

18. During the course of the arguments, it has been urged by the Ld. Sr. counsel for the petitioner that as per the respondent, the investigation qua the petitioner is complete, however, this submission of the Ld. Sr. counsel has no force as the investigation in respect of other associates of the petitioner, other public servants and other properties involved in the money laundering is still in progress. In my opinion, the tentacles of the crime are so widespread and it is not that the investigation can be segregated in respect of one or the other accused, the entire crime committed is indeed interlinked.

19. The economic offences like the one in hand constitute a class part and they are not like other criminal cases and need to be visited with a different approach. Therefore taking note of huge

magnitude of conspiracy angle qua petitioner, it would be premature to jump to the conclusion that investigation in this case in respect of the petitioner is complete, rather huge amount of money is still to be trailed.

20. I have also gone through the diary of proceedings handed over by the ld. ASG during the course of the arguments and the perusal of the same shows that despite being in J.C. how the petitioner is still ruling the roost and is in constant touch with co-accused and interfering with the investigation. So when this is the clout of the petitioner that despite being in J.C. he is managing things then one can very well imagine what he can do once out on bail.

21. The Supreme Court in ***Rohit Tandon Vs. Directorate of Enforcement*** (2018) 11 SCC 46 while dealing with the bail plea in a money laundering case, has again reiterated that white collar crimes/economic offenders have deep rooted conspiracies involving huge amount of public funds and this should be viewed seriously and such offences ought to be considered as grave offences. Pertinently, the bail plea in the case of *Rohit Tandon (Supra)* was repelled by the Supreme Court while observing that duty of the Court at the bail stage is not to weigh the evidence meticulously but to arrive at a finding on the broad probabilities of the case.

22. So, in view of the discussions mentioned hereinabove, this Court is of the considered opinion that the petitioner is not entitled to the grant of bail, the bail application is, therefore, dismissed.

RAJNISH BHATNAGAR, J

SEPTEMBER 19, 2019

Sumant