

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

% Judgment delivered on: 07th January, 2019

+ BAIL APPLN. 2273/2018

SH. UPENDRA RAI

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION

....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Siddharth Aggarwal, Mr. Arujn Mukherjee, Mr. Arjun Dewan, Ms. Shanvi Dubey, Ms. Sowjanya Shankarna, Mr. S. Khan and Mr. Faraz Maqbool, Advocates.

For the Respondents : Mr. Nikhil Goel and Mr. Gurpreet Hora, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Petitioner seeks Regular Bail in FIR No.RC-217-2018 A 0003 dated 01.05.2018 under Section 120B, 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

2. Petitioner has been in custody since 03.05.2018.

3. Allegations against the petitioner are that during the period 2017 – 2018, the petitioner entered into a criminal conspiracy with one Sh. Prasun Roy, Chief Secretary Officer of M/s. Air One Aviation Pvt. Ltd. (Air One) and the top management of the Air One and unknown public servants of Bureau of Civil Aviation Security

(BCAS) and private persons with an intention to obtain Government passes on the strength of false information for gaining access/entry to restricted/secured /highly sensitive areas of national importance such as airports in India.

4. It is alleged that to obtain the Aerodrome Entry Pass, the petitioner showed himself as a permanent employee of Air One and obtained a temporary Airport Entry Pass. Subsequently, it is alleged that Sh. Prasun Roy projected the petitioner as a Consultant/permanent employee of Air One and sought renewal of temporary Airport Entry Pass. It is alleged that Air One forwarded the application of the petitioner for issuance of a permanent Airport Entry Pass and Bureau of Civil Aviation Security (BCAS) issued a permanent entry pass to the petitioner authorizing him access to Delhi Airport.

5. It is further alleged that in order to get an All India Entry Pass, the petitioner in conspiracy with Sh. Prasun Roy submitted an application falsely showing himself as Director Quality Control of Air One. It is alleged that BCAS is a party to criminal conspiracy who without verifying the genuineness of the record, issued a permanent Airport Entry pass authorizing him access to airports in India.

6. The complaint further alleges that the petitioner has received a total amount of Rs.1.02 crores in four installments from Air One Charters Pvt. Ltd., which indicated dubious transaction of pumping

tainted/ill gotten money into the system. It is further alleged that there is a credit and debit entry of approximately Rs.79 crores from his account and the petitioner is alleged to have received Rs.16 crores in one year from shell companies for bribing/fixing cases in Income Tax.

7. The complaint alleges that in view of the above facts, the petitioner in criminal conspiracy and connivance with Sh. Prasun Roy, M/s. Air One Aviation Pvt. Ltd and unknown public servants and private persons cheated BCAS and obtained fraudulently and dishonestly temporary and permanent Aerodrome Entry Pass and the petitioner has thus committed an offence under Sections 120B and 420 IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

8. Learned counsel for the petitioner submits that the petitioner is in custody since 03.05.2018 and investigation is substantially complete and charge sheet has already been filed against the petitioner under Section 120B read with Sections 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and substantial offence under Section 420 IPC.

9. Learned counsel for the petitioner submits that insofar as the investigation is concerned, the evidence, which is mostly in the form of documents, has already been collected and is in the custody of the prosecution and, as such, there is no further necessity of incarceration of the petitioner.

10. It is contended that in the charge sheet dated 31.07.2018, the prosecution has contended that the investigation insofar as the financial transactions is concerned is still under progress. Learned counsel for the petitioner submits that after 31.07.2018, apparently, there has been no further investigation carried out with regard to his role and involvement in the said financial transactions.

11. Learned counsel for the petitioner submits that insofar as offence of forgery is concerned, CFSL report does not indicate that it is the petitioner who has forged the signatures, on the contrary, it is stated in the CFSL report that one of the co-accused is alleged to have forged the signatures.

12. Learned counsel for the petitioner further contends that insofar as public servants are concerned, the Ministry of Civil Aviation has denied sanction on the ground that it is not a fit case for sanction for prosecution. Learned counsel for the petitioner further submits that since sanction has not been granted against any public servants, prosecution of the petitioner under the provisions of Prevention of Corruption Act, 1988, is unwarranted.

13. Learned Special Public Prosecutor appearing for CBI has contended that investigation into the financial transactions is still underway and enlarging the petitioner on bail at this stage is likely to affect the same. Strong reliance is placed on the judgment of this Court dated 04.09.2018 in CrI.M.C.3238/2018 to contend that this

Court has *prima facie* held that nature of allegations showed that further investigation was warranted and apprehension of CBI that the accused may influence witnesses was justified.

14. I am unable to accept the contentions of the learned Special Public Prosecutor appearing for CBI placing reliance on the judgment of this court dated 04.09.2018 in Cri.M.C.3238/2018. Said Petition in which judgment dated 49/2018 was delivered was a petition filed by the prosecution CBI impugning order dated 08.06.2018, whereby, the Trial Court had granted bail to the petitioner. Said petition pertained to the validity of order of the Trial Court dated 08.06.2018. The observations in judgment dated 04.09.2018 were in context of the observations/findings of the Trial Court in its order dated 08.06.2018.

15. It may be noticed that the investigation when the order impugned in Cri.M.C.3238/2018 was passed was at the nascent stage. Thereafter, the investigation had been concluded at least insofar as the offence of obtaining Airport Entry Pass was concerned and charge sheet had been filed on 31.07.2018. Charge sheet does mention that the investigation with regard to the role of Sh. Prasun Roy and other public servants in wrongful issuance of Airport Entry Pass to the petitioner continues and the investigation with regard to suspicious financial transactions carried out by the petitioner continues and the investigation has been kept open under the provisions of Section 173(8) Cr.P.C.

16. It may be seen that the charge sheet was filed on 31.07.2018. Further, 5 months have passed since the charge sheet was filed. Subsequently, sanction has not been accorded for prosecution by the Ministry of Civil Aviation, the competent authority. Denial of sanction by the competent authority, i.e., the Ministry of Civil Aviation is based on the advice given by the CVC.

17. With regard to the apprehension expressed by the prosecution that the petitioner may influence witnesses, it may be seen that a Coordinate Bench of this Court in Bail Appln.2326/2018 titled *Upendra Rai vs. Central Bureau of Investigation* has granted bail to the petitioner in case FIR No.RC-217-2018 A0004 CBI-AC-II under Sections 120B/384 IPC and Sections 8 of Prevention of Corruption Act, 1988 and the Court has observed that no material has been placed on record to show that the petitioner has been influencing the witnesses in the said FIR.

18. Even before this Court, apart from relying on the observations contained in judgment 04.09.2018 of this Court, no other material has been relied on by the prosecution to show that the petitioner has attempted to influence investigation or the witnesses. As noticed above, the observations of this court in judgment dated 04.09.2018 were *prima facie* in nature and were in context of the observations of the Trial Court, as contained in the order impugned by the prosecution in CrI.M.C.3238/2018.

19. Without commenting on the merits of the case and keeping in view of the totality of facts and circumstances of the case and considering the fact that the petitioner has been in custody for over 8 months and the trial is likely to take some time, I am satisfied that petitioner has made out a case for grant of regular bail.

20. Accordingly, on petitioner furnishing a bail bond in the sum of Rs.1 lakh with two sureties of the like amount to the satisfaction of the Trial Court, petitioner shall be released on bail, if not required in any other case. Petitioner shall not do anything which may prejudice the investigation, trial or the prosecution witnesses. The petitioner shall not leave the country without the permission of the Trial Court. In case of change of the residential address, the petitioner shall intimate the same to the Trial Court by way of an affidavit. The petitioner shall also join investigation as and when so required by the Investigating Officer.

21. Petition is disposed of in the above terms.

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

SANJEEV SACHDEVA, J

JANUARY 07, 2019
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