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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 9th September, 2020

Decided on: 24th September, 2020

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BAIL APPLN. 1907/2020

SUKASH @ SUKESH CHANDRASHEKAR Petitioner

Represented by: Mr.Mukul Rohatgi and Mr.Parag P. Tripathi, Sr.Advocates with Mr.Mahesh Agarwal, Mr.Vishal Gosain, Mr.Mayank Tripathi, Mr.Ankur Saigal, Mr.Himanshu Satija, Ms.Mishika Bajpai and Ms.Megha Bhal, Advocates.

versus

STATE OF NCT

..... Respondent

Represented by: Mr.Rahul Mehra, Standing Counsel with Ms.Meenakshi Chauhan, APP and Mr.Chaitanya Gosain, Advocate for the State with Inspector Ritesh, and SI Dheeraj (IO), Crime Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, petitioner seeks bail in case FIR No.166/2017, under Sections 170/120B/419/468/471 IPC registered at PS Crime Branch, Delhi.
2. The allegations against the petitioner in the said FIR registered on the complaint of D.Karthikeyan, Assistant Commandant, TSP, 8th Battalion, New Delhi are that a complaint was received from the control room by TSP, 8th Battalion informing that a telephone call had been received on the telephone No.011-28520415 functioning in the control room and the caller introduced himself as one Sarvana Kumar, IAS and serving in the Ministry of Home Affairs as Secretary. The call was received on 25th June, 2017 at

11.00 hours from the mobile No.7838650496 wherein the caller introduced himself as Mr.Sarvana Kumar, IAS working as PS to Hon'ble Minister of Law and Justice Thiru Ravi Shankar Prasad. He informed that he has been given this number by Tamil Nadu Police ADGP (L & O) Thiru J.K. Tripathi, IPS. The aim of the caller was to influence the senior officers of TSP, 8th Battalion and to instruct them to favour the prisoner by the name Sugesh Chandra Shekhar who is lodged in Central Jail No.01, at Tihar Jail. The manner and content of the call raised suspicion in the mind. Thus a sub-inspector was sent to the office of Dr. N. Sarvana Kumar, IAS to verify the call. Dr. N. Sarvana Kumar clarified that he has neither made any such call nor was he aware of any such inmate in Tihar Jail. The incident was brought to the notice of Director General (Prisons). Further on 7th July, 2017 the Commandant got a call from the office of ADGP (Admin) Chennai stating that one IAS officer by the name of Thiru Sarvana Kumar wants to talk to him. D. Karthikeyan, the commandant called on the mobile number given to him, that is, 9069587231. The person on the phone introduced himself as Sarvana Kumar, IAS, PS to the Minister of Law and Justice GOI, and stated that one accused lodged in Central Jail-01, Tihar Jail by name Sugesh Chandra Shekhar is close to the Hon'ble Minister. The Minister desires that inmate Sugesh Chandra Shekhar shall be well taken care of by Tamil Nadu Special Police as he is in high security ward which is manned by Tamil Nadu Special Police. The Commandant requested for an appointment with Thiru Sarvana Kumar, IAS to call on him since he is a senior officer. The request was politely declined. On suspicion, the commandant verified the genuineness of the phone call by directly contacting the office of Dr. N. Sarvana Kumar, IAS which later issued one

letter addressed to him which letter was attached with the complaint. It was thus requested that necessary action be taken to access the identity of mobile No.7838650496 as well as the caller who introduced himself on the fake identity and to take legal action against the caller.

3. After eight months of the registration of the FIR on 20th September, 2017 the petitioner was summoned and produced before the learned Trial Court on 23rd May, 2018 as he was already in custody in other matters when the Investigating Officer filed an application for police custody which was granted. On 23rd May, 2018 the petitioner was thus formally arrested in the above noted FIR and is in custody since the said period except for a period of custody parole which was granted to him which as per the order of the Division Bench of this Court is required to be excluded.

4. The petitioner had earlier also filed bail application before this Court in the above noted FIR which was permitted to be withdrawn after arguments on 10th December, 2018.

5. Learned Senior Counsel for the petitioner contends that the offence under Section 170 IPC is at best punishable upto two years and the petitioner has been in custody in the present case for more than 22 months excluding the period of custody parole. Further there is no evidence with the prosecution to prove the charges under Sections 419/468/471 IPC hence, the petitioner is entitled to bail. It is further contended that though the case of the prosecution is that on the search made in the cell of the petitioner at Tihar Jail, mobile phones were recovered however, there is no recovery from the petitioner. The allegations of recovery are vague. Further the IMEI numbers of the mobile phones recovered do not tally with the IMEI number of the two phones allegedly used in the incident, that is,

7838650496 and 9069587231. Only a statement of Sita Ram Meena, purportedly a member of the escort team with the petitioner was recorded however, no supporting document that he was accompanying the petitioner on his outstation Court production when the team departed from Delhi on 20th June, 2017 has been placed on record. There are infirmities in the statement of Constable Sita Ram Meena as he had not seen the petitioner changing the SIM in his mobile handset. In his supplementary statement he changes his version and states that he had a discussion with the petitioner and had allowed him to insert the SIM. The IMEI number of the cell phone allegedly recovered from Constable Sita Ram Meena does not tally with the IMEI number as per the call details. Statement of HC Moovendham is also not reliable. The same is full of contradictions. In his statement under Section 161 Cr.P.C. he does not say that the person who introduced himself as Shri Sarvana Kumar, IAS mentioned that he was PS to Hon'ble Law Minister. It also does not state that the UTP was close to the Hon'ble Law Minister. Further HC Moovendham does not even speak about the information about the mobile number 9069587231. No statement of D. Karthikeyan and Sarvana Kumar has been recorded under Section 161 Cr.P.C. The letter purportedly written by Sarvana Kumar to Abhishek Dixit, Commandant is only a photocopy and hence inadmissible in evidence. Further even Abhishek Dixit has not been cited as a witness. There is no evidence that Jerin is a co-accused in the present FIR or that the petitioner entered into a conspiracy with Jerin. In case the petitioner met Jerin in the jail, the same would be a document in the Tihar jail record and no such document has been filed on record. In any case the confessional statement of the petitioner based whereon a conspiracy is stated to have been hatched

is not admissible in evidence. There is no evidence on record that the petitioner either forged the documents to obtain the mobile phones on fake identity or that he entered into a conspiracy. Relying upon the decision reported as 2018 (7) SCC 581 Sheila Sebastian vs. R. Jawaharaj it is contended that when the petitioner is not the maker of the forged document, no charge of forgery can be imposed on the petitioner. The bias sought to be created against the petitioner that he sought to influence the Judge is also incorrect. The wife of the petitioner is suffering from cancer and is undergoing treatment for which the petitioner was granted custody parole and the petitioner has not misused the same. In fact the conduct of the police officers in conducting themselves before the various Courts was not appropriate and had to be thus commented by the learned Additional Sessions Judge.

6. Status report and additional status reports have been filed by the State. While reiterating the contents of the FIR it is contended on behalf of the State that during the course of investigation it was revealed that three mobile numbers/SIM cards (7838650496, 7838657126 and 9069587231) were used for making fake calls and the caller introduced himself as Mr.Sarvana Kumar, IAS, PS to Hon'ble Minister of Law and Justice, Government of India. Customer Application Form (CAF) and call detail record (CDR) of the alleged mobile numbers were sought from the concerned service providers and analysed. The IMEI search of the three mobile/SIM cards was made and it was revealed that they were used in five different mobile instruments. It was found that for the SIM card No.7838650496, IMEI number 358803078432800 was used which handset was found running on another mobile number/SIM number, that is, 9024456781. The CAF details

of mobile No.9024456781 revealed that the same was issued in the name of Sita Ram Meena who was working in the 3rd battalion and on further analysis it was found that when the call was received in TSP Control Room, the petitioner was on outstation production with DAP 3rd battalion staff for being produced before the Coimbatore Court and one constable Sita Ram Meena was member of the escorting team which departed with the petitioner on 20th June, 2017 and returned back on 25th June, 2017. Thereafter statement of Constable Sita Ram Meena was recorded who stated that Sukesh requested him several times to make call to his family and he had given his mobile handset on humanitarian grounds. This is further evident from the call detail records that number of calls were made to and from Kerala. Further investigation revealed that out of the five mobile instruments used two were recovered from the cell of the petitioner in Tihar Jail, one instrument belonged to Constable Sita Ram Meena however, two mobile instruments could not be traced. Out of the contacts made at Kerala and Karnataka one of the contacting number was 9661102033 which belongs to Ms.Leena wife of the petitioner as per true caller application on search. The said number was common in all the alleged three mobile numbers, that is, 7838650496, 7838657126 and 9069587231 as per the CDR analysis. Further the contacts at Delhi were with the advocates and legal service providers.

7. When the first incident took place on 25th June, 2017 at 11.00 hours petitioner was on outstation production and the number 7838650496 was also moving on the same outstation production. When the second incident took place on 7th July, 2017 the petitioner was again on outstation production and had departed from Delhi on 4th July, 2017 and came back on

9th July, 2017.

8. In the status report and during course of arguments the conduct and previous involvements of the petitioner have been highlighted by the learned Standing Counsel who states that besides the present case, the petitioner is involved in 20 other cases. It is stated that in view of the findings by this Court in other cases against the petitioner that there is every apprehension of his tampering with evidence and that if released on bail the petitioner is likely to interfere and hamper the trial, the petitioner be not granted bail. It is stated that the petitioner is a habitual offender and tries to manipulate the entire system. The allegations against the petitioner in four FIRs registered by the Crime Branch are serious in nature. In the first FIR, petitioner took money to influence the Election Commission, in the second he tried to influence the learned Special Judge by making a phone call impersonating himself as the Hon'ble Judge of the Supreme Court, in the third one he has impersonated as PS to the Hon'ble Law Minister to ensure that the petitioner gets benefits in the Jail and in the fourth one when taken on outstation duty he influenced the escorting team and instead of going by the train as prescribed, he went by air along with the escort team and at Bangalore he was found roaming in a Mall with co-accused Jerin which had been captured in the CCTV footage.

9. Further the jail conduct of the petitioner is not satisfactory as number of mobile phones and SIM cards were recovered from his cell besides other punishments being awarded to him. The ingredients of the offences are clearly made out as statement of Smt. Premwati was recorded who stated that though her identification was used to obtain the SIM No.7838650496 however, she never applied for the same and never used the same. It is thus

evident that on the strength of forged documents, SIM cards were obtained by the petitioner and used. .

10. It is trite law that the salient aspects to be considered while grant of bail are the gravity of offence, nature of allegations against the accused, likelihood of the accused not being available for trial and the likelihood of tampering with the evidence and influencing the witnesses if released on bail.

11. As regards the first consideration of the seriousness of the offence is concerned, argument of the learned counsel for the petitioner is that the petitioner has been in custody for more than 22 months excluding the period of custody parole granted to him and the maximum sentence that can be awarded for an offence punishable under Section 170 IPC is two years' imprisonment and for offence punishable under Section 419 IPC is three years' imprisonment and the petitioner having undergone substantial portion of the said sentence as an undertrial prisoner, the petitioner is entitled to be released on bail. As regards the offences punishable under Sections 468 IPC and 471 IPC are concerned which are punishable upto 7 years of imprisonment, case of the petitioner is that there is no evidence against the petitioner in respect of the said offence.

12. The present FIR relates to the allegations against the petitioner of impersonation as Mr. Sarvana Kumar, IAS, PS to the Hon'ble Minister of Law and Justice, Govt. of India and influencing the senior officers of the 3rd Battalion for ensuring special favours to the petitioner and that he be taken care of. From the statement of Sita Ram Meena and the mobile phone call records, it is evident that his handset was used for the SIM No. 7838650496 while the petitioner was taken for an outstation production from Delhi on

20th June, 2017 and returned back on 25th June, 2017. The relevant call was made on 25th June, 2017. The mobile phone seized from Sita Ram Meena on which the SIM No.7838650496 was used, was a cell phone make Samsung-Duo colour dark Blue Silver with IMEI Nos.358802078432801 and 358803078432809. While using the SIM numbers, not only call was made to the Control Room of the 3rd Battalion at Tihar Jail but also at various places in Kerala during outstation production period. The petitioner having utilized this SIM card purchased on the strength of forged documents and being the beneficiary of the said transaction and Section 120B IPC having been invoked, the petitioner cannot claim that offences punishable under Sections 468 IPC and 471 IPC are not made out which entail a punishment which extends to a period of 7 years' imprisonment. Though learned counsel for the petitioner has sought to contend that no documents have been placed with the charge sheet to show that Sita Ram Meena was part of Escort Team, though, this would be an issue to be looked into at the stage of trial, however, the fact remains that the Investigating Agency has collected the CDRs and CAF details of the handset No. 358802078432800. The CDR of the said handset reveals that the same is moving in the same direction where the petitioner was taken, thereby, showing the presence along with the petitioner. Further, the CDRs of the handset also reveal use of mobile No.7838650496 which was used to make the phone call to the landline number of the Tamil Nadu Special Police Control Room at Central Jail, Tihar on 25th June, 2020 at 11:00 hours and that the said SIM card was recovered from the Cell in the Tihar where the petitioner was lodged on the search being made.

13. Further, the SIM card with the mobile No. 7838650496 was found to

be obtained in the name of one Ms. Premwati and on investigation, she revealed that though her identity documents have been used for obtaining the mobile phone, however, she has neither purchased the said SIM card nor has she ever used the said number. Further, the CDR locations of the mobile SIM Numbers 7838650496, 7838657126 and 9069587231 also show their use being from the cell tower of Tihar Jail and numbers contacted were the numbers at Kerala and Karnataka. One of the contact number common in the CDRs of these three mobile numbers is 9661102033 which belongs to Ms. Leena, wife of the petitioner. In respect of the second incident of making a phone call on 7th July, 2017, the petitioner was again on an outstation production and had departed with the police staff of DAP 3rd Battalion from Delhi on 4th July, 2017 and came back on 9th July, 2017. The mobile number used i.e. 9069587231 also moved enroute the route taken by the Escort Team with the petitioner.

14. Considering the investigation carried out and even if no statements of N. Saravana Kumar, PS to the Hon'ble Minister of Law and Justice and the ADGP, Tamil Nadu police have been recorded under Section 161 Cr.P.C., at this stage this Court is of the prima facie opinion that there is sufficient material on record in the form of scientific evidence and statements of other witnesses that the petitioner has committed offences punishable not only under Sections 120B IPC and 491 IPC but also under Sections 468/471 IPC read with Section 120B IPC. Thus, the offences in which the petitioner is involved being punishable upto 7 years' imprisonment, it cannot be said that the petitioner having undergone substantial sentence, he should be released on bail.

15. This brings this Court to the second limb of the arguments of the

parties in respect to the conduct of the petitioner as to whether, he would flee from justice and/or whether there is any likelihood of his tampering with the evidence. As per the record, the petitioner is involved in 20 other cases besides the present one. De-hors the FIR registered at Mumbai and other States in the country, as per the status report, the petitioner is involved in four FIRs registered at Delhi. The first of such FIR was FIR No. 56/2017 under Sections 467/468/471/474/201/170/120B IPC and Section 8 of the Prevention of Corruption Act registered at P.S. Crime Branch. In the said FIR, the allegations against the petitioner were of recovery of ₹1.30 Crores from the raid conducted at the room of the petitioner when recoveries of identity cards, credit cards, cards of being Member of Parliament which were fake, were made. On the strength of these cards, the petitioner had access of the Parliament area and railway besides other facilities. A Mercedes car recovered from the petitioner also had a sticker of Member of Parliament affixed. The said FIR was registered on the allegations against the petitioner of taking money in order to influence the Election Commission for granting two leaf symbols to a particular candidate. After the petitioner was arrested in FIR No. 56/2017, the petitioner was further involved in FIR No. 100/2017 under Sections 170/189/507/34 IPC registered at P.S. Sabzi Mandi when the petitioner took the mobile phone of the guard accompanying him to the Court for production and made a phone call to the learned ACMM so as to show favour to the petitioner impersonating himself to be a Judge of the Hon'ble Supreme Court. Thereafter, the petitioner was arrested in FIR No.186/2017 registered at P.S. Crime Branch wherein the allegations against the petitioner were that when he was taken to Bangalore, Coimbatore and Mumbai for investigation, he

took the police staff by air which was contrary to the Rules applicable for production of prisoners to outstation and thereafter, the petitioner was found moving around in a Mall with the co-accused Jerin, who is yet to be arrested which has been captured in the CCTV footage of the Mall. Subsequent to the said FIR, the petitioner has been arrested in the abovenoted FIR No.166/2017 under Sections 170/120B/419/468/471 IPC registered at P.S. Crime Branch wherein, he was found impersonating himself as PS to Hon'ble Minister of Law and Justice.

16. In view of the continuous course of conduct of the petitioner in interfering with the administration of justice, this Court finds no ground to grant bail to the petitioner.

17. Petition is dismissed.

18. Copy of the order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2020

'vn/akb'

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