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

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Reserved on: 31.10.2023

Pronounced on: 03.11.2023

+ **BAIL APPLN. 1683/2022**

RAJEEV JHAWAR

..... Petitioner

Through: Mr. N. Hariharan, Sr. Advocate along with Mr. Rajiv Shanker Bhatnagar, Ms. Punya Rekha Angara, Mr. Siddharth Yadav, Mr. Anshuman Mohit Chaturvedi, Mr. Uddeshya Singh, Mr. Prateek Bhalla, Mr. Sharian Mukherji, Mr. Mueed Shah and Ms. Parul Yadav, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Jeevesh Nagrath, SPP for CBI along with Mr. Arjun Gaur and Mr. Rajat Gupta, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

CRL.M.A. 13598/2022 (for extension of time to comply with the directions issued vide order dated 08.06.2022)

1. The instant application under Section 482 of the Code of



Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking extension of time to comply with the directions issued by this Court *vide* order dated 08.06.2022 in Bail Application No. 1683/2022.

2. At the outset, this Court deems it necessary to briefly discuss the facts of the present case which are that an information was received by CBI that Sh. N.M.P. Sinha i.e. Ex. SP, CBI, New Delhi, in conspiracy with Sh. Vinay Jalan, Sh. Parth Jalan, Sh. Rajiv Jhawar (applicant) i.e. M.D. of M/s. Usha Martin Ltd., Sh. Raj Kumar Kapoor i.e. Authorized Signatory of M/s. Usha Martin Ltd., and other unknown persons were trying to influence the investigation of the case of CBI registered vide RC17(E)/2016 dated 20.09.2016 under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act and Section 420/120B of Indian Penal Code, 1860, by EO-II Branch, New Delhi against I. D. Paswan, the then Director (Mines), Govt. of Jharkhand, M/s. Usha Martin Ltd. and other unknown persons. The allegations are that Sh. N.M.P. Sinha was the Supervisory Officer of the aforesaid case before his retirement on 31.08.2020, and Sh. Raj Kumar Kapoor was representing M/s. Usha Martin Ltd. on behalf of Sh. Rajiv Jhawar. As alleged, they were actively pursuing the case through Sh. Vinay Jalan who had assured them that he will get the investigation moulded in their favour through his contacts in CBI. On 23.09.2020 Sh. N.M.P. Sinha had met Sh. Vinay Jalan at hotel ITC Mourya, New Delhi for three-four hours and in his presence, Sh. Vinay Jalan had asked his son Parth Jalan to prepare a reply to the summons issued by CBI to M/s. Usha



Martin Ltd. and asked him to meet Sh. N.M.P. Sinha on his next visit to New Delhi. Sh. N.M.P. Sinha also had conversation with Sh. Parth Jalan. It was informed to CBI that Sh. Vinay Jalan will deliver bribe of Rs. 20 lakhs to Sh. N.M.P. Sinha to get the work done. On the basis of this information, present case was registered vide RC AC-1/2020/A0004, dated 02.10.2020, at CBI/AC-I, New Delhi under Section 7-A/8/9/10/12 of PC Act, 1988. During investigation, a trap was laid and the accused persons namely Sh. N.M.P. Sinha and Sh. Vinay Kumar Jalan were arrested and an amount of Rs. 25,00,000/- and an amount of Rs. 5,12,000/- was recovered respectively from their possession. After completion of investigation, a chargesheet was filed on 01.12.2020 against accused namely (1) Nripendra Mohan Prasad Sinha @ N.M. P. Sinha, (2) Vinay Kumar Jalan, (3) Rajiv Jhavar, (4) Raj Kumar Kapoor, (5) M/s. Usha Martin Ltd. and (6) Hemant Joshi, under Sections 120B of IPC read with Sections 7/7A/8/9/10/12 of PC Act, 1988 and substantive offences u/s 9 and 12 of PC Act, 1988. After filing of the chargesheet, the present applicant had preferred an anticipatory bail application before the learned Trial Court.

3. The anticipatory bail application filed by the applicant Rajeev Jhavar was dismissed by the learned Trial Court *vide* order dated 17.05.2022, after which the petitioner had filed the above-captioned bail application bearing no. 1683 of 2022, seeking pre-arrest bail on account of his apprehension of being arrested in RC AC-1/2020/A0004.

4. By virtue of order dated 02.06.2022 (corrected vide order



dated 03.06.2022), this Court had disposed of the bail application filed by the petitioner with the following directions, *inter alia*, to join investigation on 09.06.2022:

“...4. Considering the rival submissions of the learned counsels for the parties, it is ordered that the petitioner will join investigation on 09.06.2022 at 11.00 a.m. and will present himself before the Investigating Officer (IO) at CBI Headquarter, Delhi. It is also ordered that in the event of his arrest, he will be given 7 (seven) days’ prior notice.

5. It is stated by Ms. Chauhan, learned SPP that the IO will ensure that concerned authorities are apprised of today’s order with regard to the LOC..”

5. Thereafter, the petitioner had filed a Crl. M.C. No. 11938/2022, in the present bail application, seeking extension of time to join the investigation, and this Court *vide* order dated 08.06.2022 had disposed of the said application by way of following observations:

“4.0 In view of the aforesaid reasons i.e. the petitioner is required to make arrangement for supervision of medical treatment/health of his father at Singapore, the present application is allowed. The petitioner by way of last opportunity, is granted extension of time till 30th June, 2022. Let the petitioner join investigation on 1st July, 2022 at 11.00 a.m. and will present himself before the Investigating Officer (IO) at CBI Headquarter, Delhi. It is directed that in the event of his arrest, petitioner shall be given seven days' prior notice and the IO will ensure that concerned authorities are apprised of today's order with regard to the LOC. It is made clear that no further extension of time shall be granted to the petitioner...”

6. Thereafter, the petitioner had again filed an application *vide* Diary No. 1063583/2022 seeking further extension of time, on the ground that Usha Martin Limited had filed an Interlocutory



Application bearing No. 86863 of 2022 before the Hon'ble Apex Court seeking clarification of an earlier order of Hon'ble Apex Court, *vide* which interim protection had been granted to Usha Martin Limited, to the extent that such protection be also extended to its directors/employees including the petitioner herein. However, this application, as per the petitioner, remained in defect and had become infructuous.

7. The present application was thus preferred by the petitioner and it was averred that the petitioner has cooperated with the investigating agencies and has duly responded to all the summons issued to him, but due to certain procedural exigencies and the pendency of the Interlocutory Application before the Hon'ble Supreme Court, the petitioner was unable to join the investigation before the Investigating Officer on 01.07.2022. as directed by order dated 08.06.2022.

8. Thus, it has been prayed that present application be allowed and petitioner be allowed to join investigation by granting extension of two weeks w.e.f. 22.07.2022 in relation to the present RC registered by the CBI.

9. Learned Senior Counsel for the applicant argues that between the period 06.10.2020 to 31.10.2020, the CBI had issued three notices under Section 41A of Cr.P.C. to the applicant to join investigation and each notice was duly responded highlighting that the applicant had been residing in Singapore since 14.03.2020 and due to his and his father's medical condition, he had sought time to appear before the I.O. through Video Conferencing. It is stated that however, the



said application seeking permission to join investigation through Video Conferencing was rejected by the learned Trial Court *vide* order dated 08.12.2021, alongwith the rejection of application filed by CBI for issuance of Non-Bailable Warrants against the applicant. It is stated that in such circumstances, the applicant had sought time to join investigation by travelling to India and, therefore, the application for grant of pre-arrest bail was moved as he apprehended arrest upon his appearance before CBI, but his bail application filed in January, 2021 was rejected by the learned Trial Court *vide* order dated 17.05.2022. It is argued by learned Senior Counsel that the perusal of the contents of present RC along with documents will reveal, on face of it, that no offence under Sections 7/8/9/10 and 12 of PC Act read with Section 120B of IPC is made out against the applicant. It is stated that admittedly, the meeting with the ex-CBI Officer and co-accused Mr. Jalan had taken place in September, 2020 i.e. after the retirement of the ex-CBI Officer when he was no more a public servant. It is also stated that the applicant had never contacted the co-accused Mr. Sinha at any stage and therefore, he did not try to influence CBI qua its investigation being conducted in the FIR/RC of the year 2016. It is stated that accused no. 1 and 2 in the present RC have already been granted bail *vide* orders dated 26.11.2020 and 01.12.2020 respectively by the learned Trial Court. It is stated that the I.O. had submitted that no coercive steps will be taken against accused Parth Jalan before the learned Trial Court at the time of hearing of his anticipatory bail application and he was never arrested by CBI. It is stated that the present applicant has duly cooperated



with CBI and had replied to the notices received from CBI and is willing to join investigation at any point of time. It is submitted that present application seeking extension of time to join investigation had been filed by the petitioner since he was unable to join investigation on 01.07.2022 due to certain procedural exigencies and pendency of an interlocutory application before the Hon'ble Apex Court. It is also argued that chargesheet already stands filed and the learned Trial Court has already taken cognizance of the offence against the present accused/applicant and, therefore, it is apparent that there is no request even by the CBI for custodial interrogation or any need for the applicant to join investigation and, therefore, bail be granted to the present applicant without any condition.

10. Learned SPP for the CBI, on the other hand, argues that in this case, the present accused/applicant has not complied with any order of this Court *vide* which he was asked to join investigation *vide* order 02.06.2023 and 08.06.2022. It is also stated that despite being given multiple opportunities to join investigation, the present applicant without any reason or ground has not joined investigation, and despite his own fault of not joining investigation, now he wants to take plea that chargesheet had already been filed and now cognizance has been taken, therefore, he is not needed for investigation. It is also submitted that the contentions raised by the learned Senior Counsel regarding the public servant concerned having retired before the meeting taking place between the accused persons cannot be appreciated at this stage in this application since this Court is not deciding any petition for quashing of RC or chargesheet but only



hearing arguments on an application for extension of time to comply with the order passed in the present anticipatory bail application. Learned SPP for CBI also draws attention of this Court to para no. 16.25 and 16.27 of the chargesheet and states that investigation qua the present applicant is still pending and this fact is mentioned in the chargesheet itself. It is, therefore, prayed that since he has not joined investigation despite several notices issued against him, and the anticipatory bail has been moved by the accused/applicant after NBWs having been obtained, his request for any extension should be rejected.

11. Learned Senior Counsel for the applicant, on the other hand, counters the arguments of learned SPP for CBI and states that though an application for grant of pre-arrest bail had been filed before this Court by concealing this fact that the CBI had obtained NBWs during the said duration from the learned Trial Court, however, the learned Trial Court exercising its own discretion had deferred passing any order for execution of NBWs and the learned counsel for the accused had not requested the learned Trial Court not to act upon the NBWs and their execution.

12. This Court has heard arguments addressed by learned Senior Counsel for the applicant and learned SPP for the CBI and has gone through the material placed on record.

13. Having perused the case file, this Court is of the view that in this case, the chargesheet was filed by the CBI in RC AC-1/2020/A0004 on 01.12.2020. This Court also notes that cognizance of the offence was taken by the learned Trial Court on 15.09.2022.



The chargesheet mentions that the investigation is pending against the present accused/applicant for want of certain documents and investigation will be carried out under Section 173(8) of Cr.P.C. The relevant portion of chargesheet i.e. para no. 16.25 reads as under:

“16.25 That two purported documents (i) unsigned copy of Supplementary Final Report Part-II of Dr. Padmini Singh, Sr.PP in RC-17 (E)2016-EO-II and (ii) unsigned copy of Supplementary Final Report Part - I of Shri Surender Singh, Dy.SP, EO-II in RC-17(E)2016-EO-II were recovered and seized from the residence of accused Hemant Joshi. Investigation with regard to creation of these documents and supply of these documents to the accused persons is not yet complete due to non-availability of accused Rajeev Jhavar, who had obtained these documents. Further, role of Parth Jalan (FIR named accused No.3) and other public/private persons also remain to be ascertained. Therefore, further investigation has been kept open U/s. 173(8) of Cr.P.C for which necessary permission may kindly be granted.”

14. However, para 16.27 of the chargesheet mentions as under:

“16.27 That it is, therefore, humbly prayed that the Hon'ble Court may graciously be pleased to summon above mentioned accused persons namely S/Shri N.M.P. Sinha (A-I), Vinay Kumar Jalan (A-2), Rajeev Jhavar (A-3), Raj Kumar Kapur (A-4), Mis. Usha Martin Limited (A-S) through its Managing Director Rajeev Jhavar (A-3) and Hemant Kumar Joshi (A-6) and to try them in accordance with law...”

15. It is not in dispute that the present accused had obtained orders from this Court for joining investigation on two occasions but he has not joined investigation on either of the occasions. However, this Court is of the opinion that at this stage, the conduct of the applicant as well as the fact that CBI had filed chargesheet and cognizance has now been taken against the present applicant have to be considered while passing the order on the present application.



16. This Court while balancing the rights of the accused as well as taking note of the conduct of the accused and the fact that CBI had filed chargesheet and cognizance has been taken against the present accused/applicant is inclined to pass the following orders.

17. This Court has kept in mind the fact that the custodial interrogation of the applicant was required and investigation qua him was pending when the chargesheet was filed. But in such circumstances, the CBI could have requested the learned Trial Court to defer taking of cognizance against the present applicant or could have even made a choice of not filing any chargesheet against the present applicant, but to the contrary, vide para 16.27, the CBI had requested the learned Trial Court to summon the applicant. It is very strange that on the one hand, CBI was opposing grant of anticipatory bail and were obtaining NBWs against the present applicant, and on the other hand, they have filed chargesheet against the applicant herein and have not opposed taking of cognizance against him. Taking of cognizance against an accused is on the basis of incriminating material collected by the investigating agency against a particular accused. This Court, therefore, finds itself in a situation where chargesheet stands filed against the present applicant without arrest and cognizance stands taken against him. But on the other hand, this Court also cannot ignore the fact that accused did not join investigation even after grant of two opportunities by this Court. However, during the course of arguments, even though it was inquired, no explanation could come from the side of CBI as to what was the urgency for filing the chargesheet in this case if investigation



against the present accused/applicant was pending. Para no. 16.25 that was referred to by the learned SPP for CBI reflects that it has only been mentioned in the said paragraph that some documents are in the custody of accused no. 3 i.e. present applicant and some investigation is yet to take place against him.

18. In these circumstances, as discussed above, this Court is inclined to direct that the present applicant will join investigation within ten days. In case of event of arrest, the applicant herein will be given seven days time to seek his legal remedies.

19. It is also made clear to the applicant that in case on this occasion, he fails to join investigation within the stipulated time, he will not be entitled to seek pre-arrest bail and in case he moves an application again for extension of time before this Court, the application will be deemed to be barred by his previous conduct.

20. In view of the above terms, the present application stands disposed of.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVERMBER 03, 2023/zp