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

Date of decision : 17.02.2023

+ BAIL APPLN. 462/2023 & CRL.M.A. 3760/2023

DILIP K GHOSH

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate
along with Mr. Arun Kanwa, Ms.
Raani Sharma, Mr. Sunder
Bansal and Mr. Aastik Dhingra,
Advocates

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Ripu Daman Bhardwaj, SPP
for CBI.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

17.02.2023

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1. The present bail application under Section 438 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by the applicant seeking anticipatory bail in RC No. 2172023A0002/CBI/ACU-VAC-II dated 14.01.2023, registered at Police Station CBI/AC-II/New Delhi for the offences punishable under Sections 7/8/9/10/12 of Prevention of Corruption Act, 1988 ("P.C. Act") read with Section 120B of the Indian Penal Code, 1860 ("IPC").

2. The case of the prosecution is that the main accused Jitendra Pal Singh, posted as Additional Divisional Railway Manager at Guwahati was demanding and accepting bribe from different contractors including accused no. 2 i.e. Shyamal Kumar Deb, accused no. 4 i.e. Bishnu Gupta and present applicant/accused no. 6 i.e. Dilip Kumar Ghosh, while awarding the contracts on behalf of the railway, release of their payments etc. An information was received that accused Shyamal Kumar Dey was facilitating the delivery of bribe amount to Jitendra Pal Singh through accused no. 3 i.e. Hariom Giri, an acquaintance of Jitendra Pal Singh. Thereafter, further details qua the conversations among the accused persons were received which revealed the possible transactions relating to the bribe amount. Acting upon the information, a trap was laid and Rs. 50 lakhs were recovered from other accused persons. It is the case of prosecution that there exists a chain of transfer of bribe amounts from one person to another in different States across country, and this *modus operandi* was adopted by accused Jitendra Pal Singh to avoid the detection of bribe amount.

3. The gravamen of the allegations against the present accused/applicant are that he was awarded a contract of Rs. 160 crores for which he had paid Rs. 30 lakhs as bribe to accused no. 1 Jitendra Pal Singh who happens to be a public servant, through different ways and hawala channel. It is also alleged that on 12.12.2022, accused Jitendra Pal Singh had contacted present applicant and had asked him to transfer the money in Delhi, upon which the applicant had replied that he could not transfer the bribe money to Delhi and instead told him to collect it at

New Jalpaiguri. During the search of applicant's house and office premises, cash amount of Rs. 9 lakhs was also recovered.

4. To the contrary, the case of the applicant herein is that applicant's company 'M/s. DK Project Pvt. Ltd.' had submitted a bid for a tender advertised by Northern Frontier Railways, which was valued at around Rs. 177 crores. It is stated that the applicant's company had emerged to be the successful bidder at the said amount, however, pursuant to an invitation from accused no. 1 i.e. representative of Northern Frontier Railway, the company of the applicant deputed the present applicant to be the designated person for participating in negotiations. Pursuant to the said negotiations, the bid amount was reduced to Rs. 166 crores and the tender was awarded to the applicant's company for the said amount.

5. Learned Senior Counsel for the accused/applicant submits that the applicant is a 60 year old heart patient. It is stated that applicant was in contact with accused no. 1 only for the purpose of a tender, for which negotiations had taken place, and neither any bribe was demanded at the instance of accused no. 1 nor was paid by the applicant. It is stated that applicant's residence and office premises were raided by the officials of CBI on 17.01.2023. It is also stated that upon service of notice under Section 41(A) of Cr.P.C, the applicant had joined the investigation on 19.01.2023 whereby he was interrogated for around 9 hours, and it is only on one occasion i.e. 20.01.2023 when he was unwell that he could not join the investigation despite service of notice under Section 41A of Cr.P.C., though he had sought exemption from appearance on said date on medical grounds. Learned Senior Counsel further submits that

though applicant/accused is not as such required for any further investigation, the applicant is willing and ready to join the same.

6. Learned SPP for the CBI/respondent, on the other hand, states that accused/applicant has neither joined investigation nor co-operated with the investigation despite receipt of notice under Section 41(A) of Cr.P.C., and the ground that applicant had suddenly got ill on 20.01.2023 is an afterthought and the same is not reflected in the medical reports of the applicant. It is further stated that applicant was in touch with accused no. 1 Jitender Pal Singh and that pursuant to bribe amount being paid, he was benefited as his tender was approved by accused no. 1. It is also stated that details of bribe amount are yet to be investigated and found, and custodial interrogation of the accused is required.

7. I have heard the arguments of both sides and perused the material on record.

8. It is the case of prosecution that main accused Jitendra Pal Singh was demanding bribe from different contractors for awarding contracts on behalf of Northern Frontier Railways, and the present applicant is alleged to have given a bribe of Rs. 30 lakhs to the accused Jitendra Pal Singh for obtaining tender in his favour. Pursuant to trap proceedings, cash amount of Rs. 50 lakhs was recovered which is alleged to be the bribe amount obtained by the main accused. The primary concern of respondent/CBI is that the applicant had joined investigation only once, and he did not appear before the investigating agency on 20.01.2023 despite service of notice under Section 41A of Cr.P.C., and that there is no clear indication in his medical prescription that he was not in a

position to appear before the agency for the purpose of interrogation. It further the case of prosecution as reflected from record that main accused and present applicant were in constant contact with each other and certain transcripts of telephonic conversation between them also show that bribe amount was given by applicant to the main accused.

9. Considering the allegations against the applicant and that the investigation of the present case is at initial stage and the trail of bribe amount is yet to be ascertained, this Court is not inclined to grant anticipatory bail to the present accused/applicant at this stage.

10. Accordingly, the present application stands dismissed.

11. It is, however, clarified that this Court has not given any opinion on merits of the case and the observations made herein-above are only for deciding the present application.

12. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 17, 2023/kss