



\$~1

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

%

Pronounced on: 14.12.2023

+ **BAIL APPLN. 2056/2023**

MANISH RAWAT

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with
Mr. Naveen Kumar, Mr. Tushar
Agarwal, Mr. Arun Kumar and Mr.
Abhishek Mahal, Advs.

Versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Prasanta Varma, SPP for CBI
with Mr. Deekshansh Patel, Adv.
with Anil Kumar (I.O).

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

**CRL.M.A. 21530/2023 (exemption) & CRL.M.A. 21529/2023
(additional documents)**

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

BAIL APPLN. 2056/2023 & CRL.M.(BAIL) 848/2023 (interim bail)

3. The present petition has been filed seeking regular bail in RC No. 2182023A0005 under Sections 7/7A/12 of the Prevention of Corruption Act, 1988 read with Section 120B IPC, 1860 registered at PS CBI/AC-III.



4. Initially, the petition was filed seeking default bail under Section 167(2) CrPC but during the course of arguments, Mr. Mohit Mathur, learned Senior Counsel for the petitioner, on instructions, gave up the prayer for default bail under Section 167(2) CrPC and limited the present petition to seeking regular bail on merits.

5. *Vide* order dated 14.06.2023, notice was issued in the present matter and the respondent was directed to file a status report. The respondent has filed a reply dated 05.09.2023, which forms part of the record.

6. The case of the respondent as borne out from the RC is as under:

- i. Information was received by the respondent that the petitioner, a neurosurgeon at Safdarjung Hospital, in criminal conspiracy with the co-accused namely, Avnesh Patel, Manish Sharma, Deepak Khattar (proprietor of Kanishka Surgical) and Kuldeep (employee of Deepak Khattar) (who all acted as middlemen), was indulging in corrupt and illegal activities by taking money without authority for giving medical advice and conducting surgery of the patients by-passing the laid down rules regarding treatment in Safdarjung Hospital, New Delhi.
- ii. The information further revealed that the *modus operandi* adopted was that the petitioner would direct the patients through the middlemen to purchase the instruments required for surgery from Kanishka Surgical, the shop of Deepak Khattar (co-accused) and compelled the patients or their caretakers to pay an amount manifold higher than the actual price. Thereafter, commission was paid to the petitioner.



- iii. The source information further revealed that Avnesh Patel (co-accused) on behalf of the petitioner would contact the attendants of the patients and explained to them that he can arrange an appointment if they pay a bribe and agree to procure instruments required for surgery from the shop of Deepak Khattar (Kanishka Surgical). The money for the aforesaid purpose was paid in cash or was paid through banking channels in the accounts of Kuldeep or Deepak Khattar.
- iv. The source information further revealed that co-accused Avnesh Patel in conspiracy with the petitioner and other co-accused forcefully obtained money from attendants of patients suffering from acute medical condition in lieu of providing them an early date for the required surgery and the time for the surgery was decided by the petitioner. The money so received was delivered by Avnesh Patel to the petitioner or the same was disbursed to other individuals as per the directions of the petitioner.
- v. It was also revealed that on 10.03.2023, a sum of Rs. 1,15,500 was transferred by Mrs. Simran Kaur (attendant of patient Ajeet Singh) into the account of Kuldeep after Avnesh Patel in conspiracy with the petitioner contacted her stating that the patient had cervical issues and he needed spinal surgery.
- vi. Similarly, on 14.03.2023, Avnesh Patel in conspiracy with the petitioner obtained bribes of Rs. 25,000/- & Rs. 30,000/- from the attendants of patients, namely, Madan Lal and Shyamu



Lal, respectively, and the petitioner was confirmed about the collection of the same.

- vii. On the same day, a sum of Rs. 30,000/- was also got transferred from Syed Atif Ali (attendant of Md. Syed Hasan Ali) by Manish Sharma in criminal conspiracy with the petitioner into the account of co-accused Kuldeep.
- viii. It was further revealed in the information that the petitioner has been laundering his illegal gotten gains through an individual namely, Ganesh Chandra and the petitioner directed co-accused Avnesh Patel to send money to Ganesh Chandra for registration of shell companies. For this purpose, Avnesh Patel in criminal conspiracy with the petitioner obtained cash to the tune of Rs. 35,000/- from a patient namely, Gauri Shankar and transferred a sum of Rs. 34,500/- for registration of the shell companies.
- ix. The source information also revealed that Avnesh Patel at the instance of the petitioner and his wife used to make payments on their behalf. It is alleged that the Avnesh Patel at the instance of the petitioner paid a sum of Rs. 1 lakh to a tour operator for making arrangements for Kerela tour of the petitioner and his wife. Similarly, at the instance of the wife of the petitioner, Avnesh Patel on 26.03.2023, paid a sum of Rs. 19,000/- on a QR code, which was sent by the wife of the petitioner for purchase of sarees.



7. Premised on the aforesaid allegations, the present RC came to be registered on 29.03.2023 by the Respondent and the petitioner was arrested on 30.03.2023.

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. At the outset, Mr. Mohit Mathur, the learned Senior Counsel appearing for the respondent, submits that it is the case of the respondent/CBI that investigation in the present matter is complete and no aspersion can be cast that the petitioner may tamper with the investigation.

9. He submits that the petitioner has been in custody since 30.03.2023 and in case the investigation is complete *qua* the petitioner, the custody of the petitioner is no more required.

10. It is further the contention of Mr. Mathur that the entire case of the prosecution is documentary in nature and all relevant documents have been seized by the prosecution and since no further recovery is to be made from the petitioner, there is no need for his custody. To buttress his contention, he submits that after the petitioner was sent to judicial custody on 06.04.2023, he was never called upon to join the investigation.

11. Mr. Mathur also urged that the petitioner may be released on bail on the ground of parity, in as much as, the co-accused namely, Kuldeep, Avnesh Patel, Manish Sharma and Deepak Khattar have been released on regular bail by the Trial Court *vide* orders dated 17.05.2023, 19.05.2023, 27.05.2023 and 29.05.2023, respectively.

12. It was also the submission of Mr. Mathur that the petitioner is a permanent resident of Delhi and has deep roots in the society and thus, he is not a flight risk.



13. It is in the backdrop of the aforesaid facts and circumstances, Mr. Mathur urges that the petitioner be enlarged on bail.

SUBMISSIONS OF THE RESPONDENT

14. *Per contra*, Mr. Prasanta Varma, the learned Special Counsel appearing for the respondent/CBI had argued on the lines of the reply. He submits that the present petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. He submits that the petitioner is the mastermind of the conspiracy and further since material witnesses are yet to be examined, therefore, there is a possibility of the petitioner influencing the witnesses, if enlarged on bail. To buttress his contention, it was submitted that the petitioner is a highly influential person against whom, a number of complaints were filed by many patients with the authorities of the hospital, but no action was taken against the petitioner.

15. It was further the contention of the learned special counsel that the petitioner has derived undue financial gain at the cost of disadvantaged and vulnerable persons of the society who were forced and/or victimized to pay money in the name of cost of the implants. It was also argued that the petitioner had obtained about Rs. 2.7 Crores as undue advantage from the patients in the name of cost of the implants.

16. It is stated by the learned special counsel that during investigation various documents were seized from the petitioner, wherein it was revealed that he was involved in 3-4 criminal cases and one complaint was also filed against him by the patient/attendant on the same allegations of taking illegal money to perform surgeries on her.



ANALYSIS

17. I have heard the learned senior counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

18. Before advertng to the merits of the matter, relevant would it be to note the factors which are to be taken into consideration while deciding a bail application. Profitable would it be to refer to the judgment of the Supreme Court in *Virupakshappa Gouda v. State of Karnataka*, (2017) 5 SCC 406, the relevant paragraph of which reads as under:-

“15. The court has to keep in mind what has been stated in Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] The requisite factors are : (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage : (SCC p. 499, para 9)

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*



- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

(Emphasis supplied)

19. Earlier, the Supreme Court in the case of **Satish Jaggi v. State of Chhattisgarh**, (2007) 11 SCC 195 had held as under:-

“5. It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence. In the present case Respondent 3 is accused of murdering a rival political leader while campaigning in the election.”

(Emphasis supplied)

20. The gravamen of allegations against the petitioner, as borne out by the RC, are that the petitioner being the mastermind entered into a criminal conspiracy with the co-accused wherein the patients, who sought treatment from him were asked to procure medical equipments/apparatus at inflated prices from the proprietorship concern of the co-accused. Commission out of the inflated prices so paid by the patients/attendants was then kick backed to the petitioner, thereby causing wrongful loss to the patients/attendants and wrongful gain to him. Further, allegation against the petitioner is that he was conducting out of turn surgeries upon the patients who would, on his demand and directions, deposit the money with co-accused Avnesh Patel.

21. The allegations against the petitioner disclose commission of a serious offence by the petitioner. The petitioner being a doctor, financially



exploited helpless patients for his personal financial gain. The patients/attendants having no bargaining power, especially during trying times, had no option but to submit to the nefarious designs of the petitioner. The petitioner by his acts would derive financial advantage at the cost of the disadvantaged and vulnerable persons of the society who would approach Safdarjung Hospital, a tertiary care facility setup by the Govt. of India in discharge of its Constitutional obligations. More often than not, it is the economically weaker section of the society, who cannot afford the expensive treatment in the private hospitals, approach the government hospitals and the doctors working there, with an earnest hope of getting the treatment at low or no cost. Patients with serious ailments and their attendants standing in front of the doctor with their folded hands, is a common sight in any hospital. Doctors are often referred to as “next to God” because of the Hippocratic oath taken by them to act as ‘life savers’ and to do everything possible to help and treat their patients. A doctor with reference to a patient acts in a fiduciary capacity. The allegations against the petitioner indicate the betrayal of such trust, as well as, the breach of Hippocratic oath, which if proved, cannot be condoned.

22. Before considering the submission of Mr. Mathur that the petitioner is entitled to bail on the ground of parity as co-accused have already been enlarged on bail, a brief recapitulation of the law on the aspect of parity may be apposite.

23. The Supreme Court in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230 has held that the Court cannot exercise its powers in a capricious manner and before granting bail on the ground of parity, the Court must focus upon the role of the accused



and his position in relation to the incident and victims is also of utmost importance. The relevant paragraphs of the judgment read as under:-

“25. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. In Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed : (SCC p. 515, para 17)

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.

26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [Pravinbhai Hirabhai Koli v. State of Gujarat, 2020 SCC OnLine Guj 2986] [Khetabhai Parbatbhai Makwana v. State



2023:100:0900



*of Gujarat, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with SidhdhraisinhBhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [SiddhraisinhBhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. **Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”***

(Emphasis Supplied)

24. Tested on the touch stone of above principles, the petitioner’s submission premised on the ground of parity, is found to be devoid of merit. The petitioner was the mastermind of the criminal conspiracy, whereas the co-accused, who have been enlarged on bail, are merely middlemen who assisted the petitioner in carrying out the conspiracy. Further, the petitioner being in a fiduciary relationship with the patients/attendants was their first point of contact in the hospital. It has also come in the reply of the respondent that the petitioner used to hand over slips containing numbers of the co-accused and would ask the patients to call the co-accused, thus the entire conspiracy was kick-started by the



petitioner. Further, the petitioner owed a solemn duty of providing treatment and care to the very persons who he is accused of exploiting, whereas, the co-accused did not owe any such duty. Thus, the petitioner cannot claim parity with the co-accused.

25. Further, the evidence of the witnesses is yet to commence. The petitioner is an influential person and at this stage there is a possibility of the petitioner influencing material public witnesses, who were his patients. The influence of the petitioner is apparent from the fact that various complaints were made by the patients/attendants before the authorities of the hospital, the National Medical Council, as well as, the Director General of Health Services but no action was taken against the petitioner.

26. That apart, the learned Special Judge (PC Act) while rejecting the petitioner's application for bail *vide* order dated 02.06.2023 has noted that during investigation by the IO, the authorities at Safdarjung Hospital revealed that only one complaint had been filed against the petitioner, whereas in pursuance to the directions passed by the learned Special Judge, it was revealed that three such complaints had been filed by the patients of the petitioner, which shows petitioner's dominance and influence in the administration of hospital despite the petitioner being in judicial custody.

27. In view of the aforesaid discussion, no ground for granting the regular bail to the petitioner is made out at this stage. Accordingly, the present petition, along with pending applications, if any, is dismissed.

28. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

29. The petition stands disposed of.



30. Order *dasti* under the signatures of the Court Master.
31. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

DECEMBER 14, 2023
ak