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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 08th January, 2025+ CRL.M.C. 2168/2021

STATE

.....Petitioner

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor with ACP A.K.
Singh, ACB, GNCTD

Versus

S.K. KOHLI

.....Respondent

Through: Ms. Shashi Shanker, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 439(2) of *the Code of Criminal Procedure, 1973* ('Cr.P.C' *hereinafter*). read with Section 482 Cr.P.C. has been filed for *Cancellation of Anticipatory Bail* granted *vide* Order dated 22.03.2021 by the learned Session Judge in FIR No. 05/2019, under Section 7 of the *Prevention of Corruption Act, 1988* ('P.C. Act' *hereinafter*) read with Sections 420/120B of the *Indian Penal Code, 1860* ('IPC' *hereinafter*), registered at Anti-Corruption Branch, GNCT.
2. The *main ground* for seeking cancellation of the FIR is that the Order passed by the learned Additional Session Judge is based upon imagination, presumption, conjectures and surmises and the Anticipatory



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Bail has been granted on the basis of imagined doubts which are not based on factual matrix.

3. It has not been appreciated that Respondent was actively involved in the processing of Bogus Bills of the alleged accused/ Director of *M/S Narang Constructions*, in the sum of Rs.8,03,812/-. The involvement of the Respondent has been established beyond reasonable doubt by his proposal and recommendation made on the Note sheet of the related contract Agreement File, wherein payment for replacement of Metal Sheet Piece was made by him, but it has been found that actually no replacement work of MS sheet pipe of die Header was done by the Contractor.

4. It has also not been considered that Respondent was twice issued Notice to join the investigation and he sought time, but he has not joined the investigation for some ulterior motive. It is evident that he is not willing to join and cooperate in the investigation for collection of vital facts and piece of evidence.

5. The *custodial interrogation of accused is inevitable to confront him with co-accused, Director of M/s Narang Construction and Mr.Pramod Kumar Kaushik, AE*, who is also avoiding joining the investigation. Because of this, the investigation has come to a halt which is still in progress and the officials of Delhi Jal Board ('DJB'), are yet to be arrested.

6. It has not been appreciated that Respondent No.1 S.K. Kohli was occupying a responsible position and considering the seriousness of allegations against him, thorough investigation is required to be carried

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for which custodial interrogation is imperative. Moreover, being an Executive Engineer of DJB, he is in a position to tamper with the evidence by influencing the vital witnesses in case he is permitted to remain on bail.

7. Reliance is placed on Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors. (2011) 1 SCC 694 wherein it has been observed that nature and gravity of the accusation and the exact role of the accused must be properly comprehended before the arrest is made and the possibility of applicant fleeing from justice and his likelihood to repeat similar or the other offences, are the factors which have to be considered.

8. It is, therefore, submitted that the Anticipatory Bail so granted to the Respondent *vide* impugned Order dated 22.03.2021 deserves to be set aside.

9. ***Counter affidavit has been filed on behalf of the Respondent,*** who has refuted all the grounds made by the Petitioner for cancellation of Anticipatory Bail granted to him. It is submitted that the present Petition is *mala fide* and has been filed with ulterior motive, after suppressing the material facts. The learned Additional Sessions Judge in the impugned Order dated 22.03.2021 has dealt with the entire fact judiciously and has considered all the material placed before granting the bail. Moreover, strict conditions have been imposed to ensure that Respondent joins the investigation. The Respondent has undertaken to join the investigation as and when required by the Investigating Officer; has furnished the complete address and has also undertaken not to travel abroad and in case passport is issued, to deposit the same with the Investigating Officer.



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10. It is asserted that he had discharged his duties as an Executive Engineer in DJB with full honesty and the allegations of recklessness as made in the Complaint, are not tenable. It is submitted that there is no infirmity in the Bail Order and the present Petition deserves to be dismissed.

11. Submissions heard and record perused.

12. The case of the Prosecution is that the Respondent was holding the post of Executive Engineer in DJB and was posted at SDW-XII (Sewage Disposal Work). On 07.06.2018, Junior Engineer ('JE') Mr. Parvesh Kumar proposed emergency work of repairing/strengthening of 1100 mm Dia Header (iron pipe) at Bharat Nagar Sewage Pump Station. In the proposal submitted by the JE, it was mentioned that the vertical Header was badly damaged at the leakage point which was sensitive as many Pump Sets were installed and around 10 MGD pumping takes place at the header. The proposal of the JE. Mr. Parvesh Kumar was further recommended by the AE. Mr. Pramod Kumar Kaushik, for execution of the work without calling of the Tender as an emergency case, on that very day.

13. On the said day, the concerned Executive Engineer (EE) Mr. Atar Singh was on leave and the Respondent- S.K.Kohli was looking after the additional charge of SDW-IX in his absence, and he gave the approval of the proposal. The proposal was finally approved by the Superintendent Engineer on the very same day. Thereafter, the work was completed by *M/s Narang Construction* on that very day till midnight.

14. After the work was completed, JE. Mr.Parvesh Kumar initiated

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another Notesheet on 08.06.2018, reporting the completion of the work on 07.08.2018 and the JE waived of formal condition of calling NIT and issuance of Work Order in favour of *M/S Narang Constructions*. AE Mr. Pramod Kaushik proposed acceptance of cost of Rs.8,03,812/- for the work carried out and the Note-sheet was forwarded by the Respondent S.K. Kohli to the Draftsman for examination. After approval from the Draftsman, Respondent S.K. Kohli proposed the estimated amount of Rs.8,03,812/- for further necessary action. The file was marked to the AAO on 11.06.2018, who commented that let the Firm execute the Contract Agreement and submit all the documents regarding repairing, GST, PAN, photograph of work and terms and conditions regarding deposition of old material against the replaced one.

15. The File was then processed by the Respondent- S.K. Kohli and forwarded to the Superintendent Engineer on the same day i.e. 11.06.2018. It was then sent to AO who on the same day, raised certain objections regarding charging of three shifts whereas the work was completed on the same day; non usage of Department's own safety equipments / gadgets and lighting arrangement, etc.

16. AE Mr. Pramod Kumar Kaushik replied to the queries on 11.06.2018 itself, which were forwarded by Respondent- S.K. Kohli to the SE. On 12.06.2018, the Work Order was issued in favour of *M/S Narang Constructions* by the SE, after the Note was justified by the AE Mr. Pramod Kumar Kaushik.

17. Subsequently, site inspection and scrutiny was conducted at Bharat Nagar SPS (Sewage Pump Station) by the Vigilance Department of DJB

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and a Complaint was filed by SE (Vigilance) regarding irregularities and fraudulent processing and release of Bills without actual performance of contract, etc. On the basis of the said Complaint, several FIRs were registered for different Work Orders. In the present case, Work Order No.65 dated 12.06.2018, which was executed on 07.06.2018, is in question.

18. As per the Investigating Agency, the Respondent-S.K. Kohli proved and recommended release of payment against the above mentioned Invoice by signing the Note Sheets as well as the Invoice of accused Mr.Ankit Narang, even though there was no old material which was replaced found at the site and the shift In-charge Mr.R.S.Pathania informed that no MS gap piece was replaced and only welding work was executed for stoppage of leakage from the main Header.

19. The present FIR was registered on 22.04.2019 i.e. after about ten months of the performance of the work. During the investigation, the Investigating Agency conducted the site inspection on 21.06.2019 and prepared the Inventory cum Observation Memo and observed that only encasing of MS of vertical delivery main had been done and no old material i.e. dismantled metal sheet piece was found which reflected that no replace work of MS sheet pipe of Dia Header was done. However, the Bill for replacement work was submitted by accused Mr.Ankit Narang which was processed by the officials of DJB, including the Respondent-Mr.S.K. Kohli. No photograph of the work executed was filed before processing of the Bill. No contract agreement was found on the record on the basis of which the bill was processed.

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20. The allegation against Respondent- S.K. Kohli was that he was supposed to inspect the work executed as per work manual of DJB. No photograph of the executed work was placed on the file before processing the Bill.

21. The learned Additional Session Judge, after appreciating the entire case of the prosecution, observed that the investigation against Respondent- S.K. Kohli could be done without his arrest as no custodial interrogation was justified. The JE Mr. Parvesh and EE Mr. Atar Singh had already been granted bail. The incident was of June, 2018 while the FIR was registered in April, 2019. Evidence in the matter is primarily documentary and there is no reasonable apprehension of the respondent tampering with the evidence or influencing with the witnesses. The Respondent was retired Government Servant drawing pension and there was no reasonable apprehension of him fleeing from justice. Consequently, Anticipatory Bail was granted to him on furnishing a Bail Bond in the sum of Rs.50,000/- with one surety in the like amount subject to the conditions.

22. From the details of the complaint and the documents placed on record, to which reference has been made in the impugned Order, it is evident that the Respondent was not posted in SDW-IX, but was posted in SDW-XII and on 07.06.2018 he was having additional charge of SDW-IX, to which the present case pertains.

23. It is the case of the complainant itself that there was an emergency situation as the 1100 mm Dia Vertical Header Pipe was damaged, which was sensitive as many Pump Sets were installed and around 10 MGD



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pumping takes place at the said Header. Considering the emergency, the File was processed on the same day by the AE Mr. Pramod Kumar Kaushik, which was to be put up before the EE Mr. Atar Singh. However, since he was on leave, the Respondent- S.K. Kohli was handling the additional charge of SDW-IX, he forwarded Superintendent Engineer for approval. After approval by the Superintendent Engineer, the Work Order was issued on 12.06.2018.

24. It is apparent that the Work Order was given after approval from the chain of officers and eventually, the bill in the sum of Rs.8,03,812/- was raised by Mr. Ankit Narang. The bill along with requisite documents, was forwarded to the Draftman, who approved the same.

25. However, subsequently, it was found that that the actual work as reflected in the Bills, had not been done and thereby, different FIRs against the Respondent, along with other officials of DJB and Mr. Ankit Narang, was registered.

26. The learned Additional Sessions Judge has observed that the entire evidence is documentary. It is pertinent to observe that admittedly even though the FIR was registered on 12.06.2018, no Charge Sheet has been filed till date. Though it was claimed that custodial interrogation of the Respondent would be required, but till date, no such Application has been filed. There is also no justifiable ground made out by the Petitioner for cancellation of the bail.

27. The impugned Order granting Anticipatory Bail to the Respondent- S.K. Kohli is a well reasoned. There is no merit in the present petition, which is hereby dismissed. Pending Application(s, if any, also stand



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dismissed as infructuous.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 08, 2025

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