



2024:DHC:7784



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

% **Date of order: 8th October, 2024.**

+ **BAIL APPLN. 3015/2024**

YUDHVEER SINGH YADAVPetitioner

Through: Mr. Sunil Dalal, Senior Advocate with Mr. Sandeep Sharma, Mr. Sachin Baisla, Ms. Shivani Sharma, Mr. Nikhil Beniwal, Mr. Naresh Bhati, Mr. Mahabir Singh, Ms. Shipra Bali, Mr. Akash Gupta, Mr. Mudabbera Zaheen and Ms. Yashpriya Sahran, Advocates.

versus

**CENTRAL BUREAU OF INVESTIGATION THROUGH
SECRETARY GOVERNMENT OF INDIA**Respondent

Through: Mr. Anupam S. Sharma, SPP, CBI with Mr. Prakash Diran, Mr. Harpreet Kabi, Mr. Vashisht Rao and Mr. Syamantak Modgill, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The applicant/petitioner has approached this Court *inter alia* seeking grant of regular bail under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023 (“BNSS” hereinafter) in RC No. 003-2024-A-0025, registered under Section 7 of the Prevention of Corruption Act, 1988 (“PC Act” hereinafter), at PS. CBI/ACB/New Delhi.

2. The factual matrix of the present matter is as follows:



(i) The petitioner/applicant was working on the post of Sub-Inspector in Delhi Police at PS Hauz Khas when the allegations of demanding and accepting bribe were made against him. Therefore, by way of the instant petition, he is hereby seeking the grant of regular bail.

(ii) On 2nd May, 2024, the petitioner was marked to seek an Action Taken Report (“ATR” hereinafter) in a complaint filed by an advocate namely, Mr. C.K Sharma for registration of an FIR against the advocates Amit Gautam, Rahul Singh, who is a son of ACP A.K Singh, posted in Anti-Corruption Branch Delhi, as well as his associate Sahil Sharma, who is the son of an official of CBI, by alleging that they have cheated him for an amount of Rs. 10 lakhs on the pretext that they will get his house tax matter settled in the Municipal Corporation of Delhi.

(iii) Thereafter, another complaint dated 17th November, 2023 was filed by one, Sh. Ankur Gupta/complainant seeking registration of an FIR against the abovementioned advocate Mr. Amit Gautam and his brother Mr. Rahul Gautam, who is an employee of ONGC, alleging that the aforesaid people falsely assured the complainant that on payment of Rs. 2.5 lakhs, he will be allotted a tender for independence-day celebration of ONGC, thereby procuring Rs. 1.5 lakhs each, from him. The abovesaid complaint was also marked to the petitioner for filing an ATR.

(iv) Pursuant to the aforesaid, Central Bureau of Investigation



("CBI/respondent" hereinafter) registered a case bearing no. RC0032024A0025 against the petitioner, on the basis of a complaint dated 18th July, 2024, filed by Mr. Amit Gautam stating that the petitioner demanded a bribe of Rs. 3 lakhs from him in exchange of settling the aforesaid matter and filing an ATR in his favour.

(v) Subsequently, on 19th July, 2024, the petitioner was arrested as an envelope containing the bribe amount was recovered lying on his office table.

(vi) Being aggrieved of the same, the petitioner filed an application before the learned District and Sessions Judge cum Special Judge, CBI, Rouse Avenue Court, Delhi, seeking regular bail, however, on 13th August, 2024, the aforesaid bail application was dismissed in view of the fact that the investigation is at a very initial stage and the chargesheet is yet to be filed.

(vii) Hence, the instant bail application has been preferred by the petitioner before this Court.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is liable to be released on bail and the learned Special Judge committed an error of law in dismissing his bail application as the same is contrary to the facts and evidence on record, causing grave miscarriage of justice to the petitioner.

4. It is submitted that the allegations in the complaint dated 18th July, 2024 are *prima facie* false as it is particularly mentioned in the verification memo that the complainant, i.e., Mr. Amit Gautam has stated therein that he



has never spoke to the petitioner before.

5. It is submitted that the petitioner has been falsely implicated in the present case and allegations made against him are completely baseless and improbable as it is hard to believe that the petitioner, i.e., a Sub-Inspector in Delhi Police would demand a bribe of Rs. 3 lakhs from the advocates, especially when one of which is the son of an ACP posted in Anti-Corruption Branch, Delhi.

6. It is submitted that the petitioner has been wrongfully implicated in the instant case as it is categorically mentioned in the FIR/RC that the conversation recorded in the Digital Video Recorder (“DVR” hereinafter) is unclear, therefore, it is submitted that the CBI/respondent has registered a case on the basis of incomplete and inaudible recordings.

7. It is also submitted that the petitioner is liable to be released on bail as the allegations are baseless and concocted in view of the fact that the petitioner was apprehended about 100 meters away from his office room while the alleged envelope containing the bribe amount was found lying in the office table of the petitioner.

8. It is further submitted that there is no possibility of tampering with the evidence/witnesses as the alleged bribe amount has already been recovered and the petitioner has cooperated with the investigation, hence, he may be granted bail.

9. It is submitted that the petitioner is liable to be released on bail in view of the fact that the present case does not fall within the category of Sections 480(1)(i) and 480(1)(ii) of the BNSS.



10. Relying upon the judgment passed by the Hon'ble Supreme Court in *Satender Kumar Antil v. CBI, (2022) 10 SCC 51*, learned counsel for the petitioner further submitted that the offence allegedly committed by the petitioner falls under the ambit of Category A as defined in the aforesaid judgment as the maximum imprisonment is upto 7 years and therefore the Hon'ble Court held that the Courts ought to exercise their discretion in favour of the accused when he is charged under the offences falling under the same.

11. It is further submitted that the petitioner may be granted bail in view of the fact that he has no criminal antecedents. It is submitted that he was arrested on 19th July, 2024 and has been languishing into custody since the aforesaid date.

12. To further strengthen the arguments, learned counsel for the petitioner also placed reliance on the judgments of the Hon'ble Supreme Court passed in *Manish Sisodia Vs CBI, SLP(Criminal) No. 8772 of 2024* and *Arvind Kejriwal Vs Enforcement of Directorate in Criminal Appeal No. 2493 of 2024* wherein it was observed that while granting bail, the Courts must adhere to the settled principle of law that “*a bail is the rule and jail is the exception*”, and by virtue of the same, it is submitted that a bail shall not be withheld as a punishment.

13. Therefore, in view of the foregoing submissions and the undertaking on behalf of the petitioner that he shall abide by all the terms and conditions imposed by this Court while granting the bail, it is prayed that the reliefs as sought hereinabove may be granted.



14. *Per Contra*, learned SPP appearing on behalf of the CBI vehemently opposed the instant bail application and submitted that the same may be dismissed as being bereft of any merits.

15. Learned SPP appearing on behalf of the CBI submitted that pursuant to the complaint dated 18th July, 2024 filed before the CBI by the complainant, i.e., Mr. Amit Gautam, a verification was conducted. During the aforesaid verification, the complainant along with CBI officials and independent witnesses reached near the premises of PS Hauz Khas, and for the purpose of recording his interaction with the petitioner, a DVR was affixed on the body of the complainant. It is submitted that the complainant alleged that petitioner demanded a bribe of Rs. 2,50,000/- from him and asked him to pay the same to him on the next day. The said interaction was heard by the CBI.

16. It is further submitted that after the aforesaid verification, a trap proceeding was initiated on the next day, i.e., 19th July, 2024, wherein the petitioner was caught demanding and accepting the bribe amount of Rs. 2,50,000/- in the presence of two independent witnesses, pursuant to which, the petitioner was arrested on 20th July, 2024.

17. Therefore, it is submitted that the allegations of corruption leveled against the petitioner are serious in nature and fall under the provision of Section 7 of the PC Act and thus, he is not entitled to be released on bail.

18. Heard learned counsel for the parties and perused the material available on record including the status report filed by the CBI.

19. The petitioner herein has contended that he has been falsely



implicated in the present case and prayed that this Court may release the petitioner on regular bail as per the law laid down by the Hon'ble Supreme Court in *Satender Kumar Antil (Supra)* which categorically states that a better discretion is expected from the Courts in favour of the accused when he has been charged under the offence which falls under the ambit of Category A.

20. In rival submissions, learned SPP for the CBI argued that the demand of bribe amount of Rs. 2,50,000/- raised by the petitioner during the trap proceedings is clearly audible and therefore, he has been rightly charged under the said offence which is serious in nature and thus, the relief of regular bail may be denied to the petitioner.

21. In the instant case, the petitioner, who was working on the post of Sub-Inspector at PS Hauz Khas has been charged under the provision of Section 7 of the PC Act. The said provision defines the punishment for the offence related to a public servant being bribed and categorically states that a public servant who is found guilty for obtaining or accepting bribe money with the intention of improperly or dishonestly performing his duty, shall be punished with an imprisonment for a term which shall not be less than three years and may extend to seven years of imprisonment and shall also be liable to pay fine.

22. For proper adjudication of the instant matter, this Court has further peruses the status report as well as the order dated 13th August, 2024, passed by the learned Special Judge.

23. It is worthy to note herein that the petitioner has been accused of



demanding and accepting a bribe amount of Rs. 2,50,000/- while performing his official duties. Upon perusal of the order dated 13th August, 2024, it is made out that the learned Special Judge observed that an offence punishable under Section 7 of the PC Act is serious in nature and it is needless to say, that when an allegation of corruption is levelled against a public servant, the foundation of trust between the public and the government officials is shaken to its core. Therefore, while considering the seriousness and high magnitude of the allegations levelled against the petitioner, his bail application was dismissed in view of the fact that the investigation is still at a nascent stage and the chargesheet is yet to be filed.

24. At the outset and without interfering with the merits of the case, this Court shall decide the point for adjudication before this Court is to determine whether the petitioner herein is entitled for a grant of regular bail in terms of the aforesaid judicial *dicta* or not.

25. This Court is well cognizant of the fact that Courts ought to bear in mind that in a matter of regular bail under Section 483 of the BNSS, the larger interest of the State must be taken into consideration. Further, a sensitive approach is required to be acquired by the Courts while dealing with the offences constituting bribery allegations against a public officer as the same minimizes the trust of the public in public servants who are duty bound to protect them.

26. However, it is imperative to state that it is upon the judicial discretion of the Courts while granting or refusing a bail application and the said discretion shall be exercised with regard to the facts and circumstances of



each case. Thus, while considering the allegations leveled against an accused, the Courts shall, at the same time, adhere to the the settle principle with regard to “*bail is a rule and jail is an exception*”, which has been time and again emphasized by various Courts. Therefore, if a Court on merits deems it fit to release an accused on bail, withholding the aforesaid relief will amount to be considered as a punishment.

27. For the purpose of dealing with the merits of a bail application, a conjoint emphasis upon various factors is required to be looked upon, such as the nature of accusation of offence, the severity of punishment in the matter, the stage of trial, the probability of tampering or threatening the witnesses, likelihood of absconding as well as the conduct of the accused in each case.

28. At this stage, it is pertinent to mention here that by way of filing the instant bail application, the primary argument on behalf of the petitioner herein is that he may be granted bail in view of the aforesaid judgment as the offence under which he has been charged with, falls under Category A as defined hereinabove, in light of the fact that the punishment prescribed under the same is less than 7 years of imprisonment.

29. At this juncture, this Court deems it apposite to refer to the observations made in the said judgment of *Satender Kumar Antil (Supra)*, which was relied upon by the petitioner. The relevant paragraphs of the same have been reproduced herein as under:

“Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not



falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts.

63. We have already dealt with the relevant provisions which would take care of categories A and B. At the cost of repetition, we wish to state that, in category A, one would expect a better exercise of discretion on the part of the court in favour of the accused. Coming to category B, these cases will have to be dealt with on a case-to-case basis again keeping in view the general principle of law and the provisions, as discussed by us.”

30. From a bare reading of the aforesaid excerpt, it is observed that the Hon’ble Supreme Court laid down certain guidelines by distinguishing the offences mentioned herein above and it was categorically held that the judicial discretion may be exercised in favour of the accused involved in offences under Category A.

31. It is relevant to note herein that the judicial aim of the Division Bench of the Hon’ble Supreme Court while delivering the aforesaid judgment is to classify the offence on the basis of the period of punishment described for it and to uphold the general principle of “*bail is the rule and jail is the exception*” in relevant cases.

32. Applying the principle of law laid down by the Hon’ble Supreme Court in *Satender Kumar Antil (Supra)*, it is pertinent to mention that that the PC Act is a special act enacted for the purpose of framing rigorous laws



in order to combat the cases of corruption against government officials, therefore, any offence committed under the same shall be covered under Category C, however, keeping in view the facts and circumstances of the case, the aim behind the judgment as well as the punishment defined under Section 7 of the PC Act, this Court finds force in the aforesaid argument that the offence under which the present petitioner has been charged with, falls under the domain of Category A.

33. Before delving into the merits of the case, it is apposite for this Court to discuss the jurisprudence with respect to granting of bail, for instance, in ***Sanjay Chandra v. CBI, (2012) 1 SCC 40***, the Hon'ble Supreme Court held that a bail should not be denied based on the sole criteria that the seriousness of allegations is against the sentiments of the community. Therefore, it was observed that a totality of factors shall be considered before deciding a bail application on merits. The relevant portion of the aforesaid judgment is herein as under:

“40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

* * *



42. *When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.*

* * *

46. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”*

34. Therefore, at this stage, for assessing whether an accused is fit for the grant of bail involves numerous factors and this Court is not required to examine the evidence on record to establish the conviction of the petitioner, rather, it needs to delve into the aspect that whether the continued custody of the petitioner serves any purpose for the adjudication of the matter pending before the learned Trial Court.

35. As mentioned earlier, the fundamental postulate that “*the grant of bail is rule and the refusal is an exception*”, has been elaborately and lucidly explained in a catena of judgments such as in ***Gurbaksh Singh Sibbia v. State of Punjab***, (1980) 2 SCC 565 and ***P. Chidambaram v. Directorate of Enforcement***, (2020) 13 SCC 791, wherein it was held as under:



“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

36. Furthermore, the Allahabad High Court has also emphasized the



aforesaid legal principle in *Peeyush Kumar Jain v. Union of India*, (2022) **121 ACC 448**, by stating that it is not advisable to categorize all of the economic offences into one group and deny bail on that basis. It was held therein that one of the key factors to determine the gravity of the offence is the term of the sentence that has been prescribed under the provision of offence. The factors that cumulatively affect the grant of bail in an offence, have been listed in the aforementioned judgment as follows:

“31. While considering the prayer for grant of bail in any offence, including an economic offence, the Court has to consider:—

- (i) the nature of accusation and the severity of the punishment to which the party may be liable in the case of conviction and the nature of the materials relied upon by the prosecution;*
- (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
- (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;*
- (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;*
- (v) larger interest of the public or the State and similar other considerations.”*

37. At this juncture, this Court deems it necessary to mention the judgment of *Gurcharan Singh vs. State*, AIR 1978 SC 179, wherein, the Hon’ble Supreme Court laid down certain guidelines and categorically held that sub-section (1) of Section 437 of Code of Criminal Procedure (“Cr.P.C” hereinafter), grants discretionary power to the Courts to release an accused



on bail in non-bailable cases, subject to imposition of conditions, if necessary. Thus, it is the judicial discretion of a Court to allow a bail application of an accused charged with non-bailable offences.

38. Coming back to the merits of the case, it is imperative to note that the case against the petitioner involves the offences wherein maximum imprisonment is upto 7 years. It is the case of the petitioner that he may be released on bail in view of the fact that he has been falsely implicated in the instant case and the bribe amount has already been recovered. It has been further argued that the petitioner has duly cooperated with the investigation and that he is no more required by the CBI for any purpose.

39. The learned Special Judge *vide* order dated 13th August, 2024, took into consideration the seriousness of the offence and dismissed the bail application filed by the petitioner on the ground that the investigation is at its initial stage and the chargesheet is yet to be filed in the instant matter.

40. It is noteworthy to mention herein that one of the arguments advanced by the learned counsel appearing on behalf of the petitioner is that the petitioner has been falsely implicated in the present matter as the recorded conversations between him and the complainant were unclear and thus, the bail application filed by the petitioner was rejected merely on the ground that the investigation is yet to be fully conducted in the instant matter.

41. For a thorough adjudication, this Court has perused the status report filed by the CBI and a bare reading of the same reflects that the chargesheet in the instant case has been filed on 17th September, 2024. Furthermore, it is stated therein that the examination *qua* the witnesses including the



verification officer, trap laying officer, complainant, witnesses during the verification and trap proceedings, has been completed. Therefore, this Court is of the view that the investigation *qua* the petitioner stands complete.

42. Insofar as the argument of seriousness of offence is concerned, it is relevant to note that in view of the discussion on law in the foregoing paragraphs, the settled principle of law is that the gravity of an offence cannot be the sole criteria for rejection of bail. Therefore, taking into consideration the principle of law laid down by the Allahabad High Court in *Peeyush Kumar Jain (Supra)*, it is relevant to note that bail cannot be solely denied on the basis of the grievousness of the offence.

43. Further, this Court deems it necessary to take into account the fact that the petitioner has no criminal antecedents and that there is no investigation pending against him and the same is reflected in the status report. Therefore, this Court finds that no fruitful purpose would be served by keeping the petitioner in judicial custody.

44. Undoubtedly, the allegations levelled against the petitioner are grave in nature and against public morale, however, at the same time, this Court is required to take into account and appreciate the settled law that a bail shall not be withheld as a punishment. It has been enunciated time and again that deprivation of bail must be considered as a punishment and that every man is deemed to be innocent until duly tried and proven to be guilty.

45. This Court finds no other material which outweighs the considerations for grant of bail keeping in view the law laid down by the Hon'ble Supreme Court in the above referred cases.



46. Bearing in mind the facts and circumstances of the present case as well as the aforesaid judicial precedents and without making any observations that may affect the merit of the instant case, this Court is of the view that the petitioner has made out a case for grant of bail and thus, he may be released on bail in the present matter.

47. In view of the aforesaid reasons, the present bail application *qua* the petitioner stands allowed. Accordingly, it is directed that the petitioner be released on bail in RC No. 003-2024-A-0025, registered under Section 7 of the PC Act at PS. CBI/ACB/New Delhi, on furnishing a personal bond in the sum of Rs. 1,00,000/- with solvent surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions of bail: -

- a) he shall surrender his passport, if any, to the Investigating Officer and shall under no circumstances leave India without prior permission of the Trial Court;
- b) he shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- c) he shall remain present before the jurisdictional police station on **Second and Fourth Saturday** of every calendar month for the period of two months or till filing of the final report, whichever is earlier;
- d) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- e) he shall provide his mobile number(s) to the Investigating



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Officer and keep it operational at all times;

f) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

48. It is imperative to clarify that the observations made hereinabove are only for the purpose of deciding the present bail application and shall not affect the merits of the case.

49. It is made clear that in case of breach of any of the above conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of bail.

50. Accordingly, the petition stands disposed of in the abovesaid terms. Pending applications, if any, stands dismissed.

51. A copy of this order be sent to Jail Superintendent for compliance.

52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 8, 2024

rk/sm/mk

Click here to check corrigendum, if any