

Reserved

Court No.19

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10668 of 2021

Applicant :- Parveen Kumar Gupta

Opposite Party :- State Of U.P.Thru C.B.I./A.C.B. Lucknow

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Pankaj Bhatia,J.

1. The present bail application has been filed seeking enlargement of the applicant on bail in Case Crime No.540 of 2019 now RC0062020A0005, under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(2) of the Prevention of Corruption Act, 1988, Police Station CBI/ ACB, Lucknow.
2. The facts in brief are that an FIR was registered as FIR No.540 of 2019 on 02.11.2019 by the Secretary of the Trust, namely, Uttar Pradesh State Power Sector Employee Trusts as well as the Corporation, namely, UPPCL against the applicant as well as one Sudhanshu Dwivedi and Ayodhya Prasad Mishra. In pursuance to the said FIR, the applicant was arrested by the EOW, Lucknow on 03.11.2019 and a first charge-sheet was filed against three persons, namely, the applicant, Sudhanshu Dwivedi and Ayodhya Prasad Mishra on 01.02.2020. Subsequently, a first supplementary charge-sheet and a second supplementary charge-sheet was also filed implicating other persons in the offence in question. It is stated that subsequently the CBI took over the investigation w.e.f. 05.08.2020 and the matter is under investigation and no charge-sheet has been filed by the CBI. It is also stated that the trial has not yet commenced.

3. Ms. Kamini Jaiswal, learned Counsel appearing on behalf of the applicant assisted by Sri Purnendu Chakravarty, learned Advocate argued that the genesis of the dispute leading to lodging of the FIR is that in December, 2016, in a meeting of the Trustees of which the applicant was then the Secretary took decision with regard to the investment of funds available with the trust. One of the said decision being to invest, the funds in the company known as Dewan Housing Finance Limited (DHFL). It is argued that the meeting was held by all the Board of Trustees in which the decision was taken and the same was also in consonance with the guidelines issued by the RBI relating to the investment in the Housing Finance Company including DHFL.
4. It is further argued by the Counsel for the applicant that the decision with regard to the investment was taken by a Committee in which one of the members was the applicant and the co-accused have already been enlarged on bail vide orders collectively filed as Annexure-9 to the affidavit. It is further argued that ever since the investigation has been taken over by the CBI, no charge-sheet has been filed and no investigation whatsoever have been carried out from the applicant. It is further argued that the applicant is suffering with cardiac disease and has undergone treatment with the KGMU, Lucknow, the applicant does not have any criminal antecedents and as such cannot influence the investigation. It is lastly argued that the investigation cannot go indefinitely and the pretrial arrest cannot continue indefinitely as there is no likelihood of the trial being concluded in near future. Reliance has been placed by the Counsel for the applicant for the following judgments:

“I. Union of India vs K.A. Najeeb; 2021 SCC Online SC 50

II. P. Chidambaram vs Directorate of Enforcement; (2020) 13 SCC 791

III. Surinder Kumar Khanna vs Intelligence Officer Directorate of Revenue Intelligence; (2018) 8 SCC 271

IV. Sanjay Chandra vs CBI; (2012) 1 SCC 40

V. State of Kerala vs Raneef; (2011) 1 SCC 784

VI. State of M.P. vs Sheetla Sahai and others; (2009) 8 SCC 617”

5. Sri Anurag Kumar Singh, learned Counsel for the CBI opposes the bail application and argued that although the decision was taken by the Committee, however the applicant benefited out of the said decision, inasmuch as, the son of the applicant in his statement has stated that around 30 crores commission was obtained from DHFL which was divided in between Ayodhya Prasad Mishra, the applicant and Sudhanshu Dwivedi. He thus argued that considering the magnitude of loss caused to the trust, the bail application is liable to be rejected. Sri Anurag Kumar Singh, learned Counsel appearing on behalf of the CBI places reliance on the following judgments:

“I. Y.S. Jagan Mohan Reddy vs Central Bureau of Investigation; (2013) 7 SCC 439

II. State of Bihar and another vs Amit Kumar @ Bachcha Rai; (2017) 13 SCC 751

III. Rohit Tandon vs Directorate of Enforcement; (2018) 11 SCC 46

IV. Serious Fraud Investigation Office vs Nittin Johari and another; (2019) 9 SCC 165

V. State vs Captain Jagjit Singh; (1962) 3 SC 253

V. Chenna Boyanna Krishna Yadav vs State of Maharashtra; (2007) 1 SCC 242

VI. Rajesh Ranjan Yadav vs CBI; (2007) 1 SCC 70

*VII. Kalyan Chandra Sarkar vs Rajesh Ranjan @
Pappu Yadav and another; (2004) 7 SCC 528”*

6. As regard, the claim of parity, he opposes the request of the Counsel for the applicant. He lastly argued that the court has to keep in mind the magnitude and the gravity of the offence while deciding the bail application.
7. The facts that emerge are that the applicant is in custody since 03.11.2019 and the charge-sheets have already been filed and from 05.03.2020, the date from which the CBI has taken over the investigation, no fresh charge-sheet has been filed, the co-accused have been enlarged on bail and there is nothing on record to demonstrate that the applicant if enlarged on bail can in any way adversely affect the investigation or the trial which has not even started, merely because of the quantum involved, the submission of the learned Counsel for the respondents does not merit acceptance for the sole reason that an applicant cannot be continued in detention indefinitely without therebeing any likelihood of trial commencing which is evident from the facts of the case, inasmuch as, since 05.03.2020, no further steps have been taken for starting or concluding of the trial. Further, in view of the fact that the co-accused on similar charges have been enlarged on bail, the applicant is entitled to be enlarged on bail.
8. Accordingly, the bail application is *allowed*.
9. Let the applicant **Praveen Kumar Gupta** be released on bail in Case Crime No.540 of 2019 now RC0062020A0005, under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(2) of the Prevention of Corruption Act, 1988, Police Station CBI/ACB, Lucknow on his furnishing personal bonds and two

reliable sureties of Rs.5,00,000/- (Five lac) each to the satisfaction of the court concerned with the following conditions:

- (a) The applicant shall execute a bond to undertake to attend the hearings;
- (b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date: 31.01.2022

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(Pankaj Bhatia,J)