

**IN THE COURT OF VINOD YADAV: SPECIAL JUDGE (PC ACT) CBI-15:**  
**ROUSE AVENUE COURTS COMPLEX: NEW DELHI**

<b>FIR No.: RC No.2182021A0007</b>
<b>Bail Matter No.20/2022</b>
<b>CBI V/s AKIL AHMAD &amp; Ors.</b> <b>[Bail Application of Akil Ahmad (A-1)]</b>
<b>PS: CBI/AC-III/New Delhi</b>
<b>U/s 120 B IPC r/w Section 7, 8, 9 &amp; 10 of PC Act, 1988 (As amended in 2018)</b>

11.02.2022

**THROUGH WEBEX VIDEO CONFERENCING**

Present: Shri Neetu Singh, Ld. PP for CBI alongwith IO, Inspector Dinesh Kumar.

Ms.Nitya Rama Krishnan, Ld. Senior Advocate for A-1 Akil Ahmad alongwith Shri Ashwath Sitaraman, Advocate.

Applicant/Akil Ahmad (A-1) produced in JC through VC.

**ORDER**

This is an application filed under Section 439 Cr.P.C on behalf of A-1 Akil Ahmad/applicant, seeking regular bail in the matter. Applicant has been in custody for the last 43 days.

2. I have heard arguments advanced at bar by both the sides on the application under consideration and perused the report/reply filed in the matter.

3. (i) Before advertng to the arguments advanced at bar, it would be appropriate to have a brief overview of the facts of the case in hand. The case FIR in the matter was registered on 30.12.2021 on the basis of “**source information**” that applicant/A-1 Akil Ahmad, being Regional Officer of National Highways Authority of India (in short “**NHAI**”) was in the habit of demanding and accepting illegal gratification from NHAI contractors for clearing their pending bills and for issuing Provisional Commercial Operations Date (in short “**PCOD**”) for completed projects.

(ii) On 30.12.2021 applicant/A-1 had demanded illegal gratification from A-2 Retnakaran Sajilal, General Manager of M/s Dilip Buildcon Private Limited, having its registered office at Plot No.5, Chuna Bhatti, Kolar Road, Bhopal, Madhya Pradesh-462016 (hereinafter referred to as “**DBL**”) with respect to project under “**Bangalore-Chennai Expressway Package 1 & 2**”, being undertaken by DBL in Karnataka. A-4/Devendra Jain being Executive Director of DBL had approved payment of Rs.20,00,000/- (Rupees Twenty Lakhs Only) for being paid to applicant/A-1 towards illegal gratification. After approval by A-4, said illegal gratification of Rs.20.00 lakhs was delivered at the Delhi office of A-8 Anuj Gupta through “**Hawala**” for being finally paid to applicant/A-1. During trap proceedings, on 30.12.2020 said amount of Rs.20.00 lakhs was recovered from a black colour bag lying beneath the table of the cabin/office belonging to A-8 Anuj Gupta. Applicant/A-1 was accordingly arrested by CBI in the matter on 31.12.2021 from Bangalore.

(iii) Further, cash amounting to Rs.4.00 lakhs was also recovered from the premises of applicant/A-1. The locker of applicant/A-1 was inspected on 04.01.2022 and cash amounting to around Rs.50.00 lakhs and approx. 04 Kilograms of gold bars and jewellery (valued around Rs.2.20 Crores) were found therein.

4. The learned senior counsel for the applicant has very vehemently argued that arrest of the applicant has been effected in the matter by CBI without cause and without following the due process of law. The applicant was arrested in the matter on 31.12.2021 from Bangalore and thereafter remanded to police custody for four days which thereafter stood extended twice (total nine days’ police custody remand). He has been in judicial custody since 08.01.2022. It is argued that admittedly the offences invoked in the case in hand entail punishment for a maximum period of seven years’ imprisonment, therefore, the Notice under Section 41 Cr.P.C should have had reasons to be placed on record before effecting arrest of the applicant. The said reasons should have been placed before

the learned Magistrate as well before whom the applicant was produced in Bangalore seeking transit remand. In this regard, reference has been made to the law laid down by the Hon'ble Supreme Court of India in paragraphs No.8.1 and 8.2 of judgment "**Arnesh Kumar V/s State of Bihar & Anr.**", (2014) 8 SCC 273. Chapter 11 of CBI Manual 2020 in this regard has also been pressed into service.

5. (i) The learned senior counsel made a strong pitch that applicant being Regional Officer of NHAI had no discretion to accord any favour to M/s DBL or clear its bill(s). The project under the name "**Bangalore-Chennai Expressway Package 1 & 2**" was a newly begun project which was approved/awarded in March' 2021 by a Committee comprising of six members of NHAI, of which applicant was not a part/member thereof. The said project is being constructed under the Hybrid Annuity Mode (in short "**HAM**"), wherein the terms of the Contract are all set and prescribed in the Model Concession Agreement for HAM ("**Model Agreement**") and the applicant has no discretion in this respect. As such, it is contended that a Regional Officer has no role to play in payments made to the concessionaire during the construction period in a HAM project, which is the case in construction of Bangalore-Chennai Expressway. In support of the aforesaid contentions, learned senior counsel has taken me through Clause 23.4 of the Model Agreement. As regards the completion/provisional completion certificate, it is submitted that same is done by independent Engineer after assessing the work done and the Regional Officer like applicant is neither involved in assessing the work nor issues any such Certificate.

(ii) The allegation of demand of bribe against the applicant is based on "**secret/source information**" and in fact there is no substantive evidence of demand of "**bribe**" or acceptance thereof or giving any amount to the applicant. It is emphasized that some Whatsapp exchanges made by A-8 Anuj Gupta (Chartered Accountant) on 31.12.2021 at the behest of CBI official(s) and to which applicant allegedly said "OK" is the sum and substance of the entire case

which in any manner are not legally sustainable. In other words, it is submitted that the above alleged Whatsapp communication between applicant/A-1 and A-8 Anuj Gupta do not bear out complicity of applicant with the alleged offences.

(iii) It is next argued that the applicant was neither caught red handed accepting alleged bribe amount nor there is any complainant in the matter, who is likely to be influenced. The alleged gratification amount of Rs.20.00 lakhs already stands recovered from the office of A-8 Anuj Gupta. The rest of the allegations pertains to “**Hawala transaction**” with which the applicant has no concern at all. As a sequel thereto, it is emphasized that the entire evidence with regard to the source information/FIR in the matter stands collected by the CBI. The intercepted conversation and Whatsapp messages have already been taken into possession; his office and residential premises have been thoroughly searched; and even his voice sample has been obtained/taken by the IO/CBI. It is very vociferously contended that the investigation in this case cannot traverse beyond scope of FIR and the same is documentary in nature.

6. As regards recovery of cash amounting to around Rs.50.00 lakhs and approx. 04 Kilograms of gold bars and jewellery (valued around Rs.2.20 Crores) from the bank locker belonging to applicant/A-1 and his wife, it is contended that the same are joint and legitimate earnings, investments and proceeds earned from property sale by the applicant and his family members. It is next contended that the investigating agency/CBI has already seized the mobile phones of his immediate family members, i.e his wife, minor son and father, without providing the hash value, thereby flouting the norms laid down by Hon’ble High Court of Karnataka in the case of “**Virendra Khanna V/s State of Karnataka**” 2021 SCC Online Kar 5032.

7. It is further argued that there is no complainant in this matter and as such, there is no likelihood of the applicant threatening any witness or tamper with the evidence.

8. (i) It is claimed that the applicant has clean past antecedents, stable background and having deep roots in the society. He is not a flight risk. His daughter is a student of law at Bangalore while his minor son is studying in school.

(ii) While dwelling upon the professional achievements of applicant, it is submitted that he has a flawless career of shining integrity which is evident from the fact that his “**Work Output**” has been assessed/rated as 9/9.5 on a weightage scale of 1-10 by his superiors. Copies of his Annual Performance Appraisal Reports for the years 2017-2019 in this regard have been referred to.

9. The learned senior counsel further relied upon the judgment passed in case of “*Sanjay Chandra V/s CBI*” (2012) 1 SCC 40 to emphasize the point that once the accused is no longer required for further investigation, then he is entitled for bail. It is emphasized that “*pre-trial detention has been deprecated by the Courts*” and “*bail is the rule and jail is an exception.*” The learned counsel further made a strong pitch by submitting that “*bail is not to be withheld as a punishment before the trial*” and “*presumption of innocence*” of the accused remains till the time he is pronounced guilty by the Court.

10. It is further argued that the public sentiments should not be a guiding force at this stage, as the applicant is not claiming bail on the ground of innocence, but the same is being claimed on the basis of “**presumption of innocence**” in his favour. The reference in this regard has been made to the observations made by Hon’ble High Court of Delhi in paragraphs No.11 to 14 of the case/judgment reported as, “**2010 SCC Online Del 130**”, titled as, “**R. Vasudevan V/s CBI, New Delhi**”.

11. It is further emphasized that as many as five accused persons, i.e A-4 Devendra Jain, A-3 Mahim Pratap Singh Tomar, A-6 Sunil Kumar Verma, A-2 Retnakaran Sajilal and A-5 Ms.Uma Soni have already been enlarged on bail by

this Court vide orders dated 07.01.2022, 15.01.2022 and 17.01.2022 respectively and as such, applicant is also entitled for bail in the matter on the ground of parity. In the end, it is argued that no useful purpose would be served by keeping the applicant behind bars as investigation in the matter, which to a great extent is documentary in nature is almost complete.

12. (i) Per contra, learned PP for CBI, duly assisted by the IO has opposed the bail application in equal vehemence and contended that it is a case of corruption by demanding illegal gratification/bribe, which is not only a punishable offence, but also undermines human rights, indirectly violating them and systematic corruption is a human right's violation in itself, as it leads to systematic economic crime. As regards the case in hand, it is strenuously emphasized that the investigation conducted so far has revealed that applicant/A-1 had demanded illegal gratification from A-2 in respect of the work of Bengaluru-Chennai Expressway Project and it was A-2 who had informed his boss, i.e A-4 about the said gratification demand of Rs.20.00 lakhs, which was ultimately recovered by CBI team during trap proceedings from the Delhi office of A-8 Anuj Gupta on 30.12.2021. During investigation, A-8 Anuj Gupta disclosed that the said amount of Rs.20.00 lakhs was meant for delivering to applicant/A-1. In the meantime, A-8 Anuj Gupta voluntarily made a Whatsapp call to applicant/A-1 and told him that "**Saaman mil gaya**" to which applicant replied "**OK**" and thereafter the call was disconnected. Immediately thereafter, applicant/A-1 made a return Whatsapp call to A-8 Anuj Gupta on his mobile number and A-8 said "**20 lakh mil gaye**" to which applicant replied "**OK**". It is argued that it was only after this development that applicant was arrested in the matter on 31.12.2021 from Bangalore.

(ii) It is further very vehemently argued that the scrutiny of data extracted from the mobile phones of accused persons, intercepted calls and interrogation conducted so far has revealed that applicant/A-1 was in the habit of obtaining illegal gratification and has acquired huge movable and immovable

assets therefrom. The locker of applicant was inspected on 04.01.2022 and huge unaccounted cash amounting to around Rs.50.00 lakhs and approx. 04 Kilograms of gold bars and jewellery (valued around Rs.2.20 Crores) were found therein. The applicant has not been able to give any plausible explanation qua the aforesaid recovery effected from his bank locker.

(iii) It is next contended that the investigation conducted in the matter further revealed that during the year 2020, applicant/A-1 was lying posted as GM (Karnataka), NHAI and also involved in the processing and finalizing the tender for Bangalore-Chennai Expressway (Package 1 & 2). The documentary evidence collected in the matter revealed that applicant was associated with the above project since the award of tender. Being GM (Karnataka), he had also signed on behalf of NHAI on the agreement executed for the said work between concessionaires, i.e M/s DBL and NHAI.

13. (i) It is further vehemently emphasized that the CDRs of applicant/A-1 and A-8 Anuj Gupta clearly reveal that they were in constant touch with each other and were part of a “**larger conspiracy**”, which remains to be unearthed. It is further argued that the mobile handset which was used by applicant/A-1 for Whatsapp calling and messaging was removed by him which has so far not been traced by CBI and as such, the CBI is not in a position to unearth a part of the conspiracy. The applicant has not at all cooperated in the investigation.

(ii) It is next contended that during the course of investigation, it has come in the disclosure statement of applicant/A-1 that he used to interact with A-8 only through Whatsapp calls and messages. The transcripts of those calls could not be detected/retrieved; whereas, the transcript of Whatsapp messages has been recovered, which clearly shows that the applicant was actively involved in demanding illegal gratification.

14. (i) It is submitted that the data collected by CBI is very huge in quantity and the analysis is taking time; a larger conspiracy is to be unearthed which

requires confrontation of the applicant with other accused persons; investigation of the case is in its initial stages and if the applicant is enlarged on bail at this stage, he being a senior officer of NHAI may tamper with the evidence, which to a certain extent is documentary in nature. It is further submitted that cannot claim parity with the other co-accused person who already stood enlarged on bail in the matter and instead his parity lies with A-8 Anuj Gupta, whose bail application already stood dismissed by this Court vide order dated 21.01.2022.

(ii) It is next contended that the cases of present nature are the one, which affect the entire society and interest of an individual in respect of liberty or otherwise cannot be considered over and above that of society.

(iii) It is next contended that the applicant has not co-operated in investigation in as much as he has not communicated the “**password**” of his “**I-phone**”, which was seized from him by CBI during investigation.

(iv) It is emphasized that there is a clear demand of bribe by applicant from A-2 which is reflected in the calls intercepted between them. There is further very clear evidence that the applicant wanted to side track the “**Project Director**”, who is an honest officer and had cleared the project of DBL. It is very vociferously argued that the applicant had pressurized A-2 for payment of bribe amount, as the scheme of the Government was coming to end on 31.12.2021. He had communicated that in case the bribe amount is not given to him by 30.12.2021, the release of payment to DBL would be delayed. It is further emphasized that earlier also the applicant had demanded bribe from A-2 on 14.11.2021. As such, dismissal of instant bail application has been strenuously prayed for.

15. I have given thoughtful consideration to the arguments advanced at bar from both the sides. I have also perused the relevant record placed before me.



16. I am conscious of the fact that present is neither a trap case where the applicant/A-1 was caught red-handed demanding or accepting the bribe amount nor there is any complainant in the matter, even then from the material produced on record so far, it is clearly evident that applicant/A-1 and A-8 Anuj Gupta (Chartered Accountant) were in constant touch with each other through Whatsapp calling and messaging. It is not disputed by learned senior counsel that applicant is a senior officer of NHAI and during the year 2020, he was lying posted as GM (Karnataka), NHAI and involved in the processing and finalizing the tender for Bangalore-Chennai Expressway (Package I & II) and also signed on behalf of NHAI on the Agreement for the said work between concessionaires, i.e M/s DBL and NHAI. It is further an admitted position on record that during trap proceedings, unaccounted cash amount of Rs.20.00 lakhs was recovered by CBI from the Delhi office of A-8 Anuj Gupta (Chartered Accountant) and it was A-8 who had made a Whatsapp call to applicant/A-1 and told him that “**Saaman mil gaya**” to which applicant replied “**OK**”. This is not the end of story here. It is a matter of record that immediately thereafter, applicant/A-1 made a return Whatsapp call to A-8 Anuj Gupta on his mobile number and A-8 said “**20 lakh mil gaye**” to which applicant replied “**OK**”. This *prima facie* gives an indication that some hanky-panky was going on between applicant/A-1 and A8 Anuj Gupta with regard to aforesaid unaccounted cash amount of Rs.20.00 lakhs.

17. (i) It is a matter of record that during inspection of the bank locker belonging to applicant, which was carried out on 04.01.2022 by CBI team in due presence of applicant and other witnesses, huge unaccounted cash amounting to around Rs.50.00 lakhs and approx. 04 Kilograms of gold bars and jewellery (valued around Rs.2.20 Crores) were found therein for which no plausible explanation has come forward from the side of applicant.

(ii) Further, this Court also cannot lose sight of the fact that the mobile handset which was being used by applicant/A-1 for making Whatsapp call and messaging to other accused persons, including A-8 Anuj Gupta was removed by

him which has so far not been traced by CBI. The said mobile phone is a vital piece of evidence in the case in hand. This *prima facie* gives an impression that applicant is acting smart and not cooperating in the investigation. The “I-phone” which was seized from the applicant is being sent by the IO to FSL, as the applicant has not shared its password. The learned senior counsel for the applicant has argued that applicant has “**right to silence**”, as available to him under Article 20 (3) of the Constitution of India. I agree that the applicant has right to silence, but in that case, an adverse inference is liable to be raised against him.

(iii) There is no issue with the law laid down in the judgments relied upon by the applicant, but the same are not applicable in the facts and circumstances of the present case.

18. The investigation qua the applicant is at a nascent stage. I agree with the learned PP for CBI that the larger conspiracy between applicant/A-1, who is the principal accused and A-8 Anuj Gupta is liable to be unearthed and the documents from the statutory authorities need to be collected. I further agree with the submissions of learned PP that applicant being a senior officer of NHA is very well in a position to tamper with the evidence, which to a certain extent is documentary in nature, if he is enlarged on bail at this stage. I further find substance in the submissions of learned PP that parity of applicant/A-1 lies with A-8 Anuj Gupta and not the other accused persons, who already stood enlarged on bail.

19. I do not find any substance in the argument of learned senior counsel for the applicant that the reasons were not furnished by the CBI before the learned Magistrate, who was dealing with transit remand application of the applicant because a copy of reasons were not only furnished to the applicant at the time of his arrest but was also furnished to the learned Magistrate at the time of remand.

20. The moto of NHAH states “*Hum Sadak Ka Nirmaan Hi Nahi Kartey, Rashtra Ka Nirmaan Kartey Hain*”. What kind of “**Rashtra Nirmaan**” is being done by senior officers like applicant by having millions of rupees in their locker. I really fail to understand this. Corruption erodes trust in government and undermines the social contract. This is cause for concern across the globe, but particularly in contexts of fragility and violence, as corruption fuels and perpetuates the inequalities and discontent that lead to fragility, violent extremism, and conflict. Corruption impedes investment, with consequent effects on growth and jobs. Corruption is not only a punishable offence, but it also undermines human rights indirectly violating them and systematic corruption is a human rights violation itself, as it leads to systematic economic crime.

21. As regards the contention of learned senior counsel that applicant has been in custody for the last 43 days, it is noted that long detention *per se* cannot be a ground to grant bail to a person who is accused of a serious and grave offence having a far reaching social impact. I am supported in my aforesaid view by the observations made by Hon’ble Gauhati High Court vide order dated 24.06.2021, passed in Bail Application No.544/2021, titled as, “**Prasanta Kumar Dutta V/s The State of Assam**”. The observations made by Hon’ble Gauhati High Court in para 22 of the said order are re-produced as under:

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*22. Long detention per se cannot be a ground to grant bail to a person who is accused of a serious and grave offence having a far-reaching social impact. The recruitment scam of the present case had shocked the conscience of the people of the State of Assam and had shaken the credibility of the public service recruitment process. In this regard, I may profitably refer to the case of “State of Bihar V/s Amit Kumar”, (2017) 13 SCC 751, where the Hon’ble Supreme Court had the occasion to deal with a similar matter. The pertinent observations of the Hon’ble Court are extracted hereunder:*

*“8. A bare reading of the order impugned discloses that the High Court has not given*

*any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. **When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts.** We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.*

*9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.*

*13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly*

*worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466: (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439: (2013) 3 SCC (Cri) 552]. Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously.*

*15. Having bestowed our thoughtful consideration to the gravity of the offence and several other crucial factors which are discussed in detail in preceding paragraphs, we are of the opinion that it is not advisable to release the respondent-accused on bail at this stage. Accordingly, without expressing any opinion on final merits of the case, we set aside the order of the High Court. The appeal stands allowed.”*

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(emphasis supplied)*

22. Having regard to the nature of allegations against the applicant, who is a senior public servant; stage of investigation; recovery of unaccounted cash amounting to around Rs.4.00 lakhs from his residence; further recovery of unaccounted cash of around Rs.50.00 lakhs and approx. 04 Kilograms of gold bars and jewellery (valued around Rs.2.20 Crores) from his bank locker; non-recovery of his mobile handset so far; for non-disclosure of the password of his “I-phone”; far reaching social-impact of the offence involved in the matter and larger public interest; I am not inclined to admit the applicant on bail at this stage.

23. The present bail application accordingly stands dismissed.

24. It is hereby clarified that nothing stated hereinabove shall tantamount to expression of opinion on the merits of the case.

25. A copy of this order be sent to Superintendent Jail concerned, learned counsel(s) for the applicant as well as to learned PP for CBI/IO of the case through electronic mode.

26. Copy of this order be also uploaded on the official website of Delhi District Courts.

**(Announced through Webex Video-Conferencing)**

VINOD YADAV Digitally signed by VINOD  
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**(VINOD YADAV)  
SPECIAL JUDGE (PC ACT) CBI-15  
ROUSE AVENUE COURTS COMPLEX: NEW DELHI  
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