

Bail Matter No. : 233/2022
CBI v. iSec Pvt. Ltd. & ors. (Chitra Ramkrishna)

21.12.2022

Present: Sh. Rajan Dahiya, Ld. Sr. Public
Prosecutor for CBI.

Ms. Rebecca M. John, Ld. Senior Counsel
assisted by Sh. Shivam Batra, Sh. Akhil
Ranganathan, Arshdeep Singh, Sh. Ankit
Bhushan, Sh. Adya R. Luthr and Sh. Rony
O. John, Ld. Counsels, Advocates for
accused/applicant Chitra Ramkrishna.

Vide this order, I shall dispose of an
application moved on behalf of the accused/applicant
Chitra Ramkrishna for grant of bail.

2. This is the application moved on behalf of
accused Chitra Ramkrishna for seeking bail in RC no.
2212022E0030 dated 07.07.2022 registered under
Section 120-B, 409, 420 of IPC; Sec. 69 B, 72, 72A of
the IT Act, Sections 20,21,24,26 of the Indian
Telegraph Act, Sec 3&6 of Indian Wireless Telegraphy
Act and Sec 13(2) r/w 13(1)(d) of the PC Act.

3. As per record, prior to the arrest of
accused/applicant in this case on 27.09.2022, she
was arrested by Enforcement Directorate (ED), in
ECIR/DLZO-I/28/2022 dated 11.07.2022 on
14.7.2022. As per record, the bail application of
applicant moved in said ED matter was dismissed by
this court vide order dated 29.8.2022. However, it is
informed that the bail application moved by the

applicant/accused before the Hon'ble Delhi High Court has already been heard and is now reserved for orders.

4. I have heard the arguments from both the sides and carefully gone through the entire record.

5. Ld. Senior Counsel for the accused/applicant has argued that though the bail application moved by the accused/applicant in ED matter is still pending before the Hon'ble Delhi High Court but the co-accused Sanjay Pandey has already been enlarged on bail by the Hon'ble Delhi High Court vide order dated 08.12.2022. It is further argued that in the light of the observations made by the Hon'ble High Court in said bail order passed on the bail application of co-accused Sanjay Pandey, the present applicant/accused Chitra Ramkrishna also deserves to be granted bail in the instant case. Ld. Counsel submitted that as per said order, the essential ingredients of predicate offences of the instant FIR i.e. the offence punishable under Section 120B r/w Section 409/420 B IPC are totally lacking for making any premise for the alleged offence of money laundering in said ECIR/DLZO-I/28/2022. It is further submitted that all other offences of the instant FIR i.e. the offences under Section. 69 B, 72A of the IT Act, Sections 20,21,24,26 of the Indian Telegraph Act and Sec 3&6 of Indian Wireless Telegraphy Act are bailable.

6. It has been further argued on behalf of accused/applicant that in said bail order dated 08.12.2022, Hon'ble Delhi High Court was pleased to observe that the ingredients of none of the predicate offences which formed the basis of the alleged offence of money laundering under PMLA, have been made out. Ld. Sr. Counsel has drawn attention of this court to the observations contained in para no. 49, 54-56 and 63 of said order with regard to the alleged offences of Sections 409, 420 and 120B IPC. Ld. Sr.Counsel has further drawn attention of the court to para no. 42-45 containing similar observations with regard to the offence of Section 72 of IT Act. It is submitted that even with regard to Section 13(2) and 13 (1)(d) of PC Act, the Hon'ble Court was of the view that none of said provisions can be invoked in the instant case, as there was no allegation raised by the Prosecution regarding giving or receiving of a bribe or illegal gratification. Ld. Sr. Counsel further argued that as per said order of the Hon'ble High Court, NSE is a private entity and therefore, no offences under Section 13 of PC Act can be said to have been committed over the course of M/s iSec contractual dealing with NSE.

7. It is further argued that in the light of the aforementioned observations of the Hon'ble High Court, the accused/applicant also deserves to be granted bail in the instant case because no ingredients of the predicate offences mentioned in the present FIR are made out in the light of the allegations contained therein while the rest of the

offences of the FIR under Section 20, 21,24 and 26 of Indian Telegraph Act, 1885, Section 3 and 6 of Indian Wireless Telegraphy Act, 1933 and Section 72 A of Information Technology Act 2000 are bailable. Ld. Sr. Counsel further submitted that in this case, the accused/applicant is in custody from 27.9.2022 and she is no more required for the purposes of investigation.

8. It is further submitted that although the CBI has alleged the offence of criminal conspiracy punishable under Section 120-B of IPC only with the aid of Section 409 and 420 IPC but as per the observations in paragraph no. 58 of the aforementioned bail order, the offence of Section 120-B IPC even as a standalone offence is not made out for lack of criminal intent which is necessary ingredient for the offence of Section 120-A IPC.

9. On the other hand, Ld. Sr. PP for CBI vehemently opposed the bail application by submitting that the role attributed to accused/applicant Chitra Ramakirshnan in the instant FIR is entirely different from the role attributed to co-accused Sanjay Pandey, who was granted bail by the Hon'ble High Court vide aforementioned order dated 08.12.2022. It is further submitted that said order was passed on the bail application moved in a separate ED matter ECIR /DLZO-I/28/2022 and CBI was not even party to said bail application and never got the opportunity to put forward its case before Hon'ble High Court regarding predicate offences of

the instant FIR. It is further submitted that the report filed by the CBI which finds mention in para 34 of said order, was filed in a quashing petition and not in the bail application and said quashing petition filed by co-accused Sanjay Pandey for quashing of instant FIR is still pending before the Hon'ble High Court.

10. I have given my thoughtful consideration to the rival contentions raised from both the sides and also carefully gone through the entire record.

11. It is pertinent to note here that aforementioned ED matter i.e. ECIR/DLZO-I/28/2022 is based on the premise that accused persons including the applicant herein indulged in illegal interception of MTNL lines at NSE during the period 2009-2017, resulting into commission of various offences under Section 120-B, 409, 420 of IPC; 72 of the IT Act, Section 13(2) read with Section 13(1)(d) of the PC Act covered in the category of scheduled offences/predicate offences under Prevention of Money Laundering Act (PMLA) and same also led to generation of proceeds of crime to the tune of Rs. 4.54 crores given by NSE to the company of co-accused Sanjay Pandey M/s iSec Services Pvt. Limited for the aforementioned illegal activity, thereby making them (accused persons) also liable for the offence of money laundering punishable under Section 4 of PMLA.

12. It is also important to note that for consideration of bail in a case involving offence of

money laundering, the case has to withstand the stringent conditions of Section 45 PMLA as well as the triple test of 439 Cr.PC. As such, when a bail plea is opposed by the prosecutor in an ED case, the court needs to satisfy that the accused is not guilty of the offence of money laundering and will not commit any such crime after his release on bail.

13. Perusal of the order dated 08.12.2022 shows that vide said order, Hon'ble High Court was pleased to grant bail to the co-accused Sanjay Pandey on the satisfaction of existence of the twin conditions contained in Section 45 of PMLA and while granting bail, the Hon'ble High Court has discussed the essential ingredient of all the predicate offences in the light of the allegations contained in the instant FIR and made following observation :

" 76. Since I have prima facie given a finding that none of the ingredients of the scheduled offence are made out, the provisions of PMLA are not attracted.

77. I am of the view that in the present case, no scheduled offence is prima facie made out, concomitantly there cannot be proceeds of crime having been generated as there is no criminal activity relating to a scheduled offence. This position is in consonance with the dicta of **Vijay Madanlal Choudhary (supra)** where the Hon'ble Supreme Court held as under:

"406.... The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a Signature Not Verified Digitally Signed byAMIT

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nonschedule offence, would
make no difference. The person
is not prosecuted for the
scheduled offence by invoking
provisions of the 2002 Act, but
only when he has derived or
obtained property as a result of
criminal activity relating to or in
relation to a scheduled offence
and then indulges in process or
activity connected with such
proceeds of crime. Suffice it to
observe that the argument
under consideration is
completely misplaced and needs
to be rejected."

"78. Since none of the ingredients of the
scheduled offences viz., Section 72 IT
Act, Section 120B r/w 409 and 420 IPC,
section 13(2) read with 13(1)(d) PC Act
are made out, there is no occasion to
allege acquisition or retention of
'proceeds of crime', which under Section
2(u) of PMLA is defined to mean
proceeds arising out of 'scheduled
offences'."

14. As per instant FIR, top officials of NSE
including the applicant herein conspired with M/s iSec
to cheat the NSE and its employees and in
furtherance of this criminal conspiracy iSec was hired
for illegal interception of the phone calls of NSE
employees. For said purpose, iSec was issued
Agreement/work orders in the guise of Periodic Study
of Cyber Vulnerabilities of NSE and same was done in
contravention of the provisions of Telegraph Act as no
permission was taken from competent authority as

required under Section 5 of the Telegraph Act. Transcripts of these calls were provided by M/s iSec and received by the officials of NSE at the top level, which resulted in breach of confidentiality and privacy of the employees of NSE and caused wrongful gain of Rs. 4.54 crores to iSec as payment for this task and corresponding wrongful loss to NSE.

15. As per the allegations, the applicant was directly connected with the illegal recording of telephone calls of NSE employees because the approvals for giving contract of Periodic Study of Cyber Vulnerabilities under the guise of which illegal tapping of phone calls of NSE Employees was done, was processed/granted by the applicant/accused in her capacity as Deputy Managing Director/Joint Managing Director/Managing Director of NSE during the period of offence between 2009-2017.

16. However, in the light of the aforementioned observation made by the Hon'ble High Court regarding lack of essential ingredient of the predicate offences, this court is inclined to grant bail to the accused/applicant in the instant case. Mere fact that CBI was not a party to bail application of the co-accused moved before the Hon'ble High Court in said ED matter, cannot be a ground to urge before this court to take a different view with regard to alleged predicate offences. Undoubtedly, the observations contained in the aforementioned order are reflective of only the prima facie view taken by the Hon'ble High Court but, this court also at this

stage is required to only take a prima facie view of the matter for consideration of bail application of the accused. Furthermore, the reply filed by the CBI in the quashing petition pending before the Hon'ble High Court was also taken into account by the Hon'ble High Court before passing the aforementioned order.

17. Considering the fact that the Hon'ble High Court has already granted bail to the co-accused Sanjay Pandey in the connected ED matter, which in the light of Section 45 PMLA embodies far more stringent conditions for grant of bail, I find no reason to decline bail to the applicant in the present case. As already noted above, all the offences other than predicate offences of the present FIR are bailable. In view thereof, accused is granted bail with the conditions that :

1. Applicant shall furnish personal bond in the sum of Rs.1,00,000/- with two sureties in the like amount;
2. Applicant shall appear before the court as and when the matter is taken up for hearing;
3. Applicant shall provide her mobile number to the IO concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
4. The applicant shall join investigation as and when called by the IO concerned.

5. In case the applicant changes her address, she will inform the IO concerned and this Court also;

6. Applicant shall not leave the country during she bail period and surrender her passport, if any, at the time of release before the IO concerned;

7. Applicant shall not communicate with, or come into contact with any of the prosecution witnesses or tamper with the evidence of the case.

18. Nothing stated herein shall amount to expression of opinion on merits of the case.

19. Let a copy of this order be sent to the Superintendent Tihar Jail. Copy of the order be given dasti to both the parties as prayed.

(SUNENA SHARMA)
SPECIAL JUDGE (PC ACT) (CBI)
ROUSE AVENUE DISTRICT COURTS
NEW DELHI/21.12.2022