

Lakshay Vij vs. CBI
Bail Matters 270/2024
17.12.2024

Present: Sh.Suryakant Singla, Id. Sr. Advocate along with Sh.Prabhav Ralli, Sh.Dev Vrat Arya, Ms.Vanya Gupta and Ms.Mayanka Dhawan, Id. Counsels for accused/applicant.

Sh.Amjad Ali, Id. PP for CBI along with IO Insp.Sandeep.

This is regular bail application of accused/applicant who is stated to be in judicial custody of CBI since 24.10.2024 and prior thereto he was in custody of ED since 22.07.2024.

Grounds

It is stated in the bail application that there is no material to link the accused/applicant with the alleged defrauding of foreign nationals, it is not even the case of prosecution/CBI that accused/applicant indulged in inducing, enticing the victim in transferring the money from her account. It is stated that accused/applicant is not the beneficiary of alleged proceeds of crime as no chain of money, transferring from the account of Ms. Lisa Roth, through crypto currency wallet has been connected to applicant/accused.

It is stated that though as per allegations accused/applicant was instructing co-accused persons regarding transfer of crypto currencies but this allegation has not been substantiated by any material or evidence. It is stated that accused is in judicial custody of CBI since 24.10.2024m, he was earlier taken to police remand for five days but nothing recovered from the accused. It is stated that CBI is adopting pick and choose policy in arresting of accused/ applicant but not arresting other five accused named in the FIR who are allegedly stated to be beneficiary of proceeds of crime. It is stated that prosecution is relying upon the statement of co-accused

which is inadmissible and allegations are based on WhatsApp chat, which cannot be relied upon in the absence of forensic evidence or connecting evidence with the accused.

Reply to the bail application has been filed on behalf of CBI.

Facts

Precise reference of facts necessary for disposal of present application are that present RC bearing no.RC-2312023S0002 has been registered u/s 120B r/w 419, 420 IPC and Section 66 and 66B of I.T. Act 2000 by CBI (International Operation Division) on 04.07.2023, with the allegations that on 21.05.2022 victim who is US Citizen (Ms.Lisa Roth), when was working on her laptop, her system was hacked and she was contacted by a number displayed on her laptop screen, person represented himself to be Microsoft employee, allegedly misguided her to transfer money from her fidelity account to her First State Bank account. Caller allegedly exercised unauthorized remote control over the system of the victim by using her mobile phone, e-mail ID and thereby induced her to transfer USD 4 lakhs to a Okay coin account. In that manner the said USD 4 lakhs were thereafter were converted into crypto currency and further transferred to crypto wallet of persons named in the FIR i.e. Praful Gupta, Rishabh Dixit, Sarita Gupta, Kunal Almadi and Gaurav Pahwa.

Apparently on the basis of source information and information from USA, present RC was registered and investigation was carried out. During investigation named accused were joined in the investigation but were not arrested. From the reply of the CBI it appears that the allegation against the accused is that he was one of the member of the WhatsApp group among other co-accused persons and accused/applicant used to share

details of crypto wallets as well as bank accounts of other accounts in that WhatsApp group and transfer of proceeds of crime to different bank accounts.

Since on the basis of RC registered by CBI, Enforcement Directorate had also registered ECIR, during the investigation of ED accused applicant was arrested on 22.07.2024 and later CBI also arrested him after moving application before Ld. ACJM.

Submissions

Sh.Suryakant Singla, Ld. Sr. Counsel appearing for accused/applicant submits that named accused in the FIR, had never been arrested in the investigation of CBI, whereas the accused/applicant was arrested, despite the fact that he joined the investigation on four occasions. It is submitted by Ld. Sr. Counsel that a pick and choose policy was adopted whereas there was no material/evidence collected during investigation against the accused applicant. It is submitted that the accused in judicial custody and no more required in the investigation.

Ld. PP for CBI on the other hand argued that there are serious allegations of converting the proceeds of crime into crypto currency and investigation is still going on. It is argued that accused did not cooperate in the investigation and did not provide the mobile device despite directions from Hon'ble High Court. It is submitted that grant of bail to the accused would hamper the investigation as investigation require more time to collect relevant evidence.

Analysis

Having considered the submissions at bar and having gone through the record including reply filed by the CBI. First of all fact to note is that

in the FIR of the CBI five persons were named as accused with specific allegations against them of having induced the victim to part with USD 400,000 and converting that money into crypto-currency and then transferring to crypto-wallets. However there is no explanation as to why those five persons were never arrested and accused/applicant was arrested whose name was not even in FIR. It is admitted fact that accused/applicant joined the investigation on 31.05.2024, 03.06.2024, 04.06.2024 and 18.06.2024 and later was arrested in this case on 24.10.2024. Even if facts as stated in the reply of CBI, are taken on the face of it, it is in the allegations that accused was member of WhatsApp group with other accused persons and giving instructions for transfer of crypto currency in different bank accounts. Such allegations on the face of it is very serious, when prosecution was called upon to show the material in support of those allegations, no material could be shown. As such allegations are only that accused was member of some WhatsApp group. There is nothing showing that it is accused/applicant who either received or transferred crypto currency into any bank account.

It is also alleged that despite directions from Hon'ble High Court in WP(Crl.) 2058/2024, whereby LOC against the accused was opened with the directions to the accused to join the investigation and to provide his mobile device, one of the mobile number in the WhatsApp group is stated to be 8888889297, stated to be of accused/applicant but same was in the name of one Jai. Another mobile number in that group was 999979752 which was in the name of accused, the mobile of the same has already been provided to investigating agency. Ld. PP for the CBI has not been able to show any other evidence connecting the accused/applicant with

mobile no. 999979752. As such allegations against the accused are also not supported with any material or evidence. Allegations by itself cannot be taken to be gospel truth when the same is not supported by any material.

This court would refrain from making much observation on the merits of the matter as investigation is still going on but relief of bail cannot be denied only by asserting certain allegation which is also not supported by any material. Moreover there is no explanation regarding disparity in the investigation of arresting certain accused person and not arresting certain accused persons named in the FIR. Thus for the reasons so stated at this stage accused is admitted to bail upon furnishing of personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of Id. Trial court, subject to following conditions:

- (1) Accused/applicant shall join the investigation as and when called upon by the investigating officer;
- (2) Accused/applicant shall not try to contact or influence the complainant or prosecution witnesses in any manner.
- (3) Accused/applicant shall not leave the country without prior permission of the court concerned.
- (4) Accused/applicant shall surrender his passport, if issued in his name.

With these observations bail application stands disposed off.

Order dasti.

(Shailender Malik)
Spl. Judge (PC Act) CBI-21
RACC/New Delhi/17.12.2024