

Court No. - 16

Case :- BAIL No. - 4387 of 2021

Applicant :- Ayodhya Prasad Mishra (Second Bail)

Opposite Party :- Central Bureau Of Investigation (Acb) Hazaratganj,
226001

Counsel for Applicant :- Ayodhya Prasad Mishra, Anchal Mishra, Atul
Mishra, Nadeem Murtaza, Rituraj Mishra

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Dinesh Kumar Singh, J.

1. This is the second bail application filed by the accused-applicant. The first bail application was rejected by this Court vide judgment and order dated 10.04.2020 passed in Bail No.1060 of 2020.

2. By means of the instant second bail application, the applicant is seeking bail in Case Crime No.540/2019, under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(2) of the Prevention of Corruption Act, Police Station Hazratganj, District Lucknow, wherein, the investigation of the case was thereafter transferred to the Central Bureau of Investigation and consequently RC No.0062020A0005, under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(2) of the Prevention of Corruption Act was registered at Police Station CBI-ACB, Lucknow on 05.03.2020.

3. The accused-applicant has filed Special Leave Petition (Criminal) Diary Nos.11182 of 2020 against the said order of rejection of bail before the Supreme Court. However, the said S.L.P. was dismissed by the Supreme Court vide order dated 15.05.2020. While dismissing the Special Leave Petition, the Supreme Court passed the following order:-

"We do not find any ground to release the petitioner on bail at this stage. The Special Leave Petition stands dismissed.

Mr. Siddhartha Dave, learned senior counsel submits that the petitioner is aged about 69 years and is suffering from heart related ailments and in case he continues to be in custody there is likelihood that he may medically suffer further. However, the said submissions are objected to by the learned Solicitor General.

As mentioned supra, we do not find any ground to release the petitioner on bail at this stage. It is open for the petitioner to move the appropriate court in future seeking bail on medical grounds if he is so chooses based on valid medical records. If such application is made the said court will consider it on merits and in accordance with law."

4. The accused-applicant was Managing Director of Uttar Pradesh Power Corporation Limited (for short 'UPPCL'). Allegations against him and co-accused-Praveen Kumar Gupta, the then Secretary of "Uttar Pradesh State Power Sector Employees General Provident Fund", "Uttar Pradesh State Power Sector Employees Gratuity Fund" and "Uttar Pradesh State Power Sector Employees Pension Fund" (for short 'the Funds') and Mr. Sudhanshu Dwivedi, the then Director (Finance) is that they had invested the money from these funds in private sector companies in a wholly illegal and mala fide manner to earn huge illegal commission in violation of the provisions of the Companies Act, Employees Provident Fund and Misc. Provisions Act, 1952 and provisions of the Indian Trust Act, 1882 as well as Rules framed thereunder.

5. It is also alleged that according to the records available, GPF contributions amounting to Rs.2631.20 crores were invested in DHFL, out of which only Rs.1185.50 crores have been received by the trust office and an amount of Rs.1445.70 crores plus interest is yet to be received. Similarly, an amount of Rs.1491.5 crores of the Contributory Provident Fund was invested in the DHFL, out of which Rs.669.3 crores have been received by the office of the trust and Rs.822.2 crores plus interest is yet to be received. Thus, the total amount of Rs.2267.90 crores (Principal Amount) and interest is yet to be received from the DHFL.

6. Thus, allegations in sum and substance are that the accused in furtherance of the well-planned criminal conspiracy with mala fide intention for personal gain and in violation of the relevant provisions of law, have invested huge amount of two funds i.e. Uttar Pradesh Power Sector Employees General Provident Fund and Uttar Pradesh Power Corporation Limited Contributory Provident Fund in DHFL, a company incorporated under the Companies Act. Their mala fide decision has caused huge loss to these funds to the amount of Rs.2267.9 crores (Principal

Amount) besides interest. The investigation has revealed that the investments have been made in the DHFL by the accused for personal gain as they have received the huge amount from DHFL as commission for making such investments.

7. Heard Mr. Mukul Rohtagi and Mr. Vivek Tankha, Senior Advocates assisted by Mr. Nadeem Murtaza, Mr. A.P. Mishra, Mr. Varun Tankha, learned counsels for the applicant and Mr. Anurag Kumar Singh, learned counsel for C.B.I.

8. Mr. Mukul Rohtagi, learned Senior Counsel for the applicant has submitted that the accused-applicant was the Managing Director of the UPPCL between July, 2012 and March, 2017. He is 70 years old. He is having fragile health and suffering from various ailments, including heart disease, hypertension, ear problem of tinnitus, thyroid and other diseases. He underwent two heart surgeries and three stents have been placed in the arteries of the accused-applicant. His various ailments have been mentioned in paragraphs 69 to 70 of the bail application. The medical prescription, documents and reports have also been placed on record as Annexure-35 to the bail application. He has also submitted that the Supreme Court while rejecting the Special Leave Petition has given liberty to the accused-applicant to approach this Court for grant of bail on medical condition.

9. It is further submitted that the investment made in the PNB Housing Finance and LIC Housing Finance had been repaid with much more interest than the interest could have been earned from scheduled Banks. It has been submitted that the decision to make investment in Diwan Housing Finance Limited (for short 'DHFL') was taken by the then Secretary and the Director (Finance) without any knowledge of the accused-applicant. He has also submitted that there is no signature of the accused-applicant on the decision for investing the Funds' money in DHFL and the said decision was taken by the Secretary and the Director (Finance).

10. It has been further submitted that the accused-applicant resigned as Managing Director of UPPCL and his resignation was accepted on 23.03.2017. On 24.03.2017, he handed over the charge of the Managing Director to the then Chairman of the UPPCL, Mr. Sanjay Agarwal. He has further submitted that only incriminating piece of evidence against the accused-applicant is the minutes of meeting dated 22.03.2017 by way of

circulation/rotation. However, it is said that the said minutes did not ratify any investment made with DHFL as alleged by the prosecution. The aforesaid minutes of meeting record a general agreement in consonance with the Government Notification dated 02.03.2015 to invest in AAA+ companies that too was to be decided by the then Secretary of the Trust and the Director, Finance. The accused-applicant had merely appended his signatures on the said minutes of meeting only on 22.03.2017 treating the same to be a routine decision. The accused-applicant was not aware of the first investment in DHFL, which was made on 17.03.2017.

11. It has been further submitted that except for the statement of co-accused-Abhinav Gupta s/o Praveen Gupta, Secretary of the Trust given to the police while in police custody, there is no evidence against the accused-applicant. It has been further submitted that as per the investigation conducted by the C.B.I., the brokerage firms for financial transactions were being organized by Mr. Abhinav Gupta between January 2018 and April 2019 after two years of tendering resignation by the accused-applicant. He has further submitted that no evidence has so far been collected by the C.B.I. of receiving any amount as commission by the accused-applicant.

12. It has further been submitted that co-accused, Abhinav Gupta whom the C.B.I. has said to be 'kingpin' of the scam, has been granted bail by the Supreme Court in Special Leave to Appeal (Criminal) No.3110 of 2021 vide order dated 04.06.2021.

13. It has also been submitted that another co-accused, Vikas Chawla has been granted bail by the Supreme Court in Criminal Appeal No.97 of 2021 dated 01.02.2021.

14. It has been submitted that the C.B.I. has not been able to collect any evidence against the accused-applicant and till date, it has not filed any charge-sheet/supplementary charge-sheet against the accused-applicant or any other accused. It has, therefore, been submitted that there are changed circumstances for enlarging the accused-applicant on bail; firstly on his age, secondly his health condition and thirdly almost two years in jail since his arrest and no evidence so far having been collected by the C.B.I. for accepting any alleged commission by him or any money trail linking the accused-applicant. It has been, therefore, submitted that the accused-applicant *prima facie* has no role in making investment in DHFL and,

therefore, he is entitled to be enlarged on bail. It has further been submitted that presence of the accused-applicant in custody is no longer requires for further investigation and considering his health condition as supported by the documents including the certificate of medical officer, he should be enlarged on bail.

15. It has further been submitted that it is a COVID pandemic period and unless and until it is imperative to keep an accused in jail, he should be allowed to come out of the jail on bail. It is submitted that the investments in DHFL were made from March 2017 to December 2018 and the applicant had already resigned on 23.03.2017.

16. Learned counsel for the accused-applicant has relied on the judgment of the Supreme Court in the case of **P. Chidambaram vs Directorate of Enforcement, (2020) 13 SCC 791** to submit that the gravity of the alleged offence can only beget the length of sentence provided in law and the bail cannot be denied only on the ground that offence allegedly committed by the accused is grave.

17. On the other hand, Mr. Anurag Kumar Singh, learned counsel for the C.B.I. has opposed the bail application and has submitted that Mr. Praveen Kumar Gupta, the Secretary of the Trust and Sudhanshu Dwivedi, Director (Finance) had initiated the proposal for investing fund amount in private entities including DHFL with mala fide intention and the said proposal was approved by the accused-applicant.

18. Mr. Anurag Kumar Singh, learned Counsel has further submitted that from the documents produced along with bail application in respect of the ailments of the accused-applicant, it would relevant to note that he had been receiving medical treatment since 2013 and there is no new development so far as health of the accused-applicant is concerned. The medical prescription and the receipts annexed thereto pertain to the period before the arrest of the accused-applicant.

19. It has further been submitted that the Supreme Court while granting bail to Abhinav Gupta has said that Abhinav Gupta was not a public servant and, therefore, his case has been distinguished from other public servants and the accused-applicant cannot claim parity with the bail granted to co-accused Abhinav Gupta. He has also submitted that the Supreme Court while rejecting the bail of the accused-applicant vide order dated

10.04.2020, did not find any ground to release him on bail. He has, therefore, submitted that the documents regarding ailment of the accused-applicant up to 15.05.2020, were not found sufficient by the Supreme Court to release him on bail and, it was left open that in case in future he suffers from deterioration in health after 15.05.2020, he may approach the court on the basis of the valid medical records. He has also submitted that there is no fresh ground or changed circumstance for enlarging the accused-applicant on bail.

20. It has been further submitted that the accused-applicant had signed the note-sheet/ resolution dated 17.12.2016, by means of which a decision had been taken for the first time to invest the funds of GPF and CPF in private housing companies. Rs.50 crores from GPF Trust and CPF Trust funds were transferred to PNB Housing on the basis of the above decision approved by the accused-applicant. It has also been submitted that the said investment was in furtherance of criminal conspiracy to earn huge illegal commission. Thereafter, the accused-applicant signed the note-sheet on 29.12.2016, by means of which he had approved the decision of investment of Rs.340 Crores from GPF Trust and Rs.50 Crores from CPF Trust in PNB Housing. The Funds were transferred pursuant to the above decision during the tenure of the accused-applicant on 19.12.2016 and 03.01.2017 respectively.

21. It has also been submitted that the accused-applicant had approved the decision dated 21.04.2015, by which it was resolved that the decisions may be taken by rotation without resorting to regular meeting of Board of Trustees which resulted in further investment in private housing finance companies. Co-accused-Abhinav Gupta had stated that a sum of approximately Rs.30 Crores was received as brokerage and the said amount was divided amongst the accused-applicant, P.K. Gupta and Sudhanshu Dwivedi.

22. He has placed reliance on the judgments of the Supreme Court in the following cases:-

(i) State of Maharashtra vs Capt. Buddhikota Subba Rao, 1989 Supp.(2) SCC 605;

(ii) Ram Govind Upadhyay vs. Sudarshan Singh & Ors, (2002) 3 SCC 598;

(iii) Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr, (2004) 7 SCC 528 and;

a judgment of this Court in the case of **Satya Pal vs State of U.P., 1998 (37) ACC 287.**

23. It has, therefore, been submitted that unless there is a change in circumstance or some new facts have developed after rejection of the first bail application, second bail application should not be entertained. He has further submitted that there is no change in circumstances, which warrant the accused-applicant to be enlarged on bail

24. It has been further submitted that by means of a detailed judgment considering all aspects of the matter, the first bail application of the accused-applicant was rejected by this Court, and mere long period of incarceration would not entitle the accused-applicant to be enlarged on bail.

25. To buttress his submission, he has placed reliance on the following judgments of the Supreme Court:-

(i) The State vs Captain Jagjit Singh, (1962) 3 SCC 253;

(ii) Chenna Boyanna Krishna Yadav vs State of Maharashtra, (2007)1 SCC 242;

(iii) Rajesh Ranjan Yadav vs C.B.I., (2007) 1 SCC 70.

26. Mr. Anurag Kumar Singh, learned counsel for the C.B.I. has further submitted that a deep-rooted conspiracy was hatched by the accused-applicant and another co-accused to cheat the money of the employees Trust in a systematic manner and in such a condition, the accused-applicant should not be enlarged on bail.

27. To buttress his submission, he has placed reliance on the two judgments of the Supreme Court in the case of:-

(i) Kalyan Chandra Sarkar (supra);

(ii) Himanshu Chandravadan Desai vs State of Gujarat, (2005) 13 SCC 234; and

(iii) State of Gujarat vs Mohanlal Jitamalji Porwal & Anr, (1987) 2 SCC 364.

28. I have considered the submissions advanced on behalf of the accused-applicant and on behalf of the C.B.I and perused the voluminous record of the bail application running into a few hundred pages.

29. The C.B.I. has been investigating the offence for almost two years. The accused-applicant is 70 years old and has been suffering from various ailments including heart ailment. Except for few documents allegedly signed by him, authorizing investment in PNB Housing, LIC Housing and DHFL, there is no document on record regarding his involvement in the commission of the offence. Co-accused-Abhinav Gupta in his statement given to the police has stated that around Rs.30 Crores commission was obtained from DHFL and this commission was divided amongst the accused-applicant, his father, P.K. Gupta and Sudhanshu Dwivedi, but the C.B.I. has not been able to unearth so far any money trail involving the accused-applicant to have received part of the commission allegedly given by the DHFL or the PNB Housing Company. It appears that the case of the present accused-appliant is different than that of Praveen Kumar Gupta, Secretary of the Trust and Sudhanshu Dwivedi, Director (Finance). The accused-applicant has been in jail for almost two years. Co-accused- Mr. Abhinav Gupta whom the C.B.I. has said to be the 'kingpin' of the whole scam, has been granted bail by the Supreme Court on the ground that he was not a public servant. Another co-accused, Vikas Chawla has also been granted bail by the Supreme Court as mentioned above. The C.B.I. is yet to conclude the investigation and when the question was put to the counsel for the C.B.I. that within how much time the C.B.I. intends to complete the investigation, he has submitted that by September 2021, in all likelihood, the C.B.I. will complete the investigation and file charge-sheet/supplementary charge-sheet. It is not the case of the C.B.I. that the accused-applicant is in a position to tamper with the documentary evidence at this stage or he will not be available for investigation.

30. Considering the age of the accused-applicant, his health condition and his long incarceration in jail and so far, no evidence of money trail involving him having been unearthed by the C.B.I., it would be appropriate to enlarge the accused-applicant on bail.

31. Let applicant, Ayodhya Prasad Mishra be released on bail in the aforesaid case on his furnishing a personal bond and two sureties of the like

amount to the satisfaction of the Magistrate/Court concerned, subject to following conditions :-

(i) The applicant shall make himself available as and when the investigating officer requires his presence for the purpose of investigation. He shall not tamper with the evidence or influence the witnesses.

(ii) The applicant will surrender his passport before the trial Court.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(v) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

The party shall file self attested computer generated copy of this order downloaded from the official website of High Court Allahabad. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 13.7.2021

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