

**IN THE COURT OF MS. SUJATA KOHLI, DISTRICT & SESSIONS
JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE AVENUE
DISTRICT COURT COMPLEX, NEW DELHI**

CC No. 401/2019

CBI Vs. Dharmendra @ Dharmendra Yadav

24.08.2020

**ORDER ON APPLICATION MOVED BY PROSECUTION FOR
CANCELLATION OF BAIL OF ACCUSED**

1. Matter was taken up in terms of orders of Hon'ble High Court bearing no. 26/DHC/2020 dated 30.07.2020 and 322/RG/DHC/2020 dated 15.08.2020, through "Hyperlink URL for Conferencing via Cisco Webex".
3. Prosecution has moved the present application for cancellation of bail of the accused submitting that the accused has won over the complainant violating the bail conditions and complainant's mind is not free from coercion and undue influence and would frustrate the ends of justice, therefore, the complainant cannot be examined by the prosecution in independent manner.
4. Reply to this application has been filed on behalf of the accused submitting that the application is liable to be dismissed as the same is

devoid of merits and is based on surmises and conjectures and is nothing except mere allegations without any substance and it seems that in the garb of the present application, the prosecution is trying to build pressure on the complainant to depose according to their dictum and the application is nothing but an attempt to delay the trial. It has been further submitted in the application that the witness has specifically deposed before this Court on 19.02.2020 that he was stating without any fear or pressure or inducement from any person whatsoever.

5. Arguments were advanced by both the parties, at length, through Cisco Webex meeting platform.
6. During the course of arguments, Ld. Sr.P.P. for State has relied upon a judgment of Allahabad Hon'ble High Court, passed on 03.09.2013 in case titled as "***Umesh Yadav Vs. State of UP***" in ***Crl. Ap. No. 3054 of 2013***.
7. I have heard both the parties and have given my thoughtful consideration to the facts of the case. I have also gone through the judgment cited by the prosecution.
8. At the outset, all that is needed to be referred to, at this stage, is the complaint Ex.PW5/A which was lodged with CBI on one hand, and the statement of the complainant in court as recorded on 19.02.2020 on

the other.

9. The complaint Ex.PW5/A is reproduced hereunder for an easy reference:-

“Mera naam Subhash Chand S/o Satyapal Singh R/o Village & Post Office Ristal, PS Loni District Ghaziabad hai. Mai ek driver hu aur vetan par gadi chalata hun. 26.03.2019 ko mere aur mere dost Harish ka Arawali Park Vasant vihar ke gate par jhagda ho gaya. Mere Dost Harish ne 100 number par pone kar diya. Uske baad Police aayi mujhe aur mere dost ko ghadi ke saath pakad kar Vasant Vihar thana le gai.

Thane me pahunchane par Ct. Dharmendra ne meri gadi DL-1Z-A 2671 ko chhodne ke liye mujhse Rs.20,000/- rishwat mang ki, jo mere mana karne par Rs.10,00/- me chhodne ke liye taiyar ho gaya. Uske Baad meri gadi DL-1Z-A 2671 ko chood iya jo mera bhai Rahul lekar chala gaya. Mujhe aur mere dost ko Vasant Vihar thane me band kar diya.

Uske baad 27.03.2019 ko thane me Ct. Dharmendra ne phir Rs.10,000/- ki mang ki gaadi chhodne ke badle me. Usi din ham dono ko Cantt. Thane ke Court me pesh kiya jaha se ham dono ki jamanat ho gai.”

10. The relevant portion of the statement of complainant dated 19.02.2019 made by him in court is also reproduced hereunder:-

“On 26.03.2019 I had a quarrel with one of my friends, namely Harish, at Vasant vihar. Harish called up the police at 100 number. When police came to the spot, I as well as

my friend were both taken to PS Vasant Vihar. My vehicle was also taken by the police. After reaching the PS, I wanted to go to toilet and when I went there, one person in civil clothes but who stated himself to be in Delhi Police and told himself to be Satbir told me that he could get my vehicle released if I could pay Rs.20,000/- as bribe. I did not had that much of money and on my request, the amount was reduced to Rs.10,000/-. Rs.10,000/- was given by me to the said person Satbir there and then. My vehicle was got released and taken by my brother. However, the police would both of us in the PS Vasant vihar in the lock up, the whole night.

On the next day, we both were released through orders of Court. I went to PS Vasant Vihar for getting my other articles. The same person Satbir met me and again demanded the remaining amount of Rs.10,000/- as bribe. However, I deferred the payment telling him that I would give the money on the next day. I can identify the persons at Satbir, however, I state that he is not present in the court. (Accused has been shown to the witness but witness states that as under:

The person present in court is not the one who had demanded the money).

Next day I went to the CBI office and told them about the incident. They obtained the written complaint from me. I told them that the person Satbir had been demanding money and taking the name of one Dharmender.

At this stage the witness is shown the complaint dated 28.03.2019 and he has identified his signature at point X-

1. The complaint is now exhibited as Ex.PW5/A. The complaint was written by me in my own hand. The dictation was however given by the CBI officials. I told them that the person who was demanding money was Satbir and not Dharmender but they told me that first I should write down the name of Dharmender to whom the money was eventually to be given. I kept clarifying to the CBI officials that the name of the person who was demanding the money was Satbir not Dharmender but CBI officials told me that I should write the name of Dharmender, to whom the money was to go, and then they would automatically call Satbir, as well.

When Satbir had demanded the money initially, he had told me that he had one acquaintance with one SHO and he took his name as Dharmender Yadav. Satbir had told me that the money was to be given eventually to the said Dharmender Yadav. I then told CBI officials that I had to go to Delhi Cantt. to attend the hearing before the SEM, but they told me not to go and that they would talk to the SEM.

To Court: I state that this without any fear or pressure or inducement from any person whatsoever, that the person who demanded the bride from me was Satbir and not Dharmender. He was not the person present in court (the witness refers to the accused of this case)."

11. Coming to his statement as made in the court, throughout, the witness has referred to the person demanding money initially, as being one Satbir, and not the accused Dharmendra Yadav. Upon being

questioned by the Court specifically on this aspect, the complainant categorically stated before Court, that, he has made this statement, without any fear or pressure, or inducement, from any person whatsoever, to the effect that the person who demanded bribe from him, was Satbir, and not Dharmendra. He again and again reiterates before Court that the person present in the Court (accused Dharmendra Yadav) is not the person to whom he gave the bribe.

12. Till the point of further demand of remaining amount of Rs.10,000/- , the story that is given in the statement by the complainant in court remains on the same footing, however, where it goes wrong is, on the point of identification of the accused present in court. From there he starts to say that he can identify the person Satbir, however, the said person Satbir is not present in court. Accused was shown to the witness but witness still stated and maintained that, the person present in court, was not the person who had demanded the money.
13. The complainant does not back out on the aspect where he stated that he did go to CBI office, and also told them about the incident, they obtained a written complainant from him, but the witness while in Court claims that, he had told CBI that, the person who had demanded the money, was Satbir and that Satbir had been taking the name of one Dharmendra.

14. The witness upon being shown the complaint, also did not deny his signatures and rather, he stood by and identified the complaint as Ex.PW5/A, and he even admitted that it was written in his own hand. However, he has stated before Court something quite serious against the CBI officials, in as much as he goes on to allege that the contents of the complaint were however dictated by the CBI officials.

15. Reference is had to para-5 of the statement of complainant, made in court on 19.02.2020. The relevant portion is being reproduced hereunder:-

“The complaint was written by me in my own hand. The dictation was however given by the CBI officials. I told them that the person who was demanding money was Satbir and not Dharmender but they told me that first I should write down the name of Dharmender to whom the money was eventually to be given. I kept clarifying to the CBI officials that the name of the person who was demanding the money was Satbir and not Dharmender but CBI officials told me that I should write the name of Dharmender, to whom the money was to go, and then they would automatically call Satbir, as well.”

16. Complainant even claims that he told the CBI officials that the person who was demanding money was Satbir and not Dharmendra, but it is the CBI officials, who told him that, first he should write down the

name of Dharmendra in the complaint to whom the money eventually was to be given. Complainant further states before court that he kept clarifying to the CBI officials that the name of the person who was demanding money was Satbir and not Dharmendra, but the CBI officials kept telling him that, he should write the name of Dharmendra to whom the money was to go and then they would automatically call Satbir, as well.

17. Complainant even went to the further extent to explain the facts according to him, which were that, when Satbir demanded money initially, he had told him that, he had one acquaintance and he took his name as Dharmendra Yadav. Complainant further states that Satbir told him that money was to be given eventually to the said Dharmendra Yadav.

18. Upon this entire statement coming from the complainant, Court also put a question to him, to ascertain, as to whether, he was stating all this under any fear, pressure or inducement from any person whatsoever, but still, the complainant stated to the Court that, he was not under any fear, pressure or inducement from any person whatsoever. He again emphatically reiterated that, the person who demanded bribe from him was one Satbir and not Dharmendra.

19. After perusal of the entire relevant material on record, referred above,

it is more than evident that, at least at this stage, prosecution has not been able to bring up any such material to substantiate that, there was any threat or inducement to the complainant, for him to have changed his statement and to have turned hostile.

20. In fact the specific allegations made by the complainant against the CBI officials, is itself quite a serious matter. A person under threat or under an inducement may turn hostile at the most, and deny everything point blank and take a U-turn, but he certainly would not go to the extent, to start raising allegations against the CBI officials themselves.

21. In any case, the truth of the matter, as to whether, the accused had committed some acts to win over the complainant, as alleged by CBI on one hand, or the CBI officials having molded the contents of the complaint as per their own motives, suitability, so as to put Dharmendra Yadav in the front as an accused and to shield the person called Satbir, as being now alleged by the complainant, would all be matter to be found after the trial concludes. At this pre-mature stage, when even the statement of the complainant in Court is still lying deferred on the request of Prosecution itself, the application itself seems to have been moved without any supporting material, and at a quite pre-mature stage.

22. The judgment relied upon by the CBI has been perused and considered, but reliance thereon by CBI is wholly misplaced and misconceived. The instant case cited was one where it is the brother of the deceased himself, who had turned hostile and which by itself is enough to imply that he had been won over, and besides there were various other circumstances leading to such conclusion and which ultimately even ended up in conviction. Also the reference to certain other decisions therein, were all applicable to the category of cases where it was clear that accused had committed some acts to win over the complainant/witness and it was observed that court is not a mere spectator and instead should act with initiative. The decision of the court to have cancelled the bail, was duly appreciated by their Lordships while also observing it to be a deterrent for the other witnesses.

23. In case titled as ***State (Delhi Admn.) v. Sanjay Gandhi, (1978) 2 SCC 411***, Hon'ble Supreme Court observed that the cancellation of bail stands on a different footing from the rejection of bail. The Court held that the following grounds are available for cancellation of a bail already granted:

- i. if the accused made an attempt to flee from justice;
- ii. if he tried to tamper with the evidence;

- iii. if supervening circumstances show that it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial;
- iv. if the order granting bail was without jurisdiction;
- v. if there was a wrongful exercise of power by the Magistrate in granting bail.

24. However, as already mentioned above, the situation in the present case is clearly not covered and the application in the present case seems to have been moved in a haste and without any substance.

25. For all one knows, it may even be the other way round, that the moment the complainant came out with statement against the CBI officials that, it is they who had pressurized him into writing the name of Dharmendra instead of Satbir that CBI promptly rushed in, not only to seek cancellation of the bail of the accused, but even to get the testimony of the complainant deferred. The appropriate course for CBI would have been to seek permission for cross-examination of the complainant and thereafter to have taken the decision, to move or not to move this application.

26. Without going further into the matter which purely would be a matter of merits, I find no merit in the application filed by the prosecution. It is not only that this application is without any merit but seems to have

been wholly misconceived and moved in haste and highly casual manner.

Application is dismissed.

**Announced in open Court
today on 24.08.2020**

(SUJATA KOHLI)
District & Sessions Judge-cum-Spl. Judge
(PC Act)(CBI)/RADC/ND