

**IN THE COURT OF SH. HARJYOT SINGH BHALLA, CMM,
ROUSE AVENUE DISTRICT COURTS,
NEW DELHI**

CBI Vs. Deepak Talwar & Ors
RC-DAI-2017-A-0036

05.06.2020

Present: None.

ORDER

1. By this order I propose to dispose of the regular bail application of the accused Deepak Talwar. It is the case of the accused that of the several accused persons named in the FIR, as also chargesheeted so far, only applicant accused Deepak Talwar would be in custody, in case the present bail application is dismissed.

2. The details and status of various accused persons in the present case is as follows:

Table Regarding Status Of Arrest And Chargesheeting Of Accused Persons.

| Not arrested | On court bail | Chargesheeted |
|---------------------|----------------------|----------------------|
| Sunil Khandelwal | Yasmeen Kapoor | Deepa Talwar |
| Raman Kapoor | Jatin Wadhera | Deepak Talwar |
| Mrs Deepa Talwar | Tarun Kapoor | Girish Vaid |
| Girish Vaid | | K.K. Nayar |
| K.K. Nayar | | Jatin Wadhera |

3. It is submitted by the counsel that since other co-accused persons have been granted bail or they have been chargesheeted without arrest or they have so far not been arrested nor chargesheeted, why only accused Deepak Talwar should be deprived of his liberty?

4. Ld. Counsel has relied upon the order dated 01.05.2020 passed by the court of Ld. ASJ, Special Act Sh. A.K. Kuhar in the ED case **ECIR/HQ/19/2017** registered pursuant to the present CBI case. He has

categorically relied on para 5 and 6 of the said order to show how the two cases are related. Para 5 and 6 are quoted for ease of reference:

5. M/s Advantage India is registered Society which is also registered under the Foreign Contribution (Regulation) Act, 2010 for carrying out the educational and social activities. It had received foreign contribution during the financial year 2012-2013 to 2015-2016 to the tune of Rs.90.72 Cr. from M/s Airbus S.A.S. Paris, France and M/s MBDA, England, UK which companies are engaged in Aeronautics and Missile manufacturing respectively. Both the companies' separately entered into an agreement with M/s Advantage India to provide donation. The applicant/accused being the President of the Society signed the agreements. This fund was received under Corporate Social Responsibility Scheme (CSR). The Foreign Receipts and Monitoring Unit (FRMU) of Ministry of Home Affairs, however, found that funds so received by M/s Advantage India were utilized not for the mandated purposes that is towards the promotion of aims and objectives of the Society, for which it was received but for the purposes contrary to the mandate in the Memorandum of Association. A complaint was accordingly made to CBI. This led to registration of the FIR vide no. RC-DAI-2 017-A-A0036 dated 16.11.2017 by Central Bureau of Investigation, ACB, New Delhi for Violation of provision of Sections 33, 35 and 37 of Foreign Contribution (Regulation) Act, 2010 and Sections 120B, 199, 468, 471 and 511 read with Section 417 of Indian Penal Code (IPC) for the offence of criminal conspiracy, making false statement before authority, use of forged documents as genuine and attempt to cheat.

6. The Offences under the Section 120B, 417 and 471 of IPC are the Scheduled Offences under the Schedule attached to the Prevention of Money Laundering Act, 2002 (PML Act). Thus, on the basis of FIR registered by CBI for Offences including Scheduled Offences under PML Act, the Directorate of Enforcement recorded ECIR/HQ/19/2017 on 04.12.2017 to investigate the matter under PML Act to find the trail of the Proceed of Crime (POC).

5. Ld. Counsel has thereafter relied on para 7 to 11 of the said order to show that the allegations being investigated in both the cases are similar and pertain to the same transaction. Thereafter, Ld. Counsel has submitted that the present case and the ED case have virtually the same evidence and witnesses and therefore,

the order granting bail in the said case cannot be ignored by this court, in an investigation on similar allegations out of same transactions.

6. Ld. Counsel has next submitted that the foreign donor in the present case has not made any complaint and the earlier bail orders viz-a-viz accused Tarun Kapoor dated 19.10.2019 and Yasmeeen Kapoor dated 22.10.2019 in the present case show that even the Ld. ASJ Sh. Pulatsya Parmachala while granting bail to the said accused persons had expressed doubt regarding the commission of offence of cheating.

7. Ld. Counsel has next contented that the FIR in the present case was registered in the year 2017. The accused was available in India since early 2019 and he was in custody in another case but the IO never sought to arrest him till 09.12.2019. Ld. Counsel emphasized that the date of 09.12.2019 was relevant as it was the 90th day of custody of co-accused Jatin Wadhwa who was granted default bail by this court for non filing of chargesheet and only at that stage, the present accused was sought to be arrested.

8. He has further submitted that a look at the chargesheet reveals that the substantive offence of 467 of IPC was only invoked against accused Jatin Wadhwa in the chargesheet which has been filed so far. The accused Deepak Talwar on the other hand, only chargesheeted with substantive offence under Section 420 of IPC and the offence of conspiracy under Section 120 B of IPC read with Section 420/467/468 of IPC. Since accused Jatin Wadhwa is already on bail, the present accused definitely has a right to be given bail on the grounds of parity, his case being on better footing.

9. Ld. Counsel has next submitted that the entire allegations in the case are that foreign contribution received by Advantage India was transferred to various entities for purchase of:

firstly, medicine;

secondly, mobile medical units;

thirdly, stationary;

fourthly, exercise notebooks; and

fifthly, payment made to Tarun Kapoor by cheques and account transactions.

10. Even though it is alleged by the prosecution that accused Deepak Talwar received back the money so spent in cash, as those transactions were sham or bogus and no goods and services were infact received, however, no recovery has been made of any cash from the accused either by CBI or by the ED. He has submitted that the allegation that about Rs.75 crores was received by Raman Kapoor and Jatin Wadhwa and that they returned the money in cash is not substantiated by any evidence except by one oral statement made by an approver and even co-accused Raman Kapoor and Jatin Wadhwa are on bail/not arrested so far.

11. It is submitted that no offence of cheating is made out as the donor has not made any complaint regarding inducement and at the most, the claim that foreign contribution has been received in contravention of the Foreign Contribution (Regulation) Act would at the most amount to offence under Section 33/35/37 of the said Act which are punishable with imprisonment of upto 6 months/5 years/1year or with fine or both, respectively. Therefore, his submission is that the present case is on better footing than the ED case in which the Ld. ASJ Sh. A.K. Kuhar had already granted bail to the accused.

12. The counsel has also relied on para 11 of the bail application, where he has reproduced certain observations made by Hon'ble Mr. Justice Manmohan while disposing off writ petition of the accused vide order dated 23.08.2019 bearing no. 3595/2017 which are reproduced for ease of reference:

52.that this court has no doubt that the investigating agency and the trial court shall keep in mind the maxim that bail is the rule and jail is an exception”

13. Lastly, counsel has stated that the accused is not at flight risk and this aspect has been dealt with in detail being order of the Ld. ASJ and he specifically relied on para 29, 30 and 32 of the said order. It is contended that once the Ld. ASJ has already concluded that there is no risk of accused jumping bail, this court should not hold otherwise.

14. Ld. Senior PP has stated that the present case is grave and serious. Out of 11 allegations against the accused, CBI has so far been able to investigate and chargesheet the accused qua only one of the allegations and remaining investigation is pending.

15. Ld. Senior PP has tried to impress upon the court that the order passed by the Ld. ASJ Sh. A.K. Kuhar in the ED case has no bearing on the facts and circumstances of the present case as CBI was not a party in the said case and technically both the cases are different and offences cannot be considered as same.

16. Ld. Senior PP has next contended that the offence of cheating was clearly made out as Government was deceived to grant permission for the foreign contribution received by the accused and reliance has been placed on Section 415 of IPC. He next contended that the delay in the arrest and investigation is only due to the absence of accused from India until the year 2019. Thereafter, by the filing of the writ petition before the High Court. He has also stated that this is an exceptional case and serious offences have been committed. Therefore, accused is not entitled to bail despite the observations made by the High Court in the writ petition.

17. I have considered the rival submissions. I have also perused the order passed by the Ld. Special Judge granting bail to accused Deepak Talwar in the connected ED case. The connection between the two cases becomes apparent when one reads paras 5 to 11 of the said order. Paras 5 and 6 have already been reproduced hereinbefore and Paras 7 to 11 are being reproduced for ease of reference:

7. After investigation ED filed Complaint in Court which is premised on the allegations that accused Deepak Talwar, who controlled M/s Advantage India had hatched a criminal conspiracy to divert the funds received through foreign donors for non-mandated purposes by booking expenditure in the Books of Account of the Society on the basis of forged documents. The payments made through banking channels on the basis of documents forged ostensibly for mandated purposes of the Society were received back in cash by Deepak Talwar, founder of Society, after routing the same through a chain of entities. He roped in other accused as well to execute his plan.

8. The investigation by the ED has revealed that bogus bills were prepared and documents were forged to show false expenses. It is the case of ED that a sum of 26.96 cr. was shown in the books of M/s Advantage India under the heading 'medicines' purchased through M/S Astha Pharma and M/S Hind Pharma for FY 2013-14;2014-15 and 2015-16. The proprietors of these firms namely Smt. Kusum Juneja and Sh.Ramesh Kumar in their statements under section 50 of PML Act denied having made any sale to M/s Advantage India and the Drug License number mentioned in the Bills does not belong to them. Allegedly bank accounts in the name these Pharma firms were opened on the

basis of forged documents. The accused Jatin Wadhera provided assistance to book bogus expenses through M/S Astha Pharma and M/S Hind Pharma to generate cash by transferring RTGS to these entities.

9. It is the case of the ED that out of the total receipt of about 90 Cr. M/s Advantage India paid about 42 cr. to M/s Accordis Healthcare for alleged purchase of Mobile Medical Units and associated services. Raman Kapoor, owner of M/s Accordis Healthcare, in his statement under section 50 of PML Act that on the instructions of Deepak Talwar he had booked bogus expenses and handed over cash of Rs. 29 Cr. to him in lieu of bank transfer received from M/s Advantage India. The M/s Accordis Healthcare made payments to various vendors and made expenses for medical equipments and thus booked bogus expenses as mentioned in Para 6 of the complaint. During investigation summons were issued to those vendors but summons received with remarks either address not found or addressee not at the address. Thus proceed of crime has been generated through sham transactions, as expenditure was booked by M/s Accordis Healthcare without there being any actual transaction. M/s Accordis Healthcare also booked bogus expenses under the head professional fees and commissions, which is evident from the statements of persons to whom such fees and commission was ostensibly paid.

10. It is further case of the ED that M/s. T. Kapoor was paid more than one crore as consultant fees in the year 2013-14 and 2014-15 which was a mis-utilization of foreign contribution as M/s T. Kapoor was providing consultancy to M/s Wave Impex(P)Ltd and Wave Hospitality(P)Ltd.

11. It is further alleged that M/s Wave Impex is a family concern of accused Deepak Talwar and is beneficially controlled by him. Investigation has revealed that in the FY 2013-14 M/s Wave Impex has received 1.65 Cr. from two Kolkata based companies namely M/s SnehBarter (P) Ltd. and M/s Planar Distributors (P) Lid. Investigation has revealed that these are shell companies and provided accommodation entries into M/s Wave Impex in lieu of cash. Thus, the accused has layered the Proceeds of crime generated by him by showing bogus expenditure from M/s Advantage India.

Therefore, there is no doubt that the two FIRs pertain to the same transactions and allegations are also the same, just that the said actions and consequences fall within the ambit of IPC, FCR Act as well as PML Act.

Two separate agencies are virtually investigating the same transactions and so far have made similar allegations.

18. Further, from the table regarding status of various accused persons it is evident that all other accused persons are either on bail or have not been arrested. Further, the accused Jatin Wadhwa against whom substantive offence of Section 467 IPC has been invoked in the chargesheet is already on bail. On top of all, are the observations made by Ld. Special Judge (ASJ Sh. Pulatsya Parmachala) in his orders granting bail to Yameen Kapoor and Tarun Kapoor expressing doubt about commission of offence of cheating calling it debatable; and the fact that no cash has been recovered from the accused to substantiate the claim that he received the money paid in bogus transactions back in cash.

19. Be that as it may, the real considerations for granting bail are not on the merit of the case but on factors laid down by the Hon'ble Supreme Court from time to time and more recently in *P. Chidambaram's* case. The order passed by Sh. AK Kuhar(ASJ) Ld. Special Judge, has extensively dealt with those factors and I quote the relevant portions of his bail order:

29. The court could not be convinced how the further incarceration of the accused will help further investigation. So far as 'flight risk' is concerned the apprehension is without any substance moreover fetters can be put on his liberty by depositing his passport, by issuing a Look-Out Notice etc thus, putting a restriction on his travel abroad and his activities can be monitored. The ED has not been able show any reasonable ground to say that he will temper with evidence, moreover evidence collected is documentary. The ED has not brought any material on record that accused will influence witnesses. Most of the witnesses have been examined and their statements are on record.

30. The ED is conducting further investigation and has reserved its right to file supplementary complaint. Without making any comment on the right of ED to file supplementary complaint, I would say no time limit can be put on such investigation and it would be highly unreasonable to confine the applicant behind bar till ED complete further investigation, more so when investigation qua accused has been completed as the Complaint against him has already been filed.

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32. Having considered the facts and circumstances of the case, submissions of the Ld. Counsels for both the parties and case law cited and relied upon I am of the view that further custody of accused will not serve any purpose. The Complaint has already been filed; co-accused who were never arrested are on interim regular bail; case of the ED is documents based ; there is no material on record to suggest that he ever tried to temper with evidence or influence witnesses; he has been granted bail in other related cases; there is no certainty when further investigation would end....”

20. In my humble view, on the aforesaid factors I do not have any material or rationale to differ from the view expressed by the Ld. ASJ and hold otherwise. Further, while granting bail, the following conditions were also imposed by the Ld. ASJ, which surely can be termed as adequate protection to the prosecution.:-

1. The applicant/accused shall furnish personal Bond of Rs. 5,00,000 (five lakh) with one Surety Bond of the like amount.

2. He shall not leave the territory of NCT of Delhi without intimating the Investigation Officer of the case.

3. He shall not leave the country without due permission of the Court.

4. He shall deposit his passport with the I.O. or the Court if not deposited already.

5. He shall furnish the address of his residence, if it is different from the one available with I.O. and shall not change the address with out intimating the I.O. and the Court.

6. He shall furnish his active mobile phone number and e-mail ID to the I.O. and shall be available if his personal appearance is required for the purpose of any enquiry or investigation pertaining to the case.

7. He shall not do any act which will give a reasonable ground to assume that he is trying to temper with evidence or trying to influence, threaten or win over witnesses examined or likely to be examined in the case.

21. Lastly, the accused has a long history of coronary artery disease and of cardiac surgery as already noted in the order dated 20.3.2020 passed by this court. In these circumstances the accused is admitted to regular bail on the following conditions:

1. The applicant/accused shall furnish personal Bond of Rs. 5,00,000 (five lakh) with one Surety Bond of the like amount.
2. He shall not leave the territory of NCT of Delhi without intimating the Investigation Officer of the case.
3. He shall not leave the country without due permission of the Court.
4. He shall furnish the address of his residence, if it is different from the one available with I.O. and shall not change the address with out intimating the I.O. and the Court.
5. He shall furnish his active mobile phone number and e-mail ID to the I.O. and shall be available if his personal appearance is required for the purpose of any enquiry or investigation pertaining to the case.
6. He shall not do any act which will give a reasonable ground to assume that he is trying to temper with evidence or trying to influence, threaten or win over witnesses examined or likely to be examined in the case.

22. Accused is given three days time to arrange fresh surety bonds in terms of the order. Application disposed off accordingly.

Harjyot Singh Bhalla
CMM/RADC/New Delhi
05.06.2020