

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Bail Application No. 839/2010 and Crl. M.A. No.718/2010**

% Reserved on: 3rd June, 2010

Decided on: 4th June, 2010

Dr. Ketan Desai
S/o Sh. Dhirajlal Desai
“Ashirvas”, 7, Friends Avenue,
Sindhu Bhavan Road, Badakdev,
Ahmedabad (Gujrat).

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Advocate with
Mr. Pramod Dubey, Mr. J.S. Bhasin,
Mr. Vivek Jain and Ms. Misha Narayan,
Advocates

versus

The State
(Through C.B.I.)

..... Respondent

Through: Ms. Sonia Mathur and Mr. Sushil Kumar
Dubey, Advocates with I.O. Satender
Goswami.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes.
2. To be referred to Reporter or not? Yes.
3. Whether the judgment should be reported
in the Digest? Yes.

MUKTA GUPTA, J.

1. This is a petition for grant of regular bail in case RC No. 02(A)/10/ACU-IX/CBI dated 22nd April, 2010 under Section 7, 8, 11, 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (hereinafter ‘the PC Act’). As per

the prosecution this case was registered on the allegations that Dr. Ketan Desai, President, Medical Council of India (MCI) entered into a criminal conspiracy with Shri J.P. Singh with an intention to obtain bribe for grant of permission to Gyan Sagar Medical College, Patiala. The concerned management of this medical college became a party to this conspiracy by agreeing to pay the bribe in order to get certain shortcomings in the infrastructure overlooked by the MCI. The CBI received a source information on the basis of which enquiry was conducted, during which the relevant mobile phones were intercepted.

2. It is contended that after registration of the case a team was deployed at the residence of Shri J.P. Singh at D-6/13, Vasant Vihar, New Delhi to intercept Dr. Kamaljeet Singh who was coming to deliver the bribe amount of Rs. 2 Crore. At about 12.50 hrs. on 22nd April, 2010, Dr. Kamaljeet Singh while coming out of the house of Shri J.P. Singh was challenged and interrogated and on his disclosure, Rs. 2 Crore was recovered from the office located at the ground floor of the residential premises of Shri J.P. Singh at D-6/13, Vasant Vihar, New Delhi.

3. Learned counsel for the CBI states that the present is a case of larger conspiracy wherein the Petitioner, former President, Medical Council of India (MCI) was not only passing on prior information to Shri J.P. Singh pertaining to the schedule of inspection by MCI but also ensured that favourable report would be given by the Inspection Team of MCI. According to learned counsel, despite

the fact that the Gyan Sagar Medical College was lacking in certain requisite infrastructure which could not have been completed within such a short duration, the Petitioner and Shri J.P. Singh helped the Institute to get favourable report from MCI in lieu of a consideration of an amount of Rs. 2 crores to be delivered through Shri J.P. Singh to the Petitioner. In this regard statement of a witness recorded under Sec. 164 Cr.P.C has been relied upon.

4. Learned counsel for the CBI has also produced the transcript of the conversations between the parties. The transcript of the conversations show continuous interaction between Dr. Ketan Desai, Sukhwinder Singh, Jitender Pal Singh, Kamaljeet Singh, K.A. Paul and Nirmaljeet Singh Bhango and the conversations are co-relatable to the dates on which the events took place. The conversation amongst the accused persons reflect the motive, demand of bribe and the modus operandi for the favours shown to the Gyan Sagar Medical College and Hospital, Patiala. It is submitted that two accused persons, that is, Nirmaljeet Singh Bhango and K.A. Paul are still absconding.

5. It is submitted by learned counsel for the CBI that the Petitioner was holding a very sensitive position and the compromise thereon was affecting the medical education in the country which had far-reaching consequences not only on the educational standard of the doctors but also the patients. It is submitted that the investigations are prima facie leading to the fact that the Petitioner and Shri J.P. Singh are involved in such an incident relating to one more medical

college. It is stated that since the Petitioner was holding a sensitive position and was a highly influential person, initially people were not coming forward to complain against him. Even in the present case the complainant was not ready to divulge his identity and thus, the enquiry started on source information. It is for this reason, it was put on the official website of the CBI, that in case anybody has any complaint against the petitioner/MCI, the same may be informed to the CBI. It is thereafter that the complaints are pouring in and till now approximately 225 complaints have been received. It is stated that another case of disproportionate assets has also been registered against Dr. Ketan Desai. According to her, the Petitioner is an influential person and there is every likelihood of his tampering of evidence in case he is released on bail.

6. Learned counsel for the Petitioner contends that the permission to Gyan Sagar Medical College was granted after completing all the necessary formalities. According to learned counsel a Committee was set up by the Central Govt to look into the issue of grant of approval to the Gyan Sagar Medical College which also found no irregularity in it. Learned counsel states that as per the search list, the investigating agency itself was not aware whose money it was. Moreover, the amount of Rs.2 crore in the search list at item No.50 has been added subsequently after the witnesses had signed the same.

7. Learned counsel places reliance on *Professor K. Narayan Rao vs. CBI, 2009 (4) JCC 2551; Anurag Vardhan vs. CBI, 105 (2003) DLT 594*. It is

contended that the petitioner has already spent nearly 44 days and in any case investigation has to be completed with a period of 60 days and thus, the investigation having nearly reached completion, there is no likelihood of the petitioner's interfering with the investigation. It is contended that the statement of Lakhvinder Singh is not reliable, as the search list shows that only one person came out from the car and thus either it could be that person or the driver Lakhvinder Singh.

8. It is contended by learned counsel for the Petitioner that the Petitioner is no longer the President of MCI and has also been suspended as a Professor and thus there is no likelihood of his committing such an offence in future. There is no recovery effected from the Petitioner which fact has been admitted by the CBI in its reply filed before this Court. It is contended that there is no material to show that the Petitioner had shown favour to the Gyan Sagar Medical College and Hospital for grant of approval. It is stated that the transcript if any are in the possession of CBI which the Petitioner cannot tamper with and thus no useful purpose will be served by keeping him in custody.

9. The Petitioner's mother is ailing and in this regard he has filed an application for interim bail as well. The Petitioner is the only son and thus, is required to look after his mother. It is stated that the Petitioner is also suffering from "obstructive sleep apnea" and thus requires constant medical attention.

10. Learned counsel for the CBI with regard to the ailment of the mother, states that the mother was operated on 11th November, 2009 and there is no apparent problem at the moment. Moreover, the treatment which she had undergone from Dr. Gandhi for her Psychotic ailment was 3-4 years back. It is stated that the wife of the Petitioner is a doctor and running a full-fledged nursing home. Thus, requisite medical facilities are available to the mother of the Petitioner. Qua the Petitioner, it is stated that learned Trial Court has directed that the required breathing aid, that is, nasal CPAP be provided to the Petitioner which requires no regulation and the Petitioner for his ailment of Hypertension is on regular medication.

11. I have heard learned counsel for the parties. I have also perused the statements of the witnesses recorded under Section 161 and the transcript of the conversations between the parties. The transcript corroborates the sequence of events as to how first deficiencies were pointed out and then a favourable report was given, after getting the inspection done by a particular team, who acted on the behest of the present Petitioner. From the material on record, prima facie, a case of conspiracy under Sections 7, 8, 11, 13 (2) read with 13 (1) (d) of the PC Act is made out.

12. In the preset petition, the issue for consideration before this Court is whether it is a fit case for grant of bail to the Petitioner. The Petitioner has been in custody for 44 days. The Petitioner is the main accused in the present case.

The present case is not registered on the complaint of an individual but the CBI acted on a source information and thereafter intercepted the conversations of the accused persons leading to a trap being conducted, wherein Rs. 2 Crore, which was to be given to the Petitioner for extending favour, were recovered and thus, on registration of a FIR the Petitioner and the other accused persons were arrested on 22nd April, 2010. The Petitioner was the President of Medical Council of India, a statutory body, responsible for the medical education of the country. The grant of permission for continuing with the medical courses and introducing new courses was in the hands of this statutory authority. Injudicious discretionary exercise affects the quality of education obtained by persons who got medical degrees, thereby affecting the health of patients of the country. It may be noted that in this case also the complainant has not come forward and the Petitioner would have gone scot free but for the reliance on the source information and interception conducted by the CBI. This clearly demonstrates the influence built up by the Petitioner. I find force in the contention of learned counsel for the CBI that because of the influence of the Petitioner nobody came forward to make complaints against the Petitioner regarding demand of money or for giving approval/permission to colleges without requisite infrastructure. It is for this reason that the CBI had to put on the website, requesting the people to come forward to give complaints against the Petitioner/MCI officials if they had any. The fact that the Petitioner was in custody and on the CBI's assurance number of complaints have been received,

which now have reached upto 225 approximately, demonstrates the fact that people are not willing to come forward and complain against the Petitioner due to his influence. On a specific query being put to learned counsel for the CBI as to whether the said complaints would be investigated in this very FIR or separate FIR would be registered, learned counsel for the CBI states that on these complaints, in case cognizable offences are made out, separate FIRs would be registered. It is also pointed out that one more case under the PC Act for having disproportionate assets has already been registered against the Petitioner and his family members.

13. Be that as it may in view of the fact that the Petitioner is the main accused and now being in custody, people are coming forward to give complaints which would have to be inquired and thereafter investigated if need arises, I am not inclined to grant bail to the Petitioner at this stage.

14. I am also not inclined to grant bail to the Petitioner on the ground that the Petitioner is suffering from hyper-tension and sleep apnea, in view of the fact that the Petitioner has already been provided with CPAP machine and for hypertension he is on regular medicines. Regarding the mother's ailment, it may be noted that she was hospitalized from 8th February, 2010 to 17th February, 2010 only for evaluation of her neurological problem. As per the medical report it is observed that from 2003 onwards she is a case of progressive dementia with cognitive and behavioural dysfunction and has been advised continuous treatment and care. No ground is made out for release on

bail in view of the fact that the Petitioner is the only son who has to look after his mother, as the wife of the Petitioner is a doctor and running a nursing home. Thus, there are sufficient number of doctors to take care of the old ailments of the Petitioner's mother, which need no emergent attention.

15. The petition and CrI. M.A. No. 718/2010 are stand dismissed.

(MUKTA GUPTA)
JUDGE

JUNE 04, 2010
'raj'