

**IN THE COURT OF MS. SANTOSH SNEHI MANN,
SPECIAL JUDGE (PC ACT) : CBI-08 : RADC : ND**

In re:

**RC No. 18(A)/2020/ACB/CBI/New Delhi
u/S: 7 P.C Act r/w 120-B IPC**

1. Bail Application No. 02/2020
Jitender v. CBI
2. Bail Application No. 03/2020
Badri Prasad Yadav v. CBI

01.07.2020

(Through CISCO Webex Meeting App)

Bail Applications are taken up through Video Conferencing hosted by Mr. Mukesh Kumar, J.J.A, Computer Branch, Rouse Avenue District Court, New Delhi, in reference to the Order No. E-3943-4029/DJ/RADC/2020 dt. 13.06.2020 of Id. District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RADC, New Delhi.

Regular functioning of the Courts at District Courts, Delhi has been suspended since 23.03.2020 vide orders of Hon'ble High Court of Delhi bearing Nos. 373/Estt./E1/DHC dt. 23.03.2020, no. 159/RG/DHC/2020 dt. 25.03.2020, no. R-77/RG/DHC/2020 dt. 15.04.2020, no. R-159/RG/DHC/2020 dt. 02.05.2020, no. R-235/RG/DHC/2020 dt. 16.05.2020, R-305/RG/DHC/2020 dt. 21.05.2020, no. 1347/DHC/2020 dt. 29.05.2020, no. 16/DHC/2020 dt. 13.06.2020 and 22/DHC/2020 dt. 29.06.2020.

Present: Advocate Vijay Bishnoi, defence counsel for the applicants/accused Jitender and Badri Prasad Yadav



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in both the applications.

Mr. M. Saraswat, PP for CBI with IO Insp. Ravinder Kumar Bharti and previous IO Insp. Shyam Rai.

Reply to both the applications has been filed by IO Insp. Ravinder Kumar Bharti on the official e-mail id of the Court (readercbi08radc@gmail.com). IO has submitted that advance copies have been supplied to the defence counsel by e-mail. Ld. defence counsel has confirmed that he has received the copies.

Vide this common order I shall dispose of both the bail applications moved under Section 437/439 Cr.P.C. as they arise from the same FIR(RC) and common facts.

Heard.

Record perused.

Brief background facts are that on 16.06.2020, a written complaint was filed by Mr. Sunil Kumar Vats to the Superintendent of Police, CBI, ACB, New Delhi submitting that 6-7 months back he had purchased a 100 square yards plot at Khasra No. 78-12, H. No. 131, Vijay Vihar, Delhi and when he started constructing the boundary wall on the said plot, some persons came and asked him to stop the construction claiming that they were the owners of the plot. Complainant made a call to the PCR and then those persons left. He gave a written complaint in this regard at PS Vijay Vihar and was told by co-accused S.S. Chahal, SHO PS Vijay Vihar to carry on the construction of the boundary wall by telling him that he will look after the matter.

Allegedly, thereafter co-accused S.S. Chahal started



harassing the complainant and on 10.06.2020 he called the complainant to the police station through constable Samay Singh and demanded Rs. 5 lacs for allowing construction of boundary wall on the said plot. Allegedly co-accused S.S. Chahal, SHO PS Vijay Vihar also threatened the complainant to falsely implicate him if his demand was not met.

Complaint was verified by SI Pradeep, CBI ACB in the presence of an independent witness on 16.06.2020. During verification proceedings, complainant negotiated the bribe amount with the co-accused S.S. Chahal, SHO PS Vijay Vihar, who now allegedly demanded Rs. 6 lacs within 10 days. It was agreed that complainant will give Rs. 2 lacs on the next day and rest of the amount in 10 days. Allegedly co-accused S.S. Chahal, SHO PS Vijay Vihar instructed the applicant/accused constable Badri Prasad Yadav to receive and collect the bribe amount on his behalf from the complainant.

Consequent to confirmation of the demand in the verification proceedings, FIR was registered on **17.06.2020** and trap was laid. In the trap proceedings on 17.06.2020, applicant/accused Ct. Badri Prasad Yadav of PS Vijay Vihar was caught red handed while demanding and accepting Rs. 2 lacs as bribe from the complainant on behalf of co-accused S.S. Chahal, SHO, PS Vijay Vihar, after he reached near applicant/accused Ct. Jitender, PS Vijay Vihar who was present at the spot, waiting on a police motorcycle kept with ignition on. As per replies filed by CBI, applicant/accused Ct. Badri Prasad Yadav and Ct. Jitender were



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apprehended at the spot.

Learned Defence counsel argued that both the accused have been falsely implicated and none of them is named in the written complaint filed by the complainant. It was argued that the main accused S.S. Chahal, SHO PS Vijay Vihar, who is named in the complaint, has already been granted bail and investigation is complete for all practical purposes. It was further argued that both the applicants/accused are in judicial custody since about 02 weeks and no purpose would be served by keeping them in the judicial custody. Challenging the sanctity of the proceedings/investigation conducted by the CBI, learned defence counsel has referred to "*State Vs. Bashir Ahmed & Others, 1983 SCC OnLine Del 137*" and "*Arnesh Kumar Vs. State of Bihar & another, (2014) 3 SCC (Cri.) 449*".

Learned Public Prosecutor CBI has opposed both the bail applications on the grounds inter-alia that, applicants/accused Ct. Badri Prasad Yadav and Ct. Jitender, were partners in crime being actively involved in the commission of offence along with the co-accused S.S. Chahal, SHO PS Vijay Vihar. It was argued that, on the instructions of co-accused S.S. Chahal, SHO PS Vijay Vihar, applicant/accused Ct. Badri Prasad Yadav received part-payment of the bribe amount and applicant/accused Ct. Jitender was present at the spot waiting for him on a police motorcycle, kept with ignition on.

With respect to the legal arguments on the basis of the judgments referred by the ld. defence counsel, it was



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submitted by Ld. PP that ratio of the judgment in *Bashir Ahmed (Supra)* is not applicable to the facts of the present case and there is no violation of *Arnesh Kumar (Supra)*. It was argued that applicants/accused being the Delhi Police officials may tamper with the evidence, influence the witnesses, hamper the on-going investigation or may even flee from the jurisdiction of the Court, if granted bail.

I have carefully considered the rival submissions in the light of material on record.

It is a matter of record that none of the applicants/accused were named in the written complaint filed by the complainant, in which co-accused S.S. Chahal, SHO PS Vijay Vihar was named. It is also a matter of record that co-accused S.S. Chahal has been granted bail on 26.06.2020 by the Court of Sh. Chandra Shekhar, Id. Special Judge, CBI-19 (P.C Act), Rouse Avenue District Court, New Delhi. Copy of the order has been filed along with the bail applications. It has been conceded by the CBI through PP and the IO that the said order has not been challenged by the CBI. Though, it was orally submitted by the IO Insp. Ravinder Kumar Bharti that decision has been taken to challenge the said order, factual position as of now is that co-accused S.S. Chahal, SHO PS Vijay Vihar, the main accused named in the FIR, is out on bail.

In *Sanjay Chandra Vs. CBI, (2012) 1 SCC 40* it has been held by the Apex Court that bail is a rule and jail is an exception.



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Coming to the facts and circumstances of the matter, role of the co-accused S.S. Chahal, SHO PS Vijay Vihar as made out from the verification report, FIR and the reply of CBI, is much graver than the alleged role of applicants/accused, who are not even suggested to be the beneficiaries of the bribe amount allegedly recovered from the possession of the applicant/accused Ct. Badri Prasad Yadav. According to the CBI's own case, applicant/accused Ct. Badri Prasad Yadav had received the bribe amount on the asking and on behalf of co-accused S.S. Chahal, SHO PS Vijay Vihar, where as applicant/accused Jitender was present at the spot when the alleged transaction took place. There is no direct allegation of demand or acceptance against applicant/accused Jitender. Statements of all the material witnesses including complainant and the independent witnesses have been recorded. Voice samples of the applicants/accused have also been taken. Applicants/accused are the public servants and they have roots in the society. They are in custody since about two weeks. There is nothing on record to even remotely suggest or indicate that applicants/accused Ct. Badri Prasad Yadav and Ct. Jitender are in any position or capacity to either hamper with the investigation or tamper with the evidence. Moreover material investigation has been done and evidence is in the possession of IO, who is much senior in rank than the applicants/accused .

In the above facts and circumstances of the matter, it is deemed just and proper to grant bail to both the applicants/accused Ct. Jitender and Ct. Badri Prasad Yadav



on each furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount, subject to the following conditions:

1. Accused shall furnish their current address(es) to the IO and in case of any change in the address(es), they shall report to the IO;
2. Accused shall furnish their active mobile phone numbers and e-mail address(es) to the IO within 02 days of their release from the judicial custody;
3. Accused will join the investigation as and when asked by the IO;
4. Accused will not try to influence or approach the witnesses including the complainant;
5. Accused will not tamper with the evidence or hamper the investigation in any manner.

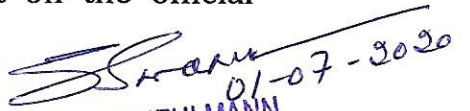
Bail applications are allowed

Bail bonds be furnished by the accused persons before the concerned Duty Magistrate as per the prevailing procedure during suspension of regular functioning of the Court.

A scanned signed copy of this order is being sent through Whatsapp to Sh. Vivek, P.A to Ld. District & Sessions Judge-cum-Special Judge (PC Act), Rouse Avenue District Courts, New Delhi, with direction to him to upload it on the official website of Delhi District Courts.

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Signed hard copy of the order shall be placed on record of the judicial files as and when physical Court functioning is restored.

This order has been dictated on phone to Mr. Pankaj Sanwal, P.A.



PS

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