

IN THE COURT OF SH. CHANDRA SHEKHAR, LD.SPECIAL
JUDGE, CBI-19 (PC ACT), ROUSE AVENUE DISTRICT COURTS,
NEW DELHI

FIR No. RC-DAI-2020-A-0024

PS: CBI, ACB, New Delhi

U/s: 7, 7-A, 8 & 9 PC Act & 120-B IPC

Saurav Sharma v. CBI

07.09.2020

Present: (Through CISCO Webex Meetings App)

Ld. Sr. Counsel Sh. Ramesh Gupta with Ld. Counsel Sh. Vijay
Bisnoi for accused Saurav Sharma.

Ld. Public Prosecutor Sh. Amit Kumar for the CBI with IO
Inspector N.C.Nawal.

ORDER ON BAIL APPLICATION OF ACCUSED
SAURAV SHARMA

An application seeking regular bail was filed on behalf of accused
Saurav Sharma on 01.09.2020 before Ld. District & Sessions Judge-cum-
Special Judge (PC Act) Ms. Sujata Kohli, Rouse Avenue District Courts,
New Delhi, who assigned the same to this court, for hearing and disposal
of the same.

2. A notice of the application was given to CBI, which opposed the
application by filing reply. Copy of the same was supplied to the Ld.
Counsel of the accused.

3. I have heard the submissions of both the parties on the bail
application of the accused Saurav Sharma.

The case of CBI concisely, is that accused Saurav Sharma was
posted as Appraiser at Inland Container Depot, Tughlakabad, New Delhi;
he used to inspect and clear import consignments under discharge of
disofficial duties; the accused Ram Krishan Mishra, an employee of M/s.
Flexcon, 23/5, 1st floor, East Patel Nagar, New Delhi, accused Ravi
Sharma, an employee of M/s. Him Logistics Pvt. Ltd., 2151, 3D, New



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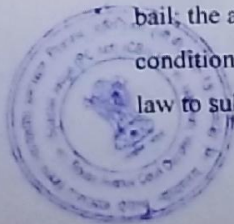
Patel Nagar, Shadipur, New Delhi and accused Omkar Singh, an employee of M/s. Uniclear were working as Custom House Agents; they alongwith some other persons were in conspiracy with accused Saurav Sharma, who used to take illegal gratification from the Custom House Agents for undue clearance of import consignments. In July 2020, the accused Saurav Sharma was transferred to Chennai, as Appraiser and deputed in the office of Chief Commissioner of Customs, Customs House, 60, Kishan Block, Rajaji Salai, Opp.: District Collectorate, Chennai, Tamil Nadu. But, despite transfer accused Saurav Sharma was regularly pursuing parties for payment of pending dues of illegal gratification through aforesaid Custom House Agents. They used to converse in code language; the Special Unit of CBI got the information about the aforesaid facts and with permission of competent authority, intercepted and recorded a series of their telephonic conversation. On 17.08.2020, the accused Ram Krishan Mishra handed over an amount of Rs. 7 lakh (Rupees seven lakh only) to accused Kishore Kumar to be given to other accused Neeraj Kumar at the instance of accused Saurav Sharma. The CBI arrested the accused persons and recovered the said amount from accused Neeraj Kumar. An amount of Rs. one crore three lakh fifty thousand was recovered from the house of a close relative of the accused. The father of accused has stated that the said amount was of accused Saurav Sharma. A case u/s 120-B IPC r/w section 7, 7-A, 8 & 9 of the Prevention of Corruption Act, 1988 (as amended in 2018) was registered on the basis of source information against the said accused persons and others and matter is under investigation.

4. Ld. Sr. Defence Counsel on behalf of the accused Saurav Sharma in brief, submitted that the case against accused Saurav Sharma has been registered on the basis of source information and on illegally intercepted and recorded communication, the same is not a substantial evidence as same violates the fundamental and constitutional rights of the accused; the accused has been arrested on 18.08.2020 by ACB/CBI/Chennai at Chennai and after transit remand, he was kept in



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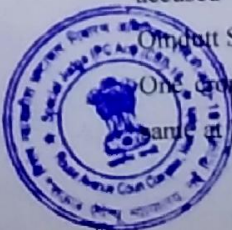
police custody in Delhi till 29.08.2020 and thereafter, has been sent to judicial custody till 09.09.2020; the interception orders passed u/s 5 (2) of the Telegraph Act, 1885 are void and are encroachment to the right of privacy and liberty granted to the accused under Article 21 of the Constitution of India; the presumption u/s 20 of the Prevention of Corruption Act, 1988 (as amended upto 2018) is not applicable as the accused was not arrested at the relevant time and nothing incriminating was recovered for him and at his instance; the alleged recovery of Rs. approximately one crore was effected from a distant relative of the accused which has no bearing on the accusation against the accused; the registration of FIR on the basis of source information is a very weak evidence; the accused never misused his official position while working at New Delhi or at Chennai; the alleged transcripts filed by the IO are concocted, manipulated and tampered; the accused is no more required to be kept in judicial custody for further investigation of the case; the accused has clean antecedents and no other case is pending against him; the offences alleged against the accused are punishable up to seven years therefore, a notice u/s 41-A of Cr.P.C. should have been given to the accused to join investigation but, the CBI has arrested the accused without such notification and has violated the mandate provided under the said section of Cr.P.C.; no complaint against the accused has been made by any private person or by the department of the accused; source information cannot be proved in the court of law, the wife of the accused is pregnant and is at the advance stage; there is no other person in his family to take care of her; the accused himself is suffering from Irritable Bowels Syndrome and diarrhea; if the accused is kept in judicial custody, his condition will worsen in the wake of pandemic COVID-2019 when Hon'ble Supreme Court of India and the Hon'ble High Court of Delhi have released numerous accused of serious and grievous offences from the jails to maintain physical distance and even extended the period of bail; the accused has deep roots in the society; he is ready to abide by any condition imposed upon him. Ld Counsel has relied upon following case law to substantiate his submissions:



- (a) Dharambir Khattar v. union of India and Anr., Writ Petition (Crl.) No. 1582/2007 decided on 21.11.2012 by the Hon'ble Delhi High Court;
- (b) K. S. Puttaswami v. Union of India 2017 (10) SCC 1;
- (c) Arnesh Kumar v. State of Bihar and Anr. (2014) 3SCC (Crl.) 449;
- (d) Data Ram v. State (Crl. Appeal) No. 227/2018, date of decision: 06.02.2018 decided by the Hon'ble Supreme Court of India.

Relying upon the above case law Ld. Counsel requests that accused Saurav Sharma may be released on bail.

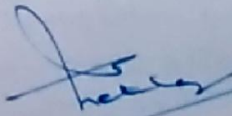
5. Ld. Public Prosecutor for CBI and the IO have opposed the application, submitting that accused Saurav Sharma is the main accused; he was posted as Appraiser in Inland Container Depot, Tughlakabad, New Delhi, he was demanding and accepting illegal gratification through Custom Clearing Agents for unduly clearing the import consignments; he telephonically asked the accused Ram Krishan Mishra to collect pending bribe amount from different parties and also instructed him to pay whatever amount is lying with him to accused Kishore Kumar; the accused Saurav Sharma and Ram Krishan Mishra talked in code language; the accused Ram Krishan Mishra told accused Saurav Sharma that he is having seven files meaning Rs. Seven lakh. He asked accused Ram Krishan Mishra if accused Kishore Kumar had come to receive the amount; the accused Ram Krishan Mishra had replied in positive. The accused Ram Krishan Mishra delivered an amount of Rs. Seven lakh to accused Kishore Kumar at the instance of accused Saurav Sharma which was later on recovered from accused Neeraj Kumar before the accused Neeraj Kumar could delivered the same to accused Saurav Sharma. The accused Saurav Sharma had telephonically informed his father Sh. Omandut Sharma to clear everything, who had taken Rs. 1,03,50,000/- (Rs. One crore three lakh fifty thousand only) from his house and kept the same in his sister's house; the said amount was recovered at the instance



of father of the accused Saurav Sharma from his sister's house; the father of the accused has stated that the said amount is of accused Saurav Sharma; there is sufficient incriminating material on record against accused Saurav Sharma that he was in criminal conspiracy with his co-accused persons and committed the crime of demand and acceptance of illegal gratification. The father of the accused has not been made an accused so far, his deposition as witness is admissible in evidence against the accused Saurav Sharma; The offences committed by the accused are of serious and grave nature; the intercepted conversation clearly shows that he was putting pressure on accused Ram Krishan Mishra and other Inland Container Depot officials for making pressure on the parties for collection of pending amount of illegal gratification; the transcription has been prepared on the basis of intercepted conversation; the investigation is still at initial stage and important evidence is yet to be collected; the accused may influence the witnesses, the judicial custody of the accused is required to avoid tampering of evidence; the accused may abscond if he is enlarged on bail. Ld. Public Prosecutor for CBI has relied upon the following judgments to support his submissions:

- (a) Mallampati Gandhi, Appellant v. State of Telangana, Respondent (2018) 2 ALT (Cr.) 1;
- (b) CBI, Appellant v. Upendra Rai, Respondent (2018) 8 AD (Delhi) 321;
- (c) Nimmagadda Prasad, Appellant v. CBI decided by the Hon'ble Supreme Court of India in I Cri. Appeal no. 728 of 2013 on 09.05.2013;
- (d) Serious Fraud Investigation Office; Appellant v. Nittin Johari and Another, Respondents decided by the Hon'ble Supreme Court of India in Cri. Appeal no. 138 of 2019 on 12.09.2019 and;
- (e) Superintendent of Police, CBI and Ors., Appellant v. Tapan Kumar Singh, Respondent in Cri. Appeal no. 938 of 19995 decided on 10.04.2003.



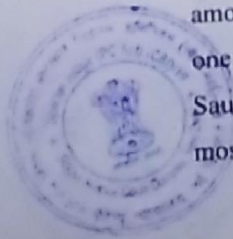

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Relying on the aforesaid judgments, he requests that accused may not be enlarged on bail.

6. I have considered the submissions of Ld. Sr. Defence Counsel for the accused, Ld. Public Prosecutor and IO for CBI perused the judicial record, cited case law and relevant provision of law.

(a) It is writ large that granting of bail in non-bailable offences is a judicial discretion, which enormously depends on facts and circumstances of each case and varies case to case. The judicial discretion though varies discreetly, is guided by some judicially recognized, valuable factors. In brief, the same are: considering nature and gravity of offence, antecedents of accused, circumstances peculiar to the accused, apprehension of tampering of evidence, possibility of influencing the witnesses, securing of presence of accused and larger interest of justice and impact of the offence on the society. Therefore, these important factors are essentially required to be considered at the time of deciding and disposing off a bail application of accused.

(b) Applying the aforesaid factors in the present case, it is observed that even if the case of the CBI is believed to be true at its face value, the facts brought on record are that the accused Saurav Sharma telephonically talked with the accused Ram Krishan Mishra to collect some amount from some persons and he gave directions to the accused Ram Krishan Mishra to pay whatever amount is with him to accused Kishore Kumar and they talked in code language; the accused Ram Krishan Mishra had delivered an amount of Rs. Seven lakh to accused Kishore Kumar, which was later on recovered from the possession of accused Neeraj Kumar. An amount of Rs. one crore three lakh fifty thousand was effected from one of the close relatives of the accused, the same was of accused Saurav Sharma as per the statement of his own father. But, it is most momentous that though allegations of demand, delivery and



recovery of amount are there on record but, the allegations that the demand and delivery of the amount was made as illegal gratifications to be paid to the accused Saurav Sharma by accused Ram Krishan Mishra or accused Neeraj Kumar or any other accused or person for granting undue privilege or benefit to any of the accused, party or person in discharge of his official duties of clearing the import consignments are not there. There is no complaint against the accused Saurav Sharma so far by any private party, person or department of the accused that he used to make demands and take illegal gratification for discharge or undue discharge of his official duties. It is well established legal proposition that mere demand and delivery of any amount is not sufficient to attract the alleged provision under section 120B IPC or alleged provisions of Prevention of Corruption Act, 1988. It is most significant that the demand and delivery of the amount must be for illegal purposes or for illegal gratification in discharge of official duties of accused. Therefore, at this stage, it seems that on legal aspect, the case against the accused Saurav Sharma is doubtful. The case no doubt, is still at initial stage but, the court cannot be oblivion of the facts that as per case of CBI the interception of conversation between accused persons was taking place since March, 2020, the police custody remand of the accused persons were taken but, no evidence till date could be collected by CBI that the money demanded and delivered was to be paid to accused Saurav Sharma only for the purpose of doing some illegal act or for illegal gratification for undue discharge of his duties. At this stage, the case of the CBI is based on suspicion and suspicion howsoever strong cannot be evidence. There must be at least allegations at this stage in the form of statement of some witness(s) or through some documentary evidence that demand and delivery were for doing or have done some illegal work or for illegal gratification, which is missing. It seems that it is the most potential point which goes in favour of the accused at this stage. The issue of nature and gravity of the offence is also closely connected with the said legal aspect. It



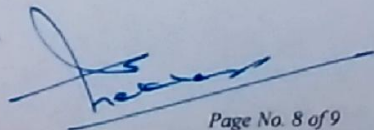
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is claimed by the accused that he has clean antecedents and no other case is pending against him, the IO has not rebutted the same, the voice samples of the accused have already been collected by the CBI; the identity of the speakers in intercepted conversation can only be confirmed after report of CFSL, which will take considerable time. Keeping the accused in judicial custody, awaiting the report, is not in the interest of justice. The apprehension of CBI that the accused may tamper with evidence, influence the witnesses or flee from justice can be taken care of by imposing suitable conditions while granting bail to the accused. Therefore, it seems it is in the interest of justice to grant regular bail to the accused Saurav Sharma.

7. The accused Saurav Sharma is accordingly admitted on bail u/s 439 Cr.P.C. subject to the conditions that (1) accused shall furnish his personal bond in the sum of Rs. 1,00,000/- (Rupees one lakh only) with one surety in the like amount, (2) he shall not leave the country without permission of the court and deposit his passport with IO within a period of seven working days from his release from the jail, (3) he shall furnish his current address to the IO and report any change therein immediately to the IO and to the court, (4) after release from jail, he shall furnish his active mobile number and e-mail address to the IO within a period of seven working days and will be available physically before the IO whenever the IO requires his physical presence for the purpose of further investigation as per law, (5) he shall not do any act or conduct, due to which a reasonable inference may be drawn that he is trying to tamper with the evidence or trying to influence or threaten or win over them.

The accused may furnish his personal bond and surety bond before the Ld. Concerned Duty Magistrate as per prevailing procedure. The application of the accused Saurav Sharma is allowed and disposed of accordingly.





A copy of this order is being sent through Whats App to Sh. Raj Kumar, Reader of this court with a direction to get this order uploaded on the official website of Delhi District Courts at the earliest through Computer Branch, Rouse Avenue Courts Complex, New Delhi. He is also directed to send a Whats App copy of the order to the respective counsel of the parties at the earliest. A signed hard copy of the order shall be placed on record as soon as work is resumed from the Court premises of Rouse Avenue District Courts, New Delhi.

Dated: 07.09.2020



श्री चन्द्र शेखर
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New Delhi

CHANDRA SHEKHAR

Special judge, CBI-19 (PC Act)
Rouse Avenue District Courts, New Delhi