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

+ BAIL APPLN. 2701/2022

GAUTAM KHAITAN Petitioner

Through: Mr. PV Kapur, Mr. Sidharth Luthra,
Sr. Advs. with Ms. Madhu Khurana,
Mr. AT Patra, Ms. Roopa Dayal, Mr.
Ramaditya Tiwari, Mr. Karan
Khaitan, Advs

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Ripu Daman Bhardwaj, SPP for
CBI

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
16.09.2022

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CRL.M.A. 18148/2022

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This is an application seeking release on bail in RC No. RC 217 2016 A0015 dated 18.10.2016 registered U/s 120-B IPC and Sections 7,8,9,12 and 13(2) R/W 13(1)(d) of PC Act, 1988, by CBI ACU-V/AC-II New Delhi.
4. An RC was registered on 18.10.2016, where the petitioner was not named.
5. The FIR is against unknown officials of the Ministry of Defence, Government of India, M/s Embraer, Brazil, M/s Interdev Pte. Ltd Singapore

and Mr. Vipin Khanna.

6. It is stated that there were 3 fully modified Embraer Aircrafts EMB-145 aircrafts which was purchased by DRDO.

7. There was an agreement signed between M/s Embrarer, Brazil and Director CABS, DRDO on 03.07.2008 for a consideration of 210 million USD.

8. It is stated that a sum of 5.76 million USD was paid to Mr. Vipin Khanna through M/s Interdev Pte. Ltd Singapore in the year 2009 which was alleged to have been used to influence the officials of Ministry of Defence.

9. On 25.08.2022, the applicant has been arrested. He has filed this bail application in which notice was issued on 09.09.2022.

10. Mr. Bhardwaj, learned standing counsel for CBI along with other investigating officer DSP Rajeev Rajan has filed a detailed reply, wherein he has stated that Mr. Dev Inder Bhalla, Director of M/s Interdev Pte. Ltd Singapore has stated that the agreement for receiving commission of USD 5.76 million was vetted by the applicant.

11. It is further stated that the applicant was coordinating with him for execution of the agreement dated 23.11.2009 between M/s Interdev Aviation Services Pte. Ltd., Singapore and M/s KRBL DMCC Dubai for routing the funds to the tune of Rs. 3.27 million USD out of 5.76 million USD.

12. He states that there is also official communication from M/s Embrarer, Brazil to the investigating officer indicating the role of the applicant.

13. He states that there is also official communication from Switzerland against the applicant.

14. He further states that these are serious allegations and need to be

investigated.

15. The order dated 03.09.2022 rejecting the bail of the applicant is predicated on 3 grounds namely:

- One, there is allegation of commission/kickback to the tune of 5.76 million USD.
- Two, the investigation is at nascent stage because of lack of cooperation from foreign governments.
- Third, the magnitude of the offence is too huge.

16. I am unable to agree with the contentions.

17. In the present case, the case is of the year 2016. Almost more than 6 years have elapsed and it cannot, by any stretch of the imagination, be held that the investigation is at a nascent stage. Six years is a long period of time.

18. As regards the magnitude of the amount involved is concerned, I am of the view that it cannot be a consideration to deny the right of liberty to an individual. It is not the magnitude of the amount but the magnitude of the offence and the prima facie involvement of the accused which is a consideration for allowing or disallowing bail application.

19. In the present case, the applicant has not been named in the FIR. The allegations against the applicant are only based on statement of various witnesses and official communications.

20. The respondent should have and could have verified the same and in case the same were found substantial, the charge-sheet should have been filed.

21. In addition, there is no Government official who has been named or identified to have received kickbacks.

22. The triple test is satisfied as:

A. The Applicant Is Not A Flight Risk –

23. The applicant after registration of the FIR has travelled abroad 42 times and has returned on every occasion.

B. Possibility of Tampering with Evidence:

24. There has been no allegation or document placed on record which shows that the applicant has tampered with the evidence.

25. This apprehension can be taken care of by imposing restrictions.

C. Influencing Witnesses:

26. There is no allegation or document shown that he has influenced any witnesses. This apprehension can also be taken care of by imposing restrictions.

27. Thus, the applicant satisfies the triple test.

28. In view of the aforesaid, the bail application is allowed and the applicant is directed to be released on bail, subject to the following conditions:

- i. The applicant shall furnish a personal bond with one local surety in the sum of Rs. 25,000/- each, to the satisfaction of the Trial Court;
- ii. The applicant shall appear before the Court as and when the matter is taken up for hearing;
- iii. The applicant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
- iv. In case the applicant changes his address, he will inform the IO concerned and this Court also;

- v. The applicant shall not indulge in any criminal activity during the bail period;
 - vi. The applicant shall neither contact any of the witnesses nor tamper with the evidence in any manner;
 - vii. The applicant shall give prior intimation of his travel abroad with detailed itinerary to the concerned Investigating Officer.
29. The observations made by me are only prima facie and only for the purpose of deciding the present bail application.
30. In view of the aforesaid, the bail application is allowed.
31. The application is disposed of in the aforesaid terms.

Dasti under the signature of Court Master/ Private Secretary.

JASMEET SINGH, J

SEPTEMBER 16, 2022/dm

Click here to check corrigendum, if any