

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 14611 of 2022

With
R/CRIMINAL MISC.APPLICATION NO. 14592 of 2022

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SHIVPAL SINGH CHAUDHARI

Versus

CENTRAL BUREAU OF INVESTIGATION

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Appearance:

MR SAMIR B GOGDA(11306) for the Applicant(s) No. 1

MR RC KODEKAR(1395) for the Respondent(s) No. 1

MR LB DABHI, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 05/09/2022

ORAL ORDER

1. Heard learned Sr. Advocate Mr.N. D. Nanavati appearing with learned Advocate Mr.A. S. Timbalia for the applicant in Criminal Misc. Application No.14592 of 2022 and learned Sr. Advocate Mr.J.M. Panchal appearing with learned Advocate Mr.Samir Gogda for the applicant in Criminal Misc. Application No.14611 of 2022.

2. By way of these applications under Section 438 of the Code of Criminal Procedure, 1973, the applicants - original accused pray for being released

on anticipatory bail in connection with **FIR No.RC0292022A0003 of 2022** registered with **CBI/ACB/Gandhinagar, District Gandhinagar** on 15.7.2022 for offences punishable under Sections 120-B of IPC and under Sections 7, 7A & 8 of Prevention of Corruption Act, 1988 (As amended in 2018).

2.1. The above FIR came to be registered *inter alia* upon information being received that one Digvijay Mishra posted as Chief General Manager (Tech) and Regional Officer, NHAII, Gujarat was indulging in corrupt and illegal activities.

2.2. Both the applicants i.e. applicant of Criminal Misc. Application No.14592 of 2022, who is Managing Director of one M/s.GHV India Private Limited and applicant of Criminal Misc. Application No.14611 of 2022, who is Managing Director of one M/s.New India Contractors and Developers Private Limited, Ahmedabad, have

been arraigned as accused Nos.3 and 4, more particularly in context of an allegation that an amount of bribe had been arranged to be paid to the aforementioned Mr.Digvijay Mishra for showing favour in the projects being undertaken by the Companies of the applicants in context of works awarded by NHAI.

SUBMISSIONS IN CRIMINAL MISC.

APPLICATION NO.14592 OF 2022:

3. Learned Advocate Mr.Nanavati would submit that one Mr.T.P. Singh, who was an employee of applicant of 14592 of 2022 had paid amount of Rs.10,00,000/- to the above referred Mr.Digvijay Mishra and whereas immediately after the bribe amount had been delivered, the said Mr.T. P. Singh had been arrested and the bag given by said Mr.Singh to Mr.Digvijay Mishra containing the amount in question had been recovered from the possession of Mr.Mishra. Learned Sr. Advocate

Mr.Nanavati would submit that while undoubtedly the present applicant is the Managing Director of the company in which Mr Singh was working and whereas as of now there is no material to show that the amount had been paid at the instance of the present applicant. Learned Sr. Advocate Mr.Nanavati would submit that as a matter of fact from the material produced by the CBI, more particularly affidavit-in-reply as well as the order of the learned Sessions Court, it becomes apparent that the said Mr.Singh had also acted on behalf of the other Companies, more particularly acted as an agent for the Chief General Manager of NHAI. Learned Sr. Advocate Mr.Nanavati would submit that the present applicant is the Managing Director of the Company and whereas the applicant may not be vicariously imposed with a criminal liability for the acts of his employee, more particularly when it clearly appears that the employee was also acting as an agent for the public servant in question. Learned

Sr. Advocate Mr.Nanavati would further submit that the applicant had been served with a notice under Section 41-A of Cr. P.C., by Investigating Officer on 19/7/2022 asking the applicant to appear before the I.O on 20.7.2022 and in response thereto, the applicant had immediately written a communication to the investigating officer on 20/7/2022 informing that the applicant having returned from the international travel was not feeling well and had consciously isolated himself from others and while the applicant requested for 2 weeks' time for appearing in person, he had also requested that he may be permitted to appear through virtual mode. Learned Sr. Advocate Mr.Nanavati would submit that the prompt reply and the request to appear through online mode clearly shows that the applicant was ready and willing to cooperate with the investigation. Learned Sr. Advocate Mr.Nanavati would submit that even otherwise the applicant is ready and willing to appear before the

investigating officer on any date as may be deemed appropriate by this Court and whereas in such context, it is requested that the applicant may be accorded with protection. It has also been submitted by the Senior Advocate that the maximum punishment that could be imposed upon the applicant insofar as the offenses alleged is upto 7 years. Learned Sr. Advocate Mr.Nanavati , even in the said context, would submit that looking to the nature of the offences and probable punishment and the role attributed to the present applicant, this Court may exercise discretion in favour of applicant and release applicant on pre-arrest bail.

SUBMISSIONS IN CRIMINAL MISC.**APPLICATION No.14611 of 2022 :**

4. Learned Sr. Advocate Mr.J.M. Panchal appearing with learned Advocate Mr.Samir Gogda for applicant would submit that one Mr.Ankur Malhotra, an employee of the applicant, who has been arrested

and whereas the allegation against the applicant being that the employee of the applicant Mr. Malhotra had given an amount of Rs.5,00,000/-, which was paid to Mr. Digvijay Mishra, CGM, NHAI through Mr. T.P. Singh. Learned Sr. Advocate Mr. J. M. Panchal would submit that the nature of allegations are such that the custodial interrogation may not be necessary more particularly the applicant being ready and willing to cooperate with investigation. Learned Sr. Advocate Mr. J. M. Panchal would submit that since the employee of the applicant as well as the person who had given the alleged bribe and the person who had received the same, have all been arrested, therefore, there will be no hindrance to the investigation, if the applicant were to be released on pre-arrest bail. Learned Sr. Advocate Mr. J. M. Panchal emphasizing that granting pre-arrest bail to the applicant would not, in any manner, hamper free, fair, and full investigation, would further submit that residence of

the applicant had also been searched by the investigating officer and whereas no incriminating material was found. It is also submitted that while the allegations against the applicant is that he had paid some bribe to the CGM, NHAI, but as such the CGM was not in any position to favour the present applicant, more particularly according learned Sr. Advocate Mr.J. M. Panchal, the present applicant was a sub-contractor. Learned Sr. Advocate Mr.J. M. Panchal would submit that the main contractor of work was one M/s.Sadbhav Engineering Limited and whereas the said M/s.Sadbhav Engineering Limited had sub-contracted the work to one M/s.Gawar Constructions Limited, which had sub-contracted the work to the applicant. Learned Sr. Advocate Mr.J. M. Panchal would submit that as such the applicant is only accountable to M/s.Gawar Constructions Limited, the Company of the applicant has no direct dealings with the officers of the NHAI. Learned Sr. Advocate Mr.J. M. Panchal would further submit that

the offences alleged being punishable with maximum imprisonment of 7 years, considering the same in all probability, after the applicant is arrested, he would be entitled for regular bail and having regard to the same, decision of the learned Coordinate Bench of this Court in case of **Solanki Ravibhai Dipubhai and Ors. Vs. State of Gujarat and Ors., reported in 1992 (1) GLR 631** is sought to be relied upon and would submit that in the said decision the learned Coordinate Bench had *inter alia* observed that if a person can be granted regular bail after his arrest, then there may be no harm in granting anticipatory bail to such person. Having regard to such law laid down by the learned Coordinate Bench, learned Sr. Advocate Mr.Panchal would submit that this Court may release the present applicant on anticipatory bail.

5. As against the same, learned Special Public Prosecutor Mr.R. C. Kodekar appearing for CBI would submit that having regard to the nature and

gravity of offences and the role attributed to the applicants, this court may not consider releasing the applicants on anticipatory bail. Learned Special Public Prosecutor Mr.R. C. Kodekar would submit that insofar as the applicant of Criminal Misc. Application No.14592 of 2022 is concerned, he is an employee of the Company, who had delivered an amount of Rs.10,00,000/- i.e. Rs.2,50,000/- as regards the project of the Company in question in Criminal Misc. Application No.14592 of 2022, Rs.5,00,000/- for the project of the Company in question in Criminal Misc. Application No.14611 of 2022 and Rs.2,50,000/- from an employee of another contractor namely one M./s.M.K.C. Limited. Learned Special Public Prosecutor Mr.R. C. Kodekar would submit that after the said amount having been delivered immediately the employee of applicant was apprehended and the residence of the CGM, NHAI had been raided and the said amount with the bag in question was also recovered in presence of

independent witnesses. Learned Special Public Prosecutor Mr.R. C. Kodekar would further submit that 5 different envelopes containing currency notes totalling Rs.2,81,000/- with a hand-written chit showing the the amounts to be delivered to officials of NHAI had also been recovered from the laptop bag of Mr.T.P. Singh, the employee of applicant of Criminal Misc. Application No.14592 of 2022.

6. Insofar as the applicant of Criminal Misc. Application No.14611 of 2022, it is submitted by learned Special Public Prosecutor Mr.R. C. Kodekar that an employee of the said applicant one Mr.Ankur Malhotra had received an amount of Rs.5,00,000/- from one Mr.Kaptan Singh and the said amount was for the Company of the said applicant as well as another contractor namely M/s.Himalayan Construction Pvt. Limited. It is also submitted that after the amount of Rs.5,00,000/- had been handed over to the said Mr.T.P. Singh, and employee of the applicant had sent WhatsApp messages regarding

handing over the amount to applicant of Criminal Misc. Application No.14592 of 2022 and also to the brother of the said applicant and whereas the said applicant is stated to have responded to the said message by stating "OK".

7. Learned Special Public Prosecutor Mr.R. C. Kodekar would further submit that a contract for construction of 4-line Expressway from Ahmedabad to Bhavnagar was being constructed by 4 different contractors on basis of contracts awarded to them directly or as sub-contracts and it is in context of this project that the four contractors had given Rs.2,50,000/- each, totalling to Rs.10,00,000/- through Mr.T.P. Singh to Mr.Digvijay Mishra, CGM of NHAI. Learned Special Public Prosecutor Mr.R. C. Kodekar would further submit that after investigation, since there is *prima facie* material to show involvement of the applicants more particularly applicants being MDs of companies which were executing the projects and the employee of one of the Companies having

collected the money on behalf of the other three Companies as well as his own Company had delivered the money. It is submitted that the person who had delivered the money, Mr.T.P. Singh, employee of applicant of Criminal Misc. Application No.14592 of 2022, admitted in his statement that he had paid the money for his Company on the basis of instruction by his Managing Director i.e. the applicant of the Criminal Misc. Application No.14592 of 2022 and whereas the said Mr T. P. Singh also accepted having received Rs.5,00,000/- money from Mr.Ankur Malhotra employee of applicant of Criminal Misc. Application No.14611 of 2022 and the said Mr.Ankur Malhotra accepting in his statement that after giving the money to Mr.T.P. Singh, he had sent a message through WhatsApp to the applicant of Criminal Misc. Application No.14611 of 2022 i.e. his Managing Director, who had replied 'OK'. According learned Special Public Prosecutor Mr.R. C. Kodekar, there would be enough

material to show *prima facie* involvement of the present applicants in the offences in question. Learned Special Public Prosecutor Mr.R. C. Kodekar would further submit that having regard to the role attributed to present applicants, more particularly as Managing Directors of the Companies in question and also considering in nature of accusations of having paid bribe money to a public servant and further considering the fact that releasing the applicants at this stage may hamper free, fair and full investigation, more particularly looking to the position held by them and also considering the fact that since the aspect of corruption hinges upon not only the individuals involved, but the entire system as well as the country as a whole, and also considering that the bribe appearing to be paid with regard to constructions of roads, which also would be an aspect with which large number of persons would be impacted, therefore, learned Special Prosecutor Mr.R. C. Kodekar would submit that this Court may

not consider releasing the applicants on pre-arrest bail at this stage.

8. Learned Advocate Mr.Vijay Agrawal for the applicant in criminal miscellaneous application number 14592 of 2022 in rejoinder would take this Court through the provisions of sections 8, 9, and 10 of the Prevention of Corruption Act and would submit that as per the scheme of Act, when an offence is committed relating to bribing of public servant and when it is said to be committed by a commercial organization such organization shall be punished with fine (proviso 3 to Section 8). It is further submitted that the Commercial Organization could make defence that it had declared procedures to prevent persons associated with it from undertaking such a conduct (proviso 2 to Section 9(1)). It is also submitted that when the offence is committed by Commercial Organization, then before punishing the persons responsible for management of the organization, it shall be required to be proved

that such offence is committed with consent of such person. Learned Advocate has sought to submit that having regard to the Scheme of the Act, it would be premature, more particularly without the competent Court forming an opinion as regards the guilt of the commercial organization, to hold its employees or person responsible for the organization involved in the offence. Learned Advocate would, therefore, submit that this Court may entertain this application and grant anticipatory bail to the said applicant.

9. Heard learned Advocates for the respective parties and perused the documents on record as well as the investigation papers. While the Court does not intended to discuss the material and evidence in detail, suffice it to state that the following aspects have been taken into consideration by this Court:-

9.1. That the applicants before this Court are Managing Directors of the Companies, whose employees have been arrested on the charge of

paying bribe to a public servant namely CGM of NHAI. It also appears that insofar as the Applicant of Criminal Misc. Application No.14592 of 2022 is concerned, his employee T.P. Singh acting for his own Company as well as for other three Companies had collected an amount of Rs.10,00,000/- i.e. Rs.2,50,000/- each and had paid the same to the CGM of NHAI;

9.2. It also appears that the said person Mr.T.P. Singh had in his statement admitted that the amount of bribe was given under the instructions of the said applicant.

9.3. That the employee of Criminal Misc. Application No.14611 of 2022, Mr.Ankur Malhotra after handing over the amount to Mr.T.P. Singh, which was delivered to CGM of NHAI sent a WhatsApp message to the said applicant about the same and whereas the said message had been acknowledged by the applicant.

9.4. Mr.Ankur Malhotra in his statement also reaffirmed the said aspect.

9.5. It, thus, appears that there is a *prima facie* material to show that the active involvement of the applicants in the offence in question.

9.6. Insofar as the legal questions raised by the learned Advocate for the applicant of Criminal Misc. Application No.14592 of 2022 are concerned, in the considered opinion of this Court, in view of the fact that there is *prima facie* material to show involvement of the applicant, those questions are not required to be answered, more particularly such aspect, in the considered opinion of this Court, not being relevant for the purpose of deciding the application under Section 438 of Cr. P.C.

9.7. Insofar as the decision of the learned Coordinate Bench of this Court in case of **Solanki Ravibhai Dipubhai and Ors. (supra)** relied

upon by the learned Sr. Advocate for the applicant in Criminal Misc. Application No.14611 of 2022, it clearly appears that the said observation was not *ratio decidendi* of the decision. Furthermore, it also clearly appears that the learned Coordinate Bench has not laid down any precedent, which may be binding to Benches of Coordinate Strength, more particularly learned Coordinate Bench *inter alia* observing that there may not be in harm in granting anticipatory bail to a person, who is likely to be released on bail, if arrested. In the considered opinion of this Court, such observation did not, in any manner, impinge upon discretion available to Coordinate Benches, more particularly even the learned Coordinate Bench, recognizing the aspect of grant of anticipatory bail being a discretionary relief, by using the term "there may be no harm in granting anticipatory bail".

10. Furthermore, in the considered opinion of this

Court, the parameters, which have to be taken into consideration by a Court considering an application of grant of pre-arrest bail has been elaborately discussed and decided by the Hon'ble Apex Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors., reported in (2011) 1 SCC 694** and whereas the said decision insofar as the parameters laid down by the Hon'ble Apex Court has been affirmed by the Five-Judge Bench of the Hon'ble Apex Court in case of **Sushila Aggarwal Vs. State (Nct of Delhi), reported in 2020(0) AIJEL-SC 65697**. It does not appear to this Court that in the decision of **Siddharam Satlingappa Mhetre** (supra) or in the subsequent decision of **Sushila Aggarwal** (supra), the aspect of a person likely to be released on bail upon his arrest was stated to be a relevant parameter to be considered by a Court considering an application for grant of anticipatory bail.

11. Further considering the fact situation *inter alia*

of the parameters laid down by the Hon'ble Apex Court in **Siddharam Satlingappa Mhetre** (supra), it appears to this Court that the nature and gravity of the offences alleged, which is quite serious more particularly since it appears that a very Sr. Officer of NHAI had been bribed and whereas since it also clearly appears that the same had been at the instance of the present applicants while the applicants are not stated to have any antecedents and whereas the Investigating Officer has not stated any apprehension about the applicants fleeing from justice but at the same time having regard to the nature of allegations and having regard to the fact that the Companies of the applicants are engaged in similar business, the possibility of the accused repeating the offences in question cannot be ruled out. It also does not appear that the accusations have been made with the object of injuring or humiliating the applicants. This Court is also in agreement with the learned Special Public

Prosecutor that grant of anticipatory bail may impact a large number of people more particularly, since the allegations being of bribing a public servant, more particularly public servant being Incharge of an organization which had a very serious responsibility of building and maintaining important highways within the State. It also does not appear that it is a case of over implication. Insofar as the balance requires to be struck, in the considered opinion of this Court, considering the senior position being held by the applicants and further considering that the employees of such applicants are stated to be co-accused and witnesses, there is a possibility that releasing the applicants on pre-arrest bail may hamper free, fair and full investigation and whereas since there is *prima facie* material to show commission of offence by the applicants no harassment, humiliation would be caused on account of detention of the accused. It also does not appear that the prosecution is frivolous, more particularly in

view of the fact that material having been gathered by the Investigating Officer showing a clear commission of offence and also showing the *prima facie* involvement of the applicants.

12. At this stage, this Court seeks to rely upon observations of the Hon'ble Apex Court in a somewhat similar circumstance where an influential person was facing charge of commission of offence punishable under Section 13(2) of the P. C. Act. The Hon'ble Apex Court in case of **State Rep. By the C.B.I. Vs. Anil Sharma reported in (1997) 7 SCC 187** at paragraph 6 has observed as thus:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful

informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."

13. In the considered opinion of this Court, having regard to the discussion in the preceding paragraphs this Court is of the opinion that this is a fit case for custodial interrogation and protecting the applicants, more particularly looking to the senior

positions held by them may result in the interrogation, becoming an exercise in futility as observed by the Hon'ble Apex Court in the above quoted decision, thus the request of the applicants for being granted pre-arrest bail cannot be accepted.

14. Having regard to the observations and discussion herein above, in the considered opinion of this Court, this would not be a fit case for exercising discretion in favour of the applicants and releasing them on pre-arrest bail. Hence, the present applications stand rejected.

(NIKHIL S. KARIEL,J)

V.V.P. PODUVAL

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