

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

Kishore Kumar v. CBI

05.09.2020

(Through CISCO Webex Meeting App)

Present: Ld. Defence Counsel Sh. Navneet Panwar for accused  
Kishore Kumar.

Ld. Public Prosecutor Sh. Amit Kumar for CBI.

ORDER ON BAIL APPLICATION OF ACCUSED  
KISHORE KUMAR

An application seeking regular bail was filed on behalf of accused Kishore Kumar on 31.08.2020 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 Kishore Kumar.

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 his official duties; the accused Ram Krishan Mishra, an employee of M/s. Imexcon, 23/5, 1st floor, East Patel Nagar, New Delhi, accused Ravi Sharma, an employee of M/s. Him Logistics Pvt. Ltd., 2151, 3D, New 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. 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. Defence Counsel on behalf of the accused Kishore Kumar in brief, has submitted that accused has been falsely implicated by the CBI after recovery of Rs. Seven lakh effected from accused Neeraj Kumar; the CBI has recorded his statement and his voice sample under coercion; the arrest of the accused is in violation of section 41-A of Cr.P.C. as the punishment provided for the alleged offences against the accused is up to seven years; nothing incriminating was recovered from or at the instance of the accused; the accused is a man of small means; he was working as a Custom Clearing Agent; the co-accused Neeraj Kumar is one of the acquaintances of the accused; he was not having any interaction with accused Saurav Sharma; he is not aware of any conspiracy or illegal

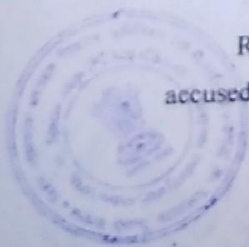


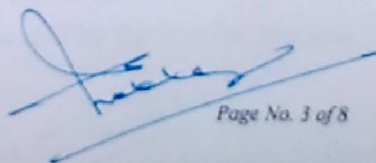
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activity, if any, was going on between the accused persons; he had collected the amount from accused Ram Krishan Mishra on asking of accused Neeraj Kumar; the wife of accused Ms. Megha Shrichandani and daughter Ms. Pranjali Shrichandani are suffering from serious ailments; the wife of the accused was operated for removal of her Uterus and Ovaries on 03.02.2020 and since then, she is not keeping well as she could not get proper treatment due to spread of pandemic COVID-2019; daughter of the accused is suffering from Optic Chiasma Glioma (tumor near the optic nerve in the brain), she had undergone brain stenting at Sir Ganga Ram Hospital; she has lost vision in her left eye; she is suffering from frequent headaches, fits and unconsciousness; she is presently undergoing Ayurvedic treatment; there is no other person in the family of accused to look after his ailing wife and daughter; there is no likelihood that accused will tamper with the evidence; the accused has no role or connection with any alleged illegal transaction which is alleged to have taken place between the other accused persons; the accused has clean antecedents; the whole family is dependent upon him; no purpose shall be served if the accused is kept in judicial custody 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 to control the pandemic and even extended the period of their bail; he is ready to abide by any condition imposed upon him for grant of bail. Ld Counsel has relied upon following case law:

- (a) H. B. Chaturvedi v. CBI 171 (2010) DLT 223;
- (b) Jitender Kumar v. Govt. of NCT of Delhi, 2016 (10) JCC 652;
- (c) Arnesh Kumar v. State of Bihar, 2014 (8) SCC 273
- (d) Bail Application no. 1353/2020 titled as Shivender Mohan Singh v. Directorate of Enforcement;

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

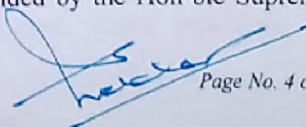


  
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5. Ld. Public Prosecutor for CBI and the IO have submitted that accused Saurav Sharma had telephonically informed accused Ram Krishan Mishra that he had deputed accused Kishore Kumar and whatever is lying with him, he should handover the same to him with a slip; the accused Ram Krishan Mishra had replied that he will give seven numbers meaning Rs. Seven lakh; after sometime, accused Kishore Kumar came to accused Ram Krishan Mishra, who handed over the amount of Rs. Seven lakh to him and informed accused Saurav Sharma that he had handed over seven files; accused Kishore Kumar had collected the amount of illegal gratification of Rs. Seven lakh knowingly from accused Ram Krishan Mishra and passed the same to accused Neeraj Kumar through one Sonu, who was delivery boy of accused Neeraj Kumar. The accused got recorded his statement and sample voices during investigation without any coercion or undue influence. The accused Kishore Kumar is actively involved in conspiracy and commission of crime with other co-accused persons. The medical records of wife and daughter of the accused is confirmed by the concerned Doctors however, the illness of any of the family members of the accused is not a ground for granting of bail. The accused Kishore Kumar, if enlarged on bail, may abscond and tamper with evidence and influence the witnesses; the crucial evidence is yet to be collected by the CBI, the judicial custody of the accused is required to avoid tampering of evidence. 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 (Cri.) 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



  
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Court of India in Cri. Appeal no. 138 of 2019 on 12.09.2019  
and;

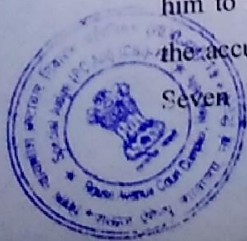
(e) Superintendent of Police, CBI and Ors., Appellant v. Tapan  
Kumar Singh, Respondent in Cri. Appeal no. 938 of 19995  
decided on 10.04.2003.

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

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

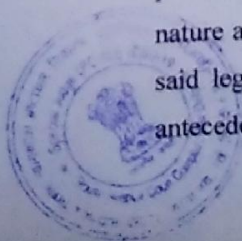
(a) It is writ large that granting of bail in non-bailable offences is  
a judicial discretion, which enormously depends on facts and  
circumstances of each case and varies case to case. The judicial  
discretion though varies discreetly, is guided by some judicially  
recognized, valuable factors. 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



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recovered from the possession of accused Neeraj Kumar. 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. 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 Kishore Kumar 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 is claimed by the accused that he has clean antecedents and no other case is pending against him, the IO has not

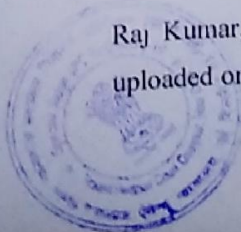


rebutted the same, the voice samples of the accused have already been collected by the CBI; the identity of the speakers in intercepted conversation can only be confirmed after report of CFSL, which will take considerable time. Keeping the accused in judicial custody, awaiting the report, is not in the 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 Kishore Kumar.

7. The accused Kishore Kumar 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 Kishore Kumar is allowed and disposed of accordingly.

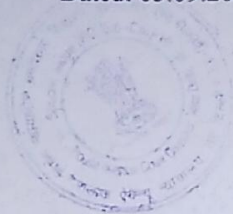
A copy of this order is being sent through Whats App to Sh. Raj Kumar, Reader of this court with a direction to get this order uploaded on the official website of Delhi District Courts at the earliest



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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: 05.09.2020



  
CHANDRA SHEKHAR

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

श्री चन्द्र शेखर  
Sh. Chandra Shekhar  
विशेष न्यायाधीश, एच.आर.के. अखिल अखिल (सी.बी.आई.)  
Special Judge PC A (CBI)-19  
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