

CBI Vs. Sunny Kalra

(S/o. Sh. Madan Lal Kalra)

FIR No. : RC/AC1/2015/A/0005 dated 16.12.2015

u/S. : 120B r/w. 420, 468, 471 IPC

13(2) r/w. 13(1)(d) PC Act 1988

PS : CBI/AC1/New Delhi

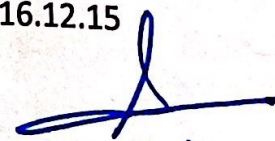
Distt. : New Delhi

13.05.2020 (at 2:00 PM)

ORDER

1. Vide this order, I shall dispose off the bail application moved u/S. 167(2) r/w. 439 CrPC filed on behalf of the applicant / accused Sunny Kalra.
2. This bail application was taken up via CISCO Webex platform, facilitated by computer branch official(s) of RADC in the presence (on screen) of Sh. V. K. Pathak, Ld. PP for CBI, DSP Pramod Kumar, IO of the case and Sh. Pradeep Rana, Ld. Counsel for the applicant / accused on 12.05.2020, in which detailed arguments were addressed and concluded.
3. The brief facts which can be taken out from the bail application filed on behalf of the applicant / accused and from the reply filed by the CBI / Prosecution are as under :

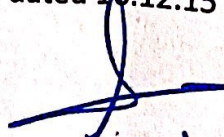
“3. That in this regard, it is humbly submitted that on 16.12.2015, the instant case RC AC-1 2015 A0005 was registered on the basis of a complaint dated 11.12.2015 received from Shri Vijay Kumar Gupta,


13/5/2020

Chief Manager, Punjab National Bank, Daryaganj Branch, Delhi on the allegations that M/s. White Tiger Steels Pvt. Ltd. through its Directors Shri Sunny Kalra (accused/applicant) and Smt. Aarti Kalra availed financial facilities to the tune of Rs.1000 lakh under Cash Credit limit from PNB, Daryaganj, New Delhi. Against this facility the entire stocks were hypothecated as security and to secure the said facilities Shri Sunny Kala and Smt. Aarti Kalra stood as guarantors. This facility was further secured by Shri Ashok Kumar S/o Shri Ved Prakash, R/o C-1/1121, Vasant Kunj, New Delhi-110070 by mortgaging built up residential house No. 477, Shivji Marg, Westend Greens, New Delhi-110037. The accused persons were, however, most irregular in making the payment and did not make any repayment after 25.6.2014. The hypothecated goods were also clandestinely removed by accused persons without the knowledge of the Bank. Thus, accused private persons and firms in criminal conspiracy with each other and also in connivance with unknown Bank officials have committed criminal breach of trust and cheated the said Bank to the tune of Rs.10,99,09,096/- as on 15.12.2014 plus future interest thereon.

4. That a charge sheet U/s. 120-B, 420, 468 & 471 of IPC and Sec. 13(2) r/w 13(1) (d) of PC Act 1988 was filed in the Hon'ble Court against accused Sunny Kalra (accused/applicant) and his wife Aarti Kalra, M/s. White Tiger Steel Pvt. Ltd., Subhash Chand Jindal, the then AGM, PNB, Virendra Kumar Sood, the then Chief Manager, PNB and Kanika, Manager, PNB (public servants) on 22.12.2016 on the allegation that accused Sunny Kalra entered into a criminal conspiracy with other co-accused and obtained a loan of Rs.1000 lakh from PNB, Daryaganj, Delhi on the basis of forged documents and did not repay the loan to the Bank, hence caused a wrongful loss to the tune of Rs. 10,99,09,096/- as on 15.12.2014 to the Punjab National Bank, Daryaganj Branch, Delhi and corresponding wrongful gain to the accused persons. The charge sheet is presently pending in the Court of Hon'ble Special Judge (P.C. Act), CBI-07, Rouse Avenue Courts, New Delhi. Further investigation under Section 173(8) of the Cr.P.C. in the case is continued in order to look into the role of other private persons, who had helped the accused persons to commit the fraud.

5. That it is humbly submitted that accused Sunny Kalra S/o Shri Madan Lal Kalra R/o 477, Shivji Marg, Westend Greens, New Delhi (accused/applicant) was absconding since registration of case. He along


13/5/2020

with his family members had fled to United Arab of Emirates (UAE) and was since absconding. Therefore, Hon'ble Special Judge was pleased to issue Warrant of Arrest dated 09.05.2017 for his arrest.

6. That it is further humbly submitted that on receipt of information through NCB, Muscat, Oman about availability of accused Sunny Kalra at Muscat, Oman and in compliance of the above mentioned Warrant of Arrest dated 09.05.2017, the undersigned IO visited Muscat, Oman and arrested the above mentioned accused Sunny Kalra on 06.03.2020 at 2140 hrs. (Oman) at Office of C.I.D., Muscat International Airport, Muscat, Oman while observing all codal formalities.

7. That it is also submitted that the accused Sunny Kalra was brought to New Delhi on 07.03.2020 early morning and was produced before the Hon'ble Special Judge (P.C. Act), CBI-07, Rouse Avenue Courts, New Delhi and was remanded to Police Custody for three days and thereafter he was remanded to judicial custody on 09.03.2020. Since then he is under judicial custody.

8. That it is also humbly submitted that complicity on the part of the accused/applicant has been elaborately mentioned in the charge sheet. Aarti Kalra, co-accused and wife of the accused/applicant, is still absconding and presently is in UAE. His brother and his wife, who are also accused in other such Bank fraud cases, are absconding and are presently in UAE. There are other two cases pending trial against the accused/applicant. The accused/applicant does not have any permanent house in India at present and hence his address of Dubai, UAE was mentioned in the first interim bail application filed on 08.04.2020. It is also submitted that exaggerated valuation of the property situated at 477, Shivji Marg, West End Green, Mahipalpur, New Delhi was obtained by the accused persons and the same property was mortgaged by the accused/applicant against the sanctioned limit to M/s. White Tiger Steels Pvt. Ltd. and also by his brother namely Sanjay Kalra and his wife Varsha Kalra in another loan case (RC AC-1 2015A0006 dated 16.12.2015) of Rs.800 lakh from the same Branch of Punjab National Bank, in which brother of the accused/applicant is one of the accused. Charge sheet has also been filed against Sanjay Kalra and others in FIR of case RC AC-1 2015 A0006 on 22.12.2016 before the Hon'ble Special Judge (P.C. Act), CBI-07, Rouse Avenue Courts, New Delhi. As per the

re-valuation report of the above mentioned property, mortgaged property was not worthwhile to grant the above mentioned loan.

9. That the charge sheet against the accused/applicant Sunny Kalra has already been filed on 22.12.2016 showing the accused applicant as absconding at the column of particulars of accused persons charge sheeted {11[1] (xiii)} in the charge sheet. Since investigation was kept open under section 173(8) Cr. P.C. to look into the role of other private persons who had helped the accused persons to commit the fraud, the benefit under section 167(2) r/w section 439 of Cr.P.C. cannot be given to the accused/applicant.

10. That due to national lockdown in view of the threat of Covid-19 pandemic, further investigation in this case could not be completed. The accused is moneyed and influential person. Enlarging the accused/applicant on bail at this stage will be detrimental to the interest of trial of the case.”

4. It is stated in the bail application that out of the cheated amount of Rs. 10,99,09,096/-, the bank had already recovered Rs. 4.89 Crores after auctioning the property of Westend Greens, Vasant Kunj, Delhi. It is also stated that the accused after his arrest in the present case was produced in the concerned Court of Ld. Special Judge on 07.03.2020 and was remanded to police custody for two days. Thereafter, he was remanded to judicial custody on 09.03.2020 and he is in JC since then.

It is further stated that the investigation in this matter are complete qua the present applicant/accused and after the arrest of the applicant / accused, his custodial interrogation was carried out by the investigating agency and no incriminating evidence was recovered from the possession or at the instance of applicant / accused. Admittedly, the entire case of the prosecution is based on documentary evidences which is already in the power and possession of the investigating agency.

It is further stated that the accused has been arrested for the offence(s) punishable u/S. 120B r/w 420/468/471 IPC and 13(2) r/w 13(1)(d) of PC Act, the maximum punishment for these offences is upto 10 years. Hence Section

167(2)(a)(ii) of CrPC would be applicable as per the settled law. It is stated that since the charge sheet has not been filed within the period of 60 days, in view of the settled law, the accused is entitled to be released on default bail after the expiry of 60 days in judicial custody. In support of his contentions, he has relied upon the following judgments :

- a) *Rakesh Kumar Paul Vs. State of Assam (SLP (Criminal) no. 2009 of 2017);*
- b) *Nand Kumar @ Nandu Vs. State of Delhi (Criminal appeal no. 18 of 2018);*
- c) *Uday Mohan Lal Acharya Vs. State of Maharashtra AIR 2001 SC 1010;*
- d) *Mohd. Iqbal Madar Sheikh Vs. State of Maharashtra (1996) 1 SCC 722;*
- e) *Sanjeev Chawla Vs. State of Delhi (Cr. MC 1468/2020);*
- f) *Mahesh Kumar Vs. CBI MANU/DE/3403/2013;*
- g) *R. Vasudevan Vs. CBI.*

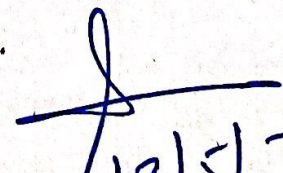
It is also stated that he had also filed interim bail applications in the court of Sessions, which had been dismissed with the directions to the jail authorities to provide requisite medical attention to the accused and it is also stated that he had also filed an application u/S. 439 CrPC for grant of interim bail for a period of 60 days in the Hon'ble High Court, which was also listed for 12.05.2020. During the course of the arguments, it was submitted by Ld. Defence Counsel that the said application which was listed for 12.05.2020 had been dismissed as withdrawn, which fact was also confirmed by the IO during the course of the hearing.

It is stated that all the co-accused have already been released on bail by the Ld. Special Judge and the accused is aged around 35 years and is a patient of diabetes and other ailments and is in JC for more than two months and there is no apprehension that he will abscond as he has also surrendered his temporary passport to the investigating agency when he landed in India.

It is stated that the applicant / accused is also ready to settle the disputed amount with the complainant bank in order to show his bonafides without prejudice to his rights and contentions.

CBI Vs. Sunny Kalra

FIR No. RC/AC1/2015/A/0005 dated 16.12.15


13/5/2020
Page No. 5

It is also stated that the family / in-laws of the accused are permanent residents of India and are staying in Delhi / NCR for more than 20 years and they will be willing to provide sound surety for him.

It is also stated that even after five years of registration of the case till date the charges have not been framed against the co-accused persons. Therefore, it is stated that it is a fit case where the accused be released on bail.

5. On the other hand, Ld. PP for CBI has argued that the provisions of Section 167 (2) CrPC is not available to the present accused in view of the judgment of the Hon'ble Supreme Court titled as *Dinesh Dalmia Vs. CBI (2007) 8 SCC 770*. It is further stated that the accused is also wanted in two other cases of cheating of Rs. 4 Crores and Rs. 5.5 Crores respectively, which are also pending in the Rouse Avenue District Court investigated by the CBI.

6. To the contrary, Ld. Counsel for the accused has argued that in those cases, no coercive procedure has been initiated against the accused and he has only been summoned in those cases. It is also argued that it has been admitted by the IO during the course of the arguments of the present case that the investigating agency does not contemplate to arrest the accused in those two cases and that the investigations qua the accused in this case are complete.

7. On the other hand, Ld. PP for CBI has argued that considering the number of cases against the accused and grave and serious allegations against him and the fact that he has a flight risk and he has no permanent residential address in Delhi or India and that he was arrested from abroad with great difficulty warrants that his bail application be dismissed.

8. I have gone through the rival contentions.

9. The Ld. Defence Counsel has argued his bail application primarily on two grounds :

(a) On the ground of statutory bail u/S. 167(2) CrPC;

(b) Regular bail due to completion of investigations.

Taking up the first plea first, the Ld. Defence Counsel has argued that accused was arrested in the present case and was produced before the Ld. Special

13/5/2020

Judge on 07.03.2020. He was also remanded to police custody of two days and thereafter to judicial custody till date, as accused has been arrested for committing offence(s) u/S. 120B IPC r/w 420/468/471 IPC and 13(2) r/w 13(1) of PC Act wherein the maximum punishment is upto 10 years, therefore in view of the judgment of *Rakesh Kumar Paul Vs. State of Assam (supra)*, the charge sheet had to be filed within 60 days which has not been done in the present case by the investigating agency. Therefore, accused is entitled to statutory bail u/S. 167(2) a (ii) of CrPC. Therefore a indefeasible right has accrued in his favour for grant of bail.

10. To the contrary, Ld. PP for CBI has relied upon the judgment *Dinesh Dalmia Vs. CBI (supra)* to controvert the arguments of Ld. Defence Counsel for grant of statutory bail. The relevant part of the judgment is reproduced as under :

“The case of Dinesh Dalmia v. CBI[2], which is relied upon by the High Court, relates to granting of bail under Section 167(2) CrPC. In said case, the accused /absconder (Dinesh Dalmia) after his arrest was produced before the Magistrate, and on the request of CBI police custody was granted on 14.02.2006 till 24.02.2006, whereafter on another application further police custody was granted till 08.03.2006. Said accused was remanded to judicial custody, and the accused sought statutory bail under sub-section (2) of Section 167 CrPC as no charge sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge sheet, and the remand of the accused to judicial custody was under Section 309 CrPC, after police remand came to an end, granted under Section 167(2) CrPC. The High Court upheld said order and this Court also affirmed the view taken by the High Court. In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of Dinesh Dalmia (supra) in upholding refusal of remand in police custody by the Magistrate, on the ground that accused stood in custody after his arrest under Section 309 CrPC. We have already noted above the principle of law laid down by the three judge bench of this Court in State v. Dawood Ibrahim Kaskar

(supra) that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation. If the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression 'accused if in custody' in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed."

The facts of which are squarely applicable to the present case, as in the present case, also the charge sheet against the present accused has already been filed as per reply filed by the IO on 22.12.2016, showing the accused as absconding as per column no. 11(1) (xii) of the chargesheet. Therefore, the present case is a case of further investigations qua the present accused after the filing of the chargesheet. Therefore, the said statutory provision would have been available to the accused only once, not twice, as argued by Ld. Defence Counsel, hence his plea for statutory bail is rejected.

11. Now coming to his plea of regular bail, it is admitted case that after his arrest from abroad, he was produced before the Ld. Special Judge on 07.03.2020 and he was also remanded to two days police custody remand, whereafter he is in judicial custody.

12. The IO during the course of arguments admitted that he does not intend to file any chargesheet qua the present case, however, he may file a supplementary chargesheet qua the present accused. Therefore, it appears that the present accused is no longer required for investigations in the present case.

13. Ld. PP for CBI has argued that accused is also involved in two other cases of CBI for committing fraud of Rs. 4 Crores and Rs. 5.5 Crores, which are also stated to be pending at the stage of inquiry in which accused has only been summoned / called by issuing production warrants. However, the IO during the course of hearing verified from the concerned IOs / holding IO(s) of those cases that investigating agency does not contemplate to arrest the present accused in those two cases for unearthing any facts or for investigations.

14. Ld. PP for CBI has further argued that accused had fled abroad and red corner notice was issued against him and he was arrested from Muscat, Oman and

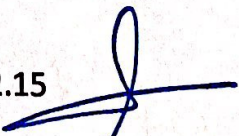
was deported to India, therefore, it is stated that he is a flight risk and may abscond again. He has further argued that the accused has no fixed residence in India and his wife is also absconding and no affidavit or undertaking of any other relative / friend is attached to show that they are willing to give him shelter at their residences.

15. On the other hand, Ld. Defence Counsel has argued to the contrary as reproduced above. No doubt the conduct of the present accused is not above board, as he instead of facing trial absconded abroad. However, at the same, the accused is stated to be in JC since 09.03.2020 and before that his two days police custody remand was also obtained. As discussed above, main charge sheet has been filed against the accused and only supplementary charge sheet has to be filed qua him, therefore, it appears that accused is no longer required for the investigations. It is also stated that after registration of the present case in the year 2015, even the charges have not been framed against the co-accused persons, who are all on bail. Therefore, in view of the settled law, the liberty of the accused cannot be left in Limbo only on account of belief of the State / Investigating Agency that accused is a flight risk.

Ld. Counsel for accused has also argued that out of total amount of Rs. 10.99 Crores, the bank has already recovered a sum of Rs. 4.89 Crores by auctioning his property at Delhi.

16. Therefore, in these overall facts and circumstances discussed above, it is a fit case for grant of bail and the accused Sunny Kalra is consequently admitted to bail on furnishing a personal bond in the sum of Rs. 1 Lakh with two sureties of like amount each to the satisfaction of Ld. Duty Magistrate, Rouse Avenue Court / Ld. Duty Magistrate, Tihar. The accused will also mark his attendance physically or on the phone or otherwise with the IO once every week till he provides documentary proof of his residence in shape of rent agreement / ownership documents, which will be first verified by the IO. The accused shall not leave the NCR of Delhi and country without permission of the Court nor will influence or contact the witnesses in any way.

The accused shall within 03 days, without fail from the date of his release shall furnish his temporary address at which he shall be available as well as his


13/5/20 20

mobile number. On failure to comply with any of these conditions, the IO shall be at liberty to move an application seeking cancellation of his bail.

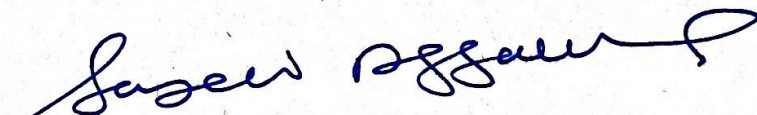
17. The bail application stand disposed off accordingly.

Nothing expressed hereinabove shall have any bearing on the merits of the case.

A scanned signed copy of this order is being sent to Sh. Surender Prasad Mandal, Branch Incharge, Computer Branch, Rouse Avenue District Court, New Delhi via Whatsapp / E-mail for further action in terms of the above order.

A copy of the order sheet be retained on record to be put in the judicial file as and when normal court work stands resumed.

The present order has been dictated / sent on phone / whatsapp to Sh. Amit Makhija, Sr. PA attached with the undersigned.


(SANJEEV AGGARWAL)

Special Judge (PC Act) (CBI)-02

Rouse Avenue District Court

New Delhi

13.05.2020