

**IN THE COURT OF SH. SANJEEV AGGARWAL,
SPECIAL JUDGE (PC ACT) (CBI)-02, ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

**CBI Vs. Abhishek Tiwari & Ors.
FIR No. RC2182021A0005
PS CBI/AC-III/New Delhi
CNR No. DLCT11-000488-2021**

11.02.2022

O R D E R

1. Vide this order, I shall dispose the present application for regular bail moved on behalf of applicant/accused Abhishek Tiwari (A-1) *(the accused is hereinafter, being referred to by his status as mentioned in the charge-sheet).*

2. Brief facts of the case as per the charge-sheet are as follows :-

a) This Regular Case RC2182021A0005 was registered by the CBI on 31.08.2021 on the basis of a complaint submitted by Shri Kiran S., Supdt. of Police, CBI, AC-V, New Delhi against (i) Shri Abhishek Tiwari, Sub Inspector, CBI, AC-V, New Delhi, (ii) Shri Anand Dilip Daga, Advocate, R/o -97/1, Civil Lines, Temple Road, Nagpur and (iii) Unknown others, under section 120-B, 409 of Indian Penal Code and section 7 and 8 of Prevention of Corruption Act, 1988 (as amended in 2018).

b) It was alleged in the FIR that a PE 2232021A0001 was registered on 06.04.2021 in compliance of the order dated 05.04.2021 of the Hon'ble High Court of

Mumbai. For conducting the enquiry, a team of officers led by the Enquiry Officer Shri R S Gunjiyal, Dy. SP, CBI alongwith Shri Abhishek Tiwari (A-1), Sub Inspector, CBI left for Mumbai on 06.04.2021. During the enquiry, the team members examined witnesses including Shri Anil Deshmukh, the then Home Minister, Maharashtra, who was examined on 14.04.2021.

c) It was further alleged that consequent upon the enquiry, the Enquiry Officer submitted his report dated 16.04.2021. Shri Abhishek Tiwari (A-1) had assisted the Enquiry Officer in the preparation of the said report and had been in possession of case sensitive documents. Pursuant to the comments and opinion of senior officers and after approval by the competent authority, RC 2232021A0003 was registered by the CBI on 21.04.2021 u/s 7 of PC Act, 1988 (as amended in 2018) and 120-B of IPC against Sh. Anil Deshmukh, the then Home Minister of Maharashtra & unknown others, the investigation of which is in progress.

d) It was further alleged that the case sensitive and confidential documents pertaining to the enquiry and investigation were disclosed to unauthorized person. Shri Abhishek Tiwari (A-1) had come in contact with Advocate Shri Anand Dilip Daga (A-2), Lawyer of Shri Anil Deshmukh, during the course of enquiry and had been in regular contact with him since then.

e) It was further alleged that Shri Abhishek Tiwari (A-1) had visited Pune in connection with investigation of the said RC, where Advocate Shri Anand Dilip Daga (A-2), met him and handed over to him an iPhone 12 Pro as illegal gratification in lieu of passing details regarding the said enquiry and investigation, thereby causing improper performance of public duty. He had been obtaining illegal gratification from Shri Anand Dilip Daga (A-2) at regular interval.

f) It was further alleged that Shri Abhishek Tiwari (A-1) shared copies of documents like memorandum of proceedings, sealing-unsealing memorandum, statements, seizure memos etc., related to the investigation of the case with Shri Anand Dilip Daga (A-2) through WhatsApp on many occasions and thus, Shri Abhishek Tiwari (A-1) who was entrusted with the possession of case sensitive documents as part of the enquiry and investigation in his capacity as a Sub-Inspector, has committed criminal breach of trust in respect of said property. He entered into criminal conspiracy with Shri Anand Dilip Dagar (A-2) and Unknown others and disclosed case sensitive and confidential documents to unauthorized persons, for the purpose of subverting investigation of RC2232021A0003, in lieu of undue advantage and illegal gratification to himself.

g) Investigation has established that Shri Abhishek Tiwari was associated with the PE2232021A0001 and RC2232021A0003 of AC-V Branch of CBI and was privy to the case sensitive documents and strategy of the case.

h) Investigation has established that Shri Abhishek Tiwari (A-1) in conspiracy with Shri Anand Dilip Daga (A-2), advocate of Shri Anil Deshmukh, leaked the case sensitive and secret documents to Shri Anand Dilip Daga (A-2) in order to subvert the investigation of RC2232021A0003 of AC-V Branch of CBI.

i) During investigation, it is established that a Preliminary Enquiry Registration Report vide PE2232021A0001 was registered by AC-V Branch, CBI on 06.04.2021 against Shri Anil Deshmukh, the then Home Minister, Govt. of Maharashtra & Unknown others for enquiry, in compliance of the order dated 05.04.2021 passed by the Hon'ble High Court of Maharashtra in PIL No. 06/2021 and batch of connected PILs in the matter of Shri Param Bir Singh Vs. the State of Maharashtra & others, whereby, the Hon'ble High Court had directed the CBI to initiate a Preliminary Enquiry into the complaint of Dr. Jaishri Laxmanrao Patil (Advocate). The Enquiry of the PE was entrusted to Shri R. S.Gunjiyal, Dy. SP, CBI.

j) It is also mentioned in the charge sheet that accused Abhishek Tiwari along with other senior officers, CBI

visited Mumbai and camped at DRDO Guest House, Santa Cruz, Mumbai along with the Enquiry Officer Sh. R. S. Gunjiyal, Dy. SP during the period 06.04.2021 to 15.04.2021 and assisted in the enquiry and also during the recording of the statement of the witnesses and preparation of Enquiry Report after return to Delhi with him on 15.04.2021. Thereafter, Sh. R. S. Gunjiyal had submitted the Enquiry Report (i.e. Final Report-I) in the PE on 16.04.2021. Therefore Abhishek Tiwari had access to complete documents related to PE2232021A0001 of AC-V Branch, CBI.

k) The investigation has also revealed that Anand Dilip Daga had accompanied Shri Anil Deshmukh on 14.04.2021 during his examination by CBI at DRDO Guest House Santa Cruz, Mumbai in connection with the above PE2232021A0001.

l) It is also mentioned that the above PE2232021A0001 culminated into registration of a regular case vide RC2232021A0003 by AC-V Branch of the CBI on 21.04.2021 u/s. 120-B of IPC and Section 7 of PC Act, 1988 (as amended in 2018) against Shri Anil Deshmukh, the then Home Minister of Maharashtra and unknown others.

m) Thereafter, a number of CBI officials including the investigating officer Sh. Mukesh Kumar, Dy, SP and Abhishek Tiwari, Sub Inspector (A-1) etc. undertook official tours and camped outstation from time to

time. The said Abhishek Tiwari was also part of the team planning the searches along with the IO.

n) It is also mentioned in the charge sheet that (A-2) Anand Dilip Daga was one of the lawyers for petitioner Sh. Anil Deshmukh before the Hon'ble Supreme Court and also before the Hon'ble High Court. It is also revealed that (A-1) and (A-2) met at Delhi, Mumbai and Pune physically and had been in regular touch through whatsapp calls / messages and SMS after 14.04.2021 and from the search of (A-1) on 01.09.2021, certain electronic devises including his mobile phones, laptop and pen drives were seized. One apple i-Phone was also seized on 01.09.2021.

o) Anand Dilip Daga (A-2) was arrested on 01.09.2021 and his mobile phone was also seized. The imaging of mobile phone was done and data was extracted and the files related to PE2232021A0001 and RC2232021A0003 of AC-V branch of CBI were retrieved from the mobile phone of (A-2). The dates of creation of files in the phone of (A-2) indicates the dates of leakage of corresponding documents. The hash value of the above files were also analysed during investigation and it matches with the corresponding hash value of the documents recovered from the Samsung mobile phone and from the pendrive of Abhishek Tiwari (A-1), details of which have been mentioned in the charge sheet.

p) It is also mentioned that the statement of Sh. Subodh Kumar Jaiswal, the then Director General, CISF was recorded telephonically by Sh. Mukesh Kumar, DySP(IO) on 06.05.2021 and was saved in his external hard disk. No other member of the investigation team, except Sh. Mukesh Kumar, DySP was aware of this fact. The said statement was found saved in the pen driver of (A-1) on 01.08.2021 and also in the mobile phones of (A-2) on 05.08.2021, which he had unauthorisedly accessed and leaked the said documents to Anand Dilip Daga (A-2) and the contents of statement of Sh. Subodh Kumar Jaiswal u/S. 161 CrPC dated 06.05.2021 in RC2232021A0003, extracted from the phone of (A-2) and '161 CrPC statement' extracted from the phone of (A-1) is precisely matching, as the hash value of both of them is the same.

q) The investigations also revealed that (A-1) who was sent to Pune on 26.07.2021 to coordinate searches there while in Pune met (A-2), who visited Pune through vehicle no. MH 31 ER 7000, as Abhishek Tiwari stayed at HAL Guest House, Pimpri, Pune and Anand Dilip Daga met him there, which was confirmed by vehicle entry register maintained at the gate of HAL Guest House.

r) The investigations also revealed that (A-2) got an I-Phone 12 Pro purchased through one Sh. Satyajeet Wayal on 27.07.2021 for accused Abhishek Tiwari,

which was purchased for Rs. 95,000/-, which is corroborated by whatsapp chats between (A-2) and Sh. Satyajeet Wayal, which was handed over to (A-1) on 07.08.2021 and same was seized during the search of office cabin of (A-1) on 01.09.2021.

s) Thereafter, it was revealed that the illegally accessed / obtained Enquiry Report of PE2232021A0001 was already available with (A-2), which he in conspiracy with Vaibhav Gajendra Tumane (A-3), Social Media Handler of Sh. Anil Deshmukh got circulated / posted with a note on the background of the Preliminary Enquiry to a number of addressees, as a part of their larger conspiracy to subvert the investigation of RC2232021A0003 for which (A-3) roped in services of Sh. Rahul Chakranarayan (a care taker at the residence of Sh. Anil Deshmukh) and other persons. Therefore, it is stated that all the accused persons were acting in conspiracy with each other.

3. The application for bail has been filed by the applicant/accused Abhishek Tiwari (A-1) on the ground that the two other accused persons have already been granted bail by this court vide order dated 31.01.2022. Therefore, on the grounds of parity, he be also released on bail. It is also stated that he has been falsely implicated in this case. Investigation is complete and no useful purpose shall be served by keeping him in jail. Trial will take long time to commence and the accused meets the 'triple test'. It is orally submitted that the earlier bail applications of this accused

were dismissed by the Ld. Trial Court and by Hon'ble High court when the investigations were at initial stage, but now, there are material change of circumstances, as at that time, the charge-sheet had not been filed, whereas now the charge-sheet has been filed after 90 days and the matter is now pending at the stage of inquiry/arguments on charge. Therefore, it is stated that it is a fit case, where he be released on bail.

4. Reply has been filed by the CBI in which the allegations made in the application have been vehemently denied and it is stated that there is no parity as claimed. The role of the accused is totally different from the other accused persons. It is stated that merely because investigation is complete, there are no ground to release him on bail. It is further stated that accused if released on bail may influence the witnesses and tamper the evidence and may flee from justice. Further there is strong evidence against the accused as mentioned in the charge-sheet and the allegations against the accused are grave and serious in nature, therefore, the bail application be dismissed.

5 I have gone through the rival contentions of the parties.

6. It has been held in the judgment titled ***P. Chidambaram Vs. Directorate of Enforcement (Criminal Appeal No. 1831/2019, arising out of SLP (Criminal) No. 10493 of 2019) decided on 04.12.2019***, by the Hon'ble Supreme Court in relevant paras as under :

21. Such consideration with regard to gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied in that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case, since there is no

such bar created in the relevant enactment passed by the legislature nor does the Bail Jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge. The precedent of another case alone will not be the basis for either grant or refusal of bail though it may have bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of accused to stand trial.

In para 15 of the said judgment, it was held as under :

15.“The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vidh Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner.”

7. It has been held in the following judgment of the Hon'ble Supreme Court titled **Prasanta Kumar Sarkar vs. Ashis Chatterjee (2010) 14 SCC 496** as under :-

"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are :

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusations;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail. "*

8. Further, it has been held by the Hon'ble Supreme Court in the judgment of **Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2005) 2 SCC 42** as under :-

"this Court also observed that though the accused has a right to make a successive application for grant of bail, the Court entertaining such subsequent bail applications has duty to consider the reasons and grounds on

which the earlier bail applications were rejected and in such cases, the Court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier application."

9. The perusal of the order of the Hon'ble High Court dated 12.10.2021 reveals that the Hon'ble High Court was pleased to dismiss the Bail application(s) of A-1 (applicant herein) and A-2 on the ground that the investigations were still at the initial stage, therefore, Hon'ble High Court declined to grant bail to A-1 and A-2 at that stage.

10. Therefore this subsequent/successive application moved by applicant/accused(A-1) after the dismissal of his earlier bail application(s), on the ground mentioned above, is based upon materially different grounds, as chargesheet in this case has already been filed after thorough investigations after a lapse of 90 days, whereafter the matter is now pending at the stage of inquiry/further investigations. Therefore, there are fresh material grounds qua A-1 after dismissal of his earlier bail applications as elaborated above, as also the fact that A-1 is in judicial custody for almost five months.

11. Further, A-1 is an Ex. CBI Official and therefore, has roots in the society. Further, the allegations of the present case does not pertain to economic offences of huge magnitude, therefore, it cannot *per se* be said to be falling under the category of **grave offences**. Further, the other accused persons having almosst similar role have already been released on bail vide detailed order dated 31.01.2022. Therefore, on the grounds of parity, accused Abhishek Tiwari is also entitled to bail.

12. In view of the above detailed discussion, without commenting upon nature and gravity of the accusations as stated in the charge-sheet filed by the investigating agency, lest it may prejudice the case of the prosecution/defence later on, it is a fit case, where the accused deserves to be admitted to bail, as a resultant, the applicant Abhishek Tiwari is admitted to bail on his furnishing personal bonds in the sum of Rs.1,00,000/- with one surety of the like amount subject to the following terms and conditions :-

(1) The above applicant/accused will fully cooperate/join further investigation, as and when required by the investigating agency/IO/HIO.

(3) The above applicant/accused shall not leave the country without prior permission of the court.

(4) The above applicant/accused shall neither tamper with the evidence in any manner nor try to influence the witnesses.

In case of violation of any of the terms and conditions of the bail mentioned above, the CBI will be at liberty to move an application seeking cancellation of bail.

13. With these observations, the bail application moved on behalf of accused Abhishek Tiwari (A-1) stand disposed off as above.

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

**Announced in the open
Court on this 11th Day
of February, 2022.**

**(Sanjeev Aggarwal)
Special Judge (PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/11.02.2022**