

CNR No. DLCT11-000603-2022
CBI Case no. 51/2022
CBI Vs. M/s OBPL & Ors.

23.02.2023

Present : Sh. K.K. Sahu and Sh. Navneet Jawal, Ld. PPs with IO
Inspector Ritesh Dangi.

M/s OBPL (A-1) is represented through its AR
Sh. Tarun Kumar Sablania, who is present in person.
Accused Gautam Thapar (A-2) is present through
Video Conferencing.

Sh. N. Hariharan, Sr. Advocate with Sh. Rajat Katyal
and Sh. Rahul Sambher, Advocates for accused M/s
OBPL (A-1) and Gautam Thapar (A-2).

Accused Rana Kapoor (A-3) has appeared through VC
from Taloja Jail, Maharashtra.

Sh. Vikas Pahwa, Sr. Advocate with Ms. Stuti Gujral,
Sh. Prabhav Ralli, Sh. Abhishek Pati, Sh. Udipto,
Advocates for accused Rana Kapoor (A-3).

Copy of the chargesheet, annexures A, B, C, statements
of witnesses and documents supplied to the advocates appearing on
behalf of the accused persons. Soft copy thereof in the DVD also
supplied to the respective advocates.

Application as filed by the applicant/complainant Yes
Bank Ltd. for directions to the concerned IO to provide CD/soft
copy of the annexures/documents filed alongwith the chargesheet is
pending consideration. Application is allowed.

IO submits that today he has brought the DVD containing the copy of chargesheet and annexures/documents filed alongwith the chargesheet for supplying the same to the applicant/complainant Yest Bank Ltd. Let the mentioned DVD be supplied to the advocate appearing on behalf of the applicant/complainant Yes Bank Ltd. against due acknowledgment.

It is pointed by the Ld. PPs that on the LDOH, accused persons were granted interim bail and same was opposed on behalf of the CBI, but inadvertently the opposition as raised by the CBI was not recorded in the ordersheet.

Applications as filed by applicants A-2 & A-3 for grant of regular bail is also pending consideration.

Separate replies to the applications filed on behalf of the CBI. Copies supplied.

The case of the prosecution in brief is that the CBI had registered the present case vide RC2232021A0005 on 02.06.2021 u/s 120-B r/w 406, 420, 468, 471 IPC on the basis of a complaint dated 27.05.2021 received from Sh. Ashish Vinod Joshi, Chief Vigilance Officer, Yes Bank Ltd., Mumbai against M/s Oyster Buildwell Pvt. Ltd. (borrower company), its holding company Avantha Reality Ltd., its Directors/Promoters; Sh. Raghubir Kumar Sharma; Sh. Rajendra Kumar Mangal; Ms. Tapsi Mahajan; applicant/accused Gautam Thapar; unknown officials as named in the FIR and also against unknown Public Servant(s) and Private Person(s), alleging therein the commission of offences of fraud and thereby causing wrongful loss of Rs. 466.51 Crores to the

complainant.

It is submitted by the respective Ld. Counsel representing the applicants/accused persons that their clients have fully cooperated with the CBI during the course of investigation and joined the investigation whenever called by the IO. Further, the applicants have not been arrested by the CBI during the course of investigation. Further, their clients have not committed the alleged offences. Further, the applicants are deeply rooted in the society and there is no reasonable basis for harbouring any apprehension whatsoever that they may flee from justice, if granted bail. Ld. Counsel for applicant Rana Kapoor also submits that his client was not named as an accused in the present FIR.

Applications are opposed by Ld. PPs stating that applicant Rana Kapoor in conspiracy with the ultimate beneficiary/applicant Gautam Thapar not only cheated the Yes Bank Ltd. of the public money to the tune of Rs. 466.51 crores but also abused his official position in ensuring loan to A-1. Further, A-3 has not been arrested during the investigation of the present case considering the fact that he is already in Judicial Custody at Taloja Jail, Maharashtra in other cases registered by the CBI as well as ED. Further, the applicants have also been arraigned as accused persons in many cases of CBI and ED. Further, the offences committed by the applicants are very serious in nature and they apprehend that applicants may influence the witnesses. Further, the applicants will flee and settle in any country with which we have no extradition treaty.

I have heard arguments on behalf of both the parties and gone through the record.

One of the submissions of the prosecution is that the accused Rana Kapoor (A-3) has not been arrested for the reason that he is already in judicial custody in other matters of CBI and ED. This contention of the prosecution is not at all reasonable as there was no bar to arrest accused (A-3) when he was already in custody in many other matters. The investigating agency could formally arrest the said accused in this matter also, but they did not do so.

The Ld. Counsel for the applicant submitted that the question of bail to a person who was not arrested during the investigation was directly in question in **Satender Kumar Antil v. CBI and Another (2021) 10 SCC 773** and the same will apply in the present case also.

The Hon'ble Supreme Court in the above noted case categorically held that in the case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the Court, i.e. where the investigating agency has not exercised the power of arrest, there is no need for further arrest at the instance of the Court. As such, when the accused is charge sheeted without arrest, there is no need for arrest.

In the light of the above observations and in the facts and circumstances of the case, having regard to the law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation & another (supra)** and that the applicants were not arrested by CBI during the investigation and that the chargesheet was filed without arresting the applicants and nothing has been

brought on the record by the CBI to show that the applicants had not co-operated during investigation or had tried to influence any witness or tamper with the evidence, the bail applications as filed by the applicants are allowed.

Applicants are admitted on bail on furnishing personal bonds in sum of Rs. 1 lakh with one surety in the like amount subject to the following conditions -

- i) They shall not tamper with the evidence.
- ii) They shall not try to contact or influence the witnesses.
- iii) They shall not leave the country without permission of the Court and shall deposit their passport, if the same has not already been deposited with any investigating agency/Court.
- iv) They shall furnish their mobile numbers and e-mail IDs used by them to the prosecuting agency and shall also inform the change in mobile numbers and e-mail IDs, if any, to the IO.

Since accused Rana Kapoor (A-3) is languishing in Taloja Jail, Maharashtra, his surety bond be filed within one week from today and his Personal Bond be furnished within one month through the concerned Jail Superintendent, Taloja Jail, Maharashtra.

Ld. Counsel for A-2 submits that bail bonds filed on behalf of of his client on 16.02.2023 in compliance of interim bail order dated 07.02.2023, which were accepted till today, may kindly be considered for the regular bail also. Ld. Counsel further submits that surety of the accused is also present today in the Court and he

prays to further accept the mentioned bail bonds till the next date of hearing. Considering the submissions, the bail bonds of A-2 already on record is further accepted till the next date of hearing. Accused Gautam Thapar (A-2) is directed to physically appear in the Court alongwith his surety as soon as he gets well so that his bail bonds may be finally accepted.

On the last date of hearing, production warrants qua A-3 for his production for today through VC was ordered to be issued, but the same has not been issued. Ahlmad submits that inadvertently he could not issue the production warrants.

Although, at this stage, there is no purpose for issuing production warrants, but the same should be issued so that the jail authorities have proper communication and details of the present case and can get properly connected with the present case and do necessary formalities. Accordingly, issue fresh production warrants for A-3 in terms of order dated 07.02.2023 for the next date of hearing.

The Jail Superintendent, Taloja Jail, Maharashtra is directed to facilitate the accused Rana Kapoor (A-3) in furnishing his personal bonds and the same be sent to this Court through e-mail as well as in physical form at the earliest.

Copy of this order as well as order dated 07.02.2023 be sent alongwith the production warrants for necessary information and compliance.

Matter now to come up for scrutiny of documents and for further proceedings on 10.07.2023.

Copy of this order be given dasti to Ld. Counsel for
accused persons as well as to the IO.

(Sameer Bajpai)
Special Judge (PC Act) CBI-14
Rouse Avenue District Court,
New Delhi/23.02.2023