IN THE COURT OF AMAN SOOD, SPECIAL JUDGE, CBI
SHIMLA, DISTRICT SHIMLA, H.P.

CNR No.	:	**HPSH100069622022**
Filing No.	:	4340/2022
Registration No.	:	**421/2022**
Case Type	:	Bail Application
Bail Application No.	:	**60-S/22 of 2022**
Date of Institution	:	11.10.2022
Date of Decision	:	**05.11.2022**

Jaspreet Kaur W/o Sh.Harpal Singh R/o Kothi No.222, Phase-2, Sector-54, SAS Nagar, Mohali.

……..Bail applicant.

Versus

Central Bureau of Investigation.

……....Respondent.

Bail application for bail under section 438 Cr.P.C.

Case FIR No.RC2172021A0002 dated 13.03.2021 under Section 120-B IPC read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988 registered with PS CBI, AC-II/New Delhi.

For the bail applicant :Sh.Sumesh Jain, Advocate.

For the respondent :Sh.Sushil Negi Special PP CBI, Inspector Suraj Pal, CBI, AC-II, New Delhi(on the earlier date of hearing).
Sub Inspector Dharmender from CBI present today.

O R D E R

This order shall dispose of an application under Section 438 Cr. P.C. filed by above named bail-applicant, in case No.RC2172021A0002 dated 13.03.2021 under Section 120-B IPC read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988 registered with CBI, AC-II/New Delhi.

2. Bail petitioner has sought bail, alleging that she was served with a notice under Section 41A Cr.P.C.

3. According to learned counsel for the bail petitioner, she apprehends arrest, because a person Nirmal Singh was also issued a notice under Section 41A of Cr.P.C., but later on arrested even after joining the investigation.

4. That the allegations are that during the period of June 2009 to June 2011, proper verification was not conducted and that unjustified delay of nine months was made to favour the CIL. That the RC has been registered in violation of the Section 40 of the Central Excise Act 1944. She also relies upon an order of the Commissioner.

5. The reply of CBI, making the allegations, in brief are:-

(i). That M/s Mondelez Foods Private Limited (Formerly known as Cadbury India Limited) has paid bribe, misrepresented facts and manipulated records to avail area based exemption benefits (Central Excise & Income Tax) fraudulently in Baddi, Himachal Pradesh. Some members of the executive board of the company along with key managers, collectively decided to manipulate records, engaged intermediaries to route bribe and cover up all evidences.

(ii). That M/s Cadbury India Ltd. vide letter/declaration dated 30.06.2009 informed the Assistant Commissioner of Central Excise Shimla Division that its Unit-II, has started production since 29.06.2009 and was entitled for exemption of tax for next 10 years as per notification No.50/2003 EC dated 10.06.2003. However, most of the approvals/licenses were granted to M/s CIL (Unit-II) after 30.03.2010. Thus, 2nd Unit of M/s CIL did not fulfill the prescribed condition as laid down in the notification dated 10.06.2003.

(iii). That Sh. Subhash Sharma, Bhavana Dogra, V. Ramanan and Sanjay Kurup by entering into criminal conspiracy, had appointed one Deepak Chandel as local “legal” consultant for obtaining 23 licenses/approvals from different government departments. He had no legal expertise and was not known for providing consultancy services. He was merely a distributor of NITCO tiles and marbles. For the above said purpose, Deepak Chandel opened a proprietary firm M/s Daksh Associates &

Consultants. This firm was not registered and did not do any activity except for issuing bills/letters to M/s CIL.

(iv). That Sh.Sanjay Kurup, Factory Manager, Baddi, obtained in principle approval for the use of local "legal"consultant. On 09.04.2010, V. Ramanan from M/s CIL, requested Sh. Vikram Arora, Vice President (Finance & Compliance), M/s CIL for approval of Rs.60,00,000/- towards local "legal" support to expedite the final approval of the licenses which was approved by Sh.Rajesh Garg. Between 16.02.2020 to 30.07.2010, Rs.40,79,970/- was paid to Daksh Associates by M/s CIL in 05 different installments.

(v). That the above said officials of M/s CIL by further entering into criminal conspiracy with Sh.Sumit Sharma, proprietor M/s Tax Consultant (Advocate), engaged him for liasioning with Central Excise Officers. Rs.1,47,000/- was paid to him as consultancy fees by M/s CIL in two installments.

(vi). That Sh.Nirmal Singh, Superintendent and **Ms. Jaspreet Kaur, Inspector** (bail-petitioner herein), while posted as Range Officers, Central Excise Range, Baddi III, failed to conduct proper verification of the declaration dated 30.06.2009 filed by M/s Cadbury India Limited under CBEC notification no.50/2000-CE dated 10.06.2003. Despite written and specific directions from their superior officers, they failed to conduct physical verification whereby M/s CIL was given an opportunity to manipulate records and evade Central Excise duty. By entering into criminal conspiracy, Nirmal Singh sent a favourable report to the Division office on 06.05.2010 after a long and unjustified delay of 9 months without doing physical verification.

6. The bail-petitioner relies upon on an order passed by Commissioner in the proceedings O-I-O No.CHD-CEX-001-COM-33-34-2015 dated 25.03.2015 where at para no.122 (xiii), the Commissioner holds " I refrain from imposing penalty on Sh.Nirmal Singh, Superintendent and Ms.Jaspreet Kaur, Inspector, now Superintendent, under Rule 26 (1) and 26 (2) (ii) of the Central Excise Rules 2002."

7. This Court has heard the learned counsels for the bail-petitioner and the learned Public Prosecutor.

8. The main contention of bail-petitioner is that Commissioner has held otherwise. Investigation is in progress. This court finds that it is not a proper stage to go into such aspect, while dealing with the bail application. Suffice it to notice, that offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act 1988 if found to have been committed, is quite independent.

9. Bail-petitioner was served with a notice under

Section 41A of the Cr.P.C.. It is submitted that detailed examination of the accused is essential to unearth the deep root offence. In case the bail petitioner is enlarged on bail she may not co-operate in the investigation.

10. According to CBI, the evidence in the form of documents and oral statements, accused had prepared false verification report to undue favour to CIL.

11. That the offence falls in the category of economic offence. That there is reasonable apprehension that if the accused/applicant is granted bail, She may not co-operate in the investigation.

12. Coming to the question of grant of bail, the court finds that, it is not the case of CBI, that before and after grant of interim bail by this Court, the accused was called and has not joined the investigation. According to CBI, if accused is granted bail, she may not co-operate in the investigation of this case. This court thinks that, evidence is to be collected by the investigation agency.

13. The apprehension expressed by the CBI, that in the event of her bail, she may not co-operate in the investigation is merely an apprehension.

14. In so far as the contention, that it is an economic offence, Hon'ble Supreme Court in Satinder Kumar Antil Vs. Central Bureau of Investigation (Miscl. Application No.1849 of 2021 in SLP Criminal No.5191 of 2021) after

having considered various judgments, also relating to mandate of Section 41 and 41A of the Code of Criminal Procedure has pleased to pass the directions.

15. In the instant case there is nothing to infer that from the time of alleged commission of offence by her, she had made any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the CBI or the Court. The offence(s) against the accused in the crime registered against her also carries an imprisonment which may extend to seven years.

16. It is appropriate to refer Sanjay Chandra vs. CBI (2012) 1 SCC, (which is also relied by the Hon'ble Supreme Court, in Satinder Kumar Antil vs. Central Bureau of Investigation. It is held at para no.23 of Sanjay Chandra's case, as follows:-

> 23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvinced person for the purpose of giving him a taste of imprisonment

as a lesson.”

17. Related to economic offence(s), Hon'ble Supreme Court at para no.66 of Antil Kumar's case, after considering P. Chidambaram vs. Directorate of Enforcement (2020) 13 SCC 791, has held “Therefore, it is not advisable on the part of the Court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field.” Hon'ble Supreme Court then refered to the precedents (i) P. Chidambaram vs. Directorate of Enforcement (2020) 13 SCC 791 and (ii) Sanjay Chandra vs. CBI (2012) 1 SCC.

18. Taking into consideration the fact that present case is mainly based on the documents, pertaining to the allegations of commission of offence, and the documents are available with the department/CBI, it is not a case that in the event of his release, there is possibility of accused indulging in such activities which may destroy the evidence of the commission of offence. To ensure that she does not indulge in such activities, and joins the investigation, adequate conditions can be imposed. Consequently, the order dated 11.10.2022 is confirmed and it is ordered that in the event of her arrest, she be released on bail by the Investigation Officer of CBI, on her furnishing of personal and surety bond of Rs.5,00,000/-

each. This bail order is on following conditions:-

i. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing any fact to the court or the police;

ii. That the petitioner shall not tamper with the prosecution evidence or terrorize them in any manner;

iii. That the petitioner shall make herself available as and when required to do so by the investigating agency or by the court as the case may be.

iv. That bail petitioner shall not leave India without the permission of the Court.

19. The bail-petitioner is further directed to furnish her Whatsapp. number, e-mail address, correspondence address and also to inform any change in the address to the investigation officer of CBI due to her transfer/retirement etc. It is further clarified that he will report for investigation to the place required by CBI in connection with this case, in accordance with law.

20. The bail petition stand disposed of. The observations made herein-above are strictly for the disposal of this bail petition. File after due completion be

consigned to record room.

Announced in the open court on this 5th day of November, 2022.

(Aman Sood)
Special Judge (CBI),
Shimla, H.P.

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