

CBI Case No. RC 220/23/ E0014

EO-II, New Delhi

U/s. 120-B of IPC r/w Section 51, 40,49 & 49-B of Wild Life (P)
Act 1972

CBI Vs. Manoj Kumar & Ors.

Bail applications of applicants/accused

Nazmeen Hussain & Talib Hussain.

16.01.2024

Present: Sh. Vikas Khatri, ld. APP for CBI.
Sh. Harish Kumar , ld. Counsel for both accused
persons/applicants

**ORDER ON BAIL APPLICATIONS U/S. 437 Cr.PC FILED
BY APPLICANTS/ACCUSED PERSONS NAZMEEN
HUSSAIN AND TALIB HUSSAIN:**

1. Vide this common order, I shall dispose of two separate bail applications moved U/s. 437 CrPC on behalf of applicant/accused Nazmeen Hussain and Talib Hussain seeking grant of bail.

2. Reply to the said applications was filed on 12.01.2024. The previous conviction/involvement record of accused persons/applicants was filed on behalf of CBI ON 15.01.2024. As per the said report, the accused persons do not have any previous conviction record.

3. Submissions heard. Record perused.

4. The allegations against the accused persons/applicants are that the accused Nazmeen and her brother accused Talib Husain are part of a syndicate dealing in smuggling of Ivory Tusks. It is stated that the present case was registered on the basis of a written complaint dated 30.04.2023, made by the complainant, Sh. Vishal, Inspr., CBI, EO-II, New Delhi against accused Manoj Kumar U/s.120-B of IPC r/w Section 51, 40,49 & 49-B of Wild Life (P) Act 1972. It is stated that from a secret source information, it came to be known that the accused Nazmeen and her brother whose identity was not known earlier and lateron revealed as accused Talib Husain were in possession of the Ivory Tusks. Further, it is stated that it came to be known through the secret source that the co-accused Manoj Kumar who is part of the syndicate with accused Nazmeen and Talib Husain will be arriving at Hauz Khas village, Delhi at about 02.00 PM on 30.04.2023 for trading of the Ivory Tusks of the elephant. Further, it is alleged that the said accused Manoj Kumar was arrested by the CBI team on 30.04.2023 and he was found in possession of the Ivory Tusks and was attempting to sell/trade the same.

5. It is submitted by the Ld. APP for CBI that co-accused Deepak had arranged the Car from one Rahul. It is alleged by the CBI that after perusal of the CDR of

co-accused Deepak, it was found that both the applicants/accused persons Nazmeen Hussain and Talib Hussain were in touch with co-accused Deepak as there is a call communication between them on their mobile phones on 29.04.2023 which is one day before the commission of offence i.e. 30.04.2023.

6. It is submitted by Ld. APP for CBI that during investigation, on 22.12.2023, a source information was received about the presence of brother of Ms. Nazmeen Hussain in Sangam Vihar, Wazirabad, Delhi. It is alleged that the accused persons Nazmeen Hussain and Talib Hussain were arrested on 22.12.2023 itself.

7. It is submitted by Ld. APP for CBI that during the investigation it was revealed that one Sh. Gyarsi Lal Jat who was the friend of Ms. Nazmeen Hussain on Facebook in his statement U/s. 161 CrPC as well as statement U/s. 164 CrPC revealed that the accused Nazmeen Hussain and her brother Talib Hussain were dealing in Crypto trading, antiques and trading of banned wildlife articles. It is alleged that Sh. Gyarsi Lal Jat in the said statements revealed that in April 2023, the accused persons Nazmeen Hussain and Talib Hussain had asked him to find a

suitable buyer for their Ivory Tusk which weighed 2-2.5 kg., but he refused to find such person.

8. Per-contra, Ld. Counsel for the applicants/accused persons in the separate applications as well in the oral submissions made stated that the applicants/ accused persons are innocent and do not have any previous criminal record. It was also submitted that no recovery has been made from the accused persons and recovery was made from the co-accused Manoj Kumar who has already been granted bail vide order dated 15.05.2023 by this court itself. He argued that since the complaint-cum-chargesheet has been filed, no purpose will be served by keeping the accused persons in Judicial custody as they are no more required for investigation and there is no need of custodial interrogation. It was also submitted that the accused persons cannot threaten or influence the witnesses as the witnesses are government servants. It was argued that in view of the Judgment of Hon'ble Supreme Court in case titled **Sanjay Chandra vs. CBI(2012)**, while determining whether to grant bail the seriousness of the charge and severity of punishment have to be taken into account. It was submitted by Ld. Counsel for accused persons that the punishment for relevant offence is less than three years of imprisonment as per Section 51 of Wildlife

(Protection) Act which shows that it is not a heinous offence committed by the accused persons.

9. On the other hand, ld. APP for CBI strongly opposed the bail application of the accused persons Nazmeen Hussain and Talib Hussain. It was submitted by ld. APP for CBI that accused persons were regularly in touch with co-accused Deepak which shows that they were involved in the conspiracy of trading of wild life material. It was also stated that as per the statement of Sh. Gyarsi Lal Jat recorded U/s. 161 CrPC as well as U/s. 164 CrPC, he categorically stated that accused persons were dealing in Crypto trading, Antiques and trading of banned wildlife articles and hence, prima-facie, the accused persons are guilty of commission of the alleged offences.

10. I have heard the submissions of the parties and perused the record carefully.

11. In **Anil Kumar vs. State (NCT of Delhi), (2018) 12 SCC 129**, it is observed and held by the Hon'ble Apex Court that while granting bail, the relevant considerations are:

(i) nature of seriousness of the offence;

(ii) character of the evidence and circumstances which are peculiar to the accused;

(iii) likelihood of the accused fleeing from justice;

(iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and

(v) likelihood of his tampering.

It was also held that the aforesaid list is not exhaustive and there are no hard-and-fast rules regarding grant or refusal of bail. It was held that each case is to be considered on its own merits and courts are to exercise discretion judiciously.

12. The Hon'ble Supreme Court of India in a case titled ***Satender Kumar Antil vs CBI 2022 SCC OnLine SC 825*** emphasized the principle that bail is the rule and jail is the exception. It emphasized the role of a court in upholding and protecting the rights of life and liberty. The relevant paragraphs in this regard is reproduced below:

“11. The principle that bail is the rule and jail is the exception has been well recognized through the repetitive pronouncement of this court. This again is on the touchstone of the Article 21 of the constitution of India...

ROLE OF THE COURT

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not

punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest...”.

13. Considering the fact that the co-accused Manoj Kumar has been granted bail vide order dated 15.05.2023 and also the fact that the investigation of the present case is stated to be complete, the accused persons on the ground of parity are entitled to bail. Further, the applicants/accused persons do not have previous conviction/involvements and it is a matter of record that this is their first involvements in a criminal case. Moreover, no purpose will be served by keeping the accused persons behind the bars as they are no longer required for custodial interrogation.

14. In view of the aforesaid facts and circumstances, I deem it fit to grant bail to the accused persons, namely, Ms. Nazmeen Hussain and Talib Hussain. Hence, the accused persons

Nazmeen Hussain and Talib Hussain are admitted to bail upon furnishing bail bond in the sum of Rs. 25,000/- each alongwith one surety each in the like amount subject to the following conditions:-

- i) Applicants/accused persons shall not indulge in any offence of the same nature;
- ii) Applicants/accused persons shall not influence the witnesses in any manner;
- iii) The applicant/s accused persons shall not leave India without prior permission of this court.

Applications stands disposed of accordingly.

Nothing stated herein shall tantamount to an opinion of the court on the merits of the case.

Copy of this order be given dasti to the ld. Counsel for the applicants/accused persons and ld. APP for CBI.

Copy of this order be sent to the concerned Jail Supdt. for information.

(Sonam Singh-I)
CMM/RADC/New Delhi
16.01.2024

CBI Case No. RC 220/23/ E0014

EO-II, New Delhi

U/s. 120-B of IPC r/w Section 51, 40,49 & 49-B of Wild Life (P)
Act 1972

CBI Vs. Manoj Kumar & Ors.

Bail applications of applicants/accused

Nazmeen Hussain & Talib Hussain.

16.01.2024

Present: Sh. Vikas Khatri, Id. APP for CBI.
Sh. Gaurav Sharma, Id. Counsel for the
applicants/accused persons.

Vide my separate common order of even date, both the bail applications U/s. 437 CrPC of both accused persons, namely Nazmeen Hussain and Talib Hussain stands allowed.

Accordingly, the bail applications stands disposed of.

At this stage, proposed sureties, namely Sh. Fahad Khan and Sh. Mohd. Asif have appeared and filed the respective bail bonds/surety bonds of the accused persons Talib Hussain and Ms. Nazmeen Hussain. The same are perused.

Further, the surety Fahad Khan has placed on record the original RC of vehicle bearing registration No. DL8SC V9647 and the vehicle is stated to be a Scooty and the surety Mohd. Asif has placed on record two FDRs issued by ICICI bank of an amount of Rs. 10,000/- and Rs. 15,000/- both dated 12.01.2024. The bail bonds stands accepted subject to verification.

-2-

Issue notice to the IO with direction to verify the soundness of the sureties as well as the addresses of the sureties and file the compliance report on the next date.

The original RC and FDRs be kept on record.

Since, the bail bonds have been accepted till next date, release warrants be issued. Accused persons be released from JC, if not required in any other case.

Copy of this order be sent to the concerned Jail Supdt. for information by way of all modes.

Copy of order be given dasti to Id. Counsel for the accused persons at request.

Robekar of RC and FDRs be given by the Ahlmad.

Ld. Counsel for accused persons submits that the main chargesheet-cum-complaint is fixed for consideration on the aspect of cognizance on 01.02.2024.

List for further proceedings on **01.02.2024**.

(Sonam Singh-I)
CMM/RADC/New Delhi
16.01.2024