

M. No. 175/22
CNR No.DLCT11-000125-2019
CC No.01/2020
CBI Vs. Lalu Prasad Yadav & Ors.
RC No.220 E 0013/2017
PS : CBI/EO-II/ND
under Section 120-B r/w Section 420 IPC
& Section 13 (2) r/w 13 (1) (d) of the PC Act

18.10.2022

ORDER

1. Vide this order, I shall dispose of the application filed on behalf of CBI for cancellation of bail of accused No.3 Tejashwi Prasad Yadav. It is submitted that there is sufficient evidence to link the accused No.3 to the offences committed in the case. Cognisance had already been taken and the matter was at the stage of charge. It is stated that bail had been granted to the accused No.3 on 06.10.2018 subject to the condition that he shall not try to influence witnesses or tamper with the evidence compelling the CBI to seek cancellation of bail. The Court had also observed in the order that the apprehensions of the CBI could be taken care of by passing strict conditions “directing the accused not to tamper with the evidence or try to influence the witnesses during ... the trial” and that the “prosecution was always at liberty to seek cancellation of bail in case any of the accused abuses the liberty granted to him...”

2. It is submitted that the CBI was constrained to prefer the application for cancellation of bail as the accused No.3 had in recent public gathering(s) and press conference(s), attempted to subvert the process of law and thwart the entire investigation as well as the consequent trial, blatantly abusing the liberty granted to him. It is submitted that the tone and tenor of one such press conference, as

accessible at <https://www.youtube.com/watch?v=Q3K3Euw2r8> was condemnable, intimidating and unfortunate, to say the least. Reference was made to certain statements made by the accused No.3. It is submitted that the said statements are not concerned to one case alone but form part of the larger design of the accused No.3 and are not only scandalous but are also a clear attempt to prevent the trial from reaching its logical conclusion. It is averred that from a perusal of the statements made in the press conference, it is crystal clear that several points emerge, all of which have a direct bearing on the adjudication of the application. The statements are an open and direct threat to the CBI, the officers and their families and the accused No.3 had openly warned the CBI officers against carrying out the investigation and also resorting to innuendos and threats in the process. It is submitted that the same had been made with the intent to cause alarm and dissuade the officers from discharging their duties under law, while acceding to such threats made on public platforms.

3. It is averred that through such statements, the accused No.3 had indirectly and automatically threatened and attempted to influence the witnesses. The statements made were sufficient to cause alarm to any or all prosecution witnesses testifying in the case. Most of the witnesses were conscious of the clout and influence that the accused No.3 exercised, more specifically when the accused No.3 had now openly threatened the CBI. It is averred that the attempt of the accused No.3 was further to portray the CBI in bad light and of being under the influence of political parties by using innuendos such as ‘*jamai*’ of a political party against it [@ 14:35 minutes] and the same had been done maliciously by the accused No.3 to showcase that any or all witnesses would be treated unfairly by the CBI, should they come forward and support the case of the prosecution against him. It was for the same reason that terms such as ‘*gunda gardi*’ and ‘*maar pitai*’ [@ 11:10 minutes] had been used against the CBI so that any or all witnesses, not dissuaded by the threats of the accused No.3

refused to support the case of the prosecution fearing duress and unfair treatment.

4. It is averred that the statement made by the accused No.3 was also a direct attack by the accused No.3 on administration of the entire criminal justice system and machinery and amounted to undermining the authority of the Court, most specifically when the Court was already seized of the matter and the insinuations being cast on the prosecution undermined the authority of the Court. It is averred that through such statements, readily available in public domain, the accused No.3 undermined the process of law, the investigation and the consequential trial and was as such an attempt to interfere with the administration of justice. It is averred that despite the Court being seized of the matter, the accused No.3 very conveniently attempted to give a clean chit to himself.

5. It is submitted that the accused No.3 is highly influential and powerful. He is the son of a former Union Cabinet Minister as well as former Chief Minister of Bihar and he himself has been and is again the Deputy Chief Minister of Bihar. It is submitted that such scandalous statements by the accused No.3 demonstrated his attempt to yield undue influence and power to prevent the case from reaching its logical conclusion. The accused No.3 is no common man and exercises control and influence over a large number of people, all of whom are directly and indirectly affected and impacted by the implications of such scandalous statements. It is averred that the tone and tenor of the statements is contrary and demeaning to the oath administered to him under Article 164 (3) read with Schedule III of the Constitution of India as the Deputy Chief Minister of Bihar. It is stated that it was crystal clear that the said statements, in addition to being made for political gains were an attempt to directly and indirectly, threaten and influence or attempt to threaten and influence both the CBI and the

witnesses from taking steps under law, including prosecuting and testifying against the accused No.3 and to undermine the authority of the Court and had been made by the accused No.3 misusing the influence and power available to him. It is averred that the accused No.3 had clearly attempted and interfered with the due course of administration of justice and he had abused the concession granted to him vide the bail order and misused the liberty. There was every likelihood that he would continue to indulge in similar practices to subvert the process of law by threatening CBI officers, their families, influencing witnesses and tampering with the evidence of the case, which would hamper the smooth investigation and/or trial. It is averred that the apprehensions were further fortified since there existed a *prima facie* case of misuse of influence and power by the accused No.3.

6. It is submitted that it is a settled position of law that the deviation of any of the conditions laid down by the Court while granting bail would entail cancellation of bail. It is stated that having regard to the conduct of accused No.3 and violation of conditions of bail that resulted thereof, it was a fit case of grant of bail in commission of a grave economic offence being cancelled. It is thus prayed that the bail granted to the accused No.3 vide order dated 06.10.2018 be cancelled. Along with the application, the CBI had placed on record copy of the order dated 06.10.2018 and a copy of the transcript of the press conference as accessible at <https://www.youtube.com/watch?v=Q3K3Euw2r8>.

7. Reply was filed on behalf of accused No.3 to the application filed by CBI making the preliminary submissions that the accused No.3 had not abused the liberty granted by the Court vide bail order dated 06.10.2018. The accused No.3 had always complied with the orders passed by the Court and always cooperated with the investigating agencies. Admittedly, the accused No.3 was not arrested during the investigation in the case and while passing of the bail order dated

06.10.2018, the Court had duly appreciated the facts and accordingly granted bail to him on certain conditions, which had never been violated by the accused No.3. It is submitted that after expiry of almost three years from the date of passing of the bail order, the CBI had filed the instant application for cancellation of bail only on the basis of an encrypted YouTube video uploaded by a news channel. The said news channel had uploaded the alleged video on its YouTube Channel, wherein the entire video of the press conference of the accused No.3 had not been uploaded and the CBI had also failed to check and verify the authenticity of the entire press conference held by him on 25.08.2022. The CBI had placed a YouTube video of 16:25 minutes on record, whereas the entire press conference video was 27:36 minutes. During the press conference some media persons asked specific question if he was threatening CBI officials and the accused No.3 had categorically clarified in this respect in his speech.

8. It is averred that the accused No.3 had not given any statement during the press conference, which could lead to the assumption that he had threatened any of the persons/ witnesses including any official(s) of the CBI and the CBI had filed the present application for cancellation of bail on a fictitious threat and bogus perception of threat, despite the admitted fact that the accused No.3 and his family members had consistently cooperated with the Investigating Agencies, including the CBI and had never tried to abuse the process of law. It is submitted that while filing the application for cancellation of bail, the CBI had placed the incriminating and altered video and concealed material facts from the Court pertaining to the accused No.3 who had categorically clarified that he had not threatened any person including the CBI and the audio and video of his speech were still available on the web portal at the link <https://youtu.be/MKvm1pflSuU>.

9. It is averred that the CBI had conducted raids on several places in Bihar and other places on 24.08.2022. On that day, the concerned officials of the CBI

had propagated a rumour regarding the raid conducted on a Mall in Gurugram, allegedly owned by the accused No.3 wherein the entire media channels were covering and accordingly telecasting the news, though the accused No.3 had no relationship with the said Mall or its promoters whatsoever and the entire news was false and wrongly planted to demean the reputation and goodwill of the accused No.3 politically and the said rumours were still available on google page, wherein any person could find it from google with a simple search as "CBI raid on Tejashwi's mall". It is submitted that due to the said rumour propagated by officials of the CBI and news channels, the accused No.3 had to schedule a press conference on 25.08.2022 just to clarify the true and correct facts before the public at large. During the press conference, the accused No.3 had categorically clarified that he did not have any Mall in Gurugram and during the press conference, he had not even tried to threaten any of the persons including the CBI officials.

10. It is submitted that the CBI in the application had misinterpreted the statement made by the accused No.3 during his speech on 25.08.2022 and misinterpreted the statement before the Court while filing the application since the CBI had not produced the complete statement made by the accused No.3. It is stated that the CBI in its application at paragraph No.3 (a) to (d) had mentioned that (a). *"Kya CBI waalon ke maa bete nahi hain, unke pariwaar nahi hain?"*, (b) *"Kya wo hamesha CBI officer rahenge?"* (c) *"Kya wo retired nahi honge"* and (d) *"Kya satta mein hamesh ek hi ki sarkaar rahegi?"*, which was not the complete sentence/ statement. It is submitted that on a bare perusal of the entire statement and video, the accused No.3 had nowhere threatened the CBI officials and their family members since he had only tried to convey a message to follow the professional ethics during interrogation and investigation with the Group D employees of the Indian Railways since they are also human beings and citizens of India having Fundamental Rights guaranteed under the

Constitution.

11. It is averred that the submissions made by CBI in paragraph No.3(e) were not even related to CBI officials and the accused No.3 had only submitted that the public (Janata) was more powerful in India being a democratic country and public may change the government. The statements were not related to any investigation and the entire statement had been made under the fundamental rights guaranteed under the Constitution. It is averred that from a bare perusal of the entire statement made by the accused No.3 during his speech on 25.08.2022, he had nowhere even tried to threaten any person including the officials of the CBI and their family members. In fact, the accused No.3 before closing his statement on the said day had categorically clarified the facts that he had not even threatened the CBI officials and the fact had been intentionally concealed by the CBI while filing the application.

12. It is averred that after the press conference, the accused No.3 had further clarified the facts that he had never tried to threaten any person including the CBI official vide his press release and post on his social media accounts i.e. Facebook and Twitter on 31.08.2022, wherein he had categorically stated that he had no issues with the investigating agency, which included the CBI and reference was made to the links of press conference. On 31.08.2022, the accused No.3 had posted a post on his Facebook account having more than 2.4 million followers and tweeted the same on his twitter account having more than 4.3 million followers, wherein he had again clarified the facts that he had no issues with the investigating agencies including the CBI. It is submitted that the entire clarification had been made by the accused No.3 either through the original speech held on 25.08.2022 or through news channels or through twitter regarding the alleged threat much before the filing of the application for cancellation of bail. However, the CBI had chosen to file the application on the

ground of threat, which was completely a fictitious threat and a bogus perception of threat and nothing else. The application had been filed to abuse the process of law and the accused No.3 had not abused the liberty granted by the Court. It is averred that the CBI had conducted a raid on 18.05.2022 at 10, Circular Road, Patna, 800001, Bihar i.e. the residence of Smt. Rabri Devi, wherein the accused No.3 also resides and the CBI had conducted the said raid due to another FIR bearing number RC 220 2022 E0007 registered by CBI on 18.05.2022 against Lalu Prasad Yadav and others and the accused No.3 was not an accused in the said FIR. During the raid, the family members of the accused No.3 had duly cooperated with the officials of the CBI. When the CBI had completed the raid at the said premises, the followers of the political party of Rasthriya Janta Dal had attempted to stop the CBI officials for a moment, then Smt. Rabri Devi and Shri Tej Pratap Yadav i.e. the family members of the accused No.3 had appealed to the said followers to not interfere with the investigating agency. The said incident was also published and telecast by various media channels, wherein Smt. Rabri Devi had tried to stop the followers of RJD from opposing the investigating agency.

13. It is averred that the accused No.3 had not abused any process of law and had not misused any liberty granted by the Court from the date of bail order till date. The accused No.3 had neither tried to influence any witnesses directly or indirectly nor tried to tamper with the evidence. Admittedly, the entire case of the prosecution was based on documentary evidence, which was in safe custody of the Court and could not be tampered with and the said facts had been observed by the Court while passing the bail order dated 06.10.2018. It is submitted that it was a matter of record that the accused No.3 had travelled outside the country with due permission of the Court and there was no violation in any manner of the bail conditions. The CBI had filed the application on the basis of an encrypted YouTube video, which was totally false and fabricated and

had failed to even file a certificate under the provisions of Indian Evidence Act in support of the alleged YouTube video, which clearly established the malafide intention of the CBI.

14. It is submitted that it is settled law that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. In the present application, the CBI had completely failed to adduce any material to establish the supervening circumstances. Reliance was placed on the judgment in **Dolat Ram and Others v. State of Haryana** (1995) 1 SCC 349, wherein the Hon'ble Supreme Court had held that very cogent and overwhelming circumstances were necessary for an order directing the cancellation of the bail already granted; and on the judgment of the Hon'ble Delhi High Court dated 07.09.2022 in **Jagat Singh Nagar and others v. State (Govt. of NCT of Delhi) and others** Criminal Miscellaneous Case No.2110 of 2014. It is submitted that the CBI had made vague allegations against the accused No.3 that he tried to threaten the CBI officials and their family members as well as the witnesses and the apprehension of the CBI was totally fictitious and bogus perception of threat. It is thus prayed that the application be dismissed.

15. Along with the reply the accused No.3 has placed on record a recorded video and audio of the entire speech of 25.08.2022 of the accused No.3 in a Pen Drive with the certificate under Section 65B of the Indian Evidence Act; a copy of transcript of the press conference in Hindi language; a copy of the printout of Google page; a copy of the publication made by a news channels of the press conference dated 31.08.2022 of the accused No.3; a copy of the twitter post of the accused No.3 dated 31.08.2022 and certificate under Section 65 B Indian Evidence Act in the form of affidavit of accused No.3.

ARGUMENTS

16. I have heard Shri D.P. Singh, Ld. SPP and Shri Pankaj Gupta, Ld. Sr. PP with Advocates-Shri Manu Mishra and Ms. Shreya Dutt for CBI along with IO/ Additional S.P. Shri Sanjay Dubey and Dy. S.P. Rupesh Srivastava and Shri Maninder Singh, Ld. Sr. Advocate along with Shri Varun Jain, Shri Navin Kumar, Shri Akhilesh Singh, Ms. Aekta Vats, Shri Vishal Chauhan, Ms. Anshika Batra, Ld. Counsels for accused Tejashwi Prasad Yadav (A-3) and perused the record.

17. The Ld. SPP for CBI had submitted that the thrust of reply of the accused was that CBI had not produced the contents of the press conference in toto and if the same were read as a whole, one would realize that what CBI was trying to infer could not be inferred. CBI had prima facie shown that threat had been extended by the accused No.3. The Ld. SPP had referred to the relevant portions and also to the reply filed on behalf of the accused No.3. It was submitted that there was no complaint made by anyone before this Court or any other Court and even no instance had been shown of anyone being beaten by CBI contrary to what had been stated by the accused No.3 during the press conference. In fact, the accused No.3 had made such allegations so that CBI would not be able to investigate the cases. There was even no such allegation by Bhola Yadav, who was an accused in **CBI v. Lal Prasad Yadav & Ors.**, bearing RC No.220 2022 E 0007 regarding beating. Moreover, there was no question of CBI officers getting out of way promotion and there was direct reference that CBI was unfair and acting under some instructions, which was unacceptable.

18. It was argued that the accused No.3 had not only extended the threat but also tried to discredit the organization so that it did not exercise its rights of investigation and if it was stated that someone was asking the CBI to act in a particular manner it also amounted to hindrance in investigation. The referred

portion was a veiled threat to not only the CBI officers but also to witnesses and if the accused No.3 could extend such threat to CBI, it was obvious what could happen to any ordinary citizen. It was submitted that in August, 2022 one IO of the case was attempted to be killed and FIR had been registered under Section 307 IPC in UP where his car had been hit twice by a truck but there was no proof but after the threats, the whole issue became important. After the threats, there was anxiety amongst the CBI officers. It was also submitted that the allegations made in the press conference were important as all the witnesses and beneficiaries came from Bihar and the accused No.3 had tried to say that he had become so powerful that he could challenge the agencies as it was Bihar. It was submitted that the CBI had never attempted to arrest the accused No.3 in the present case and the challan was filed without arrest and there was even no intention to arrest him at any time. The Ld. SPP had submitted that if the accused No.3 started threatening CBI, the common man who was witness would be put in a precarious position and in these circumstances the bail of the accused No.3 should be cancelled.

19. Per contra, the Ld. Sr. Advocate for the accused No.3 had argued that the Ld. SPP had argued contrary to his application, which had lines from the things stated in the press conference but now aid had been taken from the transcript filed by the accused No.3. It was submitted that CBI was seeking cancellation of bail in CIS bearing No.55/2019 and bearing RC No.220 E 0013/2017 whereas the interview and press conference had nothing to do with the said case. The accused No.3 had stated about the land for job scam and raids which were carried out in the said case and the mall had been wrongly alleged to be his property in lieu of the land for job case when nothing was found against him. Cancellation was being sought in a case which had nothing to do with the land for job scam, which was only about two properties of IRCTC, which were handed over to two companies which were subsequently acquired by the family.

It was submitted that if the CBI was talking about cancellation in a case, it had to show what was violated and they could not seek cancellation of bail in a case for another case in which the accused No.3 was not even an accused.

20. It was submitted that the CBI had resorted to pick and choose in the application. There were two conditions laid down in the bail order and the case had to be confined to those aspects and it was not stated by CBI that the accused No.3 had tried to tamper with the evidence and they had only stated about the accused No.3 trying to influence the witnesses. In fact there was nothing about influencing the witnesses and it was only stated that the accused No.3 had tried to thwart the investigation. If the CBI felt threatened, it was open to them to have registered an FIR under Section 506 IPC but no such FIR had been registered. The accused No.3 was sitting before 100s of reporters. It was submitted that several dates were important in that on 24.08.2022, the newly formed Government of Bihar had gone for a trust vote and on the same day, about 20 raids were conducted at several locations in Bihar. It was not the case of CBI that the accused No.3 had threatened any CBI officer in respect of those raids. On 18.05.2022, the CBI officers had entered at 10, Circular Road, Patna, 800001, Bihar, which was known as Rabri Niwas and people had gathered there and then the mother and brother of the accused No.3 had come out and slapped the public to let the CBI do their job which was also in public domain. In these circumstances, it could not be alleged that the accused No.3 was interfering in the investigation or threatening the witnesses.

21. The Ld. Sr. Counsel had further submitted that the accused No.3 had conducted the press conference on 25.08.2022 after winning the trust vote. A narrative was sought to be created that the accused No.3 had so much money earned in the land for job scam that he was owning a mall in Gurugram. The accused No.3 along with the reply had annexed links of the information which

was leaked by CBI to the the media in this respect. It was submitted by the accused No.3 was the Deputy Chief Minister and was holding a responsible post but he was not being allowed to breathe and it was tried to be projected as to how at a young age he had got a mall. Being a public figure, he was entitled to give an explanation and it was an open press conference and there was nothing related to the IRCTC case in the entire press conference and in the said case, the accused No.3 was on bail. The accused No.3 had referred to the details of the company in which the accused No.3 was alleged to have a share but that had been set up in 2021 whereas the check period in the land for job case was 2004 to 2009 and the accused No.3 was only giving a clarification. He had also showed the video of the Chief Minister of Haryana going to the mall and appreciating the company and the mall and of a BJP person inaugurating the mall but there was nothing against the Chief Minister. The same was linked to the raids conducted in Bihar to which the accused No.3 had not objected and it was stated that he had a share in the company only to create an atmosphere against him and the accused No.3 was only giving the clarification whereas the CBI itself had not clarified the narrative nor verified the facts. It was submitted that the grievance of the accused No.3 as evident from the transcript was why the media was not verifying the facts and he had raised the question as who was responsible for damage to his reputation. It was contended that the accused No.3 was alleged to have thousands of dollars and the agency was trying to demolish his reputation and as a public person he was entitled to criticize and he had rights under Article 19 of the Constitution of India and also to express his displeasure and disappointment. The narrative was being built up to create confusion in the minds of the public so the accused No.3 had to clarify that he was a victim and clarification and criticism were all suffered by him. He was an easy target as he did not belong to the establishment and the Government and the narrative would change in a minute.

22. The Ld. Sr. Counsel had further argued that the accused No.3 was merely asking a question and not extending a threat and there was no reason why he could not ask the question. The accused No.3 could be taken up for defamation and threat but not for cancellation of bail whereas in fact he was being defamed. It was the opinion of the accused No.3 that the investigating agencies were not acting as per their domain but bail could not be cancelled on such an opinion and the accused No.3 had only raised questions which the country wanted to know. It was in the knowledge of the accused No.3 that Group D people were being harassed and he was not talking about Group D people in Bihar but in the entire country and he meant that there could be family members of CBI officers also working as Group-D who could be subjected to similar treatment and that why they were being tortured and they also had family. He had himself stated clearly that no threat was extended and further on his Facebook and Twitter Accounts, he had given clarifications. It was submitted that the alleged threats were of 25.08.2022 whereas the application was moved on 18.09.2022. The question was put to accused No.3 by a Reporter and he denied that any threat was extended.

23. It was submitted that the accused No.3 was entitled to give his opinion how the establishment was interfering in the investigation and thwarting the investigation and if the accused No.3 said that the agencies were not working as per the CBI Manual, he was not wrong. When as a Member of Opposition he saw the agencies being misused, he had a right to raise question and the right of expression could not be curtailed by moving such applications. It was further submitted that the accused No.3 had not violated any condition in the IRCTC case. As per the application of CBI, he had extended the direct threat to CBI officers but there was no such threat if the contents were read as a whole and the two lines which were relied upon by CBI were in continuation of the others and he had also clarified the same. It was also said that there was indirect threat to witnesses but no name of witness or IO was taken. The CBI could have

registered an FIR but the same was not done. It was submitted that according to the CBI, the accused No.3 had undermined the authority of the Court but the accused No.3 had not stated that he did not have trust in the Court and rather he had stated that he had co-operated in the investigation and abided by all decisions of the Courts. It was submitted that the accused No.3 had no undue influence as the agency was independent. The Ld. Sr. Advocate for the accused No.3 had also relied upon several judgements and it was submitted that the CBI had not referred to any provision of law under which they had sought cancellation and it was also not a case that the accused No.3 could abscond.

24. The Ld. SPP for CBI in rebuttal had submitted that the entire defence sought to be put on behalf of the accused No.3 was of liberty of the accused No.3 under Article 19 of the Constitution and that the accused No.3 had some rights to criticize and had the liberty and power to hold a press conference. It was submitted that CBI and its officers did not have the liberty to clarify and their reputation was being maligned by the accused No.3 and it was the case of competing interest, in which no balance was there. What was stated amounted to a false innuendo wherein the meaning was apparent and there was no need for supervening circumstances and the statements of the accused No.3 were sufficient to infer that threat was extended. It was also submitted that the time of the press conference was important and according to accused No.3, the supervening event was the raids by the agencies on 24.08.2022 but the CBI had conducted raid but did not conduct press conference and the press conference was held on 25.08.2022 as on 24.08.2022 the accused No.3 had come to power and become the Deputy Chief Minister so the timing became important. The day the accused No.3 got power, he wielded the threat.

25. It was submitted that the CBI was not answerable to the Home Minister and the Director was chosen by the Hon'ble Chief Justice of India and reported

to the CVC and even the Courts referred matters to CBI. The CBI had not arrested the accused No.3 and even did not oppose prayers of going abroad in the case of Lalu Prasad Yadav. It was evident that the accused No.3 was not being arrested in the land for job scam as it was not felt necessary to arrest him. It was just a question of reading the order on difference sides. As regards trying to influence the witnesses was concerned, the day after the accused No.3 attained power, he threatened the witnesses. It was contended that the meaning of the words could not be changed and the touchstone on which the Court had to test the statements was how an ordinary person in that part of a country would perceive and not how a lawyer would perceive. Even a press reporter conceived the statements made by the accused No.3 as a threat and asked him a question so it was a false innuendo and even what was stated in reply to the question of the press reporter was a veiled threat. Reliance was placed on the judgement of **Deepak Yadav v. State of UP & Anr.** Criminal Appeal No.861/2022 decided on 20.05.2022.

26. It was submitted that it was not about the press conference for a particular case and it was not to clarify doubts or confusions with regard to Whiteland but what was significant was that the effort was made to tell people to go in a particular manner and it was a way of giving message as to what should be the narrative. It was submitted that the essence was that the present case was about to start and had generated heat and was about to go on trial and entire evidence of the present case came from that part of the country. The matter was stayed for three years but now the application had been dismissed and the Court had been asked to proceed further and the case had to be looked at from that perspective. As soon as the accused No.3 got power, at the first opportunity he gave the threat and the same could not given political discourse which was not relevant and had to be addressed on relevant aspects. The witnesses had to be examined and there was threat perception to many witnesses and the words were meant for

them and it was the perception of the witnesses which was important.

DISCUSSION

27. At the outset, it was the contention of the Ld. Sr. Counsel for the accused No.3 that the application had been filed without reference to any provision of law. However, the law is well-settled that bail once granted can be cancelled if the parameters for cancellation of bail are met. Moreover, in the instant case, the CBI has sought cancellation of bail of the accused No.3 which was granted vide order dated 06.10.2018 of my Ld. Predecessor wherein it was observed as under:

“10. The apprehensions of the CBI can be taken care of by passing strict conditions directing the accused not to tamper with the evidence or try to influence the witnesses during the proceedings of the trial.

11. Needless to say, the prosecution is always at liberty to seek cancellation of bail in case any of the accused abuses the liberty granted to him, by the order of the bail.

12. Thus, considering the facts and circumstances of the case, bail applications of all the accused are allowed subject to their furnishing of personal bonds and surety bonds of Rs. One lac each. It is further directed the the accused shall not try to influence witnesses or tamper with the evidence compelling the CBI to seek cancellation of their bail. The accused shall not leave the country without seeking permission from this court.”

Thus, the Court while granting bail to the accused had made an observation that the prosecution was always at liberty to seek cancellation of bail in case any of the accused abused the liberty granted to him, by the order of the Court and as such it was not necessary to refer to any express provision of law while moving the present application.

28. It is further significant, and as has also been argued by both the sides that the Court had imposed two specific conditions, while granting bail, besides the condition that the accused shall not leave the country without seeking permission from this Court, namely:

- 1) That the accused shall not try to influence witnesses; and
- 2) That the accused shall not try to tamper with the evidence.

The Ld. Sr. Counsel for the accused No.3 had submitted that there was no specific allegation or contention that the accused No.3 had tried to tamper with the evidence and the said contention was not specifically opposed. The Ld. SPP for CBI had contended that the Court had directed that the accused shall not even 'try' to influence the witnesses and it was not merely a case of actually influencing the witnesses. It is thus, to be seen by the Court whether the accused No.3 had done any act by which he had violated the said condition imposed when bail was granted to him.

29. The Ld. Sr. Counsel for the accused No.3 had also referred to various judgments to point out the law that had been laid down regarding cancellation of bail i.e. the judgment of the Hon'ble Supreme Court in **State (Delhi Administration) v. Sanjay Gandhi** (1978) 2 Supreme Court Cases 411 wherein it was observed as under:

“Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over.”

Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Dolat Ram & Others v. State of Haryana** (1995) 1 SCC 349 decided on 24.11.1994, wherein it was held as under:

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and

dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

Further in **Ms. X v. The State of Telangana & Anr.** Criminal Appeal No.000716/2018 decided on 17.05.2018, the Hon'ble Supreme Court had referred to the judgment in **Dataram Singh v. State of Uttar Pradesh** 2018 (2) SCALE 285 wherein it was observed as under:

"It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

30. Reliance was also placed on the judgment of Hon'ble High Court of Delhi in **Central Goods and Service Tax v. Naval Kumar & Ors.** 2021 SCC

OnLine Del 3257 : (2021) 50 GSTL 449 : (2021) 92 GSTR 1, Criminal M.C. 231/2021 decided on 04.06.2021 wherein it was observed as under:

“It is settled that once bail granted should not be cancelled in a mechanical manner without there being any supervening circumstances which are not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same.”

The Ld. Sr. Counsel had also placed reliance on the judgment of the Hon’ble High Court of Delhi in **Vishal Bhutani v. State & Anr.** CrI. M.C. 1308/2021 decided on 06.01.2022 wherein it was held as under:

“It is settled that once bail granted should not be cancelled in a mechanical manner without there being any supervening circumstances which are not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same.”

Reliance was placed on the judgment of Hon’ble High Court of Kerala in **Godson v. State of Kerala**, Criminal M.C. 2807/2022 and Criminal M. C. 2814/2022, decided on 10.08.2022 and on the judgment of the Hon’ble High Court of Delhi in **Jagat Singh Nagar & Ors. v. State (Govt. of NCT of Delhi) & Ors. (supra)** wherein it was observed as under:

“It is thus, seen that occurrence of supervening circumstances can always be the basis for cancellation of bail granted earlier besides, the inherent powers and discretion to cancel the bail of an accused on merits. Cancellation of bail after it is granted

because the accused has misconducted or because of some supervening circumstances, warranting such cancellation, is in a different compartment altogether than an order granting bail, which is unjustified, illegal and perverse. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. Once bail is granted the same should not be cancelled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

31. The Ld. SPP for CBI on the other hand had placed reliance on the judgment of the Hon’ble Supreme Court in **Deepak Yadav v. State of UP & Anr.** 2022 SCC OnLine SC 672 decided on 20.05.2022, wherein it was observed as under:

“This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in Dolat Ram And Others v. State of Haryana laid down the grounds for cancellation of bail which are:-

- (i) interference or attempt to interfere with the due course of administration of Justice*
- (ii) evasion or attempt to evade the due course of justice*
- (iii) abuse of the concession granted to the accused in any manner*
- (iv) Possibility of accused absconding*
- (v) Likelihood of/actual misuse of bail*
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.*

31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

- a)Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*
- b)Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.*
- d)Where bail has been granted on untenable grounds.*
- e)Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*
- f)Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*
- g)When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”*

In light of the condition imposed vide order dated 06.10.2018 by which bail was granted to the accused No.3 and the settled law in this respect as adverted to above, this Court has to examine whether the bail granted to the accused No.3 is liable to be cancelled.

32. The case of the CBI for cancellation of bail of the accused No.3 is based on certain statements made by him during the press conference held by him on 25.08.2022. It was submitted by the Ld. Sr. Counsel for the accused No.3 that CBI was seeking cancellation of bail in CIS bearing No.55/2019 and bearing RC No.220 E 0013/2017 whereas the interview and press conference had nothing to do with the said case. The accused No.3 had stated about the land for job scam and raids which were carried out in the said case and the mall had been wrongly alleged to be his property in lieu of the land for job scam when nothing was found against him. It was submitted that cancellation was being sought in a case which had nothing to do with the land for job scam and if the CBI was talking about cancellation in a case, it had to show what was violated and they could not

seek cancellation of bail in a case for another case in which the accused No.3 was not even an accused. A perusal of the transcript pertaining to the press conference dated 25.08.2022 does show that the reference therein was to the FIR registered on 18.05.2022, the raids conducted subsequent to that, the allegations that had surfaced in the said matter about the connection of the accused No.3 with Whiteland Corporation and about the land for job case whereas the present case relates to IRCTC. There is no reference in the entire press conference to the present case of IRCTC or about any threat to any witness of the present case specifically.

33. It was then argued by the Ld. SPP for CBI that it was not about the press conference for a particular case and it was not to clarify doubts or confusions with regard to Whiteland but what was significant was to tell the people to go in a particular way and it was a way of giving a message as to what should be the narrative and what was important was the timing of the press conference. On 24.08.2022, the accused No.3 had come to power and on 25.08.2022, the accused No.3 held a press conference in which he extended threats which had to be looked at from the perception of the common man/ witnesses who belonged to Bihar. Moreover, the trial in the present case was about to start and the witnesses in the present case belonged to that part of the country and as such the threats extended would have a direct bearing on the present case. It may be reiterated that in the entire press conference, the accused No.3 has not specifically referred to the present case. Moreover regarding the timing of the press conference, it is a fact that the party of the accused No.3 had won the trust vote on 24.08.2022 but it is also a fact that on 24.08.2022 itself raids were conducted at several places in Bihar wherein allegations were made of links of the accused No.3 to Whiteland Corporation and as per the case of the accused No.3, the said press conference was held to respond to the said allegations which, in part is also borne out by the first part of the statements of the accused

No.3 at the press conference. As such, it would not be correct to directly relate the holding of the press conference on 25.08.2022 by the accused No.3 in which the alleged threats were made to the 'acquisition' of power on 24.08.2022 or of allegedly trying to give a message after having become the Deputy CM.

34. The Ld. SPP for CBI had then contended that there was no complaint made by anyone before this Court or any other Court and even no instance had been shown of anyone being beaten by CBI contrary to what had been stated by the accused No.3 during the press conference; in fact, the accused No.3 had made such allegations so that CBI would not be able to investigate the cases and there was even no such allegation by Bhola Yadav and there was no question of CBI officers getting out of way promotion and there was direct reference that CBI was unfair and acting under some instructions, which was unacceptable. It was submitted that the accused No.3 had not only extended the threat but also tried to discredit the organization so that it did not exercise its rights of investigation and if it was stated that someone was asking the CBI to act in a particular manner it also amounted to hindrance in investigation and the CBI officers did not have any liberty to clarify on any allegations. The Ld. Sr. Counsel for the accused No.3 had, on the other hand, argued that the accused No.3 could have his own opinion about the working of the institutions and he was well within his rights under Article 19 of the Constitution to express himself and to criticise the working of the institutions and to express his displeasure and disappointment. It is true that Article 19 of the Constitution confers the Fundamental Right to Freedom of Speech and Expression and a person has the right to exercise such freedom. However, such freedom is not unfettered and has to be exercised within limits. While the accused No.3 is entitled to have his opinions about the working of the institutions and also to criticise, it should not be unjust criticism and should not be such as would act as an impediment or hindrance in the agencies carrying out their functions and exercising their right

to investigation. However, there is merit in the contention of the Ld. Sr. Counsel for the accused No.3 that the CBI would have appropriate remedies available in this regard such as defamation or if the officers felt threatened, to register an FIR under Section 506 IPC which was not done and the remedy would not be to seek cancellation of bail which could be done only on satisfying the criteria laid down in several judgments. The Ld. SPP for CBI had also submitted that in August, 2022 one IO of the case was attempted to be killed and FIR had been registered under Section 307 IPC in UP where his car had been hit twice by a truck but there was no proof but after the threats, the whole issue became important. However, as per the submissions of the Ld. SPP for CBI, FIR has been registered in that case and there is no averment that the said case was linked to the present case in which the application for cancellation of bail has been filed.

35. Coming to the statements made by the accused No.3, the CBI in its application for cancellation of bail had submitted that the accused No.3 had stated as under, which amounted to extending a threat:

"Kya CBI waalon ke maa bete nahi hain, unke pariwaar nahi hain?"

"Kya wo hamesha CBI officer rahenge?"

"Kya wo retired nahi honge"

"Kya satta mein hamesh ek hi ki sarkaar rahegi?"

and:

"Bihar hai sab kuch theek thaak kar deta hai, chinta na kariye abhi toh shuruat hai na, yeh log apna leela dikha rahe hain na, janta jab apna andolan shuru karegi humari ladai ladegi tab in sabko bujha jayega" @ 9:33 minutes.

It was submitted by the Ld. SPP for CBI that the said statements clearly

amounted to a threat to the CBI officers and not only to CBI officers but even to the witnesses. To this the Ld. Sr. Counsel for the accused No.3 had submitted that the CBI had followed a pick and choose policy and the said statements had to be seen in their context and along with the remaining part of the statement and the complete statement read as under :

“or Aap batao jo group D ke, group D me jo bahal, jo bahali uinki hui hai garib pariwar se he na hai? wo garib pariwar ke logo ko tang kiya ja raha hai! aur hamare sutro ke hawale se khabar mili hai ki unke sath maar pit bhi ki gai hai. Kya CBI walo ke maa bete nahi hai? unka pariwar nahi hai? Wo hamesha CBI Officer rahenge? Kya wo retried nahi honge? Kya satta me hamesha ek hi ki sarakar rahegi? kya sandesh aap log dena chahate hai? Ham puchhna chahate hai un logo se aap sanvaidhanik sanstha ke jo kaam jo dayitawa (liability) mila hai usko nibhaiye Imandaari se aap bataiye tab se aaj tak pure pariwaar ne na cooperate kiya hai sabhi jaanch agenciyo (investigating agency) ke har nyayalay ke aadesh ko na mana hai kahi kuch galat kiya hai ham logo ne?..”

It was submitted that this would show that no threat was extended and what the accused No.3 was trying to convey was that even the family members of CBI officers could be in Group D and they could be subjected to similar treatment. No doubt it is a question of interpretation to be put to the words uttered by the accused No.3 and the words used by the accused No.3 do convey the impression of being irresponsible but cannot be construed to be a threat when read in light of what was said prior to the referred portions of the statements. From a reading of the same, it cannot specifically be said that any threat was extended much less to the witnesses or the officers in the present case.

36. The Ld. Sr. Counsel for the accused no. 3 had then submitted that infact a question had been put by a reporter if he was threatening CBI officials and the accused No.3 had categorically clarified in this respect in his speech as under:

"Dhamki nahi hai, ham bole ki wo bhi garib pariwaar ka

hai jo tum pit rahe ho! group D ka hai? hai na? to aap bhi... jo apko sanrakshan ab tak die huya hain, jisse promotion ho raha hai kabhi apake sath khuda na khasta esa ho jaye or aap nayay magane jaye or aap ke sath esa he harkat ho jaye toh woh log bachane aayenge kya..?"

The Ld. SPP for CBI had submitted that even the said para contained a veiled threat and the fact that a question had been raised by a reporter showed that the perception was that a threat was extended by the accused No.3 thereby. As observed above, the words used by the accused No.3 could be subject to interpretation but they cannot be construed as giving the impression of being in the form of a threat and even if the test of an ordinary person is applied, no such meaning can be drawn from the said words. Moreover, the accused No.3 himself had clarified that he was not extending any threat and what was the meaning of the words which he had uttered. Even there is no merit in the contention that the words uttered by the accused No.3 by way of clarification also contain a veiled threat.

37. It was also submitted by the Ld. Sr. Counsel for the accused No.3 that the accused No.3 himself had further clarified that he had never tried to threaten any person including CBI official by this press release and posts on social media accounts i.e. Facebook and Twitter on 31.08.2022 wherein he had categorically stated that he had no issues with the investigating agency which included the CBI. The copies of the said posts have also been placed on record. It is thus seen that the accused No.3 had clarified the issues through his Facebook and Twitter accounts as well and that the CBI has also not been able to show that any specific threat was extended to any witness or there was any complaint by any witness that the accused No.3 had tried to influence him, more specifically in the present case.

38. Further, contrary to the averments in the application of CBI, there is

nothing to infer that the accused No.3 had extended any direct threat to CBI officers and there is also nothing to show any indirect threat to any witness nor any such witness has been named. There is further nothing to show that the accused No.3 had tried to undermine the authority of the Court and in fact there is merit in the submission of the Ld. Sr. Counsel for the accused No.3 that the accused No.3 had not stated that he did not have trust in the Court and rather he had stated that he had co-operated in the investigation and abided by all decisions of the Courts. The present case cannot also be said to be a case wherein by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused No.3 to retain his freedom during the trial. The present cannot also be said to be a case of interference with the due course of administration of justice or evasion or attempt to evade the due course of justice or even an abuse of the concessions granted to the accused in any manner (in the present case vide order dated 06.10.2018 while granting bail to the accused No.3).

39. In light of the above discussion and in light of the parameters laid down by the Hon'ble Supreme Court and Hon'ble High Courts regarding cancellation of bail, no ground is made out for cancellation of bail. In the facts and circumstances of the case, it would however, be appropriate that the application for cancellation of bail is disposed of by giving a warning to the accused No.3 to act responsibly, moreso since he is holding the responsible position of the Deputy Chief Minister of the State of Bihar and to be temperate and careful in the words used by him. The application is accordingly disposed of.

Copy of order be given dasti.

ANNOUNCED IN THE OPEN COURT (GEETANJLI GOEL)
ON 18.10.2022 ASJ/SPL. JUDGE (PC ACT) (CBI)-24
ROUSE AVENUE DISTRICT COURT
NEW DELHI