

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 51 OF 2022

Gautam Thapar Applicant
v/s.
Central Bureau of Investigation, Mumbai
and anr. Respondents

Mr. Mahesh Jethmalani, Sr. Advocate with Mr. Sandeep Kapur, Ms. Gunjan Mangla, Mr. Ravi Sharma, Mr. Vivek Suni and Mr. Abhimanshu D. for the Applicant.
Mr. Hiten Venegaonkar for Respondent No.1 – CBI.
Ms. A.A. Takalkar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th MARCH, 2022.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Special Case No.101233 of 2021 pending on the file of Special Judge (CBI), Greater Bombay for offences punishable under sections 120(B) and 420 of the Indian Penal Code and Section 12 r/w. Section 11 r/w. Section 13(2) r/w. Section 13(1)(d) of Prevention of Corruption Act, 1988.

2. Heard Mr. Mahesh Jethmalani, learned Senior counsel for the Applicant, Mr. Hiten Venegaonkar, learned counsel for CBI and Ms. A.A.

Takalkar, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The CBI has registered FIR No. RC.BA1/2020/A0004-CBI/ACB/Mumbai against the aforesaid Applicant and the other co-accused for offences punishable under sections 120(B) r/w. 420 of the Indian Penal Code and sections 7, 11 and 12 of the Prevention of Corruption Act, 1988. The allegations against the Applicant and the co-accused *inter alia* are that the Applicant, Promoter of AG companies and the co-accused – Rana Kapoor, the Managing Director and CEO of Yes Bank Ltd, his wife - Smt. Bindu Rana Kapoor, Director of M/s. Bliss Abode Pvt. Ltd. had entered into a criminal conspiracy to divert the sale proceeds of the property mortgaged with Yes Bank and to cheat the bank for the purpose of obtaining above illegal gratification. It is alleged that Rana Kapoor had obtained illegal gratification in the form of a property in the prime location in New Delhi at much less than the realizable market value. There was principal outstanding of Rs.350 crores to ICICI Bank and Rs.30 crores to DCB Bank against charge of above property in New Delhi. It is alleged that as a part of the conspiracy, Yes Bank sanctioned loan of Rs.400 Crores to M/s. Avantha

Reality Ltd. (ARL) as Lease Rental Discounting (LRD) for a period of 10 years. It is alleged that it was essentially a sham agreement entered into with an intention to defraud and cheat Yes Bank Ltd. As a part of conspiracy, Rana Kapoor extended various concessions, relaxations and waivers to various AG companies promoted by the Applicant and thereby obtained illegal gratification to the tune of Rs.307 Crores by acquiring an expensive property at Rs.378 Crores against the declined value of Rs.685 Crores.

4. The records indicate that the Applicant was served with the notice whereupon the Applicant appeared before the Investigating Agency and he was interrogated and upon completion of the investigation, charge sheet came to be filed on 08/10/2020. On receipt of the summons, the Applicant appeared before the Court and sought bail. The Bail Application has been dismissed mainly on the ground that the Applicant is involved in committing economic offence and the fact that he has repaid the outstanding amount, is not sufficient to wipe out the criminal liability.

5. Mr. Mahesh Jethmalani, learned Senior counsel for the Applicant has relied upon the decision of the Apex Court in *Satender Kumar Antil*

v/s. CBI and anr. 2021 SCC OnLine SC 922 and has also relied upon the order dated 16/12/2021 in Miscellaneous Application Diary No(s). 29164/2021 in SLP(Crl) No.5191/2021, wherein the Hon'ble Supreme Court has laid down guidelines for grant of bail after filing of the charge sheet in different categories/types of offences. Economic offences not covered by Special Act, are classified under category 'D' and it was held that in such cases on appearance of the accused in Court pursuant to the process issued, bail application to be decided on merits.

6. In subsequent order dated 16/12/2021, the Apex Court has clarified that “ *if during the course of investigation, there has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto cause to arrest the petitioner, an aspect in general clarified by us in Criminal Appeal No.838/2021 in **Siddharth v/s. State of Uttar Pradesh and anr. dated 16.08.2021 .*** ”

7. In the instant case, as noted above, the FIR was registered on 12/03/2020. The Applicant has reported to the Investigating Officer as and when called and co-operated throughout in the Investigation. Upon completion of the investigation, charge sheet has been filed on

08/10/2021. The Investigating Officer did not find it necessary to arrest the accused during the course of investigation. Hence, in terms of the clarification given by the Hon'ble Supreme Court, it is not necessary to detain the Applicant in custody pending trial, particularly considering the fact that the trial is not likely to conclude in near future, in view of large pendency of cases.

8. Under the circumstances and in view of discussion supra, the Applicant is entitled for bail. Hence, the Bail Application is allowed on following terms and conditions :-

- (i) The Applicant who is facing trial in Special Case No.101233 of 2021 pending on the file of Special Judge (CBI), Greater Bombay, is ordered to be released on bail on furnishing PR bond in the sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with one or two solvent sureties in the like amount.
- (ii) The Applicant shall report to CBI, ACB, Mumbai once in a month on every 1st Saturday between 11.00 a.m. to 02.00 p.m. until further orders;
- (iii) The Applicant shall not interfere with the complainant

and/or shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case, in any manner ;

- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (vi) The Applicant shall not leave the Country without prior permission of the Court.

9. Bail Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)