

AJAY KUMAR KUCHAR
Special Judge (PC Act) (CBI-09)
(MPe/MLAs Cases)
Court No. 502, Fifth Floor,
Rouse Avenue Court Complex
New Delhi

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**IN THE COURT OF SH. AJAY KUMAR KUCHAR,
SPECIAL JUDGE (PC ACT) (CBI)-09,
ROUSE AVENUE COURT COMPLEX, NEW DELHI.**

RC No.220 2017 E 0011

CBI EOU-IV NEW DELHI

U/s 120-B R/W 420 IPC and 8 and 13 (2) R/W 13 (1) (d) of PC Act,
1988

CBI Vs. M/s. INX Media (P) Ltd. And Ors.

22.08.2019

Present: Sh. Tushar Mehta, Ld. Solicitor General with Sh. K.M. Natraj, Ld. Additional Solicitor General assisted by Dr. Padmini Singh, Learned Senior PP, Sh. V. K. Sharma, DLA, Sh. Pankaj Gupta, learned Senior PP, Sh. R. Parthasarathy, Dy. Superintendent of Police, CBI/EOU-IV and Sh. Sanjay Dubey, Dy. Superintendent of Police, CBI/EOU-V.

Sh. Palaniappan Chidambaram in police custody with Sh. Kapil Sibal, learned Senior Advocate, Dr. Abhishek Manu Singhvi, learned Senior Advocate, Sh. Dayanand Krishnan, learned Senior Advocate with Sh. Vivek Tankha, Sh. Kunal Vajani, Sh. Arshdeep Singh, Sh. Adit Pujari, Sh. Varun Chopra, Sh. Akshat Gupta, Sh. Hitesh Rai, Sh. Sanjeevi Seshadri, Sh. Sushant Kumar Mallik and Sh. Harpreet Kalsi, Advocates.

ORDER :

1. This order shall decide the application of CBI seeking five days police custody of Sh. P. Chidambaram arrested on 21.08.2019



in RC No.220 2017 E0011, CBI, EOU-IV, New Delhi under Section 120-B read with 420 IPC and Section 8 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988.

2. I have heard the arguments of Sh. Tushar Mehta, learned Solicitor General appearing for CBI and Sh. Kapil Sibal and Dr. Abhishek Manu Singhvi, learned Senior Advocates, Counsels for the accused P. Chidambaram.

3. The CBI, EOU-IV/EO-II Branch, New Delhi had registered RC No. 220 2017 E0011 under Section 120-B read with 420 IPC and Section 8 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, against (1) M/s. INX Media (P) Ltd., (2) M/s. INX News (P) Ltd., (3) Sh. Karti P. Chidambaram, (4) M/s. Chess Management Services (P) Ltd., (5) M/s. Advantage Strategic Consulting (P) Ltd., (6) Unknown Officers / officials of Ministry of Finance and (7) other unknown persons.

4. As per the allegations in the abovesaid FIR, M/s. INX Media (P) Ltd. entered into a criminal conspiracy with Sh. Karti P. Chidambaram, Director, M/s. Chess Management Services (P) Ltd., pursuant to which irregular / illegal acts were allegedly committed by M/s. INX Media (P) Ltd. i.e. receiving excess foreign direct investment than the amount approved by FIPB and unauthorized

downstream investment by M/s. INX Media (P) Ltd. in M/s. INX News (P) Ltd. without the approval of FIPB. It is further alleged that Sh. Karti P. Chidambaram exerted influence on public servant of FIPB Unit of the Ministry of Finance by virtue of his relationship with the accused and thereby, a punitive action against INX Group was prevented. Thus, an undue pecuniary advantage to M/s. INX Media (P) Ltd., was given and as a consideration thereof a substantial amount was paid to the companies in which Sh. Karti P. Chidambaram had sustainable interest directly or indirectly.

5. Further allegations are that Ms. Indrani Mukerjea and Sh. Pratim Mukerjea in connection with FIPB approval granted to their company M/s. INX Media (P) Ltd. and M/s. INX News (P) Ltd. made payment to the tune of five million US Dollar and 4,50,000 US Dollar to the accused P. Chidambaram in the year 2007-2008 and 2008-09, for settling down the issues relating to violation of FEMA by their companies.

6. The investigation in this case is going on. During the investigation, the accused P. Chidambaram was called for joining the investigation on 06.06.2018 and he was also joined in the investigation after his arrest on 21.08.2019 from his residence at 115A, Jor Bagh, New Delhi. However, it is stated that he remained

evasive to the question put to him and did not cooperate with the investigation. He did not respond to various documents which were shown during the investigation. It is stated that there are still other documents and material which are yet to be shown to the accused. Therefore, his police custody is required. It is submitted that he was given protection vide the order dated 31.05.2018 by the Hon'ble High Court of which he has taken advantage by being evasive in the investigation.

7. Sh. Tushar Mehta, learned Solicitor General has argued that the anticipatory bail application of the accused has been dismissed by the Hon'ble Delhi High Court on 20.08.2019 wherein specific observations have been made with regard to nature and gravity of the offence and taking into account the seriousness of the offence, the Hon'ble High Court declined the benefit of pre-arrest bail to the applicant considering the requirement of custodial interrogation.

8. Sh. Tushar Mehta, learned Solicitor General has further argued that the accused has to be interrogated for the trail of the money. He submitted that during the interrogation on 06.06.2018, documents were required from the accused but he failed to produce those documents which he undertook to produce. He has played an effective and informed role in the conspiracy so for an effective

interrogation, his police custody remand for five days is required.

9. He has relied upon the judgments in *Satish Mathur vs. State*, 2009 (108) DRJ 365 and *State (CBI) vs. Anil Sharma*, 1997 CrL LJ 4414 to argue that on qualitative interrogation, custodial interrogation is required. He specifically refers to Anil Sharma's case wherein it was observed as under :-

“Success in such interrogation would allude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.”

10. The learned Counsels for the accused Sh. Kapil Sibal and Dr. Abhishek Manu Singhvi, learned Senior Advocates have also argued at length to oppose the application for police custody of the accused.

11. It was argued that co-accused Karti Chidambaram is already on bail and Ms. Indrani Mukerjea and Peter Mukerjea are also on default bail and one Bhaskaraman has been granted anticipatory bail. He submitted that it is reflected in the order of the Hon'ble Delhi High Court that a sanction was sought for prosecution of some of the accused which means that the charge sheet is already

prepared because a sanction is sought only when a draft charge sheet is prepared. Therefore, there is no scope for interrogation of the accused.

12. He submitted that the FIPB approval was given by six officers of the level of Secretary to Govt. of India but no action has been taken against them. He further submitted that it is a case of documentary evidence. As per the allegation, a payment was allegedly made to the accused in the year 2007-08 but the FIR has been registered in the year 2017. He submitted that the argument of the learned Solicitor General that accused was evasive in his interrogation on 06.06.2018, cannot be accepted. The accused cannot be expected to give answers to the questions put in interrogation as per the liking of the Investigating Agency. He submitted that it is a matter of personal liberty of a citizen of India which has to be protected by the court. He submitted that the facts stated in para no. 2 of the application do not relate to the accused. He submitted that in para no. 3, there is an allegation of payment being made to the accused but he was not asked anything about the alleged payment on 06.06.2018.

13. It was also submitted by the learned Counsels for the accused that there is no allegation that the accused will run away or tamper

with evidence. It was submitted that the CBI is harbouring on the argument that the offence is serious. It was argued that the gravity of offence is gauged by the length of punishment provided for the offence and in the present case, none of the offence is punishable for more than seven years.

14. The learned Counsels for the accused have relied upon following judgments :-

- (a) **K. K. Girdhar Vs. M. S. Kathuria**, ILR (1988) II Delhi 197;
- (b) **Manubhai Ratilal Patel vs. State of Gujarat and Ors.**, (2013) 1 SCC 314;
- (c) **Arnesh Kumar vs. State of Bihar**, (2014) 8 SCC 273;
- (d) **Satyajit Balubhai Desai vs. State**, (2014) 14 SCC 434;
- (e) **Dharam Singh vs. State of Uttar Pradesh**, (2018) 3 SCC 22;
- (f) **Joginder Kumar vs. State of UP**, (1994) 4 SCC 260;
- (g) **Santosh Kumar vs. State of Maharashtra**, (2017) 9 SCC;
- (h) **Harsh Sahani vs. Union Territory**, (1978) 2 SCC 365; and
- (i) **State of Maharashtra vs. Nainmal Shah**, (1969) 3 SCC 904.

15. Relying on these judgments, it was argued that for grant of police custody, the investigating agency is required to make a

regarding grant of five days police custody of the accused. The allegations made against the accused are serious in nature and there cannot be a dispute with the fact that a detailed and in depth investigation is required in the present case. The allegations of payment being made to the accused in the year 2007-08 and 2008-09 are specific and categorical. The trail of this money if so paid is to be ascertained. No doubt it is a case to a large extent based on documentary evidence but those documents need to be traced and their value and their worth for the purpose of the investigation in this case is to be ascertained.

19. The submission made that gravity of an offence is gauged only by the quantum of punishment which can be awarded, is not apt in the given facts and circumstances of the case. The enormity of money allegedly involved in this case and the persons who are accused necessitate an in depth investigation. It was submitted that the investigating agency did not call the accused for investigation after 06.06.2018 but in my view that cannot be a ground to deny the investigating agency an opportunity to conduct an effective investigation now. The investigation needs to be brought to a logical end and for that purpose, the custodial interrogation is sometime found useful and fruitful. The apprehension of the

accused of any coercive action can be addressed by the court to safeguard his right as a citizen of the country.

20. Thus, considering all the facts and circumstances of the case as brought to the notice of the court, I am of the view that police custody remand of the accused P. Chidambaram is justified and accordingly, the accused is remanded to police custody till 26.08.2019. The accused shall be medically examined after every 48 hours and shall be produce on 26.08.2019 after medical examination. The family members and or the counsels of the accused will be at liberty to meet him for half an hour daily at the time convenient to both the parties. It is impressed upon the Investigating Agency that it will ensure that the personal dignity of the accused is not violated in any manner.

21. Copy of the order be given dasti to both the parties, as requested.