

**IN THE COURT OF MS. ANJU BAJAJ CHANDNA
PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL
JUDGE (PC ACT) CBI ROUSE AVENUE DISTRICT COURTS,
NEW DELHI**

Misc DJ ASJ/150/2024
CNR No.DLCT11-000340-2024
ECIR No. 06/DLZO-II/2019

Ajay S. Mittal

.....Applicant/Petitioner

vs.

Directorate of Enforcement

.....Complainant/Respondent

Appearances:

Sh. Jayant Sud, Sr. Advocate, Sh. Sanjoy Ghosh, Sr.
Advocate alongwith Counsels Sh. Sanyam Khetarpal,
Ms. Prakriti Anand, Sh. Nitai Agarwal, Sh. Kartik Jasra,
Sh. Prannit Stefano, Sh. Shivam Nagpal, Sh. Rohan
Mandal, Sh. Akash Basoya, for applicant/accused Ajay S.
Mittal.

Ms. Mantika Vohra, and Sh. Zeeshan Thomas, Counsels
for A-58 Orrisa Sponge Iron and Steel Ltd.

Sh. Divyank Panwar, Advocate for A-78 Pankaj Kumar
Tewari.

Ms. Ranjana Roy Gawai, and Sh. Ujjwal Jain, Counsels for
A-1 to A-6, A-8 to A-53, A-59 to A-64 and A-69 to A-72.

Accused / applicant Ajay S. Mittal produced from JC

Sh. Zoheb Hossain, Ld. Special Counsel for ED.

Sh. N.K. Matta, Ld.SPP for ED.

Sh.Simon Benjamin, Ld. SPP for ED

Sh. Manish Jain, Ld. Counsel for ED (through VC)

Ms. Abhipriya Rai, Sh. Sourabh Kaushik, Sh.Chandveer Singh, Counsels for ED.

Sh. Anuj Kumar, IO in person.

Sh. Manoj Kumar, Deputy Director for ED

ORDER

01.05.2024

1. The applicant Ajay S. Mittal who is an accused in ECIR No.06/DLZO-II/2019 title Directorate of Enforcement vs Neeraj Singhal and Ors. has moved the present application seeking transfer of the proceedings from the court of Sh.Jagdish Kumar, Ld. Special Judge (PC Act), CBI-16 to some other court in the interest of justice.

2. As per the application, the Directorate of Enforcement has registered the above mentioned ECIR under Section 447 Companies Act read with Section 409/476/468/471/120 B IPC. The first prosecution complaint was filed on 08.08.2023 wherein applicant was not arrayed as an accused. The applicant although joined the investigation on multiple occasions but was arrested on 11.01.2024 and is in judicial custody since 16.01.2024. The second prosecution complaint has been filed wherein applicant has been arrayed as accused no.76.

3. It is further contended by the applicant that his bail application is pending adjudication before the court of Sh.Jagdish Kumar, Ld. Special Judge, which was listed for hearing on

10.04.2024. Counsels had attended the matter and sought time to prepare for arguments and the matter was adjourned to 25.04.2024. The wife of the applicant (who is also one of the accused) was watching the matter and once the counsels left the court room, the court staff enquired something and Ld. Judge passed a comment (*lene do datein, ED matters me kaun si bail hoti hai*). The applicant has further contended that the comments of Ld. Judge came as a shock to him and there is reasonable apprehension that Ld. Judge is sitting with pre-determined and pre-judicial mind to dismiss the bail application of the applicant. According to the applicant, since Ld. Judge has already formed an opinion, the applicant does not expect fair and proper opportunity to represent his case.

4. On behalf of Directorate of Enforcement, reply to the application has been filed refuting the averments of the applicant. It is stated that no such statement came to be made by the Ld. Presiding Officer or any member of the court staff. The proceedings / order dated 10.04.2024 discloses the name of the attending parties and on behalf of applicant, the presence of his Counsel Sh. Sanyam Khetrapal is reflected. The wife of applicant Ms. Archana Ajay Mittal has been granted bail on 14.02.2024 by the Predecessor of Sh. Jagdish Kumar, Ld. Special Judge, which is subject matter of challenge before the High Court of Delhi. The applicant Ajay S. Mittal preferred bail application on 23.02.2024 and reply thereof was filed on behalf of Enforcement Directorate on 13.03.2024. Since the filing of the bail application, dates / multiple adjournments were being sought on behalf of applicant on various grounds.

5. It is further asserted that apprehension of not getting fair and impartial hearing, has to be reasonable and based on substantial material. The applicant has failed to demonstrate such reasonable apprehension on the totality of all the facts. The transfer of the matter on mere asking of the applicant would seriously undermine the confidence and credibility of the judicial system. It is prayed that transfer application be dismissed with exemplary costs.

6. Arguing on behalf of applicant, Ld. Sr. Advocate Sh. Jayant K. Sud submitted that the applicant has no personal complaint against Ld. Judge, rather applicant has highest regard for the court. However, the apprehension of the applicant arises out of the manner, Ld. Judge has expressed himself by stating, *lene do datein, ED matters me kaun si bail hoti hai* (Let them take dates, who is getting bail in ED matters). Ld. Senior Counsel further argued that it is the question of life and liberty of the applicant and it is statutory and constitutional right of the applicant to have just and fair hearing. In the present case, Ld. Judge is having probable bias in favour of ED and the applicant is having genuine apprehension that he may not get fair opportunity for his bail hearing.

7. Ld. Senior Counsel has relied upon the order of Ld. Predecessor of this court Sh. Vinay Kumar Gupta, the then Principal District & Sessions Judge dated 22.09.2022 in the matter of Directorate of Enforcement vs Satyendra Kumar Jain and Ors. 2022 SCC Online Dis Crt (Del) 38, wherein ED had

moved the transfer application for the reason that Ld. Judge had agreed with the opposite side that the issues raised during arguments have not been properly controverted by the advocate of ED. In the said matter, even several hearings had taken place on bail application, yet the matter was transferred. In the said order, Ld. Judge noted the principle that justice should not only be done but appear to have been done. It has also been recorded therein that question is not whether the judge is actually biased but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is likelihood of bias affecting the decision. Ld. Sr. Counsel further argued that the order dated 22.09.2022 passed by Ld. Predecessor was upheld before the High Court of Delhi vide its order dated 01.10.2022. Ld. Sr. Counsel, therefore, prayed that relief be granted in the present transfer application in favour of the applicant.

8. On the other side, Sh.Zoheb Hossain, Ld. Counsel for ED submitted that discretion to transfer the matter has to be exercised cautiously and in exceptional circumstances. No party has any option to decide that particular judge would not hear a case. It must be seen that transfer is not sought on malafide grounds in order to take the matter out of a particular court. The apprehension cannot be fanciful or unfounded. The ramification of transfer of the matter are adverse and would affect the confidence and credibility of the system. Referring to the Judgment of Satyendra Jain vs ED dated 01.10.2022 (criminal M.C No.4916/2022 of Delhi High Court), Ld. Counsel submitted that there were multiple reasons particularly the misuse of his position by the accused and the High Court has noted in para 7 of

its judgment, the reasons requiring the transfer. According to the Counsel, the present transfer application is an afterthought and has been moved belatedly. Ld. Senior Counsel during the course of arguments also referred to the earlier orders passed by this court. Ld. Counsel has relied upon the following judgments:-

- i. Nahar Singh Yadav vs Union of India & Ors., 2011 (1) SCC 307.
- ii. Usmangani Adambhai Vahora vs State of Gujarat (2016) 3 SCC 370.
- iii. Gurcharan Dass Chadha vs State of Rajasthan (1966) 2 SCR 678.
- iv. Captain Amarinder Singh vs Prakash Singh Badal & Ors. (2009) 6 SCC 260.
- v. Lalu Prasad Yadav vs State of Jharkhand (2013) 8 SCC 593.
- vi. Asok Pande vs Supreme Court of India & Ors. (2018) 5 SCC 341.

9. I have given thoughtful consideration to the rival submissions.

10. The fairness and equality are hallmark of criminal justice system. The judges are obliged to decide the cases before them with impartiality, integrity and by ensuring the equality of treatment and in doing so judges are upholding the rule of law. It is also one of the basic principle of administration of justice that justice should not only be done but it should also seen to be done.

11. The applicant has pleaded apprehension on the ground of comment allegedly made by Ld. Judge by which he expressed

that no one is getting bail in ED matters. According to the wife of the applicant (who is also co-accused), after the hearing was over on 10.04.2024, Ld. Judge passed the comment while having conversation with the staff. On 17.04.2024, wife of the applicant sent an email to this court making similar allegations and seeking transfer of the matter to some other court. The email was followed by present petition filed under Section 408 Cr.P.C. The wife of the applicant has also filed her affidavit on record in support of her request to transfer.

12. The power under Section 408 Cr.P.C can be exercised to meet the ends of justice. In the present proceedings, this court cannot go into the merits of the allegations by holding any inquiry. There is no complaint as to the conduct of Ld. Presiding Officer Sh.Jagdish Kumar and the only issue raised by the applicant is the apprehension that Ld. Judge has already made up his mind to the effect that bail is not available in ED matters. The perception and view point of petitioner / applicant whereby he does not expect impartial hearing from the court, has to be given due regard in the facts and circumstances of the case. The pleas duly supported by affidavit cannot be outrightly discarded. Relegating the applicant to the court upon which specific allegations of bias are made, would possibly have adverse bearing on his case.

13. **In Ranjit Thakur vs Union of India, (1987) 4 SCC 611**, it was held that,

7...As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly. "Am I biased?" but to look at the mind of the party before him.

14. Not two cases are similar, however, principles of administration of justice are applicable to all the matters at par. Considering the principle that justice should not only be done but it should seem to be done and that applicant has expressed the apprehension duly supported by the affidavit of his wife, cannot be said to be misconceived or misplaced. The matter is at its initial stage and no prejudice would be caused to the answering respondent, if case is heard by any other court of competent jurisdiction. Accordingly, it is felt appropriate to transfer the proceedings to some other court. The application of applicant is allowed.

15. The ECIR No.06/DLZO-II/2019 (including bail application of the applicant) is withdrawn from the court of Sh.Jagdish Kumar, Ld. Special Judge, (PC Act), CBI-16 and is assigned to the court of Sh.Mukesh Kumar, Ld. Special Judge, (PC Act) CBI-05, RADC, New Delhi for adjudication and disposal as per law.

16. Copy of this order be sent to both the courts for compliance.

17. Parties / counsels to appear before transferee court on 04.05.2024. Ahlmad is directed to send the complete record to the court of Sh.Mukesh Kumar, Ld. Special Judge, (PC Act) CBI-05, RADC, New Delhi immediately.

18. Present transfer petition file be consigned to the record room.

(Anju Bajaj Chandna)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
New Delhi/01.05.2024