

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

Satyender Kumar Jain vs CBI & Ors.
Misc. DJ ASJ/62/2023

Satyender Kumar Jain vs ED & Ors.
Misc DJ ASJ/99/2023

Appearances:

Sh. N. Hariharan, Sr. Advocate along with
Advocates Sh. Vivek Jain, Sh. Abhinav Jain, Ms.
Punya Rekha Angara, Sh. Sharian Mukherji and Sh.
Mueed Shah, for applicant Satyender Kumar Jain.

Sh. S. V. Raju, Ld. Additional Solicitor General.

Sh. Pankaj Gupta, Ld. Sr. PP for CBI

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

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

Sh. Vivek Gurnani and Ms. Raavi Sharma,
Advocates for ED.

Respondent no.2 is stated to be the wife of the
applicant.

Dr. Sushil Gupta, Ms. Sunita Gupta, Sh. R. S. Ahuja
and Sh. Nischay Bajaj, Advocates for respondent
no.3 to 9 in ED Case and 3 to 6 in CBI case.

ORDER

20.09.2023

1. The applicant has filed two applications seeking transfer of his matters pending before the court of Sh. Vikas Dhull, Ld. Special Judge, CBI.

2. The applicant is being prosecuted by CBI in case **No. RC/AC-1/A/0005/2017 CBI/ND titled CBI vs Satyender Kumar Jain & Ors.** and by Enforcement Directorate in case **no.23/2022, ECIR/HQ/14/2017 titled Directorate of Enforcement vs Satyender Jain & Ors.**

3. According to the applicant, he took Oath as Minister in the Government of NCT of Delhi on 14.02.2015. The CBI registered an FIR No. RC-AC1-2017-A0005 on 24.08.2017 under Section 13 (2) read with Section 13 (1) (e) of the Prevention of Corruption Act 1988 read with Section 109 IPC against the applicant, his wife and four other accused persons. It has been alleged by CBI that applicant has acquired assets disproportionate to his known sources of income during the period 14.02.2015 to 31.05.2017.

4. On 30.08.2017, Enforcement Directorate registered ECIR bearing no. ECIR/HQ/14/2017 under the provisions of Prevention of Money Laundering Act 2002. The charge-sheet in CBI case was filed on 03.12.2018 and cognizance was taken by the court and accused was summoned on 03.04.2019. The court granted regular bail to the applicant on 06.07.2019.

5. On 30.05.2022, applicant was arrested by Enforcement Directorate and the applicant was remanded to judicial custody. The first regular bail application of the applicant was filed on 13.06.2022 which was dismissed on 18.06.2022. On 27.07.2022, ED/ respondent no.1 filed complaint ECIR/HQ/14/2017. The applicant filed second bail application on 17.08.2022. During the

course of arguments on the bail application, ED/respondent no.1 filed application for transfer of the matter on 19.09.2022 and on 22.09.2022, the court allowed the said application and consequently, the matter was transferred from the court of Ms.Geetanjali Goel, Ld. Special Judge, CBI to the court of Sh.Vikas Dhull, Ld. Special Judge, CBI Rouse Avenue Court, New Delhi.

6. On 17.11.2022, Ld. Special Judge Sh. Vikas Dhull dismissed the bail application of the applicant and while dismissing the bail application, Ld. Judge recorded certain observations which has caused reasonable apprehension of bias in the mind of the applicant.

7. The applicant has pointed out to the various observations made in the order dated 17.11.2022 to assert that Ld. Judge has pre-decided the matter and has returned findings with respect to the CBI matter against the accused and in favour of the prosecution. It is further contended by the applicant that while adjudicating PMLA bail application, serious observations on the CBI case have been made by Ld. Special Judge, particularly to the effect that court is not bound by the charge-sheet of CBI and additional amount can be added and additional accused persons could be added or summoned. There is severe apprehension in the mind of the applicant that he will not get fair hearing before the Ld. Special Judge Sh. Vikas Dhull and the apprehension is very much apparent from the records and the manner in which proceedings are being conducted.

8. The applicant seeks transfer of his matters on following grounds:-

i. Ld. Judge has shown utter disregard to the submissions of the counsel for applicant and has shown out of the way regard to the interest of the ED/ Respondent no.1.

ii. While declining the bail application of the applicant, the observations have been recorded which give rise to the reasonable apprehension in the mind of the applicant that proceedings are biased in nature.

iii. Ld. Special Judge while deciding PMLA bail application has concluded that applicant is prima-facie guilty of offences in the CBI matter.

iv. While referring to the para numbers 81, 83, 98, 108 and 97 of the order dated 17.11.2022, it is asserted that Ld. Judge should not have passed such observations particularly when the arguments of the applicant are yet to be heard in CBI matter.

v. Ld. Special Judge has pre-decided that the applicant has committed the offence of criminal misconduct under Section 13 (1) (e) of the Prevention of Corruption Act while proceedings against the applicant in CBI matter has been at the stage of arguments on charge.

vi. The approach of Ld. Special Judge and the course of action so adopted are completely unheard of and it is clear that the matter will not be heard in an impartial and independent manner.

vii. The Ld. Special Judge has not only concluded that applicant has prima facie committed the predicate offence under PC Act but has also summoned additional accused without giving any reasons or grounds.

viii. Ld. Special Judge vide order dated 19.12.2022 made such observations and gave directions to the CBI on his pre-conceived opinion as apparent from the order dated 17.11.2022. Summoning of additional accused has a direct bearing on the case of the applicant and calculation of disproportionate assets.

ix. It is also asserted that Ld. Special Judge has set up a new case against the applicant which is entirely different from the case of CBI and ED.

9. Applicant has relied upon the following judgments in support of his contentions:-

1. K. Anbazhagan v. Superintendent of Police & Ors. (2004) 3 SCC 767.
2. Ranjit Thakur v. Union of India (1987) 4 SCC 611 : 1988 SCC (L & S)
3. Bhajan Lal, Chief Minister v. Jindal Strips Ltd. (1994) 6 SCC 19.
4. Hazara Singh Gill v. State of Punjab (1964) 4 SCR 1.
5. State of Punjab v. Davinder Pal Singh Bhullar (2011) 14 SCC 770.

10. ED/ respondent no.1 has filed reply to the application of the applicant denying each and every allegation and averments of the application. According to the ED/ Respondent no.1, applicant has not disclosed the complete facts. The applicant had challenged the order of transfer of the matter dated 22.09.2022 in the High Court and the order for transferring the matter to Ld. Special Judge Sh. Vikas Dhull was upheld. The applicant also approached the Supreme Court and the petition was later on dismissed as withdrawn. It is further asserted that the order dismissing the bail application of the applicant was passed as per the provisions of Section 45 of PML Act 2002. The twin conditions mentioned in the section were required to be discussed and even the order dated 17.11.2022 of Ld. Special Judge has been upheld by the High Court. The application has been moved by the applicant only to delay the trial. Ld. Judge was required to take prima facie view as to the guilt of the accused in terms of Section 45 of PML Act 2002 and there is no apprehension of bias as alleged by the applicant.

11. Ld. Special Judge has heard both the parties by following the rules of natural justice. The discussion with respect to Predicate offence was done to appreciate the facts and evidence of the PMLA case. The reasoned order dismissing the bail application of the applicant cannot be a valid ground for questioning the impartiality and fairness of the judicial officer. The decision taken by the Ld. Judge has been within his discretion and jurisdiction and only prima facie view of the matter has been taken by Ld. Special Judge. ED has relied upon the following judgments:-

1. Nahar Singh Yadav & Ors. v. Union Of India & Ors. (2011)1SCC 307,
2. Maneka Sanjay Gandhi v. Rani Jethmalani (1979) 4 SCC,
3. Abdul Nazar Madani v. State of Tamil Nadu (2000) 6 SCC 204,
4. Usmangani Adambhai Vohra v. State of Gujarat & Anr. (2016) 3 SCC 370.

12. CBI has also filed reply to the application of the applicant stating therein that applicant is an influential person and has adopted tactics to delay the proceedings. It is submitted that observations made by Ld. Special Judge were infact on the arguments raised by the defence during the hearing of the bail application. It was the defence Counsel who contended that in the scheduled offence, CBI has not charge-sheeted M/s J J Ideal Estate Pvt. Ltd and even not taken Rs.15 Lacs as a part of disproportionate assets. The observations of the court came in response to the contentions raised on behalf of defence. The Ld. Judge sought clarification from CBI about the role of M/s J J Ideal Estate Pvt. Ltd and on 19.12.2022, Investigating Officer of the case attended the court and admitted that there was sufficient material as against M/s J. J. Ideal Estate Pvt. Ltd and other companies and that they should also be summoned as additional accused. Accordingly, on 05.01.2023 trial court issued summons to four companies who facilitated the commission of offence.

13. According to CBI, rules of natural justice are being followed and proper hearing is being given to the applicant as well as to CBI. The apprehension of the applicant is baseless. The Ld. Trial Court has acted in a judicious manner as per the provision of Section 319 Cr.P.C and it is open for the applicant to challenge the order. Further the CBI has pointed out to para no.119 of the order dated 17.11.2022 whereby the court has already recorded “nothing stated herein above shall tantamount to an expression of opinion on the merits of the case”. It is further asserted that the Ld. Judge has assessed factual position and has logically analysed the evidence. The case law relied upon the applicant are not applicable in the present case as the apprehension of the applicant is baseless and without any substance.

14. Arguing on behalf of applicant, Ld. Sr. Advocate Sh. N. Hariharan, contended that there has been strong apprehension of bias which arises from the bail order dated 17.11.2022. Ld. Judge has dealt with the merits of the case related to Scheduled offence despite the fact that the said matter was separately fixed for arguments on charge. Ld. Judge has already expressed his opinion about the guilt of the accused and now nothing is left to argue on the point of charge. Ld. Sr. Counsel referred to various observations contained in paras 83, 98, 98, 108 and 115 of the order dated 17.11.2022 to assert that Ld. Judge has pre-decided the matter and pre-judged the trial. Ld. Judge has been leaning in favour of the prosecution and he is lacking in his fair approach. The observations made by Ld. Judge in his order

dated 17.11.2022 are strongly worded and favoured the prosecution and the submissions of the applicant have not been taken into consideration. Referring to previous orders whereby case was earlier transferred from the court of Ms. Geetanjali Goel, Ld. Senior Counsel submitted that claim of applicant to transfer his matters stand on better footing.

15. Ld. Sr. Counsel for applicant has relied upon the following judgments in support of his arguments:-

1. Kanaklata vs. State (NCT of Delhi) & Ors, (2015) 6 SCC 617
2. State of Punjab vs Davinder Pal Singh Bhullar & Ors. (2011) 14 SCC 770
3. Ranjit Thakur vs Union of India & Ors. (1987) 4 SCC 611.
4. Raman Bhuraria vs Directorate of Enforcement, 2023 SCC Online Del 657

16. On the contrary, Ld. ASG Sh.S. V. Raju submitted that as per requirement of law, Ld. Judge was to decide on the prima facie involvement of the accused in the offences and therefore the merits of the case were considered. Ld. Counsel further pointed out to the twin conditions mentioned in Section 45 of PML Act 2002 to assert that merits of the case are required to be considered to come to the conclusion about the guilt of the accused. Ld. Judge has been duty bound and therefore he passed a detailed and speaking order. It is specifically noted in the bail order that observations are interim and would not affect the merits of the case. The applicant himself raised the submissions about his innocence and also discussed the evidence appearing

against him and therefore Ld. Judge was duty bound to deal with pleas and submissions raised by the applicant. The alleged apprehension of bias is not logical or reasonable. Merely on the basis of passing judicial orders, cases must not be transferred.

17. Ld. Additional Solicitor General has relied upon the following judgments of Hon'ble Supreme court:-

1. Dharampal and others (2014) 3 SCC 306.
2. Central Bureau of Investigation vs. Pradeep Bhalchandra Sawant (2007) 7 SCC 344.

18. I have given due consideration to the contentions of both the sides and examined the relevant material.

19. The applicant is facing prosecution in two cases one filed by CBI and other filed by ED. The case of CBI is of predicate offence and on the basis of the same ED has registered the complaint for money laundering. Both the cases are based on same pretext and they are inter-related, therefore, law provides for trial by the same court under Section 44 (1) (c) of PML Act 2002.

20. The case of Predicate offence has been fixed for arguments on the point of charge. The main grievance of the applicant has been that while deciding the bail application under PML Act 2002, Ld. Judge has pre-decided the CBI matter and the same leads to invariable conclusion that accused is guilty of scheduled offence under PC Act.

21. On examination of the contents of order dated 17.11.2022 and the requirement of law, I am of the opinion that apprehension of bias as expressed by the applicant has no merit or substance. The parameters for grant of bail and legal requirements for framing of charge are different. For the purposes of bail, Ld. Judge has to consider the merits of the case in order to come to the conclusion about guilt of the accused as per requirement of Section 45 of Prevention of Money Laundering Act 2002. For the purpose of framing of charge, court is required to take prima facie view of the facts and evidence contained in the charge-sheet and to come to the conclusion whether there is sufficient material to proceed with the trial of the case. In this way, although the parameters are different but some overlapping issues are required to be dealt with by the court.

22. It is not disputed that court is giving hearing to both the sides and principles of natural justice are being duly followed. It is no doubt true that order dated 17.11.2022 is a lengthy order and merits of the case related to the scheduled offence have been discussed in detail but this has been the requirement of law. The observations made by Ld. Judge has been due to compulsion of law to note the relevant facts, evidence and legal position to come to the conclusion about granting or declining the bail.

23. Even otherwise, if a submission is made during the course of arguments, Ld. Judge is bound to deal with the same and to return his findings. It is further important to note that para 119 of the order dated 17.11.2022 specifically records that nothing

stated herein would be taken as expression on the merits of the case. In this way, due safeguard and protection has been extended to the defence. The law is also settled that the observations made in the bail order are not final. The detailed speaking order passed by Ld. Special Judge rather shows that due hearing has been given to both the sides and after thoughtful consideration, the observations have been made.

24. The findings of the bail order dated 17.11.2022 would not in any way prevent the counsel for the applicant to re-agitate and take up all his pleas during the arguments on charge in the matter of CBI under PC Act. It is further clear that the arguments have been raised on behalf of defence that no predicate offence is made out and therefore Ld. Judge had to deal with the submissions to decide the twin conditions mentioned in Section 45 PML Act 2002.

25. The High Court vide its order dated 06.04.2023 has already confirmed the order dated 17.11.2022 as specifically noted in para 81 of the order. It is further clear from the order of High Court dated 06.04.2023 that submissions were raised on behalf of applicant / accused with respect to the predicate offence and consequent registration of complaint by ED. In para 69, the High Court has held that 'reasonable grounds' appearing in Section 45 are something more than 'prima facie'. The para 69 of the Order state as follows:-

69. *The court in view of these twin conditions has to arrive at a conclusion that whether the facts and circumstances are sufficient in themselves to justify satisfaction that accused is not guilty of the offence. It is settled proposition that "reasonable grounds" is something more than "prima facie". It has been held in catena of judgments that at this stage, the court has to see the broad probabilities of the case. If the accused has been able to demonstrate that there are broad probabilities that he is not guilty of the offence under Section 3 of PMLA, then he has a right to be released on bail.*

26. The power to transfer, withdraw or assignment of the matters is discretionary but discretion must be exercised judiciously and on well founded reasons. When a matter is transferred from one court to another, on the basis of apprehension of bias, it has larger repercussions. It not only derails the trial but is also demoralizing and demotivating for the judge concerned. Therefore, the transfer cannot be allowed on flimsy grounds as also law is well settled in this regard.

27. In The judgment of **Madan Lal vs CBI** /ACU-III,2004 SCC Online P & H 612, it has been observed as under:-

13. *The law is well settled that a litigant cannot choose a Bench of his choice. It is only in exceptional circumstances where the existence of "bias" or "; likelihood of bias", when apparent on the facts and circumstances of a case that the High Court invokes its discretionary powers under Section 407, Cr .PC to transfer the trial of such case to another Court of Competent Jurisdiction, In the absence of an allegation of pre-existing bias, the power to transfer a case can be invoked only sparingly. Now-a-days, there is growing tendency amongst disgruntled litigants,*

often ill advised, just to hoodwink the court. The allegations levelled by such litigants, therefore, need to be scrutinized with utmost care and circumspection. It cannot be overlooked that transferring a case merely on the asking of an apprehensive litigant would not only lead to scandalizing the Court but browbeating the Presiding Officer also, thereby causing direct interference in the independent and fair administration of justice.

28. The strong observations made by a judge cannot itself be the basis to conclude that judge is not holding the trial in a fair and impartial manner. A Judge is supposed to conduct the proceedings without fear and favour. During the course of proceedings, some orders may favour prosecution and some may favour defence but such orders cannot be made the basis of attributing bias to the Judge concerned.

29. Judicial orders are open to scrutiny by higher courts and just because some orders are against a particular side, cannot be a ground to transfer the case. The allegations of bias or prejudice are easy to plead but difficult to establish. The contentions of the applicant with respect to predicate offence were dealt with by the Ld. Judge which has been the requirement of law and procedure. On going through the record, I find that Ld. Judge has been dealing with the matter properly by following the rules of natural justice. I find nothing against the neutrality and impartiality of Ld. Judge and the plea of bias as perceived by the applicant and pleaded in the transfer application is not correct. In my opinion, this is not a fit case for allowing transfer applications of the applicant. Accordingly, applications are dismissed.

30. The order be placed on both the files.
31. Copy of order be sent to the concerned court for information.
32. Transfer application 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/20.09.2023