REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1148 OF 2023
[Arising out of Special Leave Petition (Criminal) No. 295 of 2023]

Central Bureau of Investigation ... Appellant

VERSUS

Santosh Karnani & Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 1149 OF 2023
[Arising out of Special Leave Petition (Criminal) No. 724 of 2023]

Rupesh Balwantbhai Brambhatt ... Appellant

VERSUS

Santosh Karnani & Ors. ...Respondents

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. The Appellants in the two Criminal Appeals, the Central Bureau of Investigation & Rupesh Balwantbhai Brambhatt (hereinafter, "complainant") respectively, are aggrieved by the order dated 19th

www.taxcode.in

December, 2022 passed by the High Court of Gujarat at Ahmedabad allowing the anticipatory bail application filed by Respondent No. 1 in connection with FIR registered as C.R. No. RC0292022A0011 of 2022 before CBI/ACB/Gandhinagar Police Station, District Gandhinagar for the offence under Section 7 of the Prevention of Corruption Act, 1988 as amended in 2018.

BACKGROUND

3. The complainant is a businessman engaged in the construction business that goes by the name: Safal Construction Pvt. Ltd. In February 2019, Respondent No. 1, an IRS Officer, posted as Additional Commissioner of Income Tax, Ahmedabad, conducted a survey for the financial year 2018-19 under Section 133A of the Income Tax Act, 1961 against Safal Construction Pvt. Ltd. whereunder the group disclosed an additional income of Rs. 50 crores.

4. Thereafter, in September 2021, search and seizure action was initiated by the Investigation Wing of Income Tax Department, Ahmedabad

against Safal Construction Pvt. Ltd. Following these searches, some papers related to the complainant's business were seized and the Central Circle, Range-1 Division initiated the procedure for raising a demand notice. It is the complainant's case that he found out that Respondent No. 1 was handling his case and would be preparing the appraisal memo. Subsequently, the complainant and Respondent No. 1 met frequently in connection with the case and it is alleged that during these interactions, Respondent No. 1 threatened to ruin the complainant's business and demanded illegal gratification.

5. On 29th September, 2022, Respondent No. 1 allegedly contacted the complainant and told him to meet him on 3rd October, 2022. Accordingly, the complainant met Respondent No. 1 at the Income Tax Office where Respondent No. 1 demanded illegal gratification of Rs. 30 lakhs to help the complainant with his case. This conversation was recorded by the complainant on a Digital Voice Recorder which has been handed over to the investigating authorities and a transcript of the same has also been provided

to this Court. The complainant was directed to deposit the amount in the account of one Vardhman in the Dhara Angadia Firm.

6. The complainant lodged a complaint the next morning with ACB Police Station, Ahmedabad city at 07:15 hours and a trap was then laid. The complainant's employee was sent to the Angadia firm with the bribe money amounting to Rs. 30 lakhs along with personnel from the ACB trap team. Upon depositing Rs. 30 lakhs with Dhara Angadia firm, the complainant contacted Respondent No. 1 through WhatsApp call which was recorded by the ACB team wherein Respondent No. 1 acknowledged payment of the amount. Immediately thereafter, one ACB team went to detain and arrest Respondent No. 1, who along with some staff members, is alleged to have physically assaulted the ACB team and escaped from the office due to the ensuing chaos. It is also claimed that Respondent No. 1, while escaping from the office, handed over his mobile phone to a colleague. Simultaneously, another ACB team recovered the bribe amount deposited with Dhara Angadia.

7. FIR No. 12/2022 was thus, registered against Respondent No. 1 under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 on 4th October, 2022.

8. Owing to the gravity of the case, on 12th October, 2022, the case was transferred to the Central Bureau of Investigation (hereinafter, "CBI") and FIR No. 12/2022 was re-registered as C.R. No. RC0292022A0011 of 2022 under Section 7 of the Prevention of Corruption Act, 1988. The FIR records that Respondent No. 1 evaded arrest by the ACB team and was still at large at the time of re-registration of the FIR.

9. Thereafter, a notice under Section 41A, Code of Criminal Procedure (hereinafter, "CrPC") was issued to Respondent No. 1 calling upon him to appear before the CBI but Respondent No. 1 failed to respond. On 17th October, 2022, Respondent No. 1 wrote a letter to the Investigating Officer that he had suffered severe anxiety & depression due to the allegations levelled against him and had, thus, gone to his home state of Rajasthan for medical

treatment. He sought four days' time to join the investigation.

10. During investigation Smit Thakkar, owner of Dhara Angadia firm, informed the authorities that the illegal gratification was deposited in the account of one Malav Ajitbhai Mehta. It is also claimed that prior to the deposit of the amount, Malav Mehta informed Smit Thakkar that Rs. 30 lakhs would be deposited in the account and would have to be transferred to another person on the same day.

11. Another notice under Section 41A was issued to Respondent No. 1 and again, he failed to appear before the CBI. On 26th October, 2022, Respondent No. 1 again sought one week's time to appear before the Investigating Officer *vide* a communication sent from the email ID of Blue Heaven Hotel, Jaipur. Subsequently, some more Section 41A notices were issued to Respondent No. 1, to which he sought more time to join the investigation on various grounds. He simultaneously preferred an application for grant of anticipatory bail.

12. By an order dated 3rd November, 2022, the City Civil & Sessions Court at Ahmedabad rejected Respondent No. 1's application for anticipatory bail. The Special Judge - CBI Court No. 3 observed that Respondent No. 1 instead of cooperating with the investigating agency, had absconded and got himself admitted in a hospital in Rajasthan to evade the process of law. Some of the observations made by the Special Judge, CBI Court, are to the following effect:

> "Thus, the ground of ill health pleaded by the Learned Advocate for the applicant would hold no ground as this Court is of a candid opinion that the applicant instead of cooperating with the Investigating Agency had absconded and had got himself admitted in hospital at his native in Rajasthan with a view to evade the process of law.
>
> … … …
>
> In view of the aforesaid facts and circumstances, this Court is of a candid opinion that custodial interrogation of the present applicant is a must to reach to unearth the larger conspiracy. It is necessary to unveil the *modus operandi* adopted by the applicant in committing the larger conspiracy and without interrogation, it would be impossible to collect the relevant evidence resulting into

> incomplete investigation. It is also crystal clear that the applicant with a view to avoid arrest has filed the present application and therefore, instead of cooperating in the investigation have tried to thwart the ·same and thus, it can be said that the applicant is not cooperating in the investigation.
>
> … … …
>
> This Court also cannot lose sight of the fact that investigation in the matter is still under progress and releasing the applicant at this premature stage would pave way for the applicant to influence the investigation, hamper the witnesses and tamper the evidence."

13. The Court eventually held that custodial interrogation of Respondent No. 1 was necessary to reach the root of the matter.

14. Aggrieved by the order of the Special Judge, CBI Court, Respondent No. 1 applied for anticipatory bail before the High Court of Gujarat. Meanwhile, on 22nd November, 2022, the Court of Special CBI Judge issued a non-bailable warrant against Respondent No. 1.

15. The High Court, vide impugned order dated 19th December, 2022, granted anticipatory bail to

Respondent No. 1. The High Court observed that there is a doubt regarding the acceptance of illegal gratification, as it was deposited in the account of Vardhman in Dhara Angadia firm and there is no evidence with respect to acceptance of the amount by Respondent No. 1. The reasons on the basis of which the High Court proceeded to grant anticipatory bail are recorded in paragraph 12 of its order, which states as follows:

> "12. This Court has considered following aspects;
>
> (i) The FIR is registered on 12.10.2022 for the offence which is alleged to have taken place on 04.10.2022.
>
> (ii) Learned APP under instructions of IO is unable to bring on record any special circumstances against the applicant.
>
> (iii) The role attributed to the applicant- accused;
>
> (iv) That the applicant is a Additional Income Tax Commissioner and no any other criminal antecedents against him;
>
> (v) There is creating serious doubt about demand and acceptance of the amount;

> (vi) There is no discovery or recovery from the applicant;"

16. The High Court further directed that despite grant of anticipatory bail, CBI could apply for police remand of Respondent No. 1 and that if the same was granted by the competent Magistrate, Respondent No. 1 would be set free immediately upon completion of the police remand. The relevant part of the impugned order to this effect reads as under:

> "16. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant even if, remanded to the police custody, upon completion of such period of police remand,

www.taxcode.in

> shall be set free immediately, subject to other conditions of this anticipatory bail order. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the applicant on bail. Rule is made absolute. Direct service is permitted."

17. Following the High Court's directions, Respondent No. 1 joined the investigation and appeared on three days but is stated to have not produced his mobile phone(s) though he was asked to do so repeatedly. The CBI, then, applied for police remand of Respondent No. 1 and, on 30th December, 2022, the Special Judge, CBI Court No. 3 partly allowed the said application. The Court, upon perusal of the case diary, observed that the allegations against Respondent No. 1 seem well-founded and that remand is necessary for the purpose of investigation to collect the missing link of evidence and to unearth the larger conspiracy. The application was allowed in the following terms:

> "The Accused Mr. Santosh Kumar Karnani is directed to appear and surrender himself to the custody of Investigating Officer, CBI /ACB/ Gandhinagar from 10.00 am to 7.00 pm on dated 31/12/2022,

www.taxcode.in

> 01/01/2023, 02/01/2023 and on 03/01/2023, in connection with RC-0292022A0011 GNR. It is further directed that accused shall be set free at 7.00 pm on respective dates.
>
> Further as per the direction of Honourable Gujarat High Court, upon completion of aforesaid period of remand, the accused be set free upon expiry of remand period and report be submitted to this Court along with copies of medical examination paper/ Certificate. The case diary be handed back to the Investigating Officer.
>
> The accused is hereby directed to give full cooperation to Investigating officer to carry out proper investigation of this case.
>
> The Investigating Officer is hereby directed to strictly adhere to the guidelines laid down by the Hon'ble Supreme Court of India in case of **D.K. Basu vs. State of W.B.** reported in **AIR 1997 SC 610** and Honourable Gujarat High Court, while the accused is in custody and refrain from any custodial ill-treatment or torture"

18. CBI, thereafter, preferred an application for suspension of the aforesaid order before Special CBI Court on the ground that they wish to challenge it before the High Court of Gujarat. Hence, Special Judge, CBI Court No. 3 stayed operation of its order till 7th January, 2023. This was later extended by

www.taxcode.in

the Court till the final disposal of the Special Leave Petition (Crl.) No. 295 of 2023.

SUBMISSIONS

19. Assailing the impugned order granting anticipatory bail to Respondent No. 1, Mr. Tushar Mehta, learned Solicitor General of India on behalf of the CBI made the following submissions:

i. Considering the gravity and seriousness of the offence and the position held by Respondent No. 1, the High Court erred in exercising its discretionary jurisdiction under Section 438 of the CrPC;

ii. The High Court did not appreciate the material collected against Respondent No. 1 which establishes a clear demand & acceptance of bribe by him in view of his voice recordings seeking an amount of Rs. 30 lakhs from the complainant and acknowledging payment thereof. The relevant voice recordings have been analysed and the voices have been identified

to be those of Respondent No. 1 and the complainant;

iii. The High Court grossly erred in observing that the FIR was registered after a long delay on 12th October, 2022. On that day, the CBI had only re-registered FIR No. 12/2022 which was initially registered by ACB Police Station on 4th October, 2022.

iv. Respondent No. 1's name was included in the 'Agreed List' in respect of Group A officers of the Income Tax Department for the year 2015 and thus, his service record is not clean;

v. Respondent No. 1 evaded arrest when the ACB team raided his office after he had acknowledged the payment of the bribe money over a WhatsApp call. Respondent No. 1 & his colleagues used criminal force to deter the ACB team from effecting arrest and collecting material evidence. While doing so, Respondent No. 1 handed over his mobile phone, which is a crucial piece of evidence,

to his colleague to ensure that the same was not seized by the investigating agency. This has been recorded in the CCTV cameras of the office;

vi. The audio recordings and video footage have been examined by the Directorate of Forensic Science, Gujarat certifying their genuineness. The report concludes that there are no signs of alteration in the same;

vii. Respondent No. 1 falsely pleaded that he had taken casual leave from the competent authority and misled the investigating agency by sending a reply to the notice issued under Section 41A, CrPC through the email ID of Blue Heaven Hotel, Jaipur. Upon investigation, it was found that Respondent No. 1 had never stayed at that hotel;

viii. During investigation, reliable evidence has come on record to show that other Income Tax officials were hands in glove with Respondent No. 1, which is also evident from the active role played by some officials

www.taxcode.in

in helping Respondent No.1 to avoid arrest by the ACB on 4th October, 2022. Custodial interrogation is highly necessary to ascertain the deeper plot at play and to examine the involvement of other Income Tax officials;

ix. Respondent No. 1 appeared before the CBI after the protection granted by the High Court but did not handover his mobile handsets which are a crucial piece of evidence and is, thus, not cooperating with the investigation. Custodial interrogation is necessary in this case to take the investigation to its logical conclusion;

x. Reliance has been placed on the judgment of this Court in ***State Rep. By The CBI v. Anil Sharma***[1] to argue that "custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the

1 (1997) 7 SCC 187.

www.taxcode.in

Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude 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.";

xi. Reliance has also been placed on the decisions in ***Prem Shankar Prasad v. State of Bihar***[2], ***State of Madhya Pradesh v. Pradeep Sharma***[3] and ***Lavesh v. State (NCT of Delhi)***[4] to urge that anticipatory bail should not be granted to an absconder;

xii. The High Court passed an unusual order directing that the investigating agency would

2 2021 SCC OnLine SC 955.
3 (2014) 2 SCC 171.
4 (2012) 8 SCC 730.

www.taxcode.in

be at liberty to apply to the competent Magistrate for police remand of Respondent No. 1 and in the same breath, prevented custodial interrogation of the main suspect.

20. Supporting the above submissions on behalf of the CBI, Mr. Maninder Singh, learned Senior Counsel appearing for the complainant, made following additions:

i. The High Court ignored the observations & findings of the learned Sessions Court recorded while rejecting Respondent No. 1's application for anticipatory bail. The said Court had gone through the material on record, including the case papers, and then only observed that custodial interrogation was necessary to enable the investigation agency to reach the core of the matter.

ii. The High Court failed to appreciate the unequivocal demand of Rs. 30 lakhs made by Respondent No. 1, which was recorded by the complainant on a Digital Voice Recorder

www.taxcode.in

and acceptance of that bribe money through Dhara Angadia Firm.

21. On the other hand, Mr. Mukul Rohatgi and Mr. Shyam Divan, learned Senior Counsels strongly refuted the insinuations made against Respondent No. 1 and defended the High Court order granting pre-arrest bail with the following submissions:

i. The allegations levelled against Respondent No. 1 are false and concocted. Respondent No. 1 never raised any demand for gratification as alleged by the complainant. Respondent No. 1 had no connection with the search and seizure action taken against the complainant's company in September 2021 or with the preparation of the appraisal report. Respondent No. 1 is not the Assessing Officer of the complainant's case and the matter is entrusted to some other officer;

ii. There is no evidence of demand or acceptance of bribe which are *sine qua non* for establishing the offence. In trap cases

under Section 7 of Prevention of Corruption Act, the conversation of demand is to be recorded by the complainant in the presence of independent panchas and the trap laying Officer has to ensure that there is no possibility of any tampering. In the present case, the voice recording of the alleged demand has been done without any police involvement and thus, holds no evidentiary value. The alleged deposit of the amount was made in an Angadia firm which is unknown to Respondent No. 1 and cannot be termed as acceptance of bribe. Respondent No. 1 has no connection with Malav Ajitbhai Mehta, who is stated to be the owner of the account wherein the amount was deposited and Respondent No. 1 was not present at the site of the Angadia firm;

iii. The complainant has animosity with Respondent No. 1 due to the past survey action taken for the financial year 2018-19 against his company which led to disclosure

www.taxcode.in

of additional income of Rs. 50 crores. This fact has not been disclosed in the FIR. The complainant has falsely implicated Respondent No. 1 due to his apprehensions that Respondent No. 1 will impose huge tax liability on him & his company;

iv. A perusal of FIR No. 12/2022 shows that it was registered on 4th October, 2022 at 9:30 pm while the acts of the alleged demand, laying down of the trap, deposit of money at Dhara Angadia and the raid at Respondent No. 1's office occurred on 3rd October, 2022 and during the daytime on 4th October, 2022. Additionally, there is no record of the complainant meeting police officials prior to the registration of FIR. The delay in registration of FIR which is more than 24 hours after the alleged demand of illegal gratification, has not been explained;

v. Only Respondent No. 1 is sought to be arrested by the CBI. The owner or employees of Dhara Angadia firm have not been

arrested and the High Court order granting anticipatory bail to Malav Mehta has not been challenged by the CBI before this Court;

vi. CBI has misused the provisions of Section 41A of the CrPC to arrest Respondent No. 1. A bare perusal of the provision and the guidelines laid down by this Court in ***Arnesh Kumar v. State of Bihar***[5] suggest that a notice under Section 41A would be issued only when the investigating agency does not require the custody of a person. In the present case, notices under Section 41A were issued post the raid conducted by ACB team at Respondent No. 1's office by which time they had decided to arrest him;

vii. As per settled law of this Court, Respondent No. 1 cannot be termed as an absconder as he was availing his legal remedies. However, despite this, the investigating agency published notices in the media and pasted

5 (2014) 8 SCC 273.

www.taxcode.in

'Wanted' posters with Respondent No. 1's name, photo and designation at various places, which indicates *mala fides* of the investigation agency;

viii. The *bona fides* of Respondent No. 1 are evident from his conduct post the grant of anticipatory bail. As directed by the High Court, Respondent No. 1 appeared before the CBI on at least four occasions, as and when called. Respondent No. 1 has also voluntarily given his voice samples. Given the fact that Respondent No. 1 is cooperating with the investigation, custodial interrogation is not required. The High Court erred in directing that, despite the grant of anticipatory bail, the investigating agency would be at liberty to apply to the competent Magistrate for police remand. This part of the order was to the disadvantage of Respondent No. 1 but he abided by the same and appeared before the Court when the CBI applied for police remand;

ix. Respondent No. 1 has an impeccable service record as is evident from his posting to one of the most sensitive assignments in the department. Such postings are only given to senior officers with clean images. His integrity is beyond doubt and he has an unblemished past record. There is no case of disproportionate assets against Respondent No. 1;

x. Section 17A of the Prevention of Corruption Act, 1988 as amended in 2018, provides for a bar on any enquiry, inquiry or investigation by a police officer into an alleged offence by a public servant, where the alleged offence relates to any decision taken or recommendation made in exercise of official functions or duties, without the previous approval of the competent authority. In this case, the investigating agency has not complied with the mandatory procedure of Section 17A and has initiated investigation on the complaint without any prior approval of the Competent

www.taxcode.in

Authority. The breach of these mandatory conditions vitiates the proceedings initiated against Respondent No. 1;

xi. In these circumstances, the High Court has rightly granted anticipatory bail to Respondent No. 1 and has provided adequate reasoning for the same in paragraph 12 of the impugned order;

xii. Cancellation of bail has to be dealt with on a completely different footing in comparison to refusal of bail and 'cogent and overwhelming' reasons are necessary to cancel bail once granted. Reliance has been placed in this regard on ***Dolat Ram v. State of Haryana***[6] wherein a two-judge Bench of this Court held that:

> "4. 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

6 (1995) 1 SCC 349.

www.taxcode.in

> 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."

xiii. No supervening circumstances for cancellation of bail have been pointed out by the CBI or the complainant.

ANALYSIS

22. The law on grant of anticipatory bail has been summed-up by this Court in ***Siddharam***

www.taxcode.in

Satlingappa Mhetre v. State of Maharashtra[7], after due deliberation on the parameters evolved by the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab***[8]. This Court held thus:

> "112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:
>
> (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
>
> (iii) The possibility of the applicant to flee from justice;
>
> (iv) The possibility of the accused's likelihood to repeat similar or other offences;
>
> (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
>
> (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

7 (2011) 1 SCC 694.
8 (1980) 2 SCC 565.

www.taxcode.in

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

23. In ***Sushila Aggarwal v. State (NCT of Delhi)***[9]**,** the Constitution Bench reiterated that while

9 (2020) 5 SCC 1.

www.taxcode.in

deciding applications for anticipatory bail, courts should be guided by factors like the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case.

24. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is *prima facie* satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

25. Keeping these principles in mind, we proceed to evaluate the rival submissions. At the outset, it is to be noted that the High Court fell in a factual error in observing that FIR was registered on 12th October, 2022 for the offence alleged to have taken place on 3rd and 4th October, 2022. The FIR was registered by the ACB against Respondent No. 1 on 4th October, 2022 under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 and was re-registered by CBI on 12th October, 2022.

26. Further, the primary ground assigned by the High Court to grant anticipatory bail to Respondent No. 1 is that there was doubt as to the acceptance of the bribe amount since records of Dhara Angadia firm had not been produced establishing any link between Respondent No. 1 & the firm.

27. The CBI has produced the case diary which contains the statement made by Smit Thakkar, who handles Dhara Angadia firm. He has clearly stated that Malav Mehta was the owner of Vardhman account and had informed him that 30 lakhs rupees would be deposited in his account on 4th October,

www.taxcode.in

2022, which in turn had to be sent to someone else. The purported recording of conversation between the complainant and Respondent No. 1 wherein Respondent No. 1 thanked the complainant, after the deposit of amount in the Vardhman account, is a reasonable link to connect Respondent No. 1 with the deposit of illegal gratification in Dhara Angadia firm, thereby *prima facie* showing acceptance thereof.

28. Regarding the alleged discrepancy of delay of more than 24 hours in the registration of FIR, we find from the material produced before us that the complainant started narrating the complaint at 07:15 hours and it ended at 08:00 hours on 4th October, 2022. The panchnama, annexed in the case diary, provides details of the trap laid by the ACB and lists all the activities of the ACB team on that day, thereby dispelling any doubts of *mala fides* on the part of the investigating agencies.

29. We have also gone through the statement of Mr. Vivek Johri, Assistant Commissioner of Income Tax who has stated that Respondent No. 1 handed

www.taxcode.in

over his mobile phone to him before leaving the office, which Mr. Johri later threw away.

30. The manner in which Respondent No. 1 forcefully evaded his arrest with the help of his colleagues and got the evidence destroyed, is a strong circumstance to indicate his complicity at this stage though a clear picture would emerge only on completion of investigation.

31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

www.taxcode.in

32. From the material placed on record, it seems that *prima facie*, the allegations against Respondent No. 1 cannot be brushed aside lightly at this stage. There appears to be a well-organised syndicate comprising officers and officials of the Income Tax Department, businessmen and Hawala traders, who are in tandem. Such a nexus needs to be unearthed through an unimpaired and unobstructed investigation.

33. The contention that prior approval of investigation, as mandated under Section 17A of Prevention of Corruption Act, has not been obtained and thus, the proceedings initiated against Respondent No. 1 stand vitiated, has no legal or factual basis. Section 17A merely contemplates that police officers shall not conduct any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken in discharge of official functions or duties, without the previous approval of the competent authority. The first proviso to the section states that such approval is not necessary in cases

involving arrest of the person on the spot on the charges of accepting undue advantage.

34. As may be seen, the first proviso to Section 17A refers to cases wherein a public servant is charged with acceptance of an undue advantage or attempt thereof. A prior approval or sanction to investigate such an officer in a trap case is likely to defeat the very purpose of trap and the investigation, which is not the underlying intention of the legislature. The investigation against Respondent No. 1, being an accused of demanding a bribe, did not require any previous approval of the Central Government. That apart, the accusation against Respondent No. 1 does not revolve around any recommendations made or decisions taken by him in his quasi-judicial or administrative capacity.

35. It is true that cancellation of bail must be done only for cogent and overwhelming reasons. Nevertheless, setting aside an unjustified order granting bail is distinct from cancellation of bail. This Court would not, invariably intervene into the judicial discretion exercised by the High Court while

granting bail to an accused. All that to be ensured is that the High Court exercises its discretion judiciously, cautiously and strictly in conformity with the basic principles laid down by this Court from time to time in a series of decisions.

36. The Constitution Bench in ***Sushila Aggarwal (supra)*** observed that:

> "92.11. The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances."

SUMMATION

37. Having considered the nature of allegations, material on record and the settled legal principles on grant of anticipatory bail, we are of the view that, howsoever hard or harsh it may be, the High Court ought to have refrained itself from extending protection against arrest to Respondent No. 1 in exercise of its discretionary jurisdiction under Section 438 of the CrPC.

www.taxcode.in

38. Assuming Respondent No. 1 had some valid apprehensions that the actions of ACB (State Police) were actuated with extraneous reasons, he can no longer say so once the investigation has been transferred to CBI. We do not find any allegation of personal vendetta, victimisation, bias or ulterior motive against the Central Agency. In any case, CBI is expected to carry out a free, fair and dispassionate investigation with faithful observance to the rights of an accused, who is subjected to custodial interrogation.

39. The appeals are, accordingly, allowed. The impugned judgment and order of the High Court dated 19th December, 2022 is set aside and the anticipatory bail application of Respondent No. 1 is dismissed. As a consequence thereto, the order dated 30th December, 2022 passed by the Special Judge, CBI Court No. 3 partly allowing CBI's application for remand is also set aside.

40. We clarify that this Court has expressed only *prima facie* opinion on the merits of the allegations for the limited purpose to refuse or grant pre-arrest

bail. If Respondent No. 1 moves an application for grant of regular bail before an appropriate Court, the same shall be considered on its own merits and in accordance with law, uninfluenced by the observations made hereinabove.

41. The appeals are disposed of in the above terms.

42. Pending application(s), if any, stand disposed of as well.

.....J.
(SURYA KANT)

.....J.
(J.K. MAHESHWARI)

New Delhi;

April 17, 2023.

www.taxcode.in