

BA No.534/2022

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Oral Order

CNR NO.: MHCC02-010685-2022

IN THE SPECIAL COURT FOR CBI AT GREATER BOMBAY

**BAIL APPLICATION NO.534 OF 2022**

IN

REMAND APPLICATION NO.820 OF 2022

**Mr. Amitava Dutta**

Aged : 49 years, Occ : Service

Presently residing at : Flat No.1803,

Tower A-2, Sarovar CHS, Kandivali (E),

Mumbai – 400 101

.. Applicant

**Versus**

CBI, STB, Mumbai

.. Respondent

Shri. Pranav Badeka, Advocate for applicant

Shri. Jitendra K. Sharma, SPP for respondent

**CORAM : S. H. GWALANI, SPECIAL JUDGE  
COURT ROOM NO.48**

**DATED : 19<sup>th</sup> AUGUST, 2022**

**ORAL ORDER**

Applicant/accused Amitava Dutta, has filed present application for bail under section 439 of the Code of Criminal Procedure in Remand Application No.820 of 2022 in R.C. No.3/S/2022/CBI/STB/Mumbai, registered for offence under section 120-B of the Indian Penal Code and Section 7 of the Prevention of Corruption Act.

**Case of the prosecution in brief as under :**

2. On 11.07.2022, first informant Hitesh Desai, received notice from applicant to pay Rs.11,62,854/- towards employee's contribution of the company for the period July to September, 2019 which was not paid by

the first informant's company. However, it was the case of first complainant that amount due and payable from them is only Rs.3,39,078/-. Thereafter, first informant met the applicant/accused on 20<sup>th</sup> July, 2022, at the applicant's office. At this meeting, first informant informed applicant that due to technical issues, challan could not be uploaded for which they had already informed the department vide letter dated 11<sup>th</sup> December, 2019.

3. Further case of the prosecution is that, applicant asked first informant to submit a further representation on 25<sup>th</sup> July, 2022. When on 25.07.2022, first informant met the applicant with representation, at that time, applicant asked him to settle the said notice by paying 15% of the notice amount as a bribe. Thereafter, applicant suggested certain changes in the representation and to meet him on 4<sup>th</sup> August, 2022.

4. It is further alleged that applicant agreed to accept Rs.2,00,000/- (Rupees Two Lakhs only) as the first installment out of the total bribe amount of Rs.2.91 lakhs on 5<sup>th</sup> August, 2022 and remaining amount afterwards. It is further alleged that after verification of first informant, a trap was led on 05.08.2022 wherein applicant was caught red handed while demanding and accepting Rs.2,00,000/- and said amount of Rs.2,00,000/- was recovered from the applicant. Therefore, applicant was apprehended and on 06.08.2022, at 1.00 hours was arrested by the respondent.

5. It is further alleged that during house search of applicant/accused huge cash amount of Rs.20,18,300/- was recovered. Beside this, amount of Rs.19,383/- approx from his purse and amount of Rs.25,000/- was also recovered from the accused.

6. After police arrest, applicant was remanded to judicial custody. Now, by filing bail application applicant/accused has claimed that allegations made against him are false and baseless and no prima facie case is made out against him. He has falsely and wrongly implicated in a false case and no offence under section 7 of the P. C. Act and section 120-B of the IPC as alleged is made out against him. Arrest memo and remand application preferred by the respondent is self contradictory.

7. It is falsely alleged by respondent that amount of Rs.2,00,000/- was recovered from the applicant out of Rs.2,91,000/- as a first installment and second was to be paid later. As such assuming without admitting that amount of Rs.2,00,000/- is recovered from the applicant, there is no requirement of the custody of the applicant and no purpose will be served by languishing the applicant in jail.

8. He further contended that all the evidence is documentary in nature and verification of first informant was also done as claimed by the respondent and there is no question of the applicant tampering and hampering any evidence or witnesses. Therefore, further custody of the applicant is not required. Applicant is a public servant and is easily available and hence there is no question of delay or no availability of him for any investigation. He has deep roots in society and there is no question of him being absconding or not remaining present before this Court for facing the prosecution. He undertakes that he shall remain present before the Investigating Agency as and when called and shall co-operate. Accordingly, applicant prayed in above terms.

9. CBI strongly opposed the application by filing their reply vide **Exh.02**, denied the contents of application and reiterated the case of

the prosecution. It is contended that there is enough material to corroborate the allegations including recorded conversation between the accused and complainant, wherein he has demanded 25% of the notice amount Rs.11,62,854/- and demanded Rs.2 lakhs as first installment and remaining in next two week. There is recovery of Rs.2 lakhs from the possession of applicant/accused in presence of CBI team members and independent witnesses. Thus, Recovery of Rs.2 lakhs from possession of accused and pink colour solution of hand wash of accused established receipt of bribe money. The procedure of recovery of the default amount of Rs.11,62,854/- by ESIC, Mumbai is of civil nature. Whereas, the instance case has been registered on a specific complaint for demanding bribe to settle the said default amount by the accused which is a criminal act. The demand and recovery of more than Rs.20 lakhs in cash from the house of accused established his role that he is habitual in taking bribe. During custodial interrogation he could not give satisfactory reply for keeping that much of cash amount with him, though he is living alone in Mumbai, and his family is residing at Kolkata. Investigation is at initial stage and statement of complainant, shadow witnesses and other material witnesses are yet to be recorded. Accused is highly influential and is second senior most officer in his office. Several incriminating documents are yet to be recovered from his office and statement of crucial witnesses are yet to be recorded and if accused is released on bail there is strong apprehension that he may influence the witnesses and may tamper with the other evidence which is yet to be collected and therefore, may hamper the investigation. Accordingly, prayed that instant application is devoid of merits and liable to be dismissed in the interest of justice.

10. Perused bail application, reply, remand application and case diary. Heard Shri. Pranav Badeka, learned advocate for applicant/accused and Shri. Jitendra K. Sharma, learned SPP for CBI at length. They argued in terms of respective contention of party. During course of argument, learned advocate for applicant has placed his reliance on following case laws.

- i. **P. Chidambaram Vs. Central Bureau of Investigation, (2020) 13 Supreme Court Cases 337.**
- ii. **Satender Kumar Antil Vs. Central Bureau of Investigation and Another, 2022 SCC OnLine SC 825.**
- iii. **State of Maharashtra Vs. Nainmal Punjaji Shah and Another, 1969 (3) Supreme Court Cases 904.**
- iv. **Khatri and Others Vs. State of Bihar and others, (1981) 1 Supreme Court Cases 627.**
- v. **Ramkrishna Raghunath Burkule Vs. State of Maharashtra, Vol- II (1997) CCR 391, Hon'ble Bombay High Court.**
- vi. **Krushna Guruswami Naidu Vs. The State of Maharashtra, (2011) 3 AIR Bom R 33.**
- vii. **In Re : Llewelyn Evans, AIR 1926 Bom 551.**

viii. **Dr. Pradeep Kumar Vs. State of Karnataka, Criminal Petition No.4535 of 2019 decided on 22.07.2019 by the Hon'ble Karnataka High Court.**

11. I have gone through aforesaid authorities.

12. During course of argument, learned SPP for CBI further submitted that statement of witness Nitin Bandre, has been recorded under section 164 of Cr.P.C. In the said statement he has corroborated the story of prosecution and also stated that before the present incident, he had also collected such parcels and envelopes for 2 to 3 occasions as per order of accused Amitava Dutta. Therefore, he claimed that opportunity may kindly be granted to CBI to conduct the investigation and bail application of the accused may kindly be rejected.

13. At this stage, the Court has to consider nature and seriousness of accusation, severity of offences, nature of evidence collected, character and behaviour of the accused, possibility of tampering of evidence and accused absconding. The existence of a prima facie case is only to be examined. Detail discussion of evidence and elaborate documentation of merits is to be avoided.

14. In the case of **Satener Kumar Anil (cited supra)** the Hon'ble Apex Court held that, **“Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man.”** Further, from the case of **P. Chidambaram (cited supra)** it is clear that **“mere**

**that any economic offence has been registered cannot be a sole ground to refuse anticipatory bail or regular bail.”**

15. In present case, offences under section 120-B of IPC and section 7 of the P. C. Act have been invoked in this crime. Punishment provided for these offences is up to Seven Years. Role attributed to applicant is that, he has demanded 15% of the notice amount Rs.11,62,854/- and demanded Rs.2 lakhs as first installment and remaining in next two week. Admittedly, there is recovery of Rs.2 lakhs from the possession of accused in presence of CBI team members and independent witnesses. Recovery of Rs.2 lakhs from possession of accused and pink colour solution of hand wash of accused established receipt of bribe money. It is to be noted that during investigation amount more than Rs.20 lakhs in cash have been recovered from the house of accused. Pre-trap and post trap panchanamas have been drawn. Recovery of certain articles and papers have been made.

16. Present applicant/accused was arrested on 06.08.2022 at 1.00 hours. Initially, he was remanded to police custody and thereafter, on 10.08.2022, he has been remanded to judicial custody as per request made by the prosecution/investigating agency. This itself shows his custodial interrogation with police is not required. More so, during the judicial custody of accused, statement of witness Nitin Bandre under section 164 of Cr.P.C. was recorded by learned Addl. Chief Metropolitan Magistrate. Investigating officer also recorded the statement of other witnesses. He has also collected electronic evidence through mobiles and voice specimen sample of accused and other were also taken.

17. In above background and in view of the facts mentioned in aforesaid paras, there is no need to have custodial interrogation of applicant/accused. Learned advocate for applicant/accused submitted that applicant is already suspended. CBI has also not disputed the said fact. That being so, possibility of his getting access to the documents in office is remote. So, prima facie at this stage, custodial interrogation of this accused is now not necessary. So far as contention of respondent that role of other conspirators as well as office Boy Nitin Bandre needs to be investigated to find out any racket is involved, it can be done by following due procedure. For that purpose, further incarceration of applicant/accused is not required. Applicant is public servant and has residences at Kandivali, Mumbai. In the facts of matter his possibility of absconding does not appear to be well founded. So far as apprehension of investigating agency in relation to influencing witnesses and tampering with prosecution evidence is concerned; allegations in that regard are vague and of general nature. Even otherwise same can be addressed by imposing certain conditions. In the light of discussion made above and in the facts of matter, I am inclined to exercise discretion of granting bail to applicant/accused. Hence, I pass following order.

### ORDER

1. Bail Application No.534 of 2022 is allowed.
2. Applicant/accused **Amitava Dutta** be released on bail on his executing P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand only) with one or more sureties in like amount.
3. Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or tamper with evidence.



4. He shall furnish his detailed permanent residential address and native residence along with mobile number to the Court and Investigating officer. In case of change of address and mobile number he shall intimate the same in advance to the Court and Investigating officer.
5. He shall not abscond and make himself available for investigation purpose and co-operate Investigating Officer in investigation and attend the CBI Office, Mumbai as and when required by the Investigating Officer until further order.
6. He shall not leave India without prior permission of the Court.
7. Accordingly, bail application stands disposed of.

Date : 19.08.2022



(S. H. Gwalani)  
Special Judge, CBI  
Gr. Bombay

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

20.08.2022, 5.25 p.m.

UPLOAD DATE AND TIME

Mrs. S. P. Pawar  
Stenographer (Grade - I)

Name of the Judge (With Court Room No.)	H.H.J. Shri. S. H. Gwalani C.R.No.48
Date of Pronouncement of JUDGMENT/ORDER	19.08.2022
JUDGMENT/ORDER signed by P.O. on	20.08.2022
JUDGMENT/ORDER uploaded on	20.08.2022