

**(2020) 04 DEL CK 0025**

**In the Delhi High Court**

**Case No :** Bail Application No. 2715, 2716 Of 2019

Christian Michel James

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

**Date of Decision :** 06-04-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 21, 32  
Indian Penal Code, 1860 — Section 376, 376A, 376B, 376C, 376D, 376E, 420  
Prevention of Corruption Act, 1988 — Section 7, 13, 13(1)(d), 13(2)  
Prevention of Money Laundering Act, 2002 — Section 3, 4  
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6

**Citation :** (2020) 04 DEL CK 0025

**Hon'ble Judges :** Mukta Gupta, J

**Bench :** Single Bench

**Advocate :** Aljo K. Joseph, M.S.Vishnu Shankar, Sriram P.

**Final Decision :** Dismissed

## Judgement

Mukta Gupta, J

Crl.M.A. /2020 (Urgent) (to be numbered)

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1. The hearing of these two petitions has been conducted through Video Conferencing.

2. By these applications, the petitioner seeks interim bail in case RC No. 207/2013 A 003 dated 12.03.2013 under Section 420 IPC and Sections 7, 8, 9,

12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act (in short 'P.C.Act') and in CC No. 1/2015, instituted pursuant to ECIR No.

DLZO/15/2014/AD (VM) recorded on 13.07.2014 under Section 3 and 4 of Prevention of Money Laundering Act (in short, 'PMLA Act')

3. Case of the petitioner is that in Suo Moto Writ Petition No. 1/2020 before the

Honorable Supreme Court, there was a direction to release prisoners who have charged with offences punishable with 7 years imprisonment or less than that. Though the petitioner does not challenge the High Powered Committee's Order of this Court however considering the conditions in Tihar Jail petitioner should also be released on bail. Learned counsel for the petitioner submits that the FIR in question was registered in March, 2013 and investigation is going on since last 7 years. The charge sheet was filed by the CBI in the year 2017. The petitioner has been extradited from Dubai on 4th December, 2018 after filing of the charge sheet, however, further investigation is still going on after filing of the charge sheet. The petitioner has been interrogated continuously for 30 days by both CBI and Enforcement Directorate after his extradition on 4th December, 2018. From 5th January, 2019, the petitioner is in judicial custody. Permission for further investigation was granted by the Special Court, which is going on since last three years whereafter CBI is intending to file the supplementary charge sheet. The petitioner is in custody for more than now 16 months. All the accused persons including main accused namely S.P. Tyagi, who were arrested before and after petitioner's arrest, have been released on bail by the Special Court. Learned counsel for the petitioner further submits that Rajiv Saxena, an accused, who is equally involved in the money laundering charges and was extradited being at par with the petitioner, was granted bail within 60 days and another accused Sushen Mohan Gupta, a U.S. citizen was granted bail immediately. Special Court rejected bail application of the petitioner on two counts i.e. firstly, that the petitioner does not have deep rooted connections in India and secondly, there is a flight risk. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in *Baba Vs. State of Maharashtra*, (2005) 11 SCC 569 to submit that even where the offences alleged were under Terrorist and Disruptive Activities (Prevention) Act (in short, "TADA"), Supreme Court granted bail due to delay in trial. Learned counsel for the petitioner also relies upon the decision in the case of *Sanjay Chandra Vs. CBI* (2012) 1 SCC 40 wherein the Supreme Court laid down consideration for grant of interim bail. He submits that the passport of the petitioner is already in custody of the CBI and the petitioner is a British citizen. Investigation is still going on and the supplementary charge sheet has not been

filed. He further submits that the petitioner has proved innocence in Italian Court; faced extradition in Dubai; the evidence is documentary in nature;

thus there shall be no purpose achieved in keeping the petitioner in custody and the petitioner is willing to abide by any conditions imposed by this

Court. Learned counsel submits that the petitioner has a low immunity level and is aged 59 years. He states that the strength of the prisoners of Tihar

Jail is 10000 whereas presently, around 17000 prisoners are lodged therein. Thus, because of overcrowding and social distancing not being mentioned,

petitioner is prone to catch Covid-19.

4. Learned counsel for the CBI contends that the regular bail applications of the petitioner are being argued by the learned counsel for the petitioner

and in the garb of interim bail applications, petitioner cannot be permitted to re-argue the bail applications on merits. Present applications seeking

interim bail are based primarily on two grounds i.e. keeping in view the present Covid-19 pandemic and the overcrowding in jail, thereby social

distancing not being maintained and secondly, the petitioner claims parity with the co-accused on the ground that they have been released, however,

the second issue would be relevant while hearing the regular bail applications. Even in the order of the Honâ??ble Supreme Court in its Suo Moto

WritPetition (C) No. 1/2020 on 23rd March, 2020, Honâ??ble Supreme Court directed constitution of the High Powered Committees by different

States and High Courts to consider the criteria for release of prisoners who have been convicted to be released, on parole and who are undergoing

trials for offences punishable with sentence for imprisonment of seven years or less. The High Powered Committee constituted under the

Chairpersonship of Honâ??ble Ms. Justice Hima Kohli has specifically excluded cases of foreign national, prisoners involved in more than one case

and cases under PMLA. Thus, the petitioner is not entitled to be released pursuant to the suo moto directions of the Honâ??ble Supreme Court dated

23rd March, 2020 as he does not follow these three criterias. Even on merits, the petitioner is not entitled to bail for the reason, the petitioner did not

join investigation anywhere and after a long drawn extradition process, was extradited from Dubai. As a matter of fact, petitioner had landed in India

at the Airport at Delhi on 12th February, 2013 when in the proceedings at Italy, the officials of Agusta Westland were arrested at Italy, however, the

petitioner again boarded a flight for Dubai and left India. The petitioner has not been staying in United Kingdom for the last 6-7 years though he is a

British National. The impugned order passed by the learned Trial Judge challenging whereby the petitioner seeks regular bail, notes that the petitioner

has never joined investigation in Italy, hence, the acquittal of the other accused during trial at Italy has no meaning qua the petitioner. The claim of

parity of the petitioner is also unfounded. Rajiv Saxena is not an accused as yet in the CBI's charge sheet already filed and is an approver in the

ECIR recorded by the Enforcement Directorate. Further, Sushen Mohan Gupta, who is a U.S. citizen has all along stayed in India and he has also not

been charge sheeted as an accused in the CBI case as yet and is an accused in the complaint filed by the Enforcement Directorate. Both Rajiv

Saxena and Sushen Mohan Gupta have not been arrested till date by the CBI and thus, the claim of the petitioner seeking parity on their release after

arrest is unfounded to the extent seeking bail in the CBI case. As regards the apprehension of the petitioner due to over-congestion in the Tihar Jail, it

is submitted by the learned counsel for the CBI that the petitioner is lodged in a Cell with only two other inmates and all facilities have been provided

to him. Hence, there being no over-congestion, the petitioner is not entitled to interim bail on this ground also. In any case, in Tihar Jail, each and every

prisoner has been screened to check whether he is Covid 19 positive or not and no prisoner till date, has been found to be suffering from Covid 19.

The prisoners now being arrested are also screened before being admitted in jail and are lodged separately so as to not mingle with the prisoners

already lodged in jail. Even the Hon'ble Supreme Court has appreciated the manner in which the prisoners are being kept in Tihar Jail. The

supplementary charge sheet has been prepared by the CBI and since in view of the amendment to the P.C. Act, sanction is required even for retired

government servant, filing of the charge sheet is awaiting the sanction to be received.

5. Learned counsel for the Enforcement Directorate objects to the maintainability of the application on the ground that the same is supported by the

affidavit of the counsel and not the petitioner. He contends that the petitioner is presently lodged at the safest place in the country being the Tihar Jail.

There is no threat of the petitioner coming on contact with any Covid-19 patient and thereby, his apprehension that due to his age, and being a British

national, not accustomed to Indian conditions, his immunity is low, is totally unfounded. The petitioner's case that he has been fully co-operating

and that the other accused at Italy have been exonerated, deserves to be rejected for the reason, the petitioner never joined the investigation at Italy

and hence, his case has been kept separately. One of the ground for grant of bail to Rajiv Saxena besides being an approver was also the fact that

Rajiv Saxena was suffering from Cancer and thus, on medical grounds, he was granted bail. Further, there is no likelihood of Rajiv Saxena not being

available during the trial and he was not a flight risk. As regards the bail granted to Sushen Mohan Gupta by the learned Trial Court is concerned, the

said order has been challenged by the Enforcement Directorate by filing a petition before this Court, which is still pending.

6. A perusal of the record would reveal that the petitioner filed Bail Appln. No. 2715/2019 seeking regular bail in R.C. 2017/2013 A 003 dated 12th

March, 2013 under Sections 420 IPC and Sections 7 and 13 of P.C. Act. Bail Appln. No. 2716/2019 was filed seeking bail in the corresponding ECIR

record by the Enforcement Directorate. The regular bail applications of the petitioner were being heard by the Roster Bench. However, the hearing

could not be concluded when the Lock Down due to Covid-19 pandemic was initiated in the country. After the regular bail applications of the

petitioner were not taken on 23rd March, 2020, the petitioner approached the Hon'ble Supreme Court for grant of bail which passed the following

order on 1st April, 2020:

“The Court convened through Video Conferencing.

Aggrieved by the rejection of his application for bail by the CBI Court, the petitioner has moved the Delhi High Court. The Writ Petition

discloses that the submission of the petitioner on the application for bail have been concluded on 4 February 2020. The petitioner has

submitted that on 16 March 2020, the proceedings were adjourned by the High Court to hear arguments in response to the plea for bail.

Mr. Aljo K Joseph, learned counsel appearing on behalf of the petitioner states that in view of the current situation, the petitioner moved an

application before the Registry of the Delhi High Court seeking interim bail, but he was informed telephonically that there was no provision

for listing an old matter before the High Court.

At this stage, since the petitioner has already moved the High Court in a substantive application for bail, we are not inclined to entertain a

petition under Article 32 of the Constitution. However, we would request the High Court to deal with the application for interim bail which

has been filed by the petitioner on its own merits in the event that the main plea for bail cannot be disposed of in the current situation. We

clarify that we have not made any observation on the merits of that plea and leave it open to the petitioner to pursue the application before

the High Court.

Subject to the above observations, the Writ Petition is disposed of.

7. After the disposal of the writ petition before the Hon'ble Supreme Court learned counsel for the petitioner filed the two applications listed today

which are yet to be numbered seeking grant of interim bail. In the meantime the Hon'ble Supreme Court took Suo Moto notice on the congestions

in the various prisons in India and the present Covid-19 situation in the country. On 23rd March, 2020, the Hon'ble Supreme Court in Writ Petition

(C) 1/2020 passed the following order:-

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Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona

Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services

Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine

which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the

State/Union Territory could consider the release of 77 prisoners who have been convicted or are under trial for offences for which

prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than

the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as

aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence

with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Undertrial Review Committee contemplated by this Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every

week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in Armesh Kumar v. State of Bihar, (2014) 8

SCC 273.â??

8. Pursuant to the order of the Hon'ble Supreme Court dated 23rd March, 2020, a High Powered Committee of this Court vide its meeting dated 28th

March, 2020 discussed and resolved the issues, relevant portion whereof is reproduced as under:-

xxxx xxxx xxxx

It has further been resolved that following category of UTPs, even if falling in the above criterion, should not be considered :-

i All inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;

ii. Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;

i. Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;

ii. Those UTPs who are foreign nationals ; and

i Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA ; and

ii Cases investigated by CBI/ED/NIA/Special Cell Police and Terror related Cases, cases under Anti-National Activities and Unlawful

Activities (Prevention) Act etc

xxxx xxxx xxxx"".

In view of the petitioner failing to qualify on three criterias laid down by the High Power Committee, i.e. being a foreign national, involved in more than

one case not being on bail in others and the cases being under Prevention of Corruption Act and Prevention of Money Laundering Act, the petitioner

has not been released on bail.

9. Thus, this Court in terms of the decision of the Honâ??ble Supreme Court is required to decide the interim bail applications on its merit as the

regular bail applications of the petitioner cannot be decided at the moment. In the interim bail applications, the pleas taken by the petitioner are about

the risk involved to him due to the prevailing infections due to spread of Covid-19 pandemic in the country, particularly, in view of the fact that the

petitioner is aged 59 years of age is vulnerable and being a foreign national has compromised immunity level as per the climatic conditions of this

country. The petitioner also states that the bail applications of the petitioner are pending since long and that the other co-accused has been released.

As regards the other co-accused having been released as noted above in the arguments of the learned counsel for the CBI and Enforcement

Directorate, Rajiv Saxena and Sushen Mohan Gupta have not been charge sheeted as accused in the CBI case and not arrested till date by the CBI.

They have been arrested by the Enforcement Directorate. Rajiv Saxena has turned as an approver and for this reason and also the fact that he was

undergoing treatment for Cancer, he was granted regular bail by the learned Special Judge. As regards Sushen Mohan Gupta is concerned, the order

granting bail to this accused by the learned Special Judge has already been challenged by the Enforcement Directorate before this Court. Further,

though Rajiv Saxena was deported, he has roots in India and thus the learned Special Judge held that there was no apprehension of his fleeing away

from justice and was not a flight risk. Further, Sushen Mohan Gupta though a foreign national also has roots in India and in any case, order granting

bail to him is under challenge before the Court. As regards the petitioner is concerned, as noted above, despite being a British national, petitioner has

not been in that country for the last 6-7 years and had to be extradited from Dubai after an inquiry. On knowing about arrest in Italy, the petitioner fled

to Dubai. The petitioner is thus a flight risk and also has no roots in the society.

10. As regards the apprehension of the petitioner being infected by Covid-19 pandemic, it may be noted that the petitioner is lodged in separate cell

with only two other prisoners and thus, is not in a Barrack or dormitory where there are number of prisons. It is not the case of the petitioner that any

of the two inmates residing with him are suffering from Covid-19 pandemic.

Hence, the apprehension of the petitioner also because of the vulnerable age and overcrowding in jail that he is likely to contract Covid-19 which may be detrimental to his health, is unfounded.

11. Learned counsel for the petitioner has relied upon the decision of the Supreme Court in *Baba Vs. State of Maharashtra* (supra) wherein, during the trial of offence under TADA, the petitioner therein was granted bail by the Supreme Court on the ground of delay in the trial, it may be noted that the charge sheet has been filed by CBI and complaint by the Enforcement Directorate, however, and further investigations after the filing of the charge sheet and the complaint case respectively are pending in both the cases. Hence, at this stage, release of the petitioner even on interim bail is not warranted. Further this would be ground to be considered during the hearing in regular bails. Hence, this Court is not inclined to grant interim bail to the petitioner.

12. Applications are accordingly dismissed.

13. It is however clarified that any observations made hereinabove may not be read as final expression of opinion during the trial or during hearing of the regular bails.=