
(1992) 09 DEL CK 0039

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2327 of 1992

K. Chandra

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Citation : (1993) CriLJ 1237 : (1993) 1 Crimes 148 : (1993) 49 DLT 135 : (1992) 24 DRJ 539 : (1993) 1 RCR(Criminal) 399

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : R.K. Anand, A.K. Bhasin and S.K. Saxena, for the Appellant;

Judgement

Usha Mehra, J.

(1) The law of bails, "has to dovetail two conflicting demands, namely on one hand, the requirements of the society for being shielded from the hazards being exposed to the misadventures of a person alleged to have committed a crime, and on the other, the fundamental canon of criminal jurisprudence, namely the presumption of innocence of an accused till he is found guilty." In order to subserve this object, the legislature has given direction/guidelines for granting or refusing bail in addition the courts have evolved certain norms for the proper exercise of such discretion. It is not a static law, it is growing. Its sources are the winds of circumstances and consciousness of man.

(2) The First Information Report bearing No.RC2(A)/92-ACU(V) dated 25th July, 1992 was lodged against Mr. V.Krishnamurthy, Ex-Member, Planning Commission, Harshad S. Mehta, a broker of Bombay, M/s. K.J. Investment Private Ltd. and others unknown. According to the prosecution, the Preliminary Enquiry conducted into the allegation revealed that Mr.V. Krishnamurthy as Member Planning Commission was in charge of key economic sectors including industry, energy, public enterprises, labour, employment and manpower. He was also Chairman of the Committee on dis-investment in public enterprises. Mr. Harshad

S. Mehta, a broker of the Bombay Stock Exchange and Chairman of Grown more Research and Assets & Management Ltd. (hereinafter called as the "GRAM"). The business affairs of this company has an office in New Delhi managed by Mr. Mohan Dass Khandelwal, a broker of Delhi Stock Exchange. M/s. KJ. Investment is a Company registered in Madras on 26th December, 1990. Shri K-Jayaker and Shri K.Chandra both @mL3 sons of Shri V. Krishnamurthy had financial interests in M/s. K. J. Investments Private Ltd. which were being promoted by Shri V. Krishnamurthy. Mr. V. Krishnamurthy and Mr. Harshad S. Mehta had meetings and conversations at Delhi and Bombay and during these meetings they discussed Government policies and Shri V. Krishnamurthy showed his willingness to promote the business interests of Shri Harshad S. Mehta. He then negotiated with Harshad S. Mehta for payment of an amount of Rs.32 lakhs. Subsequently, Mohan D. Khandelwal on behalf of Harshad S. Mehta contacted Mr. V. Krishnamurthy who instructed him to draw a cheque in favor of M/s. K.J. Investments Private Ltd. for an amount that shall be specified by his son Shri K. Chandra. Following a telephonic conversation between the two, Shri Mohan D. Khandelwal sent a cheque of Rs32,74,000.00 to Mr. K. Chandra for and on behalf of Mr. Harshad S. Mehta in favor of M/s. KJ. Investments Private Ltd. This cheque was accepted and paid in the account of M/s, KJ. Investments Private Ltd. at the behest of Shri V. Krishnamurthy without any stipulation or condition for its return. Mr. V.Krishnamurthy was promoting the interests of M/s.KJ. Investments even before becoming a member of the Planning Commission. He approached the Sanwa Bank, New Delhi for sanctioning a loan of Rs.70 lakhs to M/s. KJ. Investments Private Ltd. Mr. V. Krishnamurthy was the guarantor for this loan which Was sanctioned for an amount of Rs.70 lakhs on 29th December, 1990 due for repayment on 14th January, 1992. Without re- payment of this loan, a second loan of Rs.20 lakhs was sanctioned to M/s. KJ. Investments Private Ltd. on 6th November, 1991. This loan was secured by the personal guarantee of Mr. V. Krishnamurthy when he was a public servant. Mr. V. Krishnamurthy's connections with foreign concerns helped M/s. KJ. Investments Private Ltd. in not only securing a loan but also favorably re-scheduling the repayments. It is in the background of these facts and circumstances that an offence against Mr. V. Krishnamurthy, Mr. Harshad S.Mehta, M/s. KJ. Investments Private Ltd. and other unknown was registered under Sections 11,12,13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter called as "P.C. Act") and u/ s 120-B I.P.C. A regular case against the above said persons was registered by Shri U.S. Dutt, S.P. C.B.I., New Delhi and the investigation of the case was also taken up by him.

(3) It is further the case of the prosecution that the firms namely M/s. India Metres Ltd., M/s. K.J. Investments Pvt. Ltd. and M/s. Ergodyne Private Ltd. are family concerns of Mr. V. Krishnamurthy. His second son Mr. K. Jayaker is the Director of M/s. KJ. Investments P/t. Ltd. Said son is an American citizen presently residing in U.S.A. It is in fact the petitioner who is looking after the business interest of M/s. K.J. Investments Private Ltd. Petitioner is the Director of

M/s. Ergodyne (P) Ltd. It is further the case of the prosecution that the petitioner abetted the crime by conspiring with his father to take illegal justification from Mr. Harshad S. Mehta. This can be inferred from the fact that it was the petitioner who informed Mr. Khandelwal the exact amount to be paid and that the said amount on behalf of M/S. KJ. Investments Private Ltd. was received by the petitioner. The said amount was invested by the accused in the firm M/s. India Metre Ltd. which was lying sick. Therefore, he is guilty of abatement as well as of criminal conspiracy along with the others named in the F.I.R.

(4) However, during the investigation it was found that Mr. K. Chandra, the present petitioner, is neither the Director nor the shareholder of M/s. KJ. Investments Private Ltd. As per Company's record, the petitioner Mr. K. Chandra is nobody in M/s. KJ. Investments Private Ltd.

(5) The facts giving rise to the allegations are that M/s. India Meters Ltd. company owned by Mr. V. Krishnamurthy and Mr. K. Jayaker his son was declared sick undertaking in the year 1977. Two lakhs sixty three thousand and seven hundred shares (2,63,700) at a face value of RS.10.00 each of India Meters Ltd. were lying with the Central Bank of India. The Central Bank of India was a creditor since it had given loan to M/s. India Meters Ltd. The loan was converted into share holding by giving the shares to Central Bank of India. On 26th December, 1990 M/s. KJ. Investments Private Ltd. a company under the Companies Act was incorporated at Madras having Shri K. Jayaker and three others as Directors. M/s. KJ. Investments Private Ltd. applied for loan to the tune of Rs.70 lakhs from Sanwa Bank. The "loan was sanctioned to the tune of Rs.51 lakhs only. It was released in two Installments of Rs.39 lakhs and Rs.12 lakhs respectively. Rs.39 lakhs was released on 14th January, 1991 and Rs.12 lakhs was released on 6th February, 1992. It was the term of the loan that the same shall be repaid as per Schedule. However, on 6th November, 1991, M/s. KJ. Investments Private Ltd. applied for a fresh loan of Rs.20 lakhs. The second loan was also sanctioned without first discharging its liability. With the sanction of second loan, repayment was re-scheduled. It was agreed that the repayment should be made by 14th January, 1993. The accused knew that they were not financially sound to repay the loan but misusing the official position and without first repaying the loan they got sanctioned the second loan from the Sanwa Bank.

(6) On the other hand, defense version is that with the sanctioned loan of Rs.20 lakhs by the Sanwa Bank, M/s. KJ. Investments Private Ltd. bought one lakh shares of India Meters Ltd. held by the Central Bank of India at the rate of Rs.20.00 per share. That for the balance shares M/s. KJ. Investments Private Ltd. needed money. The amount of loan was taken from Mr. Harshad S. Mehta. This amount of Rs.32,74,000.00 was received by cheque. It was converted into demand draft by the Sanwa Bank, New Delhi favoring Central Bank of India for the purchase of balance shares numbering 1,63,700 at the rate of Rs.20.00 per share (premium RS.10.00 each.).

(7) The question for consideration is whether the petitioner who is not a public

servant, could be implicated for the offences described under Sections 11,12,13(2), 13(1)(d) of P.C. Act, 1988. If not, then why keep him in Jail. Mr. R.K. Anand, Sr. Advocate appearing for the petitioner urged that so far as the petitioner is concerned the offences punishable under Sections 11,12, and 13 of the P.C. Act cannot be attracted in the facts of this case. From the case asset up in the F.I.R. no offence under P.C. Act is made out nor the petitioner is named in the F.I.R. The only allegation against the petitioner is that he had financial interest in M/s. K.J. Investments Private Ltd. and that he informed Mr. Khandelwal the exact amount to be paid and finally the cheque issued in the name of M/s. K.J. Investments Private Ltd. was received by the petitioner. Mr. Anand further contended that after registering the F.i.R, the C.B.I. itself realised that petitioner has no financial interest in the firm M/s. K.J.Investments Private Ltd. This fact find mention in the remand applications filed" in the Court. Hence in this view of the matter the charge made against the petitioner by C.B.I. is misconceived and not sustainable on its face. It is the pigmentation of C.B.I."s imagination. As regard furnishing of the exact figure to Mr. Khandelwal, it was done after ascertaining facts as to bow many balance shares were to be purchased. After verification it was found that 1,63,700 shares were to be bought @ Rs.20.00 per share. Hence the furnishing of figure of Rs.32,74,000.00 was pure calculation. 1,63,700 shares multiplied byRs.20.00 per share, the amount will work out to be Rs.32,74,000.00. Hence according to Mr. Anand, the petitioner did not disclose any thing special nor furnishing of this information would indicate that the petitioner had any knowledge of what transpired between his father and Mr. Harshad S. Mehta. Even otherwise is act by no stretch of imagination can be construed abetment, instigation or conspiracy. There is not an iota of evidence placed on record nor has made any allegations in the F.I.R. that the petitioner instigated or abetted Mr. V. Krishnamurthy to take valuable thing, gratification or pecuniary advantage by corrupt or illegal means from Mr. Harshad S. Mehta. Mr. Anand contended that " Abatement" has been defined u/s 107 Indian Penal Code . It means a person abets the doing of a thing, who instigates any person to do that thing, or engages with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aids, by any actor illegal omission, the doing of that thing. In fact the intention to aid the commission of the crime, is the gist of the offence of the abatement by aid. But from the reading of the facts which have come on record no case is made out wherefrom it could be inferred that the petitioner instigated, abetted or conspired with Mr. V. Krishnamurthy to negotiate with Mr. Harshad S. Mehta on behalf of M/ s. KJ. Investments Private Ltd. for demanding a sum of Rs.32,74,000.00. For conspiracy there has to be meeting of mind between Mr. V. Krishnamurthy, Mr. Harshad S. Mehta and the petitioner. But the reading of the F.I.R. shows that Mr. V. Krishnamurthy held the negotiations with Mr. Harshad S. Mehta regarding the amount of Rs.32 lakhs much before the petitioner was asked to furnish the exact figure. This shows the petitioner had no knowledge about the negotiations held between Mr. Harshad S. Mehta and his father. Moreover, mere receipt of the cheque by the petitioner would neither mean meeting of the mind nor would

constitute bribe. Moreover, this amount of Rs.32,74,000.00 does appear in the Account book of M/s. K.J. Investments Private Ltd. maintained at New Delhi. The amount of loan taken by M/s. K.J. Investments Private Ltd. was for consideration. It was to be repaid within 90/180 days and the company was to pay interest at the rate of 20%. Mr. Harshad S. Mehta is a broker and investor. He invested money with M/s. K.J. Investments Private Ltd. in order to earn interest which transaction cannot constitute bribe or illegal gratification. There is no allegation made either in the First Information Report or subsequently that M/s. K.J. Investments Private Ltd. abetted or instigated Mr. V. Krishnamurthy to obtain the loan either from the bank or from Mr. Harshad S. Mehta. On the contrary the prosecution has been changing its stand from what has been indicated in the First Information Report. Reading of the remand applications moved from time to time would fully establish this point. Remand application filed on 14th August, 1992 shows that the petitioner is not the Director of either M/s. K.J. Investments Private Ltd. or of India Metre Ltd. In the remand application of 17th August, 1992 no allegation of conspiracy has been made against the petitioner. In the subsequent application of 20th August, 1992, it is depicted that Mr. V. Krishnamurthy had already shown favor to Mr. Harshad S. Mehta as a consideration of which Rs.32 lakhs was paid. These averments made by the C.B.I. in the remand applications clearly show that the petitioner had no knowledge whatsoever regarding the transaction which his father had with Mr. Harshad S. Mehta. The stand taken by the C.B.I. subsequent to the registration of the F.I.R. would show that the petitioner is innocent.

(8) That summing up his argument, Mr. Anand contended that no offence under Sections 7,11,12 or 13 of the Prevention of Corruption Act is made out against the petitioner nor from the facts which have so far been placed on record show complicity of the petitioner either under P.C. Act or for criminal conspiracy. From the material shown or produced by the C.B.I. the ingredients of criminal conspiracy as required u/s 120-B Indian Penal Code . are lacking. Moreover, mere receipt of the cheque by the petitioner, which was in the name of M/s. K.J. Investments Private Ltd., in which the petitioner has no financial interest, would not constitute bribe as held by the Supreme Court in the case of Suraj Mal Vs. The State (Delhi Administration A.I.R.1980 pan 85. The facts of that case were that an F.I.R. was registered at Panipat against the accused resident of Delhi. The S.I. and two constables came to Delhi to investigate them. At Delhi these officials demanded bribe of Rs.2,000.00 for helping the accused persons to get them acquitted. The complainant showed inability to pay that amount but paid some amount. But then reported the matter to the Higher authorities who laid the trap. These three officials were apprehended and charged. After trial out of the three, two were convicted but one was acquitted on the ground that there was no sufficient evidence against him. The Supreme Court while setting aside the conviction held that if a witness is disbelieved into one integral part of the story, the entire case fails. The Court cannot convict one accused and acquit the other with respect to the same transaction. It was further observed that when

the First Information Report is lodged the complainant is bound to furnish all the material facts and if material fact Constituting ingredient of offence not mentioned in the F.I.R. in regard to the accused it is relevant which fact goes in his favor. It was further observed that mere recovery of money by itself cannot prove the charge of the prosecution in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. Mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused. Therefore, relying on this judgment, Mr. Anand contended that merely because the petitioner received the cheque from Mr. Mohan D. Khandelwal issued in favor of M/s. K.J. Investments Private Ltd. would not constitute bribe nor the petitioner can be charged for accepting the bribe. The offence of bribe requires intention to aid the commission of a crime and that cannot be inferred from any of the documents produced so far by the prosecution. In the absence of the same the petitioner cannot be charged for an offence of abatement as held by the Supreme Court in the case of Trilok Chand Jain Vs. State of Delhi 1977 Cr.L. J 254 nor from the reading of the First Information Report or any document annexed thereto or produced it can be inferred that the petitioner intentionally aided the doing of any wrong. Unless a person knew that the doer of the illegal act was going to commit the illegal act, there could be no question of alleged abettor's intention to aid the wrong doing by the doer. A person may be said to do anything in order to facilitate the commission of the illegal act by the other and thereby aid the doing of that act only if the alleged abettor does the thing knowingly and intentionally and in order to facilitate the commission of that wrong act. In this regard Mr. Anand drew my attention to the observations made by the Supreme Court in the case of Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe Vs. The State of Maharashtra, . This High Court in the case of Madan Mohan Behl Vs. National Small Scale Industries Corporation 1971 Cr.L.J. 1378 as well as at page 1484 held that specific allegations of abetment must be made in the F.I.R. in order to attract the provisions of Section 107 I.P.C. On the allegations made in the F.I.R. no offence against the petitioner is made out. The Supreme Court in the case of State of Haryana Vs. Bhajan Lal and others 1992 Cr.L.J. 527 held that the complaint or the F.I.R. must contain the allegations which allegations should be clear enough to constitute a cognizable offence. In that case, the Supreme Court has gone to the extent of categorizing the case in which the High Court in exercise of its powers under the writ jurisdiction may interfere in proceedings relating to cognizable offences to prevent abuse of the process of the Court or otherwise to secure the end of justice. One such instant is where the allegations made in the F.I.R. or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, secondly where the allegation in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. Mr. Anand, relying on these observations, urged that neither from the reading of the

F.I.R. nor from any material so far shown to this Court any cognizable offence has been disclosed against the petitioner rather it is a fit case where the F.I.R. should be quashed. Petitioner who is a private person cannot be prosecuted under Sections 11,12 and 13 of the P.C. Act nor the reading of the F.I.R. or any other material a case of criminal conspiracy is made out against the petitioner.

(9) The provisions of Section 161 to 165-A of the Indian Penal Code dealing with offence by or relating to public servant have been lifted from the Indian Penal Code and have been incorporated in Section 7 to 13 of the P.C. Act with modification. The offence punishable under Sections 11 to 13 of the P.C. Act, 1988 with which the petitioner is charged relate to the criminal mis-conduct by a public servant. Section 11 of the Act is reproduced as under:

"PUBLICSERVANT Obtaining Valuable Thing, Without Consideration From Person Concerned In Proceeding Or Business Transacted By Such Public Servant - Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any other person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

(10) Mr. Anand contended that the bare reading of this Section would show that it applies only to a public servant. Mr. K. Chandra is not a public servant. Hence the provision of Section 12 of the Act cannot be attracted. Section 12 would be attracted when a person abets an offence punishable u/s 7 or 11 of this Act. Section 7 is also applicable to a Public Servant when such public servant takes gratification other than legal remuneration in respect of an official act. Similarly Section 13 which is reproduced here under deals with criminal misconduct by a public servant, by corrupt or illegal means or otherwise and obtaining pecuniary advantage for himself or for other. Section 13

Criminal misconduct By A Public Servant ; (1) A public servant is said to commit the offence of criminal misconduct, (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or (b) if he habitually .accepts or obtains or agrees to accept or attempts to obtain for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he

knows to be interested in or related to the person so concerned; or (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or (d) if he, (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or, (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession or has at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income."

(11) The reading of these provisions quoted above would show that these apply only to a public servant and not to a private person. Hence no case on the face of the allegations can be registered against the petitioner under Sections 11,12,13 of the P.C. Act.

(12) 82 Section 120-B Indian Penal Code . which is reproduced as under prescribes punishment of Criminal Conspiracy;

Punishment of Criminal CONSPIRACY: (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

(13) Mr. Anand, Therefore, contended that in order to prove criminal conspiracy punishable u/s 120-B Indian Penal Code . there must be meeting of mind resulting in a decision taken by the conspirators regarding the commission of an offence. The conspiracy can also be inferred from circumstances giving rise respectful of an agreement between two or more persons to commit an offence. But in the present case, no foundation is laid nor any fact alleged indicate meeting of minds between the petitioner, Mr. V. Krishnamurthy and Mr. Harshad S. Mehta nor from any circumstances it can be inferred that there was any understanding between them nor there is any intentional aiding by the petitioner in the commission of this crime. In fact no complicity of the petitioner can be inferred from the facts mentioned in the F.I.R. Mere relationship of the petitioner with Mr. V. Krishnamurthy would not make him liable for the offence of conspiracy. In this regard he placed reliance on the observation of Patna High Court in the case of Parthasarthy Banerjee and another Vs. State of Bihar 1986 (1) Cri 66 . Mere allegation at the bar that the crime with which the petitioner is charged would not have been committed without the inter-position of the

petitioner is not enough compliance of the requirement of Section 107-I.P.C. Unless the intention of the petitioner to facilitate the commission of the crime is shown from any document or averred in the F.I.R. the complicity of the petitioner cannot be inferred. In the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , it was held that the High Court u/s 482 Cr.P.C. can exercise its inherent powers for quashing criminal proceedings, firstly if it comes to the conclusion that the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused, secondly where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused, then such a proceeding is liable to be quashed or set aside. The allegations made in the complaint has to be comprehensive enough to make out a case against the accused. Finally Mr. Anand contended, that the entire investigation has already been completed. The maximum punishment u/s 12 of the Prevention of Corruption Act, 1988 is five years. C.B.I. has already mentioned in its remand application that investigation part is over, and Therefore, did not require police remand but asked the Court to give a judicial remand. The petitioner should not be kept in Jail as a punishment if not required by the prosecution for further investigation. Moreover, there are no .chances of petitioner's fleeing from this country as his passport has been confiscated by the C.B.I, nor there are any chances of petitioner interfering with the investigation or tempering with any record.

(14) During the course of arguments, Mr. Saxena, counsel for C.B.I, pointed out that it is in fact Section 8 of the Prevention of Corruption Act, 1988 which is applicable to the facts of this case. Though in the F.I.R. Section 8 is not mentioned still the Court can apply the provisions of this Section in view of the facts which have come on record. Section 8 reads as under: Section 8

"TAKING GRATIFICATION, In Order, By Corrupt Or Illegal Means, To Influence Public Servant - Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine."

(15) MR.ANAND refuted this argument and urged -that Section 8 would apply if

the gratification is accepted by a person in order to induce or influence a public servant for favor. But that is not the case as set up in the F.I.R. nor it is alleged that Mr. K. Chandra accepted the cheque of Rs.32,74,000.00 as a motive or reward for bribing or inducing any "public servant". Mr. Saxena then submitted that mere acceptance of the cheque by the petitioner is sufficient to constitute "abatement. He placed reliance on the observation of the Supreme Court in the case of *The State of Assam Vs. Krishna Rao*, and to the decision of Allahabad High Court in the case of *Azam Ali Vs. Rex* 1950 CrL.J. 1073. Mr. Anand submitted that C.B.I. cannot take advantage of these decisions because in the case of *State of Assam Vs. Krishna Rao*(supra) the Supreme Court drew the presumption u/s 4 of the P.C. Act as the recipient was a public servant. Similarly Allahabad High Court was dealing with a case where amount was received by a public servant knowing well that it was a bribe or illegal reward for his superior officer. Hence facts of those cases are quite different from the facts of the present case.

(16) Mr. Saxena, relying on the decision of the Supreme Court in the case of *State Vs. Jaspal Singh Gill*, contended that there is every likelihood of the petitioner fleeing from the jurisdiction of this Court hence the bail should not be granted. Supreme Court in the case of *Jaspal Singh Gill* (referred to above) as well as in the case of *Gurcharan Singh Vs. State (Delhi Administration)* AIR 1978 Sc 179 laid down guidelines for consideration at the time of granting or refusing the bail. It has been held that while granting the bail the Court must consider the gravity of the offence on which the accused is charged, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or the State and similar other consideration. Mr. Saxena Therefore contended that the petitioner is not an Indian Citizen. Even though his passport has been confiscated still u/s 3(b) of the passport Act, 1967, he being an American citizen can obtain traveling document from the said Embassy and can leave India. And once he leaves the country he would not be available for further investigation and/or for trial. His previous conduct would show the likelihood of this act being repeated. In August, 1992 he was about to leave India. On receiving this information C.B.I. apprehended him well in advance and thus frustrated his attempt. Once he leaves this country this court will have no "jurisdiction to get him repatriated nor any direction can be given to American Embassy not to issue any traveling document to the petitioner. It is in this background that the bail should not be granted.

(17) Mr. Anand contended that in the case of *Jaspal Singh Gill* (supra) facts were totally different. There the accused was charged u/s 3 of the Official Secrets Act, 1923 relating to Military Affairs. The allegation against the accused was that he had obtained classified information on defense matters and passed it on to U.S. Intelligence Operators, taking into consideration the gravity of the offence on which the accused was charged and which related to the security of the State,

the bail was cancelled. Mr. Anand submitted that the point raised by Mr. Saxena regarding Passport Act 1967 is without force. u/s 3 of the Foreigners Act, 1946 the Central Government has the power to make provision regarding any particular foreigner, prohibiting his entry into India or his departure there from. There is in fact Foreign Regional Registration Office known as F.R.R.O. which gives directions to its immigration office to prohibit the departure of any particular person be that a foreigner. Hence in case there is any apprehension in the mind of prosecution it can direct the officer of Frro to issue instruction prohibiting the petitioner from leaving India. This position is admitted by Mr.S. Lal counsel for the C.B.I.

(18) I have heard the counsel for the parties and considered the various contentions factual and legal raised at the bar. I have also considered the two paramount considerations for considering the bail application v.z likelihood of the accused fleeing from justice and his tempering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice. It is essential that due and proper weight should be bestowed on these two factors apart from others while deciding the bail application. From the facts discussed above and the role assigned to the petitioner prima facie it does not make out a case of grave offence against him. For the offence charged the maximum punishment prescribed is five years. Till date charge sheet has not been filed even though almost a period of two months have elapsed. In the remand application filed before the Special Judge, Delhi C.B.I. had indicated that they do not want police remand and the petitioner is put under judicial remand. This shows, the petitioner is not required for further investigation. Therefore, taking all these factors into consideration, the totality of the circumstances and the facts which have been placed on record or discussed and the legal position submitted, I am of the considered view that the petitioner can be released on bail subject to terms namely his passport which has already been confiscated will remain with C.B.I. The officer of the Frro be instructed not to permit the petitioner to travel out of India by any Airlines. I accordingly admit the petitioner on bail on his furnishing a bond of Rs.1,00,000.00 (Rs. one lakh only) with one surety of the like amount to the satisfaction of the Special Court with further direction that he will not leave the country without the permission of the Court and that he will join the investigation as and when called by the Investigating Officer.