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**(2014) 05 AHC CK 0274**

**In the Allahabad High Court**

**Case No :** Crl. Misc. 3rd Bail Application No. 15985 of 2014

Pradeep Shukla

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

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**Date of Decision :** 26-05-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439, 482  
Prevention of Corruption Act, 1988 — Section 19(3)(c)

**Citation :** (2014) 3 ACR 2496

**Hon'ble Judges :** Amreshwar Pratap Sahi, J

**Bench :** Single Bench

**Advocate :** Sudeep Harkauli, R. Basant and Keshan Nath Tripathi, Advocate for the Appellant; Anurag Khanna and Manish Kumar Singh, A.G.A, Advocate for the Respondent

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## Judgement

@DELETEUPPERDATA

Amreshwar Pratap Sahi, J.—The applicant an I.A.S. Officer who was Incharge of the National Rural Health Mission Programme is accused in the scam relating to the allegations of misappropriation of huge Government funds and has prayed for bail in this third bail application.

2. It would not be necessary to repeat all the facts in relation to the commission of the alleged offence by the applicant which has been mentioned in detail in the rejection order dated 31st May, 2013 in the applicant's first bail application, and also the details of the prima facie evidence collected which are narrated by a learned single Judge of this Court in the judgment dated 19.2.2013 referred to hereinafter.

3. On the charge-sheet being filed the applicant alongwith other co-accused in the case, including one Sri Ravindra Rai, filed 482 applications before the High Court for quashing of the charge-sheet. The said 482 applications including application No. 1143 of 2013 filed by the applicant were all dismissed by a

learned single Judge of this Court on 19.2.2013. This judgment of the High Court is reported in Devendra Mohan Vs. C.B.I./EOU-IV/New Delhi, . One of the co-accused Ravindra Rai filed a special leave to appeal before the Apex Court against the said judgment of the learned single Judge which is reported to have been withdrawn by him under the following order :

"Item No. 12 Court No. 5 Section II Supreme Court of India Record of Proceedings

Petition (s) for Special Leave to Appeal

(Crl) No (s). 2060/2013

(From the judgment and order dated 19.2.2013 in A.N. No. 43303/2012, of THE HIGH COURT OF JUDICATURE AT ALLAHABAD)

Ravindra Rai

Petitioner (s)

Versus

C.B.I./EOU-IV/New Delhi

Respondent (s)

With S.L.P. (Crl) No. 2061 of 2013

(With appln. (s) for ex parte stay, exemption from filing O.T. and office report)

With S.L.P. (Crl) No. 2061 of 2013

(With appln. for ex parte stay and exemption from filing O.T. and office report)

Date: 22.3.2013 These Petitions were called on for hearing today.

Coram:

H.L. Dattu

Jagdish Singh Khehar

For Petitioner(s): Mr. U.U. Lalit, Sr. Adv.

Mr. Shakil Ahmed Syed, Adv.

Mr. Nandit Kumar Srivastava, Adv.

Mohd. Yasir Abbasi, Adv.

Mr. Vinod Rai, Adv.

Mohd. Moonis Abbasi, Adv.

For Respondent(s)

UPON hearing counsel the court made the following

## ORDER

Shri U.U. Lalit, learned senior counsel appearing for the petitioners seeks permission of the court to withdraw the special leave petitions.

Permission sought for is granted. The special leave petitions are disposed of as withdrawn."

4. It appears that the applicant was refused bail by the court below whereafter he filed his first bail application before the High Court being Application No. 13938 of 2013. The same has been rejected on merits by a learned single Judge of this Court on 31st of May, 2013.

5. The applicant assailed the said bail rejection order by filing Special Leave to Appeal No. 4974 of 2013 that was withdrawn by the applicant on 5th July, 2013 and the

Apex Court passed the following order:

"Item No. 2 Court No. 12 Section II

Supreme Court of India

Record of Proceedings

Crl. M.P. No. 12648/2013 in

Petition (s) for Special Leave to Appeal (Crl.) Nos. 4974/2013

(From the judgment and order dated 31.5.2013 in CRMBA No. 13938/2013 of the High Court of Judicature at Allahabad)

Pradeep Shukla

Petitioner (s)

VERSUS

C.B.I.

Respondent (s)

(For bail and Crl. M.P. No. 13625/2013 application for permission to withdraw the S.L.P. and office report)

Date: 5.7.2013 This petition was called on for hearing today.

Coram:

H.L. Gokhale

Madan B. Lokur

For Petitioner(s) : Mr. Rakesh Dwivedi, Sr. Adv.

Mr. Garvesh Kabra, Adv.

For Respondent(s) Mr. Siddharth Luthra, A.S.G.

Mr. B.V. Balaram Das, Adv.

Mrs. Supriya Juneja, Adv.

Mr. Dinesh K., Adv.

Mr. Gurmohan Singh Bedi, Adv.

Mr. Dinesh Kothari, Adv.

UPON hearing counsel the court made the following

#### ORDER

Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioner, prays that CrI. M.P. No. 13625 of 2013 application for permission to withdraw the Special leave Petition be allowed. Mr. Luthra, learned Additional Solicitor General appearing for the C.B.I., has no objection to that. Accordingly, CrI. M.P. No. 13625 of 2013 is allowed and consequently, the special leave petition shall stand dismissed as withdrawn.

It will be open to the respondent to apply to the trial court to proceed with the trial at the earliest, preferably on day-today basis."

(A.S. Bisht) Court Master

(Sneh Lata Sharma) Court Master"

6. The applicant filed Second Bail Application No. 22648 of 2013 before the High Court which was held to be maintainable and it was also indicated that the Apex Court had not decided the bail matter of the applicant finally vide order dated 5.7.2013 and consequently the said second bail application was entertained and considered on the ground of his deteriorating medical condition. The applicant was accordingly granted a bail described as a short term bail for six months vide order dated 31.10.2013.

7. The applicant treating the said second bail application to be pending, filed an Extension Application No. 156299 of 2014 for extending the bail order dated 31.10.2013. The said application was heard by this Court and rejected on 12th May, 2014 holding that the second bail application did not survive as the order dated 31.10.2013 was a final order disposing of the bail application granting bail to the applicant for six months. The order was passed without prejudice to the rights of the applicant to file a third bail application.

8. This is how the present third bail application was moved alongwith an application for exempting the statutory period of 10 days as the period of six months was expiring on 6th May, 2014. Consequently, the matter was placed before Hon"ble the Chief Justice who passed orders on 6th May, 2014 directing the office to place the bail application alongwith the exemption application before

this Court. The matter was taken up on 9th May, 2014 on which date on the request of the learned counsel for the applicant the application was directed to come up on 16th May, 2014. The exemption application by passage of ten days pendency has outlived itself and is therefore, infructuous.

9. A supplementary-affidavit has been filed by the applicant dated 16th May, 2014 indicating that he had already surrendered and had been taken into custody on 15.5.2014.

10. On 16th of May, 2014, the following order was passed by this Court:

"Heard Sri R. Basant, learned senior counsel for the applicant, Sri Anurag Khanna for the C.B.I. and the learned A.G.A. Sri Manish Kumar Singh.

Put up for orders on Tuesday, i.e., 20.5.2014.

Learned counsel for the applicant informs that the applicant has already surrendered before the court whereafter he has been sent to hospital by the jail authorities.

Sri Anurag Khanna has not disputed this statement of the learned counsel for the applicant.

The learned Government Advocate State of U.P. shall inform the court about the status of the custody of the applicant through a written information from the Jail Superintendent, Dasna Jail, Ghaziabad.

The matter shall be taken up at 2.00 p.m.

A copy of this order be supplied to the learned Government Advocate free of charges for compliance."

11. On 20th May, 2014 an affidavit was filed by the Jail Superintendent, Ghaziabad which was brought on record alongwith the report dated 18th May, 2014 of the Superintendent of the Jail. The affidavit filed in support of the said report states as follows in paragraphs 4 and 5:

4. That according to the report dated 18.5.2014, it reveals that on 15.5.2014 the applicant Pradeep Shukla was admitted in District Jail, Ghaziabad by the order of the Special Judge, C.B.I., Ghaziabad. Thereafter, the under trial Pradeep Shukla had a sudden fall in the District Jail and got fainted. He was administered IV fluids and symptomatic treatment by Jail Medical Consultant Dr. Sunil Tyagi. For specialist opinion and his life-saving management Chief Medical Superintendent, District Combined Hospital, Ghaziabad was requested to urgently send a Specialist Dr. S.C. Sinha recommended transfer him to Dr. R.M.L. Hospital, New Delhi. He was sent to Dr. R.M.L. Hospital, New Delhi at 6.30 p.m. on 15.5.2014 by the Jail Ambulance with the custody of the Jail Guards and admitted him in Dr. R.M.L. Hospital, New Delhi under custody for necessary treatment, because there is no super specialist medical facilities available in Jail Hospital.

Subsequently, Dr. S.C. Sinha has prepared a complete treatment report of the

applicant Pradeep Shukla and further on the basis of the report of Dr. S.C. Sinha, the applicant Pradeep Shukla has referred to Dr. Ram Manohar Lohia Hospital, New Delhi.

5. That at present, the applicant Pradeep Shukla is admitted in Dr. Ram Manohar Lohia Hospital, New Delhi under the judicial custody."

After perusal of the said report this Court passed the following order on 20.5.2014:

"Heard Sri Keshri Nath Tripathi, learned senior counsel for the applicant, Sri Anurag Khanna for the respondent-C.B.I. and Sri Akhilesh Singh, learned Government Advocate for the State of U.P.

The Jail Superintendent, Ghaziabad, had been called upon to file his affidavit, which has been furnished today, sworn by Deputy Jailer Mr. Harbansh Kumar Pandey. Paragraph No. 4 of the affidavit indicates the status of custody of the applicant as also the cause for referring him for medical treatment to Dr. Ram Manohar Lohiya Hospital, New Delhi. The affidavit is taken on record, and having heard learned A.G.A., in the opinion of the court, it would be appropriate that the applicant furnishes a status report of his medical condition from Dr. Ram Manohar Lohiya Hospital itself where he is reported to have been admitted.

Sri Tripathi prays for two days" time to file the same. Put up on Friday at 11.30 a.m.

The medical/health status report from the Hospital from the date of his admission where the accused is admitted shall be made available by the concerned authority to the accused for being placed before the court.

Certified copy of this order be issued to the learned counsel today."

12. The applicant has filed a supplementary-affidavit dated 22.5.2014 in compliance of the order dated 20.5.2014 bringing on record the medical examination report prepared by a panel of four doctors of the Dr. Ram Manohar Lohia Hospital New Delhi which is as follows:

"DR. RAM MANOHAR LOHIA HOSPITAL, NEW DELHI

Ref. No. 12-4/2014/RMLH (MS)/83 Date : 22nd May, 2014

MEDICAL EXAMINATION OF SH. PRADEEP SHUKLA (under trial)

The medical board constituted to examine Mr. Pradeep Shukla admitted under Dr. (Prof.) L.N. Gupta, H.O.D. Neurosurgery in Neurosurgery Trauma Centre, met on 22nd May, 2014 at 11.00 a.m. The report is as under Mr. Pradeep Shukla is a known case of uncontrolled hypertension, C.A.D. (Coronary artery disease) with unstable angina, T.I.A. (Transient Ischemic Attack), L4-L5 degenerative lumbar spine disease, with grade 4/5 weakness in both lower limbs with sensory loss and L5 neurofibroma.

He has been admitted with an episode of transient unconsciousness, with urinary incontinence on 15.5.2014. At present he is hospitalized and is unstable and needs to be strictly under observation in the hospital. He needs attendant for daily activities as he is having difficulty in walking and standing.

13. The matter on behalf of the applicant had been argued on merits by Sri R. Basant, senior advocate on 16.5.2014 and then on 20.5.2014 by Sri K.N. Tripathi, learned senior counsel and on 22.5.2014 by Sri Sudeep Harkauli advocate. The C.B.I. has opposed the bail and Sri Khanna learned counsel had argued the matter on 20.5.2014.

14. Sri Harkauli has invited the attention of the court to certain more judgments apart from that which had been relied upon earlier by Sri R. Basant, learned senior counsel.

15. The judgments that have been relied upon by the learned counsel for the applicant for the propositions advanced are detailed herein under:

1. Amar Singh v. State and others, Bail Appln. No. 1414/2011 and CrI. M.B. No. 1744/2011 (H.C., New Delhi).

2. State of U.P. Vs. Atique Ahmad, .

3. Mukesh v. State of Rajasthan. 2012 Indlaw Raj 2314.

4. Sharad Kumar v. C.B.I., Bail Appl. No. 1565/2011 (H.C.. New Delhi).

5. Kamal Gandhi v. M.G. Atri, CrI. Misc. Appeal No. 2739/1996 (H.C., New Delhi).

6. Tukaram Gyanu Solankar v. State of Karnataka. CrI. P. No. 11465 of 2013 (H.C. Karnataka at Dharwad).

7. Dharambir Khattar Vs. State, .

8. Malkiat Ram alias Kita v. State of Punjab, CRM-M-No. 3859/2014 (H .C. Punjab and Haryana at Chandigarh).

9. Dipak Shubhashchandra Mehta Vs. C.B.I. and Another, .

10. Shaukatali Gabhruddin v. State of Gujarat, CrI. Misc. Application No. 170/2002. (H.C., Gujarat at Ahmedabad).

11. State of Maharashtra and Others Vs. Lalit Somdatta Nagpal and Another, .

12. Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .

13. Sanjay Chandra Vs. CBI, ."

16. Learned counsel submitted that the applicant is not guilty of any culpable act so as to connect him with any offence, inasmuch as, he being a responsible I.A.S. Officer and Incharge of the mission, it was his duty to take decisions which has been done honestly in good faith. It is submitted that none of the decisions taken by the applicant for award of contracts and supply of surgical goods and

medicines for upgrading the hospitals as mentioned in the charge-sheet was ever intended to cause loss to the State Exchequer or to misuse public money.

17. It is urged that the seriousness of the offence and keeping in view the sentence which can be finally awarded, the applicant deserves to be enlarged on bail. The applicant had offered custody as and when required under law and he did not flee from the court nor has he misused the bail which has been previously granted. There was no effective opposition by the C.B.I. to the bail when previously moved nor any response has been shown either in the second bail application or this bail application disputing the deteriorating medical condition of the applicant.

18. There is no evidence of tampering of evidence nor is there any allegation that the applicant has misused his bail or has tried to influence the witnesses. It is urged that the applicant was performing a job of collective responsibility and he cannot be singled out individually and held responsible for the allegations contained in the charge-sheet. The submission is that the evidence collected in no way would establish guilt of the applicant and as such in these circumstances the applicant deserves to be enlarged on bail.

19. It has been urged by the learned counsel that there is no likelihood of the trial concluding early inspite of full co-operation by the applicant as there is nothing on record which may indicate that the applicant is responsible in any way in causing impediment to the trial. The contention is that the period of incarceration, the gravity of the offence and the other factors for grant of bail should be taken into consideration and should not be treated as foreclosed on account of the previous orders passed by this Court or by the Apex Court. To the contrary the order dated 5.7.2013 passed by the Apex Court allows the applicant to raise all such grounds that are available in law for the purpose of consideration of bail.

20. However, the main thrust in this third bail application is based on the deteriorating medical condition of the applicant as well as the need for urgent medical treatment in view of the nature of the ailment suffered by the applicant.

21. It is contended that the applicant as per expert Medical diagnosis is suffering from spinal tumour due to growth detected between vertebrae T4 and T5, recurring Transient Ischemic Attacks and Cardiac Artillery Disorder. Sri Basant has invited the attention of the court to various documents and prescriptions from several hospitals to submit that in spite of the bail order dated 31.10.2013, the applicant continued to receive treatment and was discharged from hospital only on 3.12.2013. He has continuously been admitted to hospital on several occasions even thereafter and the aforesaid diseases with which the applicant is suffering would leave no room for doubt about his deteriorating health condition, which fact remains undisputed by the C.B.I. The prolonged ailment has made him susceptible to conditions that are threatening to life. He has cited an authority of neurology and has also raised his submissions inviting the attention

of the court to the continuing medical unfitness of the applicant that is so serious that the applicant deserves to be continued on further bail.

22. The narration of facts in the bail application indicates that the applicant had been earlier admitted in several hospitals including Dr. Ram Manohar Lohia Hospital and Post Graduate Institute, New Delhi and had also received treatment in the All India Institute of Medical Sciences earlier. Apart from this, he was also admitted in the Sanjay Gandhi Post Graduate Institute, Lucknow and the discharge report dated 16.2.2014 has been shown by the learned counsel for the applicant.

23. Apart from this, the treatment carried out in the Safdarjang Hospital at Delhi and the summary of discharge of the Dr. Ram Manohar Lohia Hospital has been pointed out to urge that the applicant has a failing health and is suffering from serious ailment. The applicant has also attempted Ayurvedic Treatment at Patanjali Hospital, Haridwar and at the Fortis Memorial Hospital, Gurgaon.

24. The last medical examination report by a panel of doctors of Dr. R.M.L. Hospital, New Delhi dated 22nd May, 2014 has already been extracted hereinabove.

25. The applicant has been receiving medical treatment in custody and prima facie to my mind effectively as per the affidavit filed by the Deputy Superintendent Jail, District Jail, Ghaziabad, the paragraphs whereof have been extracted hereinabove.

26. It is thus clear that the applicant has been referred to a hospital of repute by the District Jail authorities and the medical doctors promptly, and the applicant has also received treatment as is evident from the report dated 22.5.2014 during custody.

27. The jail authorities are also obliged to take care of such situations in view of the provisions of the Para 456 of the U.P. Jail Manual and the Guidelines/ Handbook (Hastpustika) issued in this regard where Para 27 of Chapter I mentions steps to be taken for release of under trials who are suffering from heart disease, kidney, liver and cancer for effective treatment. The said Handbook of January, 2010 available on the website, prescribes a detailed procedure and the obligations to be discharged by the jail authorities to provide medical facilities of all categories. The grant of parole is governed by the Uttar Pradesh Suspension of Sentences of Prisoners Rules, 2007 amended in 2012 promulgated vide notification dated 15th February, 2007 that extends release under certain contingencies.

28. This third bail application therefore, has to be considered in the aforesaid background keeping in view the nature of the ailment as alleged by the applicant. The learned counsel for the applicant have also invited the attention of the court to a short note relating to as what would be considered as life threatening vis-a-vis the applicant in the present case.

29. The bail application had been vehemently opposed by Sri Anurag Khanna on the previous occasions except on 22.5.2014 on which date Sri Khanna was reported to be ailing from a serious tooth pain and he could not attend court seeking adjournment on that ground. Sri Khanna had on 16.5.2014 and 20.5.2014 urged that the applicant has been freely moving about and he had travelled to Haridwar as well as to several hospitals in Delhi as well as in Lucknow which indicates that his ailment was not as serious as projected and in the event this Court desires, a detailed affidavit can be filed by the C.B.I. in this regard.

30. He further contends that once the applicant is receiving treatment while in custody which can be termed as proper and effective, then there is no occasion to consider the grant of bail to the applicant at this stage. He further submits that it is clear from the scam which is being tried by the court below that the number of accused and the number of witnesses being involved the trial is likely to be impeded in case the prime accused including the applicant are bailed out.

31. He further submits that the filing of 482 applications by the other co-accused including the applicant was clearly designed to forestall the trial and not only this the subsequent dismissal of such applications filed by various co-accused clearly indicates an attempt being made to forestall the proceedings. He therefore, submits that it would not be appropriate to exercise discretion in favour of the applicant who is one of the main accused on any such ground as is now sought to be pressed into service.

32. Having considered the submissions raised and having perused the authorities that have been relied upon by the learned counsel at the bar the present application and its merit would turn on the plea of health status as per the medical reports relating to the applicant.

33. Sri Khanna submits that the applicant has been getting normal treatment which he describes as conservative treatment and which is permissible and available under the Jail Manual. He contends that such facilities are being provided according to the applicant himself and also according to the affidavit of the Superintendent of Jail. He therefore, submits that there is no reason to grant bail to the applicant in the aforesaid background.

34. Sri Khanna has further submitted that the first bail of the applicant was rejected on merits and the order passed by the Apex Court in respect thereof on 5.7.2013 should be treated to have rejected all other pleas raised by the applicant. He has further taken the court through the affidavits filed in the previous two bail applications to oppose the bail on merits.

35. In my opinion, this may not be necessary at this stage as while disposing of the second bail application on 31.10.2013, the High Court had observed that the applicant's claim has not been rejected on merits for bail by the Supreme Court, but the said observation has to be read in the light of the order dated 5.7.2013 and the contentions already raised in the first bail application.

36. Sri R. Basant while advancing his submissions had invited the attention of the court to the fundamental principle to be kept in mind for grant of bail, particularly, the decision in the case of Siddharam (supra) where the Apex Court has referred to the balance to be struck between societal interest vis-a-vis the personal liberty while adhering to the age old principle of criminal jurisprudence that the accused is presumed to be innocent unless he is found guilty by the competent court.

37. Sri Basant has also appealed to this Court for referring to the principles enshrined in Section 437 and Section 439, Cr.P.C. for extending the benefit of bail to an infirm person with a falling health with particular emphasis on the medical conditions of the applicant. He has also urged that courts while exercising such judicious discretion have always tempered it with compassion so as to prevent any miscarriage of justice in a serious matter like the liberty of an under trial. For this he has invited the attention of the court to the other decisions as indicated above for granting bail to under trials facing critical health conditions.

38. While considering the aforesaid balance as suggested by the learned counsel, this Court is aware of the principles to be considered while granting bail in the case of Sanjay Chandra (supra) and the other decisions that have followed the same, yet the court has also to be keep in mind the background in which the present N.R.H.M. Scam is being tried and the background in which the trial is facing impediments on account of conflicting orders being passed in respect of the other co-accused either on the issue of bail or on the issue of trial. It may not be out of place to mention that some of the co-accused had filed Criminal Misc. Bail Application under Section 482, Cr.P.C. questioning the framing of charge in which the proceedings were withheld on account of interim orders passed by the High Court even though the said applications came to be ultimately dismissed after several months on 17.1.2014 and 21.2.2014. These facts have been noticed by me while rejecting the bail application of co-accused Naresh Grover in Bail Application No. 33477 of 2012 vide order dated 6.5.2014 which is extracted hereinunder:

"..... He further submits that the co-accused, the then Minister, who was involved in the incident Babu Singh Kushwaha and an M.L.A. from Barhaji, District Deoria, Ram Prasad Jaiswal had after being charged with the offences similar to that of the applicant, approached this Court in applications filed under Section 482, Cr.P.C. on the point of framing of charge questioning the proceedings before the trial court. He has invited the attention of the court to the orders passed by the High Court in four such applications under Section 482, being Application Nos. 18005/2013, 19469/2013, 27484/2013 and 38270/2013 relating to the same incident filed by the aforesaid co-accused.

The first order, which was passed on 6.6.2013 staying further proceedings against the co-accused Ram Prasad Jaiswal was passed in Application No. 19469 of 2013. The other 2 orders restraining the framing of charge against Babu Singh

Kushwaha was passed on 29.10.2013 in Application Nos. 18005 of 2013 and 27484 of 2013 and the fourth order which has been placed before the court staying the framing of charge by the trial court was passed on 27.11.2013 in Application No. 38270 of 2013. Three of these applications were finally heard and rejected on 17.1.2014. The fourth Application No. 38270 of 2013 was dismissed on 21.2.2014. It would not be wrong to presume that the interim orders even otherwise could not be passed keeping in view the principles of Section 19(3)(c) of the Prevention of Corruption Act, 1988.

Apart from this, it has been rightly pointed out by Sri Anurag Khanna, that the case of co-accused Vivek Jain and Saurav Jain is distinguishable on facts hence the reasons for grant of bail to the said co-accused does not come to the aid of the applicant. On the other hand, the applicant contends that Vivek Jain and Saurav Jain were also involved in the same offence and they have been granted bail earlier by the High Court for valid consideration. In my opinion, the grant of bail to Vivek Jain and Saurav Jain rest on the foundation of such facts which are clearly distinguishable from the case of the applicant.

With the aid of the aforesaid facts, Sri Anurag Khanna submits that the delay, if any, in the trial or the detention of the applicant during this period, therefore, is not on account of the non-availability of the court or the proceedings being held up in the trial but because of the aforesaid interim orders operating in the 482, Cr.P.C. applications relating to 2 main conspirators of this case that remained pending since July, 2013 till February, 2014."

Apart from this, the vacancy in the C.B.I. Court on account of the absence of notification by the State Government inspite of the recommendations of the High Court for the same having already been sent timely, was also a cause in impediment in the process of the trial. In this regard also the observations made by me in the aforesaid order dated 6.5.2014 which is extracted hereinunder:

"It is worth mentioning that notifying of a C.B.I. Court is the obligation of the State Government and there is no material to indicate that the High Court has delayed it's recommendation in this regard. Accordingly, I direct the Registrar General to take immediate steps to communicate to the State Government to notify the vacant courts of the Anti Corruption and C.B.I. at Ghaziabad within a week from today and the State Government shall do the needful forthwith without any delay.

Let a copy of this order be made available to the Registrar General for appropriate action."

39. Nonetheless the Apex Court in such economic offences has observed that a liberal approach should not be adopted as in the case of Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, . The Apex Court baffled by the mounting numbers of economic offences and financial scams in a matter of grant of bail in the case of Nimmagadda Prasad Vs. Central Bureau of Investigation, , has made strong observations.

40. The issue of bail to the applicant was considered in detail when the first bail application was rejected on merits on 31st of May, 2013. The applicant withdrew his special leave petition as is recorded by the Apex Court in its order dated 5th July, 2013 quoted hereinabove with a observation that the C.B.I. would apply to the trial court for disposal on day-to-day basis. The C.B.I. Court has been making efforts and but for the impediments indicated above, the same has been almost sorted out and there is every likelihood that the State Government would notify the C.B.I. Court very soon.

41. The applicant again in view of the background of the case and the serious nature of the offence and its gravity cannot claim bail as a matter of right.

42. It is necessary to emphasise that the trial should not be further impeded in any way and the presence of all the accused deserves to be secured safely when there appears to be a veigled attempt on account of the other co-accused to somehow or the other forestall the trial. The applicant being one of the main accused, therefore, has to be carefully observed and his movements are likely to impede the trial. The applicant on the ground of his ailment has been unable to fully co-operate with the trial and therefore, the issue of his medical ailment assumes importance for consideration thereby other claims on merit receding in background. It is correct that the C.B.I. has not brought forth any element of doubt indicating that the applicant has tampered the bail or has violated the terms and conditions, but the Trial Court/Incharge Special Judge, before whom the applicant surrendered passed the following order on 14.5.2014:

"Application 627Kha has been moved on behalf of accused Pradeep Shukla through his counsel in this case for granting exemption to him from personal appearance for the purpose of physical surrender to take the applicant into custody while being admitted in hospital, permitting him to continue for treatment/admission in the hospital and for any other order.

It is alleged in this application that the applicant is represented before this Court by his counsel, who was granted-interim bail on account of his serious ailment by the Hon"ble High Court for the period of six months by order dated 31.10.2013. He was released from prison on 7.11.2013. Period for interim bail expired on 6.5.2014. An application for extension of interim bail was moved before the Hon"ble High Court which was decided on 31.10.2013. Pending this application, it was directed by the Hon"ble High Court that the accused shall not be taken into custody till further orders are passed in aforesaid extension application. Accused has simultaneously moved third bail application before the Hon"ble High Court, which is pending before the Hon"ble High Court and is listed on 16.5.2014. On 12.5.2014 Hon"ble High Court decided the extension application without touching the merits of medical condition. Accused was admitted in Kailash Hospital on 11.5.2014 on account of deteriorating medical condition. He was shifted to Ram Manohar Lohiya Hospital on 13.5.2014, where he is still admitted. Earlier when accused was in judicial custody, report regarding his medical condition was submitted by jail authorities, who is undergoing medical

treatment from different hospital for T.I.A., C.A.D. and Spinal Tumor. Accused is not in a position to appear before this Court for his surrender upon expiry of the period of bail.

From the side of C.B.I. written objections 629Kha have been filed to the effect that application 627Kha is devoid of merit and is not legally maintainable. Accused has not complied with the directions of the Hon''ble High Court mentioned in the order dated 31.10.2013 and has not filed any medical progress report in this Court. The accused cannot surrender in the hospital. He has to appear before this Court, thereafter he may make any prayer for medical treatment, which may be provided to him in accordance with provisions of Jail Manual. It is the duty of jail authorities to provide all medical facilities to the accused. There is no provision for exemption from appearance of the accused as prayed.

Accused is in the habit of violating the orders of the Hon''ble High Court. Application is liable to be rejected and non-bailable warrant may be issued against him.

Heard the learned counsel for the accused-applicant as well as Special Prosecutor Sri V.K. Sharma for C.B.I. and perused the entire record.

A perusal of the record shows that first bail application was rejected by the Hon''ble High Court on 31.5.2013. Thereafter, accused moved Second Bail Application Numbering 22648/13, Pradeep Shukla v. C.B.I. Hon''ble High Court ordered for release of the accused Pradeep Shukla on 31.10.2013 on short term bail for six months subject to the following conditions:

1. That the applicant will not try to influence the witnesses and will cooperate in the speedy and expeditious trial before the C.B.I. Court.
2. That the applicant will produce the progress/status report from the attending physician or surgeon regarding his health after every two months.
3. That the applicant will not leave the country without prior permission of the court.

It is argued on behalf of C.B.I. that accused has failed to produce any medical progress/status report in this Court as ordered by the Hon''ble High Court even after two months. It is contended from the side of the accused that medical/progress report has been filed before the Hon''ble High Court giving details of the treatment etc. as it was not mentioned in the aforesaid order that the medical/progress report shall be filed before C.B.I. Court of Ghaziabad. Since there is nothing on record to show whether accused has complied with this direction by filing medical/progress report before the Hon''ble High Court, therefore, nothing can be inferred in this regard.

It transpires from record that learned Incharge of the said court of C.B.I. Ghaziabad has ordered on 9.5.2014 that the period of the interim bail has

expired on 6.5.2014, but in view of the order of Hon''ble High Court passed on 6.5.2014 in Criminal Misc. Extension Application No. 156299 of 2014, Pradeep Shukla v. C.B.I.,

exemption of the accused from his appearance for 9.5.2014 only was granted by Incharge of the C.B.I. Court concerned and accused was directed to produce order of the Hon''ble High Court.

At the time of the hearing of instant application, copy obtained from internet passed by Hon''ble High Court on 12.5.2014 in Criminal Misc. Extension Application No. 156299 of 2014 Pradeep Shukla v. C.B.I., was produced before this Court. Let this paper be indexed.

In the above mentioned criminal misc. extension application Hon''ble High Court has ordered on 12.5.2014 that this application being not maintainable is rejected without prejudice to the rights of the applicant of proper/fresh application, if so advised according to law. Therefore, application seeking extension of interim bail application has been rejected by the Hon''ble Court.

In view of above, accused Pradeep Shukla should have surrendered before the C.B.I. Court of Ghaziabad on 13.5.2014. Instead of surrendering himself by putting in his personal appearance, application 627Kha has been moved on his behalf through counsel for his surrender on expiry of the period of interim bail. Since accused Pradeep Shukla is not present for his surrender, therefore, unless he appears before the court, his surrender application cannot be allowed on the ground that he is admitted in the hospital on account of suffering from alleged ailment.

Without appearance of an accused before the court, prayer for his surrender cannot be accepted as physical appearance before the court is a must for grant of surrender application and for taking into judicial custody.

Merely on the ground that his third bail application is pending for hearing before the Hon''ble High Court, which is listed for hearing on 16.5.2014, exemption from his physical appearance cannot be granted. His another prayer for taking into custody as he is allegedly admitted in hospital can also not be granted as accused is not present before the court personally. Therefore, without his surrender he cannot be ordered to be taken into custody.

Application 627Kha is, therefore, rejected. Put up on the date fixed for further orders."

43. A perusal thereof would indicate that the applicant did not physically present himself and consequently the matter was again adjourned whereafter the applicant surrendered on 15th May, 2014. However, on the same day within a period of three hours, the applicant was transferred to Dr. Ram Manohar Lohia Hospital, New Delhi, in custody. This fact is evident from the affidavit and the report of the Jail Superintendent that has been filed alongwith the supplementary-affidavit.

44. The panel report of the doctors as extracted hereinabove that was preceded by an immediate reference by the jail authorities clearly establishes that the applicant has been provided adequate treatment promptly. The courtesy and hospitality extended by the jail authorities not only reflect benevolence but also their obligations under the Jail Manual for taking care of the applicant. The apprehension of the learned counsel for the applicant that he may not be able to receive urgent treatment in the event of any such contingency of the nature of the ailment of the applicant, therefore, does not appear to be well founded. To the contrary the report of the Jail Superintendent indicates that the applicant arrived in Jail somewhere around 3.35 p.m. and was sent to the hospital about 6.00 p.m., the same day on a reference made by the doctors of the Jail. This alertness on the part of the jail authorities therefore, does not support the apprehension of the learned counsel for the applicant that he would not be given appropriate treatment if he is in custody. On the other hand the alacrity indicates a sign of readiness on the part of the jail authorities to look to the welfare of the applicant medically. The shifting to the hospital with specialities at New Delhi from the District Jail Ghaziabad within the aforesaid short time therefore, is sufficient indication of the applicant being looked after carefully by the jail authorities.

45. Sri Basant has invited the attention of the court to the medical reports to indicate that the ailment has from before, particularly the growth of tumour, has slightly increased and he therefore, submits that the contention about the genuineness of the ailment cannot be doubted. At this stage it would be relevant to mention that the C.B.I. had not contested this position of the status of ailment and the sufferance of the applicant from the disease by filing any affidavit when the second bail application was disposed of on 31.10.2013.

46. Even assuming the medical report dated 22.5.2014 that has been filed by the applicant on its face value to be correct, the court does not find any certification of any cycled treatment or therapy to be carried out or any indication of surgery or the like being attempted to secure the health of the applicant. It also does not indicate any continuous therapy to be undertaken under continuous hospitalization nor does it refer to the period for which the applicant may need continuance or further hospitalization for the said purpose. The aforesaid certification therefore, is not sufficient for the court to conclude that the applicant deserves to be granted a permanent bail or even a periodical interim bail as was done previously.

47. It would also be relevant to note that the medical report dated 22.5.2014 does not give any indication of any deterioration or a landslide reduction in the health status of the applicant as compared from before. The report also does not predict any future threat to life or any such line of treatment so as to consider the grant of a permanent bail. On the other hand the actual treatment extended and the panel report bears enough testimony and expression to believe that the applicant is being treated appropriately even under judicial custody. There is no

reason to presume that such facilities will be discontinued in the event of any such contingency arising or to the facilities to which the applicant is entitled even otherwise which the jail authorities are bound to extend under the relevant rules.

48. Needless to mention that apart from the medical facilities, an under trial in the State of U.P. is entitled to claim temporary release on other grounds that are extensively mentioned in the Uttar Pradesh (Suspension of Sentences of Prisoners) First Amendment Rules, 2012. This is however only to indicate that an under trial is not deprived of his absolute liberty and apart from facilities of medical treatment in serious ailments, the other requirements of an under trial as mentioned in the aforesaid rules are also taken care of. The contention therefore, that the applicant's liberty stands curtailed, which ought not to be continued, is not the correct position on the facts of the present case.

49. The grant of bail being a matter judicious discretion also involves the discretion being not exercised too loosely particularly in matters of grave concern where the trial deserves to be concluded expeditiously as observed by the Supreme Court in the order passed on 5.7.2013 in the present case itself. The decision of Amar Singh (supra) and that of Ateeq Ahmad (supra), are clearly distinguishable on facts, and it would be relevant to note the last paragraph in the case of Ateeq Ahmad where the Apex Court has itself clarified that the order passed by the High Court that was under consideration shall not be cited as a precedent, and on the other hand had asked the High Court to decide the matter by exercising its discretion in accordance with law. The said case even though of an alleged kidney ailment, therefore, does not help the applicant on the facts of the present case. The ailment in the case of Amar Singh (supra), was entirely different, the seriousness whereof on facts is clearly distinguishable from the facts of the present case.

50. On this position emerging and having perused the stand of the C.B.I. that had already been taken earlier in the first and the second bail applications, the claim of the applicant for bail on his continuing ailment does not appeal to the court at this stage for the reasons indicated hereinabove that demonstrate that the applicant while in custody is being looked after by the jail authorities and is being provided with prompt medical treatment as desirable in the nearby vicinity in a hospital of repute at New Delhi. Consequently, I do not find this to be a case for grant of any further bail at this stage and the application is accordingly rejected.

51. This order will however not prejudice the right of the applicant to seek treatment in future on certification in a hospital of repute like the All India Institute of Medical Sciences, New Delhi nor it shall prejudice the applicant to seek any further judicial remedy in this regard. The jail authorities are further directed to extend medical facilities to which the applicant may be entitled under law in the event of any such contingency to ensure that the applicant's life is not under threat on account of failure of availability of medical facilities and he shall be allowed prompt medical treatment as may be advised and desirable as per the

medical opinion of the hospital where the applicant is being treated.

52. The C.B.I. is further directed to remain more alert about the movements of the applicant and keep the concerned court informed so that appropriate precautions are taken to secure the presence of the applicant for the purpose of the trial.