

# Dipak Subhashchandra Mehta vs C.B.I & Anr on 10 February, 2012

**Author: P.Sathasivam**

**Bench: J. Chelameswar, P. Sathasivam**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 348 OF 2012

(Arising out of S.L.P. (Crl.) No. 8995 of 2011)

Dipak Shubhashchandra Mehta

....

Appellant(s)

Versus

C.B.I. & Anr.

.... Respondent(s)

## J U D G M E N T

P.Sathasivam,J.

1) Leave granted.

2) This appeal is directed against the judgment and order

dated 20.10.2011 passed by the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 14224 of 2011 whereby the High Court rejected the application for regular bail filed by the appellant herein.

3) Brief facts:

(a) The appellant herein is the Joint Managing Director of

Vishal Exports Overseas Ltd., a Public Limited Company (hereinafter referred to as "the Company") incorporated in the year 1988 as a partnership firm which was converted into a Public Limited Company in 1995 under the provisions of Chapter IX of the Companies Act, 1956. The Company is engaged in the business of import and export of diverse commodities including agricultural products and diamonds.

According to the appellant, the Company was a Government of India recognized Four Star Trading House with a turnover of about Rs.3935 crores in the year 2005-2006. It is also his claim that the Company has been accredited with many awards and was ranked 1st in India under the merchant exporter category in the years 2003-04 and 2005-06.

(b) Due to non-payment of advances from various banks, complaints were filed against the Company as well as the promoters and Directors. The FIRs filed by various banks are:

(i) In the year 2008, Punjab National Bank lodged an FIR with CBI bearing No. RC-I(E)/2008/BSFC, Mumbai. In the said case, only Pradip Subhashchandra Mehta (A-3) was arrested. Remand was not granted by the Special CBI Court at Ahmedabad and bail was granted within a span of one day.

The appellant herein was not arrested in this case and formal bail was granted to him on filing charge sheet.

(ii) In the year 2009, UCO Bank lodged an FIR with the CBI bearing No. RC 12(E)/2009 in which charge sheet was submitted on 15.11.2010 and the appellant was arrested on 1.11.2010 and was released on temporary bail for various durations.

(iii) Vijaya Bank had also lodged an FIR with the CBI bearing No. RC11(E)/2008 and submitted charge sheet on 26.06.2010 in which the appellant herein was arrested after filing of the charge sheet, he was also granted bail.

(iv) State Bank of Hyderabad has also lodged an FIR and the same is under investigation. No charge sheet has been submitted so far.

(c) State Bank of India and 17 other banks filed O.A. No. 11 of 2008 before the Debts Recovery Tribunal (DRT), Ahmedabad seeking recovery of amount given by way of credit facilities under consortium arrangement to the Company. Ad-interim orders have been passed on 28.02.2008 to secure the interest of the banks and to ensure that the litigation does not become meaningless by the time final order is passed.

(d) On 19.01.2010, the appellant herein filed Civil Suit No. 145 of 2010 seeking damages to the tune of Rs.786 crores against the informant Andhra Bank and other banks before the Ahmedabad City Civil Court. The Andhra Bank, Zonal Office, Mumbai also lodged an FIR on 19.01.2010 which was registered by the CBI BS & FC/MUM bearing No. 1(E)/2010 for commission of offences punishable under Sections 406, 420, 467, 468, 471 read with Section 120B of the Indian Penal Code, 1860 (in short 'IPC'). In connection with the said FIR, the appellant herein was arrested on 31.03.2010 and remanded to police custody till 03.04.2010 and thereafter in the judicial custody. The appellant was granted temporary bail on three occasions on medical ground. After completing the investigation, the CBI submitted charge sheet on 10.06.2010 in which the appellant was arrayed as accused No.4.

(e) On 31.08.2010, the appellant preferred an application for bail after charge sheet was filed before the Special Court vide Criminal Misc. Application No. 141 of 2010 but the same was dismissed.

(f) Being aggrieved by the said order, the appellant filed Criminal Misc. Application No. 11415 of 2010 before the High Court for regular bail in connection with the FIR lodged by Andhra Bank, Zonal Office Mumbai bearing No. 1(E)/2010 which was dismissed by the High Court on 19.10.2010.

(g) After investigation in RC.12(E)/2009 lodged by UCO Bank charge sheet was submitted on 15.11.2010 and the appellant was arrested on 01.11.2010 and he was released on temporary bail.

(h) Against the order dated 19.10.2010 passed by the High Court, the appellant filed S.L.P.(Crl.)No. 83 of 2011 before this Court and the same was disposed of on 29.04.2011 directing the special Court to take all endeavour for an early completion of the trial.

(i) As there was no progress in the trial, the CBI filed a supplementary charge sheet on 02.02.2011 which was served on all the accused including the appellant herein only on 02.08.2011. Since the trial did not come to an end, the appellant filed Criminal Misc. Application No. 195 of 2011 for regular bail before the Special Court. In the meanwhile, Additional Chief Judicial Magistrate, vide order dated 15.09.2011 in Misc. Application No. 17/2011 in Spl. Case No. 03/2010 granted temporary bail up to 20.10.2011 to the appellant herein on the ground of medical exigencies. Again on 19.10.2011, considering the health of the appellant, the Special Court extended the temporary bail till 30.11.2011.

Vide order dated 27.09.2011, Special Court rejected the application for regular bail filed by the appellant herein.

(j) The appellant filed an application being Criminal Misc.

Application No. 14224 of 2011 before the High Court for regular bail but the same was rejected. Again the said application, the appellant has filed the above appeal by way of special leave before this Court.

4) Heard Mr. Mukul Rohtagi, learned senior counsel for the appellant and Mr. P.P. Malhotra, learned Addl. Solicitor General for the CBI.

5) The only point for consideration in this appeal is whether the appellant herein has made out a case for regular bail and whether the High Court is justified in dismissing his bail application.

6) We are conscious of the fact that this Court should not ordinarily, save in exceptional cases, interfere with the orders granting/refusing bail by the High Court. We are also provided with the facts and figures about the appellant's involvement in similar other proceedings. In the case on hand, out of four accused, A-1 is the Company and the appellant-A-4 is the Joint Managing Director of the Company.

It is not in dispute that A-2 and A-3 were granted bail by the High Court on medical grounds. Mr. Rohtagi, learned senior counsel for the appellant apart from highlighting that the appellant-A-4 is entitled for regular bail and also submitted that he be considered on medical grounds because of his various ailments as certified by leading doctors including the Medical Officer, Central Jail Dispensary, Ahmedabad.

7) Insofar as the merits of the claim of the appellant is considered, it is useful to refer the recent decision of this Court in Sanjay Chandra vs. Central Bureau of Investigation, 2012 (1) SCC 40. Since in this decision, all the earlier decisions of this Court relating to grant of bail in a matter of this nature have been considered, we feel that no other earlier decisions need be referred to. Those appeals were directed against the common judgment and order of the learned Single Judge of the High Court of Delhi dated 23.05.2001 in Sanjay Chandra vs. CBI by which the learned Single Judge refused to grant bail to the appellant-accused therein. The allegations against those accused appellants were that they entered into a criminal conspiracy for providing telecom services to otherwise ineligible companies and by their conduct, the Department of Telecommunications (DoT) suffered huge loss. The learned Special Judge, CBI, New Delhi rejected the bail applications filed by them by order dated 20.04.2011. The appellants therein moved applications before the High Court under Section 439 of the Code of Criminal Procedure, 1973. The same came to be rejected by the learned Single Judge by his order dated 23.05.2011. Aggrieved by the same, the appellants approached this Court by filing appeals.

8) After considering the entire materials, arguments of the various senior counsel as well as the Addl. Solicitor General for the CBI and marshalling the earlier decisions of this Court and after finding that the trial may take considerable time and the appellants who are in jail have to remain in jail longer than the period of detention had they been convicted and also keeping in mind the fact that the accused are charged with economic offences of huge magnitude, ultimately this Court

granted bail to all the appellants by imposing severe conditions.

9) It is also relevant to refer the order passed by this Court on 29.04.2011 in SLP (Criminal) No. 83 of 2011 filed by the appellant herein earlier. This Court directed as under:

"We have considered the rival contentions and also perused all the relevant documents. In view of the fact that the other two accused, namely, A-2 and A-3 were released mainly on the ground of illness and old age and of the assurance by the learned Additional Solicitor General that the trial will be completed within a period of three months, we are not inclined to accede to the request of the petitioner. However, we make it clear that for any reason if the trial continues beyond the period assured by the learned Additional Solicitor General, the petitioner is free to move bail application before the Special Court. In such event the Special Court is permitted to consider it in accordance with law. We also direct the Special Court to take all endeavour for an early completion of the trial as suggested by the learned Additional Solicitor General.

10) Though on the last date of hearing, learned Addl.

Solicitor General assured this Court that the trial will be completed within a period of three months, in view of various reasons considering the magnitude of the issues involved, frequent absence of the accused at the hearing dates due to various reasons including health grounds, filing of petition for discharge and also the pressure of work on the Special Court hearing among other important matters, the fact remains that the trial could not be concluded. In fact, it is pointed out that though the prosecution has submitted charge sheet the charges have not been framed due to various reasons as mentioned above.

11) We have already pointed out that insofar as the present case is concerned among the four accused A-1 is a Company, A-2 and A-3 were granted bail on medical grounds. According to the present appellant i.e A-4, he was arrested on 31.03.2010 by the CBI and was remanded to police custody for three days. Since 03.04.2010, he is in the judicial custody at Sabarmati Central Jail, Ahmedabad and on 15.09.2011, he was granted interim bail up to 20.10.2011 and again on 19.10.2011, considering his health conditions, the Special Court extended his interim bail till 30.11.2011. As stated earlier, the CBI has completed the investigation and submitted the charge sheet on 10.06.2010 and the offences alleged in the charge sheet are of the years 2006 and 2007.

12) Mr. Rohtagi, learned senior counsel, after taking us through various proceedings by the Civil Court as well as DRT under SARFESI Act submitted that entire properties of the appellant and their companies/firms were attached by the orders of the Court/Tribunal. According to him, before entering into transaction with the banks, all those properties have been mortgaged and as on date, the appellant cannot do anything with those properties without the permission of the Court/Tribunal. In such circumstances, he submitted that there will not be any difficulty in realising the money payable to the banks, if any. In addition to the above factual information, it was pointed out that after the order of this Court, on 29.04.2011 there is no progress in the trial. It is also pointed

out that the trial has not even commenced inasmuch as a supplementary charge sheet has been served upon the appellant herein only on 02.08.2011. It is further pointed out that the charge has not been framed till this date.

It is also brought to our notice that prosecution has relied upon 286 documents and listed 47 witnesses in the charge sheets filed by it.

13) In addition to the above information, Mr. Rohtagi has also pointed out that at the time of arrest of the appellant on 31.03.2010, he was taken to the hospital and was diagnosed for hypertension and acidity. According to him, no other ailment was noted by the hospital in the discharge card.

While so, when he was in custody since 31.03.2010, the appellant has suffered 40 per cent permanent partial disability in his left arm as a result of surgery for abnormal bone protrusion. It is also highlighted that on account of uncontrolled high blood pressure while in custody the appellant has suffered 30 per cent blindness in his right eye and has undergone a surgery for vitreous hemorrhage. It is further pointed out that the hemorrhage having re-occurred, the doctors have advised a second surgery to save his eyes.

However, according to him, the said surgery could not be performed due to continuing uncontrolled high blood pressure and resultant recurring bleeding in the vessel even after first surgery. It is also pointed out that after passing of order by this Court on 29.04.2011, the appellant while in custody has contracted obstructive jaundice requiring long intensive treatment. As a result of such obstructive jaundice, the appellant is also unable to undergo other required surgeries.

Learned senior counsel has also pointed out that the appellant is now suffering from further disability of loss of hearing which can be corrected only through surgery. In support of the above claim, various certificates issued by doctors of private hospitals have been placed on record. In addition to the same, Mr. Rohtagi by drawing our attention to the certificate dated 07.08.2011 issued by the Central Prison Hospital, Sabarmati, Ahmedabad stated that even according to the Medical officer of the Central Jail Dispensary, the appellant is suffering from various ailments as mentioned in the certificate which reads as under:

"OUT NO. ACJD/346/2011 CENTRAL PRISON HOSPITAL SABARMATI, AHMEDABAD Date : 07.08.2011 CERTIFICATE This is to certify that Mr. Dipak Shubhash Mehta is an under trial prisoner of Central Jail, Ahmedabad with prisoner NO. 4077.

He complains of continuous precordial chest pain dullache like heaviness in chest, Gabharaman, giddiness, chronic Rt. Hypochondriach pain in abdomen, bleeding P/R. dimness of vision Rt. Eye vision deviation of Rt. Eye outward since 1 -1/2 years.

Patient is a known case of uncontrolled blood pressure since 4 years, chronic obstructive jaundice since 6 months and fissure in anno with piles. Patient was sent to eye dept. Civil Hospital Ahmedabad on 02.02.2011, seen by Dr. K.P.S. (Ophthalmic

Surgical Unit) and diagnosed as Rt. Eye glaucoma, 3rd nerve palsy in Rt. Eye with vitreous hemorrhage, macular degeneration and percentage of blindness is 30%. CT report suggests Fatty replacement of belly and distal tendinous insertion of superectus muscle on Rt. Side.

On 25.03.2011, patient was operated for vitreous hemorrhage in private hospital even though, on 17.06.2011 eye examination found fresh vitreous hemorrhage present due to uncontrolled blood pressure and chronic obstructive jaundice.

On 27.09.2010, patient was sent to U.M. Mehta Institute of Cardiology & Research Centre for further investigation and treatment where his Echocardiography was done and report suggests Normal LV side and fair LV function reduced LV compliance and 55%.

On 08.01.2011, patient was operated for tardy ulner nerve paresis. It forearm and neurolysis done of Lt. ulner nerve and advised regular physiotherapy. Dated 26.02.2011 CDMO, Govt. General Hospital, Sola certified that patient is a case of physically disabled and has 40% permanent physical impairment in relation to his Lt. upper limb.

Patient needs to be under continuous observation under treating doctor and follow up. He is advised to avoid physical and mental stress to prevent any serious complications.

This certificate is issued on the basis of available case records at Central Jail Dispensary.

Date: 07.08.2011 Place: Ahmedabad Central Jail Sd/-

Medical Officer Central Jail Dispensary, Ahmedabad."

14) Apart from the above certificate, the very same Medical Officer, Central Jail Dispensary, Ahmedabad has issued another Certificate on 08.09.2011. In the said Certificate, after reiterating the very same complaints finally he concluded "he needs treatment from the Specialist, Super Specialist, Cardiologist and Gastroenterologist & Ophthalmologist for his multiple problems".

15) The above information by a Medical Officer of the Central Jail Dispensary, Ahmedabad supports the claim of the appellant about his health condition. No doubt, Mr. P.P. Malhotra, learned ASG by drawing our attention to various details from the counter affidavit filed on behalf of the CBI submitted that in view of magnitude of the financial involvement by the appellant with the nationalised banks, it is not advisable to enlarge him on bail.

16) We have gone through all the details mentioned in the counter affidavit of the Senior Superintendent of Police, CBI, and Bank Securities and Fraud Cell, Mumbai. The appellant has also

filed rejoinder affidavit repudiating those factual details. At this juncture, it is unnecessary to go into further details. In the earlier order, we have noted the assurance of the ASG for completion of the case within three months.

Admittedly, the same was not fulfilled due to various reasons.

It is also not in dispute that though the charge sheet and additional charge sheet were submitted to the Court, the same have not been approved and framed. In the meanwhile, apart from absence of some of the accused on various dates, due to some reasons or other including medical grounds, the appellant herein has also filed a petition for 'discharge'.

Further, even in the counter affidavit filed by the CBI, it is stated that the accused persons moved applications under Section 239 of the Code of Criminal Procedure, 1973 for discharge and the same are pending for hearing and disposal and further the Madhao Merchantile Bank case is going on day-to-day basis before the Special CBI Court and in addition to the same, Sohrabuddin Fake Encounter case is also pending for trial before the same Court. It is clear that the said Special CBI Court is over burdened and in view of the voluminous materials the prosecution has collected, undoubtedly the trial may take a longer time.

17) This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. [Vide Babba vs. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar vs. State of U.P., (2000) 9 SCC 443.] But the same should not be applied to all cases mechanically.

18) The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above.



19) As observed earlier, we are conscious of the fact that the present appellant along with the others are charged with economic offences of huge magnitude. At the same time, we cannot lose sight of the fact that though the Investigating Agency has completed the investigation and submitted the charge sheet including additional charge sheet, the fact remains that the necessary charges have not been framed, therefore, the presence of the appellant in custody may not be necessary for further investigation. In view of the same, considering the health condition as supported by the documents including the certificate of the Medical Officer, Central Jail Dispensary, we are of the view that the appellant is entitled to an order of bail pending trial on stringent conditions in order to safe guard the interest of the CBI.

20) In the light of what is stated above, the appellant is ordered to be released on bail on executing a bond with two solvent sureties, each in a sum of Rs. 5 lakhs to the satisfaction of the Special Judge, CBI, Ahmedabad on the following conditions:

i) the appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

ii) the appellant shall remain present before the Court on the dates fixed for hearing of the case, for any reason due to unavoidable circumstances for remaining absent he has to give intimation to the Court and also to the concerned officer of CBI and make a proper application that he may be permitted to be present through counsel;

iii) the appellant shall surrender his passport, if any, if not already surrendered and in case if he is not a holder of the same, he shall file an affidavit;

iv) In case he has already surrendered the Passport before the Special Judge, CBI, that fact should be supported by an affidavit.

v) liberty is given to the CBI to make an appropriate application for modification/recalling the present order passed by us, if the appellant violates any of the conditions imposed by this Court.

21) The appeal is disposed of on the above terms.

.....J. (P. SATHASIVAM) .....J. (J. CHELAMESWAR)  
NEW DELHI;

FEBRUARY 10, 2012.