

Sathish Babu Sana vs Central Bureau Of Investigation on 15 November, 2021

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 2228/2021

CRL.M.A. 17969/2021 (exemption)

CRL.M.A. 17970/2021 (stay)

SATHISH BABU SANA

Represented by:

Mr. Siddharth A
Advocate with M
Mr. Sahil Ghai
Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respon

Represented by: Mr. Ripu Daman Bhardwaj, SP
CBI with Mr. Kushagra Kumar
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 15.11.2021 The hearing has been conducted through Physical Mode.

CRL.M.A. 17969/2021 (Exemption)

1. Exemption allowed subject to just exceptions.

2. Application is disposed of.

W.P.(CRL) 2228/2021 and CRL.M.A. 17970/2021 (stay)

1. By this petition, the petitioner seeks quashing of RC No.224/2017/A0001/CBI/AC-III dated 16th February, 2017 under Sections 8/9/13(2) r/w13(1)(d) PC Act and Section 120B IPC registered by the CBI as also the order dated 26th October, 2021.

2. Learned counsel for the petitioner states that the above noted RC was registered impleading the four accused and some other unknown/public servants, wherein the petitioner was not named as an accused. FIR was registered pursuant to a letter received from the Director of Enforcement dated 31st August, 2016 informing about the transactions under the Foreign Exchange Management Act against AMQ Group of Companies and Moin Akhtar Qureshi. In the Enforcement Directorate

complaint, after investigation, the petitioner and Pradeep Koneru were cited as witnesses. After the Enforcement Directorate filed the complaint, the petitioner was arrested in the ECIR and status was changed to that of an accused and summons were issued under Section 50(2) PMLA which were stayed by Division Bench of this Court vide order dated 14th October, 2019 in W.P.(CRL) 2903/2019, which stay is still in force. Learned counsel for the petitioner states that on 3rd October, 2018, statement of the petitioner was recorded by the CBI as a witness under Section 161 Cr.P.C. and on 4th October, 2018, under Section 164 Cr.P.C. before the learned Metropolitan Magistrate as a witness. During the course of the investigation, the petitioner stated that the statements attributable to the petitioner in the conversation recorded were his statements.

3. Learned counsel for the petitioner also points out to Clauses 14.23, 14.24 and 14.25 of the CBI Manual, particularly Clause 14.25 which states that in case, there is doubt with the Investigating Agency, whether the statement of the person being recorded as a witness or an accused, recording of the statement under Section 164 Cr.P.C. should be kept pending till the position becomes clear because the procedure for recording statement of witnesses and confessions of the accused persons under Section 164 Cr.P.C. are different.

4. Learned counsel states that it was thus clear to the CBI that the petitioner was a witness when his statement under Section 164 Cr.P.C. was recorded on 4th October, 2018. Learned counsel for the petitioner states that since extortion was being carried out from the petitioner by the Investigating Officer in the above noted RC, the petitioner filed a complaint before the CBI on 15th October, 2018 pursuant where to RC No. 13(A)/2018/CBI/AC-III was registered. It was even the case of the CBI that as stated before the learned trial Court, noted in the order dated 26th August, 2020 that till investigation in RC 13(A)/2018/CBI/AC-III was pending, the investigation in RC 224/2017/A0001/CBI/AC-III should not be proceeded with. Learned counsel for the petitioner states that till date, no further investigation having been carried out in the present RC, suddenly the stand of the CBI has changed and the petitioner is now being treated as an accused, which is the grievance of the petitioner now. It is stated that this fact is evident from the copy of the application filed by the CBI resulting in passing of the order dated 26th October, 2021. In the application, the petitioner has been repeatedly mentioned as an accused. Learned counsel for the petitioner states that this change in the stand of the CBI is prima facie because the petitioner lodged a FIR against one of its officers of extortion in which after investigation charge-sheet has been filed not against any CBI officers but against some private persons.

5. Notice.

6. Learned counsel for the CBI accepts notice. Status report be filed.

7. List this petition on 19th January, 2022.

8. Till the next date of hearing, though the voice sample of the petitioner be collected and sent for FSL opinion, however the same will be subject to the outcome of this petition as to whether the said voice sample has been recorded as a witness or an accused. Since coercive action against the similarly placed Pradeep Koneru has been stayed by this Court in W.P.(Crl.) 384/2019, till the next

date of hearing, CBI will take no coercive action against the petitioner subject to his joining the investigation as and when directed.

9. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

NOVEMBER 15, 2021 PB