

Delhi High Court

Purushottam Dev Arya vs Central Bureau Of Investigation on 2 August, 2011

Author: Mukta Gupta

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Bail Application No.885/2011

% Reserved on: 27th July , 2011

Decided on: 2nd August, 2011

Purushottam Dev Arya

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with  
Mr. L.R. Luthra, Adv.

versus

Central Bureau of Investigation

..... Respondent

Through: Mr. Dayan Krishnan with  
Mr. Gautam Narayan, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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|--|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not?  | Yes           |
| 3. Whether the judgment should be reported in the Digest?                    | Yes           |

MUKTA GUPTA, J.

1. By this application, the Petitioner seeks anticipatory bail in case RC- DAI-2010-A-0044 for offences under Section 120B read with Sections 420/467/468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Learned counsel for the Petitioner contends that the entire case was allegedly opened initially on the complaint of one Sangeeta Goyal. Pursuant to the complaint of Ms. Sangita Goyal, a letter was written by the CEO of the Organizing Committee to Shri Bhatnagar, the Joint Secretary in the Ministry of Sports explaining that there was no illegality or irregularity in the contract awarded to M/s Swiss Timing Ltd., Switzerland (STL). The matter was examined by the members of various Committees including the Executive Board, the Finance Sub-Committee. Thus, the project was neither cleared by Mr. Bhanot nor Mr. Kalmadi against whom allegations of conspiracy have been made. The allegation of the prosecution that the contract was structured to favour STL is unfounded as there is no evidence with the CBI to show that the contract was structured in favour of STL. It is alleged that the prosecution has no evidence by way of document or otherwise to show that the

contract was deliberately awarded to the company with mala fide intention. The contentions of the STL have not been heard. There was no complaint from any of the athletes that timings were incorrect. The third allegation of inflating the price is also unfounded. No decision can be taken thereon on the basis of opinion of 2 individuals, who themselves are not experts in the field. The best test to decide the price of the contract is on the principle of demand and supply. Despite number of Committees and large number of people, who were over all incharge, none found any illegality or irregularity in the contract. In India earlier also numbers of games have been organized by the STL successfully.

3. The allegation that the Petitioner did not join the investigation is wholly incorrect. The Petitioner was interrogated/ joined in investigation four times. Pursuant to the notice issued, whatever documents were asked, they were sent by courier and the courier receipt shows that 3 Kg. documents were sent. Reliance is placed on *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*, AIR 2011 SC 312 to say that balance deserves to be maintained between frivolous allegations and liberty at the stage of anticipatory bail. Reliance is also placed on *Yogender Pratap Singh v. State*, 2009 (2) JCC 1314 to contend that if the process under Section 82 Cr.P.C. is mala fide then the Petitioner can approach the Court for anticipatory Bail.

4. Learned Special Public Prosecution on the other hand contends that the case of the prosecution demonstrates a conspiracy being hatched pursuant to which initially an attempt was made to award the contract to M/s STL by nomination, and thereafter the contract was awarded to STL on the basis of tailor made conditions so as to oust all other competitors at the pre-qualifying stage. It is stated that EOI was issued without any inputs from the concerned division i.e. Technology Functional Area, mentioning that "only Swiss Timing-Omega meets out above all criteria". Thereafter, RFP was issued on 1st October, 2009 and the conditions framed thereunder were so as to further restrict competition in favour of STL. In order to preclude any other company except STL from clearing the pre-qualification stage, the RFP conditions were altered in a non-transparent manner on 4th October, 2009 on the written directions of Mr. V.K. Verma through his note dated 3rd October, 2009. In response to the RFP, 2 bids were received, one from STL and the other from M/s MSL, Spain (MSL). In a pre-meditated manner MSL was wrongfully eliminated at the pre-qualification stage, thus, making the process virtually a single tender. STL was awarded the contract at exorbitant rate of `107 crores causing huge undue loss to the Government of India. It is also contended by learned Special Prosecutor that during investigation it has been revealed that M/s Gem International, whose partners are Anil Kumar Madan and P.D. Arya, was acting as some sort of agents/associates of M/s STL in the matter of dealing with the Organizing Committee and huge amounts were transferred by M/s STL to M/s Gem International on the pretext of its carrying out some sub- contractual work relating to provision of TSR solution for CWG 2010. M/s Gem International received at least `23 crores from STL on the basis of generic, vague, lump sum and incorrect invoices, which do not contain rates, quantities or details of works carried out by them. It has further been revealed that the invoices are false and are not based on genuine commercial transactions.

5. I have heard learned counsel for the parties. A perusal of the charge sheet and the documents enclosed and statement of witnesses show that the Petitioner and his concern M/s Gem

International were not merely sub- contractors rather they actively participated as authorized representatives of M/s STL even before the RFP was announced. The Petitioner did not appear for investigation on the ground that since the co-accused Anil Kumar Madan had gone to Switzerland for treatment, he had accompanied him as an attendant.

6. The Petitioner initially responded to the notices, i.e., when search were conducted, he was present and was interrogated. However, it is apparent that in order to avoid investigation, he went to Switzerland as an attendant of Mr. Anil Kumar Madan, who had gone there for his treatment. Even after coming back from Switzerland, the Petitioner and co-accused Anil Kumar Madan have avoided investigation. The Petitioner did not appear pursuant to a notice issued on 4th April, 2011 ostensibly on the ground that he had gone along with A.K. Madan for his treatment to Switzerland. However, as per the objections filed to the order of proclamation, the Petitioner and co-accused Anil Kumar Madan had returned to India on the 4th April, 2011. Further for a notice for appearance on the 27th April, 2011, it was replied that he was not in Delhi, however an affidavit of the Petitioner filed in WP(Crl.) No.596/2011 has been sworn on 27th April, 2011 demonstrating that he was, thus, in Delhi.

7. The Petitioner along with co-accused Anil Kumar Madan were authorized representative of M/s STL and thus, it cannot be said that the Petitioner's firm was mere a sub-contractor and had no role to play in the initial transaction. A perusal of the statement of witnesses i.e. PW1, PW2 and PW3 shows that the Petitioner along with co-accused Anil Kumar Madan and other officers of STL visited the stadia even in 2009 along with the officers of Organizing Committee. The pre-bid conference in respect of TSR was attended by co-accused A.K. Madan on behalf of M/s STL. In fact, the bid was submitted by co-accused A.K. Madan only. As regards awarding of sub- contract to AKR though learned counsel for the Petitioner has strenuously argued that the invoices were raised to justify the payment, however, they were found to be bogus as invoices had been raised even in respect of game of shooting though the contract of laying of cables in respect of shooting was not awarded by the Committee but by the Sports Authority of India. Though the Petitioner being a partner of M/s Gem International contends that there was no bar to a sub-contract, however, the contract entered between the OC and M/s STL clearly stated that before entering into a sub-contract, the party will take prior approval/intimation to the Committee.

8. The initial attempt of the OC was to award the contract to M/s STL by nomination. However, when a number of complaints were received from persons like Smt. Sunita Goyal, the tender conditions were prepared in a clandestine manner so as to exclude all other companies. Even after the request for proposal (RFP) was published, amendments were made therein fraudulently. As per the statement of witnesses, the Petitioner and his co- accused Anil Kumar Madan were frequenting the office of OC even in 2009 prior to the initiation of the procurement process for the system.

9. The Petitioner has not cooperated in the investigation. Though charge sheet has been filed, however, on the basis of additional evidence required to be collected from the Petitioners, supplementary charge sheet may be required to be filed. Reliance of the Petitioner on the decision rendered in Siddharam Satlingappa Mehtre (supra) is misconceived as the offence is grave and serious in nature. There is material on record against the Petitioner. Further in Siddharam

Satlingappa Mhetre (supra) a word of caution has been laid down that while granting anticipatory bail to the accused person the gravity of accusation, nature of offence and role of accused person must be comprehended and kept in mind. Therefore, in view of the facts of the present case, the relief as sought in terms of Siddharam Satlingappa Mhetre (supra) cannot be granted to the Petitioner herein, as on the basis of evidence collected at this stage it cannot be said that no case for conspiracy is made out and money trail has to be unearthed.

10. In view of these facts, I do not find it to be a fit case to grant anticipatory bail to the Petitioner. The application is dismissed.

(MUKTA GUPTA) JUDGE AUGUST 02, 2011 vkm