

(2012) 12 AHC CK 0222

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No's. 9052, 9055, 11640, 8792, 9589, 30502 and 14476 of 2012

Sanjay Mohan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 17, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 420
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 7

Citation: (2013) 2 ACR 1388 : (2013) 3 ALJ 349

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: Samit Gopal, G.S. Chaturvedi and Dr. Rajesh Kr. Srivastava, for the Appellant; S.S. Shah, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.P. Sahi, J.

These bail applications display the naked existence of rampant corruption that prevails, and thrives as a joint venture of bureaucratic and private enterprise -- that which ensures security of public employment through dubious methods. The accused applicants are being tried on charges of cheating, deception and corrupt methods in order to allure the victims to get themselves declared successful in the Teacher Eligibility Test (TET) 2011 which in turn would open the gates for guaranteed employment. The inter-woven conspiracy, with its hidden strings, trying to deceive the public at large is alleged to be the foundation of this story that has dwindled the fate of many lives. The purse of "black wealth" appears to have ruthlessly prevailed resulting in a rich harvest, that was unfortunately to the disadvantage of the accused, intercepted and reaped by an alert police effort

disclosing a racket that has sent the victims and the public shocking, still unable to recover from its after effect. The huge cash-flow, which may appear to be a rivulet as compared to the rivers of corruption at the national level known as scams, confirms what Juvenal (A.D. 60 - A.D. 130) said in his Satires - "Everything in Rome - at a Price". The flood of money that *prima facie* appears to have gushed in stole away the conscience of the accused who may have sold off their souls and settled with the proceeds. The recovery of not less than a crore, in cash, is enough smoke to describe the fire. The collection of such a huge amount, at least that which has been caught, appears to be the undivided effort of a sinister group engaged in dark business, like the ants who unite their mouths to carry away an elephant.

2. All these bail applications relate to Case Crime No. 675 of 2011. Since the applicants have been charged commonly u/s 420 read with Section 120-B IPC with additional sections under the Prevention of Anti Corruption Act the facts relating to their allegations are being narrated separately.

Rail Application No. 9052 of 2012 and 9055 of 2012 Sanjay Mohan v. State of U.P.

3. The applicant Sanjay Mohan is proposed to be tried for offences u/s 420 read with Section 120-B I.P.C. coupled with Section 7/13(1)(d) of the Prevention of Corruption Act, 1988, Police Station Kotwali, District - Ramabai Nagar.

4. The allegations broadly are that the applicant while holding office as Director of the Secondary Education, Government of Uttar Pradesh and Chairman, U.P. Board of Intermediate and High School Examinations, had conspired to unlawfully accept money from candidates for declaring them successful in the T.E.T. Examinations conducted in November, 2011. The cash is alleged to have been collected through the co-accused in the name of the applicant which was recovered after a vehicle of the make of Tata Ventura bearing Registration No. U.P. 83 T/2326, was intercepted by the Police on 31st of December, 2011 at about 2.45 p.m. and a huge recovery of Rs. 86,76,000/- was made from the persons seated inside the said vehicle, namely, Vinay Singh. Ratan Kumar, Amrendra Kumar Jaiswal (accused in Bail Application No. 11640 of 2012), Deshraj Singh Parihar and Ashok Misra, The said recovery is recorded in the memo that gave rise to the registration of the F.I.R. in which two other persons, Manish Chaturvedi and Madhav Singh (accused in Bail Application No. 30502 of 2012), are also named. The recovery from these five persons is stated as follows:

(1) Vinay Singh S/O Malkhan Singh

Rs. 8,00,000/-

Samsung Touch Screen

List of 163 Students/Candidates

Admit Card of Smt. Sangeeta Srivastava

Enrollment No. 16034587.

(2) Ratan Kumar

Rs. 51,00,000/-

Samsung Mobile

List of 80 Students/Candidates

(3) Amrendra Kumar Jaiswal

Rs. 27,73,000/-

Nokia Mobile

List of 30 Students/Candidates

(4) Deshraj Singh Parihar

Spice Mobile

(5) Ashok Mishra (Driver)

Samsung Mobile

Recovery: [Total Rs. 35,000/-]

5. The allegations are that the victims were allured towards guaranteed employment upon being declared successful in the exams for which this unlawful amount had been collected" that was intercepted by the Police, the details whereof are indicated in the F.I.R. The five persons who were apprehended and are named hereinabove allegedly disclosed that this money was meant to be handed over to Manish Chaturvedi and Madhav Singh alias Madhvendra who had undertaken to ensure employment to the victims but it was not disclosed by them as to who was the person actually responsible for the ultimate actual implementation of this transaction.

6. After this huge recovery of cash, investigation proceeded and then it was disclosed that the entire amount that was being collected is to be handed over to the applicant Sanjay Mohan for ensuring the said success in the examinations that would in turn ensure employment.

7. The second recovery was made on 6th of January, 2012 from Manish alias Mohan Chaturvedi, Madhav alias Madhvendra Singh (applicant in Bail Application No. 30502 of 2012) and Hemant Kumar Shakya (applicant of Bail Application No. 14476 of 2012) along with one Yogesh Kumar. These four persons were found travelling in a car bearing registration no. U.P. 80 B.P. 5607 and the following recovery was made from them:

(1) Manish alias Mohan Chaturvedi

Rs. 4,10,000/-

2 Mobiles

11 pages of roll numbers

4 ATM Cards

(2) Madhvendra Singh alias Madhav

Rs. 10,000/-

2 Mobiles

Driving License No. 620258

(3) Hemant Kumar Shakya

Rs. 10,000/-

3 Mobiles

1 ATM Card.

(4) Yogesh Kumar

Rs. 5,000/-

8 pages of names in Hindi & English & Roll Numbers

8. The statement of the victims Sangeeta Srivastava and her husband Awadhesh Kumar was recorded on 18th of January, 2012 and one Smt. Deep Sikha on 15.2.2012 followed by the statements of Ajay Singh, Kavita and Kiran on 16.2.2012.

9. In between a third recovery was made from the house of the applicant on 7th of February, 2012 of a sum of Rs. 4,86,900/- along with the following documents:-

5 pages list: 163 students & roll numbers

1 page list: 30 students & roll numbers & Category

1 page list: 67 students & roll numbers Marks-sheet of Ishwar Chand

Marks-sheet of Brij Bhan Singh of Madhyamic Shiksha Mandal, M.P.

10. The applicant was taken into custody after this recovery and is in Jail since 8th of February, 2012.

11. The accused Rama Shanker Mishra (Bail Application No. 8792 of 2012) and Narendra Pratap Singh (Bail Application No. 9589 of 2012) were intercepted in an Alto Maruti Car on 9.1.2012 resulting in the fourth recovery as follows:

(1) Rama Shanker Mishra

Rs. 1,00,150/-

1 Mobile

(2) Narendra Pratap Singh

Rs. 4,00,250/-

4 Mobiles

12. Learned AGA contends that certain other recovery has been made from the school, run by the applicant's wife later on as well, about which no details are available on record. The learned AGA, Sri Mewa Lal Shukla however submits that the first information report with regard to this subsequent recovery has been lodged at Lucknow.

13. The applicant is therefore alleged to be the kingpin of this entire dubious transaction of netting in unemployed youth with a promise to declare them successful in the T.E.T. Examinations so that they would get a sure berth of employment.

14. The second bail of the applicant in Bail Application No. 9052 is under the Gangsters Act that arises out of the same transaction.

15. I have heard Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Samit Gopal for the applicant and Sri Mewa Lal Shukla, A.G.A. for the State.

Bail Application No. 11640 of 2012 Amrendra Kumar Jaiswal v. State of U.P.

16. The applicant Amrendra Kumar Jaiswal is one of those who was found seated in the vehicle, was intercepted on 31st of December, 2011, namely, Tata Ventura bearing Registration No. U.P. 83 T/2326 and upon being intercepted, was found in the possession of Rs. 27,73,000/- along with a list of 30 candidates in his left pocket and a mobile from his right pocket. Having recovered the said amount, the prosecution alleges that the applicant confessed that he was operating in a gang that was involved in this racket and that the money recovered was said to be delivered to Manish Chaturvedi and Madhav Singh against which they were to receive certain commission. He is however alleged to have shown his ignorance about the future passing on of the money to some other person. Accordingly, he was taken into custody and is before this Court in this bail application.

17. I have heard Sri V.P. Srivastava, learned Senior Counsel for the applicant and Sri Mewa Lal Shukla, learned AGA for the State.

Bail Application No. 8792 of 2012 Rama Shanker Mishra v. State of U.P.

18. The applicant Rama Shanker Mishra in this application is said to have been apprehended on 9th of January, 2012 along with the co-accused Narendra Pratap Singh in an Alto Maruti Car bearing Registration No. U.P. 32 AY 2192 (red colour).

According to the case of the prosecution the applicant was the main agent of the co-accused Sanjay Mohan and was a tenant in the premises of an aunt-in-law of Sanjay Mohan. He was allegedly running an N.G.O. in the said premises but in effect the collecting agent of Sanjay Mohan. A recovery of Rs. 100150/- is said to have been made from him and he was taken into custody and is in Jail since 10th of January, 2012.

19. I have heard Sri A.B.L. Gaur, learned Senior Counsel for the said applicant assisted by Sri Saurabh Gaur and Sri Mewa Lal Shukla, learned AGA for the State.

Bail Application No. 9589 of 2012 Narendra Pratap Singh v. State of U.P.

20. The applicant Narendra Pratap Singh according to the prosecution was found in the company of the co-accused Rama Shanker Mishra in the same vehicle. The recovery of the cash amount from the applicant is Rs. 4,00,250/-

21. I have heard Sri L.M. Singh, learned counsel for the applicant and Sri Mewa Lal Shukla, learned AGA for the State.

Bail Application No. 30502 of 2012 Madhav Singh alias Madhavendra Singh v. State of U.P.

22. The applicant Madhav Singh alias Madhavendra Singh has been named at the initial stage of the raid on 31st of December, 2011 as the person to whom money was to be given and handed over. He has been connected after being intercepted while travelling in an I-10 (Hyundai) Car of white colour bearing registration No. U.P. 80 BP 5607.

23. Sri Sarvesh, learned counsel has assisted the Court contending that no evidence is available against him and the alleged recovery of Rs. 10,000/- is absolutely false as it was his own money. The mobiles recovered do not indicate any involvement. In the absence of any evidence, he has been falsely implicated on the mere confessional statement of the other co-accused, therefore, Sri Sarvesh has prayed for his bail. Sri Mewa Lal Shukla, learned AGA has opposed the same.

Bail Application No. 14476 of 2012 Hemant Kumar Shakya v. State of U.P.

24. The applicant Hemant Kumar Shakya is said to have been sitting on the same vehicle as the co-accused Manish, Madhavendra and Yogesh, namely, I-10 (white colour), bearing Registrar No. U.P. 80 BP 5607 when he was apprehended on 6th of January, 2012 with Rs. 10,000/-, two mobiles and one ATM Card, The name of the applicant has occurred in the statement of one of the victims Deep Sikha to have made a deceptive representation. The applicant contends that since he was merely driving the vehicle therefore his case should be considered that of a driver having no role to play. He claims parity with accused Ashok Mishra who has been released on bail by the court below on the alleged ground of being the driver of vehicle No. U.P. 83 T/2326 with a recovery of a mobile and Rs. 35,000/-

25. I have heard Sri Ghanshyam Das, learned counsel for the applicant in this bail application and Sri Mewa Lal Shukla, learned AGA for the State.

26. The arguments have been advanced separately and for the applicant Sanjay Mohan the contention of Sri G.S. Chaturvedi, learned Senior Counsel is that so far as the applicant is concerned he was not named after the interception of the vehicle on 31st of December, 2011 where it is alleged that a huge recovery of Rs. 86.73 lacs was made. He contends that there is no evidence of the applicant having represented to the candidates for assuring them success in the T.E.T. Examinations or confirming employment and he is not named in the F.I.R. There is no evidence of any pre-intended conspiracy or any element of meeting of minds so as to connect the applicant even remotely with the allegations of recovery. He contends that one of the alleged statement of Ram Naresh Tiwari which forms part of the charge-sheet, is based on the socalled voice of Rama Shanker Mishra having recorded in conversation with the applicant which extract of conversation nowhere even remotely indicates any conspiracy to cheat the victims or to collect money for the purpose as alleged in the F.I.R. He therefore submits that on this flimsy material there is not even an iota of circumstantial evidence, much less a direct evidence, to rope in the applicant. He contends that there is no legal evidence worth the name and the confessional statement of the other co-accused or the alleged victims having been collected gradually to support the case of the prosecution are uncorroborated. He submits that the alleged recovery of Rs. 4,86,000/- from the applicant had been clearly explained by him to have been realized and kept with him as against an earlier withdrawal that was made to lend the money to his sister. He submits that the voice allegedly recorded on 8th of January, 2012 in a very strange way when the main instrument has not been recovered, is unreliable, inasmuch as, the same is based on a copy of the said voice recorded through the SIM of the witness Ram Naresh Tiwari. He further contends that the duration of calls are such that the same in no way establish any link with the allegations of the alleged realization of the money for the purpose as alleged in the F.I.R.

27. Sri Chaturvedi further contends that this picture which has been painted of a long drawn conspiracy resulting in a racket can at best be an argument against the other co-accused who are named as having realized the amount from the victims directly. He submits that the statements of the some of the victims that have been collected, take the name of the applicant as he was the then Head of the Department, but there is no evidence that the applicant had ever called the candidates or had any contact with them so as to facilitate the transactions which have been made the basis of the allegations in the F.I.R.

28. He further submits that the applicant has already attained the age of 60 years and stands retired from service in August, 2012 and keeping in view his age and the fact that the charge-sheet has already been filed, he deserves to be enlarged on bail having spent almost 10 months in incarceration. He further submits that the

released of the applicant will in no way either hamper the investigation nor is there evidence to indicate that the applicant had ever attempted to intimidate the witnesses. The applicant is not in a position in any way to interfere with the trial or can in any way hamper any future investigation, if required.

29. Sri Chaturvedi therefore submits that the applicant has been inappropriately charge-sheeted with no evidence against him and therefore he deserves to be enlarged on bail. He has also placed reliance on the observations made by this Court in a bail order in the case of Smt. Gopa Chakravorthy v. State of U.P., reported in 2007 (9) ADJ 309.

30. Sri V.P. Srivastava, learned Senior Counsel who came up next to argue his matter in respect of the applicant Amrendra Kumar Jaiswal urged that the involvement of the applicant is absolutely doubtful and there is no valid explanation by the prosecution about the source of the money explained by the applicant. He contends that the applicant is a coordinator of a company, namely, Golden Trust Financial Services, which fact has been stated in the supplementary affidavit dated 15th of May, 2012 and he urges that the applicant only being a collection agent had collected this entire amount in relation to various heads from different customers who had either applied under some financial scheme or insurance. The job of the applicant is to collect the money and to deposit it to the various companies and it is this money which he was carrying when the applicant was apprehended and the recovery was made. He therefore contends that there was a full explanation of the entire amount of Rs. 27,00,000/- and odd and in the aforesaid circumstances, there being no evidence to connect the said amount with the allegations made against the applicant, the applicant deserves to be enlarged on bail.

31. Sri A.B.L. Gaur on behalf of the applicant - Rama Shanker Mishra, contends that he is being implicated only on the basis of hearsay evidence and the alleged conversation as indicated in the statement of Ram Naresh Tiwari and the copy of voice recording given is absolutely unreliable. The tenor of the conversation alleged between the applicant and Sri Sanjay Mohan is absolutely incoherent and does not bear any relevance. There is no demand or acceptance either from the candidates or through any other person implicating the applicant. Sri Gaur therefore submits that the entire prosecution is based on flimsy allegations and the alleged recovery from the applicant had been explained as money being carried by the applicant for the treatment of his ailing mother in the Post Graduate Institute at Lucknow. Sri Gaur therefore submits that there was a clear explanation with regard to the alleged amount recovered which had no connection with the offences alleged in the F.I.R. He therefore submits that the applicant being innocent deserves to be set at liberty forthwith.

32. Sri L.M. Singh has come forward to advance the contention of Narendra Pratap Singh urging that neither any appropriate charge-sheet has been filed against the applicant and the alleged recovery of the cash amount had been clearly explained

which the prosecution has failed to dislodge. He submits that merely because he was in the company of Rama Shanker Mishra as alleged the same cannot in any way connect him in the complicity of the offence. He therefore submits that in the absence of any connection of the applicant with either the candidates or the officials alleged recovery cannot be correlated to corroborate the allegations against the applicant. He therefore submits that the applicant deserves to be enlarged on bail.

33. Sri Sarvesh who has appeared for the applicant - Madhav Singh alias Madhavendra contends that the recovery of Rs. 10,000/- is clearly not at all correlatable to the alleged huge amount and the allegation that it was only the commission part which was retained by him is based on no legal evidence. The allegation against the applicant stand only on the confessional statement of the other co-accused or victims which has no basis and therefore there is no reason to curtail the liberty of the applicant. He further submits that considerations of bail are entirely different from that of a trial and therefore this Court should take an appropriate view for the purpose of granting bail to the applicant. In short he submits that it is a case of absolutely no evidence against the applicant and therefore bail should be granted.

34. Sri Ghanshyam Das has advanced his submissions for Hemant Kumar Shakya and he contends that he was only driving the vehicle and there was no other evidence to implicate him. This vehicle which was apprehended had Manish, Madhavendra and Yogesh as its passengers. He submits that the allegation against the applicant in the statement of Deep Sikha is absolutely misleading and unconnected with the offences. He therefore submits that the applicant also deserves to be enlarged on bail as there is no evidence worth credit to implicate the applicant.

35. Thus all the learned counsel have practically advanced the same submission to the effect that they are not even remotely connected with the allegations of the alleged collection of money for providing benefits to candidates of the Teacher Eligibility Test Examinations, 2011. There is no representation by any of the applicants nor is there any demand or acceptance of any extraneous amount which can be treated to be a consideration as a bribe. They all submit that in the absence of any perfect proof or clinching evidence the applicants cannot be detained behind bars as they have already spent more than 10 months with no credible evidence coming forthwith. Learned counsel therefore urged that this was a fit case where the bail should be granted to all the applicants.

36. The second bail of Sanjay Mohan in relation to the Gangsters Act, is urged to be an act of harassment to prosecute the applicant for an offence which is neither made out and for which there is no evidence. It is urged that he has neither committed an organized crime nor is there any element of the same and accordingly apprehending the applicant under the Gangsters Act is misplaced. In the aforesaid circumstances, the bail application should be allowed and the

applicant deserves to be enlarged on bail.

37. Replying to the said submissions, Sri Mewal Lal Shukla contends that this is one of the most heinous form of social crimes and no leniency should be shown to such persons against whom there is substantial evidence of recovery of a huge amount clearly for the purpose of providing benefit of passing in an examination so as to ensure employment. He contends that the victims were exploited and allured by such representation through an organized method and he has taken the court through the case diary as well as the written submissions filed by him to contend that the detention of the applicants is perfectly justified and they do not deserve to be enlarged on bail. He submits that the recovery of vehicles, a huge amount of cash and the mobile conversations as well as the location of these conversations in Lucknow range itself establishes that all the applicants were in league with each other for the purpose of collecting a huge amount from a large number of candidates misusing their official position and taking the help to other co-accused for fulfilling their mission of earning extraneous money unlawfully. This he submits is a clear case of rampant corruption founded on a wide conspiracy in the Education Department and the applicant should not be allowed to go scot free on such credible material having been collected against them. He also submits that there is likelihood of their interfering with the trial by not allowing it to proceed in one way or the other and therefore to ensure their presence during trial it would be appropriate that they remain in custody. He submits that the apprehensions are well founded as even after the arrest of the applicants a huge cash recovery has again been made from the School run by the wife of the applicant Sanjay Mohan which is ample proof of the fact that their apprehension and arrest has corroborated the prosecution of these individuals and which has helped the Police in collecting the entire material against them. He submits that at this stage the plea of age or long detention should not be entertained for showing any leniency to the applicants. He has also invited the attention of the Court to the counter affidavit filed in the leading case the facts whereof coupled with the case diary produced by him was pressed into service for opposing the bail applications.

38. He further submits that the recovery of documents including the lists of the students at the time of the interception of the vehicles from the custody of the other co-accused and the recovery of the said list alongwith the other documents from the residence of the applicant Sanjay Mohan clearly establishes the nexus of their operations in this crime. He submits that there is ample evidence of conspiracy to establish the guilt on which the applicants can be successfully prosecuted and this is not a case where the applicants can expect any acquittal.

39. Before proceeding to deal with the merits of the arguments it would be appropriate to put on record that this Court has been informed about the grant of bail to Ashish Mishra by the court below who allegedly claims to be the driver of the vehicle in which some of the accused were travelling. One of the other co-accused

namely Brijesh Pal alias Pushp Raj alias V.P. Singh was bailed out by the High Court on 4.9.2012 in Bail Application No. 22530 of 2012. The said co-accused is said to be the owner of a private school and whose name surfaced in the confessional statement of the co-accused Manish Chaturvedi. There was an alleged recovery of Rs. 5,000/- from him and the court granted bail. The order dated 4.9.2012 is quoted herein under:-

Heard learned counsel for the applicant and learned A.G. A. for the State respondent.

The present bail application has been filed by the applicant in case crime No. 675 of 2011, under Sections 420, and 120B IPC and 8/9 Anti Corruption Act, police station Akbarpur, District Rama Bai Nagar with the prayer to enlarge him on bail.

It is contended by the learned counsel for the applicant that the applicant is the owner of a private school namely Dr. B.R. Ambedkar School, Tehsil Sardhana, District Meerut and he is not named in the First Information report and his name came into light in the confessional statement of the co-accused Manish Chaturvedi. It is further contended by the learned counsel for the applicant that no recovery has been effected from the applicant nor there is any independent witness of the alleged recovery. It is further contended by the learned counsel for the applicant that the applicant has no criminal history. It is next contended by the learned counsel for the applicant that the applicant is in jail since 17.6.2012 and in case he is enlarged on bail, he will not misuse the liberty of bail. Learned A.G.A. has opposed the prayer for bail.

Considering the facts and circumstances of the case and also perusing the material on record, without expressing any opinion on the merit of the case, let the applicant Brijesh Pal alias Pushp Raj alias V.P. Singh, involved in case crime No. 675 of 2011, under Sections 420, and 120B IPC and 8/9 Anti Corruption Act, police station Akbarpur, District Rama Bai Nagar be released on bail on his furnishing a personal bond and two local sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

1. The applicant shall not tamper with the prosecution evidence;
2. The applicant shall not pressurize the prosecution witnesses;
3. The applicant shall appear on the date fixed by the trial court.

In case of default of any of the conditions enumerated above, the order granting bail shall automatically be vacated.

40. Sri Mewal Lal Shukla, learned AGA urged that this bail application was taken up separately before another court and the learned AGA who was assisting the court could not point out the fact that this entire bunch of all the connected cases was being heard in a different court. It was pointed out that the aforesaid fact was

brought to the notice of the same Hon"ble Judge in Bail Application No. 30502 of 2012 whereafter it was directed to be put up along with this entire bunch. The order dated 23.11.2012 is quoted herein under:

Learned A.G.A. has stated that bunch of cases of identical matters be listed at serial No. 2 being Criminal Misc. Bail Application No. 9052 of 2012 which has been transferred to Court No. 35 today. It is further contended that in the matter of co-accused Brijesh Pal alias Pushp Raj alias V.P. Singh, who has been granted bail by this Court on 4.9.2012, facts could not be brought before the Court, therefore, bail order has been passed.

Accordingly, put up this matter along with records of Criminal Misc. Bail Application No. 9052 of 2012 before the appropriate Court.

41. Sri Shukla therefore submits that no parity can be claimed by the learned counsel appearing for Hemant Kumar Shakya or any other co-accused, inasmuch as, the entire facts together with the magnitude of the offence was neither examined by the said court while granting bail on 4.9.2012 nor the aforesaid arguments have been considered.

42. It is to be pointed out that some of these bail applications were entertained before different benches whereafter Bail application No. 9589 of 2012 and 9055 of 2012 were assigned to the bench of Hon"ble Kalimullah Khan, J. on 27.4.2012. Vide order dated 17.4.2012, 9589 of 2012 was connected with Bail application No. 9052 of 2012 and thus it was taken up accordingly. On 11.5.2012, these facts were noted in Bail application No. 11640 of 2012 and a request was made to assign it to the same bench that was hearing the other matters. Hon"ble the Chief Justice passed orders on 15.5.2012 nominating the same Judge to hear this bail as well. From the order sheet of the applications, it appears that all these matters were being heard together except Bail application No. 22550 of 2012 that was disposed of separately on 4.9.2012 as noted above. Thereafter on 11.9.2012 the learned Judge who had been nominated and was seized of the matter released the same as recorded in the order-sheet of leading bail application no. 9052 of 2012, whereafter the Hon"ble Acting Chief Justice passed orders to list the entire bunch before the regular appropriate bench.

43. It appears when the matter was listed before the regular bench, the following order was passed on 3.12.2012:

A mention has been made that as there is paucity of time with this Bench on account of heavy fresh matter, the present case may be released to be nominated to another Bench.

Accordingly, the record of this case be placed before Hon"ble the Chief Justice for nomination of another Bench, of which I am not a member.

44. Thereafter the cases have been sent on the order of nomination passed on 10.12.2012 whereupon they have been listed before me and have been finally heard today.

45. This Court is therefore proceeding to examine the rival contentions on the basis of the legal plane related to the principles of grant of bail in corruption cases.

46. The principles for grant of bail have been time and again spelt out by the Apex Court and for criminal offences the guidelines spelt out that have been reiterated are already stated in the case of [State Vs. Amarmani Tripathi](#) . Thus there has to be a prima facie reasonable ground of the commission of the offence by the accused, the nature and gravity of the charge, the severity of conviction danger of the accused absconding if released, the character, behavior and the status of the accused, the likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with and justice be thwarted for grant of bail.

47. Thus there has to be a prima facie satisfaction of the court in support of the charge in the event bail is refused. The aforesaid decision has been recently reiterated in the case of [Kanwar Singh Meena Vs. State of Rajasthan and Another](#) . The aforesaid case however also took into account the view expressed by the Apex Court in the case of [Sanjay Chandra Vs. CBI](#) .

48. It is to be noted that the cases of Amarmani Tripathi (supra) and Kanwar Singh Meena (supra) were in relation to offences against the human body. The case of Sanjay Chandra (supra) was in relation to a public scam and scandal of a very wide magnitude where initially the Delhi High Court in the case of Sharad Kumar v. CBI and others, Bail Application No. 723 of 2011 decided on 08-06-2011 had rejected the bail applications. Some of the accused therein approached the apex Court and the bail applications were allowed. Following the case of Sanjay Chandra (supra), the Delhi High Court in the same case then granted bail to the other co-accused vide order dated 28.11.2011. I have perused both the orders of the Delhi High Court and the judgment of the Apex Court in the case of Sanjay Chandra (supra) granting bail. The said case was clearly in relation to almost the same offences as discussed in Paragraph 20 of the said judgment.

49. In the instant case also the charge-sheet has been filed. The Apex Court however in the said case was dealing with a matter relating to an economic offence that involved the transaction of award of licences for providing telecom services in the name of companies that did not deserve the said licence and the allegations were of extraneous considerations. The Apex Court accepted the principle of grant of bail as being the rule in view of the factors that weighed in the mind of the Apex Court as explained in paragraph 40 to 47 of the said judgment. However, the Apex Court in heinous offences cancelled the bail granted by the Allahabad High Court in the case of [Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and Another](#), keeping in view the history-sheet of the accused. On the other hand following the case of Sanjay

Chandra (supra), the Apex Court has granted bail in the case of [Dipak Shubhashchandra Mehta Vs. C.B.I. and Another,](#).

50. A collective reading of the aforesaid judgments therefore indicates that the court has to assess the *prima facie* involvement of the accused, the gravity of the offence and the consequences of releasing the accused on bail.

51. Having heard learned counsel for the parties and having perused the case diary as well as the affidavits exchanged all the accused are primarily sought to be held liable of the offence of collecting money extraneously in the name of declaring the victims to be successful candidates in the Teacher Eligibility Test, 2011. There is no doubt that the test was being conducted under the supervision of the applicant Sanjay Mohan. The involvement of the candidates together with some of the accused who are teachers and the other accused who have been pointed out as responsible for the said collection were *prima facie* named in the statements that were recorded during investigation.

52. The statement of Ram Naresh Tiwari on the basis of a copied voice tone is subject to evidence and the contents thereof by itself may not be sufficient to establish a representation on the part of the applicants or a demand of bribe. But the recovery of three vehicles and the huge amount of approximately Rs. One crore in cash followed by subsequent recoveries in quick succession cannot be brushed aside for the purpose of treating the evidence collected as being too flimsy against the applicants.

53. The representation by the co-accused in getting the work done through Sanjay Mohan vis-a-vis the Teacher Eligibility Test is part of a transaction that concerns his department for which he might be responsible. There has been an allegation by the prosecution that on 13th of October, 2011 there was a deposit of Rs. 5,99,000/- and odd and Rs. 8,99,000/- and odd in the bank account of Sri Sanjay Mohan that remains unexplained. The recovery of Rs. 4,86,000/- from his residence is sought to be patched up on the ground that some loan was extended to his sister and which was being returned gradually which amount was available with him.

54. It has to be taken notice that this entire group is functioning in a paramedical transformation with Sri Sanjay Mohan at the top with his alleged collection agents who are the co-accused.

55. Sri Mewa Lal Shukla is right in his submission that all the telephone calls that have been located and the connectivity chart that forms part of the evidence does indicate the operation of a racket who are in nexus with each other for an ulterior motive. The contents of such calls even though are subject to any revealing of any further evidence. Nonetheless *prima facie* the aforesaid huge recovery coupled with these facts does indicate a *prima facie* case of a huge corrupt scandal in the education department. The issue of direct representation by the accused or any demand or acceptance is a matter of trial in order to corroborate it with the

recovery which has been made. Nonetheless, the victims who have given their statements e.g. Sangeeta Srivastava and Deep Sikha have categorically named the accused with their connecting links.

56. The connectivity chart of the telephonic mobile operations of the accused from 1st of November, 2011 onwards that has been investigated and prepared may not disclose the exact contents of the conversation but the nexus of the accused with each other does get reflected. The lists of the candidates that have been recovered from the applicant Sanjay Mohan and the other co-accused also indicate that the transaction might have been a subject matter of the conspiracy the possibility whereof cannot be stamped out at this stage.

57. The aforesaid linkage of statements is part of the case diary and that has been placed before the court does indicate naming of the co-accused particularly Rama Shanker Mishra and Narendra Pratap Singh to be in contact with Sanjay Mohan. The other co-accused have named these two persons as being the real collecting agents on behalf of Sri Sanjay Mohan. Thus this *prima facie* evidence which is yet to be thrashed during trial solidly backed up by the huge recovery does indicate the *prima facie* involvement of the accused.

58. Learned counsel have stressed hard on shaky evidence and absolutely weak links to contend that there is hardly any evidence to connect the demand, realization and acceptance of the alleged recovered amount.

59. Sri Chaturvedi submits that the period of such dubious transactions can be correlated to the laundering of cash for election expenses that was close on heels in the State of U.P. to my mind this would cut both ways. Firstly there is hardly any material or substance for such speculation at this stage of plea of bail with evidence yet to be disclosed during trial. Even otherwise, if there is an iota of truth in it, then more the reason to believe such collection on the eve of elections. But then this is purely a speculative submission and has to be rejected.

60. The material to connect the links, namely the mobile calls, the area of operation nearby Lucknow with no actual representation of deceit followed by demand or acceptance has been severely criticized by all the learned counsel. They contend that circumstantial evidence is completely wanting to connect any of the accused with conspiracy or meeting of minds with an intention to deceive or cheat and commit an offence. They therefore describe it as a purely imaginary inference whereon the prosecution has built up a house of cards that is bound to crash and will never end up in conviction.

61. Sri Gopal Chaturvedi has vehemently urged about the flimsy nature of the statement of Ram Naresh Tiwari and the recorded voice of Rama Shanker Mishra with Sanjay Mohan, Sri Chaturvedi may be right in his submission that the aforesaid statement by itself and the nature of the copied version of the evidence may not be sufficient to nail the accused. Nonetheless, the recovery having been made from

three vehicles and the cash amount recovered has no *prima facie* valid explanation particularly that which was recovered on 31st of November, 2012. No person has come forward to claim that money before the trial court according to Sri Mewa Lal Shukla till date nor any applications have been filed for releasing the same or for release of the three vehicles that were intercepted and taken into custody. It is therefore very appalling to hear that a huge recovery has been made and the same is now alleged to be unconnected with the crime. To the contrary the court repeatedly called upon Sri V.P. Srivastava appearing for Amrendra Kumar Jaiswal to somehow connect the recovery with his claim of being a coordinator of a finance company. The documents which were filed along with the bail application of Amrendra Kumar Jaiswal nowhere match with the huge amount and the alleged proportionate collection made by him as a coordinator within the period during which the offences are alleged to have been committed.

62. Learned counsel with their forensic abilities have urged their best in a manner as narrated by Sir William Wordsworth in "Character of the Lawyer"

And through the heat of conflict

keeps the law

In calmness made.

63. The smoothness of the arguments were not less than a painter who can comfortably paint black as white or at least make it look like so.

64. The investigation also on the other hand has left no stone unturned to remarkably pounce upon to make the recovery and connect the telephonic operations that have been attempted by the accused within a definite period of time in and around Lucknow. To accept the description of the evidence collected as flimsy or no evidence made by the learned counsel would be too early for the purpose of granting interim liberty to the accused at this stage.

65. The concept of liberty at the stage of bail has been discussed in many judgments of the Apex Court but on the facts of this case and the evidence collected, a restraint deserves to be exercised without letting the accused to be released.

66. It is true that the Apex Court in the case of [C.M. Sharma Vs. State of A.P. Th. I.P.](#), has observed that a mere recovery of currency notes by itself does not constitute an offence under the Prevention of Corruption Act and it has to be proved beyond all reasonable doubt. But in the instant case, it is not a mere demand of Rs. 3,000/- or illegal gratification as in the aforesaid case but is an outcome of a huge extraordinary haul of more than one crore rupees that virtually remains unexplained at this stage.

67. It is experienced that it is difficult to bring home a guilt on mere circumstantial evidence, particularly when it is the outcome of a well organized conspiracy. At

times there are vague boundaries and to connect it with a crime is an uphill task that requires patience. The actual trial springs more surprises as the investigation is not able to carry things further. The discovery of more facts to corroborate the complicity and link the accused with the crime does surface when the investigation or trial by the prosecution is conducted as remarked by the all time famous character Sherlock Holmes depicted by Sir A. Conan Doyle in "Silver Blaze" as follows:

Is there any point to which you would wish to draw my attention?

To the curious incident of the dog in the night-time.

The dog did nothing in the night-time.

That was the curious incident.

68. It is then that strong circumstantial evidence emerges as opined by Thoreau in his Miscellanies:

Some circumstantial evidence is very strong, as when you find a trout in the milk.

69. In the instant case the failure of Amrendra Kumar Jaiswal to give any plausible explanation about the recovery and the huge amounts recovered from the other co-accused coupled with the victims naming the Head of the Department Sanjay Mohan cannot be casually described as a case of no evidence. The exploitation of youth for ensured employment is a lucrative crime and this *prima facie* is not a case of planted or false recovery. Under the law of corruption, the burden/onus shifts on the accused to explain possession. The explanation *prima facie* is unacceptable. All fingers therefore still point out towards this conspiracy with no immediate diversions.

70. In the opinion of the Court, the judgments in the case of [Sanjay Chandra Vs. CBI](#), and in the case of C.M. Sharma (supra) therefore do not come to the aid of the applicants for the purpose of bail at least at this stage. On the other hand the Apex Court cancelled the bail of the accused in one of the corporate scams that were subject matter of the decision in the case of [C.B.I., Hyderabad Vs. B. Ramaraju and Others](#), observing:--

4. According to the allegations of the appellant, the respondents accused are involved in one of the greatest corporate scams of the commercial world. It has caused a financial storm throughout the country and the world over. Lakhs of shareholders and others have been duped and the corporate credibility of the nation has received a serious setback. We are deliberately refraining from making a detailed observation regarding the conduct of the respondents accused because the trial is still pending and we do not want the trial to be prejudiced in any manner.

5. Ordinarily this Court would be slow in cancelling the bail already granted by the High Court but in the extraordinary facts and circumstances of these cases, we are

of the considered view that the respondents, cannot be sustained in law and the same are accordingly set aside.

71. There is another argument raised about claiming parity with the bail order dated 4.9.2012 in bail application No. 22530 of 2012 extracted hereinabove. I agree with the learned AGA that the said bail order did not examine the magnitude of the offence or considered the wide ramifications of the offence as well as the evidence collected and noted above while granting bail. This Court in the case of Nanha Vs. State of U.P., has held that parity is not a matter of right and the bail application has to be assessed on the material disclosed in relation to a particular accused. The plea of parity therefore does not impress the Court. Having considered the aforesaid legal principles and the submissions raised, the plea of a long period of incarceration or any plea of flimsy evidence does not deserve to be considered for setting the applicants at liberty, at this stage. All the bail applications are therefore rejected.