

**Court No. - 10**

**Case :-** Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C.  
No.2102 of 2022

**Applicant :-** Mr. Badri Shrestha

**Opposite Party :-** State of U.P. Thru. Prin. Secy. Home Lko. and another

**Counsel for Applicant :-** Purnendu Chakravarty, Aditya Singh

**Counsel for Opposite Party :-** G.A., Anurag Kumar Singh

**Hon'ble Dinesh Kumar Singh, J.**

1. The present application under Section 438 Cr.P.C. has been filed by the accused-applicant apprehending his arrest in FIR bearing Case Crime No.RC0062017A0026, dated 30.11.2017, under Sections 120-B read with 420, 467, 468 and 471 IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and substantive offences, Police Station CBI/ACB, District Lucknow.

2. This application has been filed after the learned trial court by a well considered order has rejected the bail application of the accused-applicant for anticipatory bail vide judgment and order dated 11.10.2022 passed in Anticipatory Bail Application No.6293 of 2022.

3. Initially, on 19.06.2017 an F.I.R. at Crime No.831 of 2017 was lodged under Sections 409, 420, 467, 468, 471 and 34 IPC and Sections 7 and 13 of Prevention of Corruption Act at Police Station Gomti Nagar, Lucknow, U.P. regarding huge corruption, misappropriation of public funds and large scale irregularities committed by the Government officials in active connivance and criminal conspiracy in implementation of a project, "Gomti River Front Development", which was conceived by the then Government involving thousands of crores of rupees of public funds.

4. The Government appointed a three member inquiry committee headed by a retired High Court Judge vide order dated 4.4.2017 issued by His Excellency, the Governor of Uttar Pradesh. The committee was headed by Justice Alok Kumar Singh, Former Judge of this Court, as

Chairman and two eminent members, Prof. U.K. Chaudhary, retired from I.I.T., B.H.U, Varanasi, who is an expert in Revereine Engineering, and Professor, A.K. Garg, from Faculty of Finance, I.I.M, Lucknow, who were the experts in the committee.

5. The committee submitted its detailed report dated 16.5.2017 pointing out several gross irregularities, misuse of powers and positions etc. by the officers/officials in implementing the said project and causing huge loss to the State Exchequer and misappropriation of public funds by the Government officials in active connivance with private persons.

6. Initially, the project cost estimated to be Rs.747.49 Crores, which was approved by the Cabinet on 17.3.2015. The cost of the project was, thereafter, revised to Rs.1990.24 Crores. However, the Cabinet approved the budget for the said project at Rs.1513.51 Crores.

7. The Central Bureau of Investigation (for short 'CBI') registered the FIR as mentioned above and after concluding the investigation in respect of the work and construction of intercepting trunk drain of both banks of Gomti River has submitted the charge sheet.

8. The tender date was extended twice, first time upto 29.08.2015 and second time upto 07.09.2015 to accommodate L-1 i.e. M/s K.K. Spun Pipes Private Limited and L-2, M/s Brand Eagles Longjian JV which were not registered with the Irrigation Department earlier and were registered only on the last date of submission of tender and its opening i.e. 07.09.2015. These two firms stood L-1 and L-2. It has been alleged that both the said firms did not fulfill the eligibility qualifications at the time of submitting the tender and investigation revealed that the name & style of M/s K.K. Spun Pipes Private Limited had been changed as M/s K.K. Spun India Limited. The conditions were relaxed to make M/s K.K. Spun Pipes Private Limited as eligible and a note was put up on 21.08.2015 by the accused-applicant to allow the manufacturers also to participate in the

tendering process along with the registered contractors. The said note was to change eligibility the conditions of NIT which was already published. The said note was approved by the then Chief Engineer, Mr. S.N. Sharma even though he was not authorized to approve any relaxation pertaining to the registration of the contractors in terms of the relevant government orders. Any such relaxation could have been accorded only with the approval of the government. This relaxation in the tender conditions was not even published in any newspaper and only a notice was put up on the notice board of the office of the Irrigation Department.

9. The CBI further found that after relaxation of tender conditions, three parties, namely, (1) M/s K.K. Spun Pipes Private Limited, (2) M/s Brand Eagle Longjian JV; and (3) M/s Patel Engineering Limited were shown to have purchased the tender forms on 26.08.2015. All these firms were not registered with the Irrigation Department but tenders were given to them and the tender conditions were relaxed by the aforesaid note in order to facilitate them to participate in the tendering process and award the contract to M/s K.K. Spun Pipes Private Limited. It is stated that fake sale of tender documents was made to M/s Patel Engineering Limited on the same day. The tenders were sold by Mr. Raj Kumar Yadav, co-accused, who made an entry "sold by me to M/s Patel Engineering Limited" in his own handwriting under his signatures. L-1 and L-2 firms applied for registration on 04.09.2015 and were registered on 07.09.2015 i.e. last date of submission of tender and opening of the tender .

10. It is alleged that pursuant to criminal conspiracy, Mr. Himanshu Gupta, Director, M/s K.K. Spun Pipes Private Limited vide his letter dated 26.08.2015 addressed to the Superintending Engineer, XII Circle illegally authorized his representative, Mr. Surjeet Srivastava, Company Secretary to purchase the tender documents even though the company was not registered with the Irrigation Department and was not eligible to participate in the tendering process. Similarly, vide his

letter dated 25.08.2015, Mr. Badri Shreshtha, Senior Adviser of M/s Brand Eagles Longjian JV had illegally authorized his representative, Mr. Shahid to purchase the tender documents even though the company was not registered with the Irrigation Department and was not eligible to participate in the tender. It was a cartel formation between M/s M/s K.K. Spun Pipes Private Limited and M/s Brand Eagle Longjian JV. The bank guarantee of Rs.4.6 Crores of the L-2 firm i.e. M/s Brand Eagle Longjian JV was made from the bank account of the L-1 company, M/s M/s K.K. Spun Pipes Private Limited. On 03.09.2015, these companies executed a sub-contract agreement in which it was agreed that M/s Brand Eagles Longjian JV was intending to bid for the work of construction of intercepting trunk drain and pass-on the entire work to M/s K.K. Spun Pipes Private Limited for execution and in lieu thereof, M/s K.K. Spun Pipes Private Limited agreed to provide bank guarantee of Rs. 4.6 Crores for the bid contract.

11. The investigation conducted by the CBI also revealed that in order to award the work to M/s K.K. Spun Pipes Private Limited forged documents of the 3rd company, M/s Patel Engineering Limited were used in order to fulfill the quorum of three parties. The documents used in the tender documents of M/s Patel Engineering in the work of intercepting trunk drain were photocopies of documents submitted by the said company during its participation in tender procedure for work of construction of Diaphragm wall earlier. The company, M/s Patel Engineering Limited had denied having purchased/submitted the tender documents for the work of intercepting trunk drain.

12. Accused Roop Singh Yadav directed Mr. Raj Kumar Yadav, the then Junior Assistant in the office, to show the sale of tender documents to M/s Patel Engineering Limited and put up forged papers. It is the accused-applicant, who put up forged papers on behalf of M/s Patel Engineering Limited by obtaining photocopies from the earlier tenders submitted by M/s Patel Engineering Limited for other

work. No earnest money was found deposited by M/s Patel Engineering Limited, and it had also not filled the rates in the tender documents. The present accused-applicant was master-mind and responsible for this forgery to favour of cartel of M/s K.K. Spun Pipes Private Limited and M/s Brand Eagles Longjian JV.

13. The investigation further revealed that the bid of M/s Patel Engineering Limited was rejected on technical grounds and rates of M/s Brand Eagles Longjian JV and M/s K.K. Spun Pipes Private Limited were found to be L-2 and L-1 respectively. After opening of the tender on 07.09.2015, the rates were written on the comparative chart by Raj Kumar Yadav on dictation of the accused, Roop Singh Yadav. The bids were not evaluated by Technical Evaluation Committee and despite being not qualified, accused Roop Singh Yadav invited M/s K.K. Spun Pipes Private Limited to execute the work and the work of Rs.285.69 Crores was allotted to an unqualified company which was not even registered with the Irrigation Department. Against already very high cost of Rs.285.69 Crores, the payment of Rs.337.32 Crores was made to M/s K.K. Spun Pipes Private Limited without obtaining any approval for the cost escalation from the Cabinet.

14. Allegation against the accused-applicant is that he was one of the main conspirators in securing the work to M/s K.K. Spun Pipes Private Limited. The accused-applicant was working as Senior Advisor South Asia Region for M/s Longjian Road & Bridge Limited and also worked as Senior Advisor of M/s Brand Eagles-Longjian JV. A power of attorney was executed by M/s Longjian Road & Bridge Limited on 5.9.2015 in favour of the accused-applicant authorizing him to be its authorized signatory of the tender documents. Vide a letter dated 25.8.2015, the accused-applicant has authorized one of his representatives, Shahid to purchase the tender documents even though the company was not registered with the Irrigation Department and was not eligible to participate in the tender process.

15. It is also interesting to note that the power of attorney was executed only on 5.9.2015 in favour of the accused-applicant, but he had issued a letter dated 26.8.2015 authorizing Shahid to purchase tender documents for joint venture and, this itself would show that the accused-applicant was actively involved in the criminal conspiracy. It is also important to note that M/s Brand Eagles-Longjian JV was not registered with the Irrigation Department and had applied for registration in Irrigation Department on 4.9.2015 before the power of attorney was executed in favour of the accused-applicant and the said registration was approved on 7.9.2015 i.e. on the date of opening of the tender.

16. A bank guarantee of Rs.4.6 Crores was made from the ICICI Bank, Connaught Circus, New Delhi on 4.9.2015 by M/s K.K. Spun Pipes Private Limited, which was used by M/s Brand Eagles-Longjian JV for participating in the tender process. Thus, a cartel was formed between M/s K.K. Spun Pipes Private Limited (L-1) and company represented by M/s Brand Eagles-Longjian JV (L-2) and with the criminal conspiracy, fraud and forgery committed by the accused persons, a third party M/s Patel Engineering was shown to have participated in the tender process and the tender was awarded to M/s K.K. Spun Pipes Private Limited.

17. Sri Purnendu Chakravarty, learned counsel for the accused-applicant submits that there is no evidence available against the accused-applicant to have drawn any financial gain or his involvement in the alleged corruption or irregularities allegedly committed by the other accused. He is a freelancer advisor and his working was to advise M/s Brand Eagles-Longjian JV in tendering process. He also submits that the charge sheet has already been filed. The accused-applicant was not arrested during the course of investigation and he has answered the summons. Accused-applicant will participate in the trial proceedings and no purpose would be served to take him into custody inasmuch as the investigation is already complete. He further

submits that there is hardly any chance for the accused-applicant to tamper with the evidence or influence any witness.

18. On the other hand, Sri Anurag Kumar Singh, learned counsel for the CBI has submitted that the accused-applicant was actively involved in the criminal conspiracy with accused persons and illegally securing the work by pooling the tender on the basis of forged documents and deprived the Government to get competitive rates and caused huge loss to the Government exchequer to benefit the Government officials and private persons. The very strange thing is that the bank guarantee was prepared by M/s K.K. Spun Pipes Private Limited for submitting the tender documents by M/s Brand Eagles-Longjian JV and despite not being qualified, the tender was allotted to M/s K.K. Spun Pipes Private Limited and, no objection was raised by M/s Brand Eagles-Longjian JV, which itself would show that the cartel was formed.

19. The accused-applicant had acknowledged his signatures on the bid submitted by M/s Brand Eagles-Longjian JV. He had also accepted that he used to advise Mr. Himanshu Gupta, one of the directors of M/s K.K. Spun Pipes Private Limited in connection with the tendering process.

20. Learned counsel for the CBI has further submitted that this Court has already rejected the bail applications of accused Raj Kumar Yadav and Roop Singh Yadav vide judgment and orders dated 29.4.2022 and 16.11.2022 passed in Criminal Misc. Bail Application Nos.4319 of 2021 and 6700 of 2021 respectively.

21. I have considered the submissions advanced by the learned counsel for the parties and perused the record.

22. Considering the charge sheet and the evidence available against the accused-applicant, I do not find any substance in the submission of learned counsel for the accused-applicant that there is no evidence

available against the accused-applicant for his involvement in commission of offence.

23. Looking at the magnitude of the corruption involved in misappropriating the public funds of thousands of crores of rupees, I am of the view that the economic offences of such scale and width could not have been committed without craftily planing and its execution. It is well settled that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the Court has to keep in mind the nature of accusations, magnitude and gravity of offence and nature of evidence in support of accusations. Economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and are considered to be as grave offences as they affect the economy of the country as a whole.

24. Considering the allegation against the accused-applicant, evidence available against him, I am of the view that this is not a fit case where the accused-applicant can be enlarged on anticipatory bail. The Court needs to balance the interest of an individual vis-a-vis interest of the society at large. When there are allegations of corruption and misappropriation of funds in active connivance with the politicians in power and the Government officials with private persons and there is evidence and involvement of the accused-applicant in commission of such an offence, he is not entitled to be enlarged on anticipatory bail.

25. The anticipatory bail application is accordingly *rejected*.

(Dinesh Kumar Singh, J.)

**Order Date :- 15.12.2022**  
Rao/-