IN THE COURT OF VIKAS DHULL, SPECIAL JUDGE (PC ACT) (CBI)-23 (MPs/MLAs Cases) ROUSE AVENUE COURT COMPLEX, NEW DELHI

Bail Matter No. 226/2022
DLCT11-000587-2022

FIR NO. 05/2020
PS. ACB
STATE VS. AMANATULLAH KHAN

Date of filing of application	**: 17.09.2022**
Date on which order reserved	**: 27.09.2022**
Date on which order pronounced	**: 28.09.2022**

ORDER

1. Vide this order, I shall dispose of the bail application of accused filed under Section 437 Cr.P.C.
2. The brief facts which are relevant for deciding the present application are that FIR No. 05/2020 PS ACB was registered on 28.01.2020 on the complaint made by Hafiz Irshad Qureshi. In the said complaint, it was alleged by him that present accused being the Chairman of Delhi Waqf Board had carried out recruitments of 32 employees on contractual basis in violation of rules and regulations regarding the recruitment process. It was further alleged that Waqf properties to the tune of Rs.100 Crores have been let out to unauthorized persons without due process of law. It was alleged that with regard to grant of tenancies of 21 properties owned by Waqf Board, bids were received through advertisements for 13 properties whereas in other

8 cases, the same were approved by Waqf Board in its meeting dated 17.12.2018 without calling for the bid or advertisement. It was also alleged that there were major irregularities in the operation of Waqf Board Bank Accounts as authorized signatories have been changed / replaced in violation of rules and regulations and funds of the Waqf Board have been unauthorizedly withdrawn and mis-appropriated. It was also alleged that a Fogging Machine worth Rs.7 Lacs was purchased by the Chairman, Waqf Board for his Okhla constituency whereas payment of the said machine was made by Waqf Board and Waqf Board money to the tune of Rs.25 Lacs was also spent for the purchase of tents which is of no use.

3. Based upon this complaint, present FIR was registered and the matter was taken up for investigation.
4. During the course of investigation, raids were conducted by the PS ACB officials at various places and various documents, cash and illegal firearms were recovered. Statements were also recorded. Thereafter, the present accused was arrested on 16.09.2022 and was remanded to custody of ACB from 17.09.2022 till 26.09.2022. Since 26.09.2022, the accused is in Judicial Custody.
5. The present bail application was filed during the course of arguments on the police remand application and the same was kept pending till the expiry of police remand. After expiry of police remand, reply was sought from the ACB on the bail application which they had duly filed on record.
6. I have heard Sh.Rahul Mehra, Ld.Senior Counsel for

accused and Sh.Atul Kumar Srivastava, Ld.Addl.PP for ACB. I have also perused the reply and the judgments relied upon by respective counsels.

7. It was submitted by the Ld.Senior Counsel for accused that in the present case, accused has been falsely implicated. It was submitted that the present FIR was registered in the year 2020 on a false and a frivolous complaint and for around 02 years, no investigation was conducted by the ACB for the reasons best known to them.
8. It was further submitted that the arrest of accused is a counter blast to the Writ Petition filed by the accused before the Hon'ble High Court of Delhi in June, 2022 seeking quashing of proceedings of Delhi Police in declaring the accused as "bad character".
9. It was further submitted that in the present case, allegations against the accused primarily are with regard to the appointment of 32 contractual employees in violation of the rules and regulations of Waqf Act, 1995, causing loss to the exchequer in granting tenancies of the Waqf properties and dishonest mis-appropriation of rupees 3.20 Crores in the form of salaries paid to the contractual employees.
10. It was further submitted that nothing has been brought on record to show that appointment of contractual employees was done by the accused with some ulterior motive. It was further submitted that even assuming that there was some violation of rules and regulations, then also it is not sufficient to show that there was some criminality on the

part of accused in the recruitment process. It was further submitted that there is no material to show that any bribe was taken by the accused in the appointment of 32 contractual employees. It was further submitted that it is also not the case of ACB that contractual employees were not qualified to be appointed to such posts or had withdrawn salaries without doing any work. It was further submitted that process of getting the posts sanctioned from the Government of Delhi takes lot of time and to ensure that the work of the Waqf Board does not suffer, the Waqf Board has the power to employ staff on contractual basis to carry on its work. It was further submitted that rules and regulations regarding appointment of the staff as mentioned in Section 24 and 110 of the Waqf Act, 1995 has not been promulgated and recruitments by the Waqf Board are being done in such manner and in the past also, employees were recruited in the absence of rules and regulations. It was further submitted that since rules and regulations are non-existent, therefore, it is not correct to say that accused appointed 32 employees in violation of rules and regulations. It was further submitted that whatever salaries was paid to such appointed contractual employees was paid through the banking channel and it is not the case of the ACB that contractual employees after withdrawing their salaries have paid the said salary amount to the accused. It was further submitted that recruitment done by the accused can at the best be said to be irregular but it cannot be said to be illegal one as no undue advantage has been taken by the accused from any of the contractual employees. Therefore, no offence under amended Section 7 of the Prevention of Corruption Act, 1988 **(hereinafter referred to as “the PC Act”**) is made out.

11. It was further submitted that as per Section 100 of the Waqf Act, 1995, the recruitment carried out by the Chairman, Waqf Board in good faith cannot be questioned.

12. It was further submitted that with regard to allegations of causing loss to the exchequer in the grant of tenancies, no material has been brought on record by the ACB to show as to in what manner, the alleged loss has been caused.

13. It was further submitted that tenancies were created with regard to Waqf properties as per the Waqf Properties Lease Rules, 2014. It was further submitted that as per said Lease Rules, advertisement was issued in a newspaper and bids were invited, reserve prices were also fixed and thereafter, tenancies were created.

14. It was further submitted that in majority of cases, previous tenancies were renewed at enhanced rent and some new tenancies were also created. It was further submitted that no material has been brought on record by the ACB to show as to in what manner, loss was caused in grant of tenancies with regard to Waqf properties.

15. It was further submitted regarding the last allegation of mis-appropriation of Rs.3.20 Crores under Section 409 IPC, that no offence is made out. It was submitted in this regard that for making out a case of criminal breach of

trust, the first ingredient which the prosecution has to show is the entrustment of property to accused or the accused having exclusive dominion over the same. It was submitted that as per Section 77 of the Waqf Act, 1995, Waqf Fund has to be created and all the money received by the Board in the form of donations, Grant in Aid etc. was required to be deposited in the Waqf Fund. It was further submitted that the entire Waqf Fund was in the control of the Waqf Board as per Section 77(3) of the Waqf Act, 1995 and said Waqf Fund was required to be utilized as per Section 77 (4) of the Waqf Act, 1995 for repayment of any loan, payment of cost of audit, payment of salary and allowances to the officers and staff of the Board, payment of traveling allowances and payment of all expenses incurred by the Board etc. Therefore, since the Waqf Fund was in the entire control of the Waqf Board, hence, there was no question of any amount being entrusted to the accused or his having exclusive dominion over the said Waqf Fund.

16. It was further submitted that it is an admitted case of the ACB that the salary was paid to the contractual employees amounting to Rs.3.20 Crores through Banking Mode. It was further submitted that there is no allegation that employees after withdrawing their salary had paid the salary to the accused. Therefore, there are no allegations that accused converted to his own use the salary paid to the contractual employees. Therefore, even the offence of Section 409 IPC read with 13 of the PC Act (amended) is

not made out.

17. It was further submitted that initially, FIR was registered under amended Section 7 of the PC Act and under Section 120-B IPC but later on, amended Section 13 of the PC Act and Section 409 IPC was added just to show gravity of offence even though there was no material for adding of Section 409 IPC and amended Section 13 of the PC Act.

18. It was further submitted that for committing the offence of criminal conspiracy under Section 120-B IPC, two or more persons must have agreed to do some illegal act. However, in the present case, ACB is yet to disclose, who apart from accused are part of criminal conspiracy. Therefore, even the offence of 120-B IPC is not made against accused.

19. It was further submitted that CBI had also registered a case with regard to recruitment of 32 employees in violation of rules and regulations against accused vide RC No. 9A/2016/AC-III, New Delhi dated 23.11.2016 under Section 13(1)(d) read with 13(2) of PC Act, 1988 and under Section 120-B IPC and as per his information, in the said case, accused has been chargesheeted without arrest and even the offence of criminal breach of trust under Section 409 IPC was never invoked by the CBI. This fact also shows that Section 409 IPC and amended Section 13 of the PC Act have been wrongly invoked just to falsely show the seriousness of the crime.

20. It was further submitted that as per reply given by the ACB, accused is shown to be involved in 24 other cases apart from the present case. However, ACB has not

provided the correct facts regarding the previous involvement of accused. It was submitted that out of total 25 cases including the present one, accused has been acquitted / discharged in 20 cases and other 05 cases are pending at the pre-charge / investigation stage.

21. It was further submitted that accused is regularly appearing before the courts where his cases are pending and has not absconded. It was further submitted that the very fact that accused has been acquitted / discharged in previous 20 cases, shows that accused was falsely implicated in the previous 20 cases.

22. It was further submitted that accused is three times MLA of Delhi Vidhan Sabha and has got deep roots in the society. Therefore, accused is not a flight risk and accused is ready to appear before this court or IO as and when he will be directed to do so.

23. It was further submitted that the very fact that accused has faced trial in 20 cases shows that he is not a flight risk. It was further submitted that even there is no chance of accused tampering with the evidence as primarily evidence in the present case is documentary in nature which already stands seized by the ACB. It was further submitted that accused undertakes not to extend threat to any witnesses connected with this case and shall abide by all the conditions which will be imposed by this court, if released on bail. It was further submitted that the principles governing the consideration of bail application is that there is a presumption of innocence in favour of the accused till

he is found to be guilty and the bail is the rule and denial thereof is the exception. For the purpose of denial of the bail, there must be extraordinary circumstances. It was further submitted that in the present case, allegations made against accused are not serious. Therefore, there is no impediment in granting bail to accused. Accordingly, it was prayed that application be allowed. In support of his submissions, Ld.Senior counsel for accused has relied upon the following judgments:-(1) C.K. Jaffer Sharief Vs State (Through CBI) (2013) 1 SCC 205; (2) A.Sivaprakash vs State of Kerala (2016) 12 SCC 273: (3) Dhananjai Kumar Pandey v CBI [2015 SCC OnLine Bom 5625]; (4) N.Raghavender vs Stae of AP, CBI 2021 SCC OnLine SC 1232; (5) Sanjay Chandra vs CBI (2012) 1 SCC 40; (6) P. Chidambaram vs Directorate of Enforcement (2020) 13 SCC 791; (7) D.K. Shivkumar vs Directorate of Enforcement (2019) 264 DLT 586; (8) Sharad Kumar & Ors. vs CBI 2011 (126) DRJ 525; (9) Ashok Kumar vs State (NCT of Delhi) 2016 SCC OnLine Del 1169; (10) CBI vs VC Shukla & Ors. (1998) 3 SCC 410; (11) Surinder Kumar Khanna vs Intelligence Officer, Directorate of Revenue Intelligence (2018) 8 SCC 271; and (12) Dashrath Singh Chauhan vs CBI 2018 SCC OnLine SC 1841.

24. On the other hand, Ld.Addl.PP for ACB has strongly opposed the grant of bail to accused.

25. It was submitted by the Ld.Addl.PP for ACB that accused has misused his position as a Chairman of Delhi Waqf

Board by appointing 32 contractual employees in violation of rules and regulations. It was further submitted that out of 32 contractual employees, 05 employees, who were recruited were the relatives of accused and remaining were the members of his constituency. It was further submitted that as per Section 24 of the Waqf Act, 1995, all recruitments to the Waqf Board are to be done in consultation with the State Government and Section 110 of the Waqf Act, 1995 provides for framing of rules and regulations for the said purpose. However, the said 32 contractual employees were recruited without the consultation of the State Government and, therefore, it was violative of Section 24 of the Waqf Act, 1995. It was further submitted that the very fact that accused had recruited his own relatives and members of his own constituency, shows that other deserving candidates were deprived of their right to secure a job in the Waqf Board. It was further submitted that although Waqf Board had constituted a recruitment committee for the purpose of engaging contractual employees but the very fact that relatives and members of his own constituency were recruited, shows that accused being the Chairman of the Delhi Waqf Board had exercised his influence over the members of the recruitment committee in the selection of 32 contractual employees. Therefore, amended Section 7 of PC Act is made out.

26. It was further submitted that with regard to grant of tenancies of 15 Waqf properties, grave irregularities were

committed.

27. It was submitted that out of 15 Waqf properties, rent agreements were executed only in six Waqf properties and with regard to remaining tenancies, rent agreements were either not executed or not provided by the Waqf Board. It was further submitted that they had recorded the statement of Mohd.Khalid, who has alleged that despite execution of rent agreement by Delhi Waqf Board and despite taking advance of Rs.67,386/-, tenanted property was not handed over to him, as it was already occupied. It was further submitted that ACB has also recorded statement of Mohd.Yusuf and Kutubuddin and both have stated in their statements that money was demanded from them for grant of tenancy rights. It was further submitted that with regard to Waqf property occupied by Bombay Mercantile Bank, Daryaganj, the rent being charged since the year 2013 is only Rs.1 Lac whereas the market rate is estimated to be Rs.2,58,000/- per month as per the report of the Government Valuer. Therefore, all the aforementioned facts show that grave loss was caused to the exchequer in grant of tenancies of Waqf properties or the bribe amount was demanded from the bidder for the grant of tenancies.

28. It was further submitted that accused being the Chairman of Delhi Waqf Board, had carried out illegal recruitment of 32 contractual employees, who were the relatives and members of his own constituency and they were paid Rs.3.20 Crores from the Waqf Fund. It was further submitted that accused being the Chairman, had control

over the Waqf Fund and he converted to his own use by distribution of salaries to the tune of Rs.3.20 Crores to his relatives and members of his own constituency. Hence, offence under Section 409 IPC read with amended Section 13 of the PC Act is made out.

29. It was further submitted that offence under Section 409 IPC provides for punishment of life imprisonment and hence, is a very serious offence. It was further submitted that accused was involved in 24 more cases excluding the present one, out of which in 20 cases, he has been acquitted / discharged and in majority of cases, he has not got any honourary acquittal from any court and majority of cases have been compounded by threatening the complainant. It was further submitted that accused has been chargesheeted in CBI Case bearing RC No. 9A/2016/AC-III, N.Delhi dated 23.11.2016 wherein also, accused is alleged to have carried out illegal recruitment of employees in gross violation of rules and regulations. It was submitted that accused is a habitual offender as despite there being existence of previous FIR against accused with regard to illegal appointment of contractual employees, accused went ahead and recruited 32 more contractual employees in 2018-2019, who were his relatives and members of his constituency. Therefore, accused does not deserve the benefit of bail.

30. It was further submitted that accused is in the habit of assaulting public servants while discharging public duties and accused is also involved in the case where highest

Government functionary i.e. Chief Secretary was assaulted.

31. It was further submitted that in the present case, when ACB had gone to conduct raid at his residence, ACB officials were assaulted at the behest of accused. Therefore, accused is in the habit of committing similar offence despite there being condition in the bail not to commit similar offence in future and has scant regard for the condition imposed by the court while granting bail.
32. It was further submitted that ACB has recorded the statement of member of Delhi Waqf Board and CEO of Delhi Waqf Board and both of them had stated in their statements that accused used to convene board meetings without proper Coram and used to misbehave with the CEO and also used to use unparliamentary language.
33. It has also come in the statement of CEO Mohammed Ahsan Abid that he was not provided the details of the contractual employees and even his approval was not obtained with regard to such recruitment.
34. It was further submitted that various diaries have been recovered from the fund manager of accused namely Kausar Imam Siddiqui @ Laddan showing the entries of payment in crores of rupees to present accused which is nothing but a bribe money.
35. It was further submitted that recovery of Rs.12 Lacs and one countrymade pistol recovered from accused Hamid also belongs to present accused as per his statement, which was also the bribe money.

36. It was further submitted that accused has not co-operated in the investigation as tenancy agreements have not been provided despite repeated reminders issued by the IO. Accordingly, a prayer was made to dismiss the bail application. In support of his submissions, Ld.Addl.PP for ACB has relied upon the following judgments of the Hon'ble Supreme Court of India delivered in (1) Ash Mohammad Vs. Shiv Raj Singh and Ors., MANU/SC/0758/2012; (2) Ms.Y Vs. State of Rajasthan and anr., 2022 LiveLaw (SC) 384 and Bail Appln No.1585/2022 titled as Vinay Sharma Vs. State (NCT of Delhi) decided on 26.09.2022 by the Hon'ble High Court of Delhi.
37. In rebuttal, it was submitted by Ld.Senior Counsel for accused that each and every act under the Waqf Act, 1995 was required to be done by the Waqf Board and accused alone being the Chairman of the Waqf Board, cannot be held responsible for the acts done by the Board.
38. It was further submitted that Mohd.Khalid despite having tenancy rights could not be provided the possession of the tenanted premises as matter was pending before the Hon'ble High Court of Delhi and no malafide can be attributed to the accused regarding the same.
39. It was further submitted that CEO of Delhi Waqf Board is a Delhi Government official and he is the custodian of entire record. Therefore, entire record including the tenancy agreements can be obtained from the CEO and if IO can obtain tenancy agreements with regard to six

tenancies, then he can very well obtain the remaining tenancy agreements from the CEO and if CEO is non-co-operative with the IO, then appropriate action can be taken against him.

40. It was further submitted that even the ACB has not pointed out a single tenancy wherein accused has accepted a lower market rent than the previous tenancy and has resultantly caused loss to the exchequer. It was further submitted that statements made by Kutubuddin and Mohd.Yusuf regarding demand of bribe for the purpose of grant of tenancies do not pertain to present accused.

41. It was further submitted that mere entry in the diary recovered from Kausar Imam Siddiqui @ Laddan showing the entries worth crores of rupees in the name of accused is of no consequence unless some independent material is shown to this court that accused had indulged in corruption. It was further submitted that so called statement of Board members and CEO have been recorded in the year 2022 only and they have not made any complaint to the Delhi Government with regard to alleged misbehaviour by accused in the Board meeting or of holding the Board meeting without Coram or of carrying out the recruitment without the approval of CEO. It was further submitted that their statements have been procured now just to build up a case against present accused. Accordingly, it was reiterated that application of accused be allowed.

42. I have considered the rival submissions of respective

counsels and have carefully perused the police file, statement of witnesses and other documents available on the police file.

43. It is a settled principle of law that while deciding the bail application, the following factors are required to be kept in mind: -

(a) There is a presumption of innocence in favour of the accused till he is found to be guilty.

(b) The bail is the rule and denial thereof is the exception. For the purpose of denial of the bail, there must be extraordinary circumstances necessarily meaning that bail ought not to be denied to an accused only on the ground of general sentiments of the community as it impairs the right to liberty guaranteed to an accused.

(c) While considering the grant of bail, both the factors, namely, the seriousness of charges and the severity of punishment which the offence carries must taken into consideration.

(d) The bail ought to be granted in a case where there are no chances of the accused fleeing away from the processes of law or in other words, the accused, who is released on bail must be readily and willingly available to submit himself to the custody of the Court at any given point of time.

(e)The grant of bail ought not to be denied only on the perceived apprehension by the Court that the petitioner, if restored to a liberty, he will tamper with the evidence. There must be some prima facie evidence on record or reasonable and justifiable grounds to believe that in case the benefit of bail is extended to an accused, he is going to misuse his liberty or so as to create conditions which are not conducive to hold a fair trial. (Reference in this regard is made to the judgments delivered in **Ash Mohammad's case (supra); Prahlad Singh Bhati Vs. NCT, Delhi and**

Anr. MANU/SC/0193/2001; Chaman Lal Vs. State of U.P. and Anr. MANU/SC/0631/2004; and Satish Chandra Vs. CBI (2012) 1 SCC 40).

44. In the light of aforesaid principles, the bail application of accused is required to be decided.

45. The first allegation which is made against accused is with regard to recruitment of 32 contractual employees in violation of rules and regulations of the Waqf Act, 1995. In this regard, it has come on record that accused being the Chairman of Delhi Waqf Board had recruited 32 contractual employees out of which five were his relatives and remaining were the members of this constituency. There is no material on record to show that any of these recruited employees had paid any bribe to the accused in securing the employment. There is also no material on record to show that these employees had withdrawn their salaries from the Waqf Fund without doing any work or they were not qualified for the job. It has also come on record that previously also, Delhi Waqf Board had recruited employees without there being any rules and regulations.

46. However, it has come in the statement of Mohammed Ahsan Abid, who was the then CEO of Delhi Waqf Board that Delhi Waqf Board had carried out the recruitment despite sanctioning of 74 posts by the Government of Delhi and despite advise of the Government of Delhi not to carry out recruitment without consultation of the Government. In his detailed statement, Mohammad Ahsan

Abid had recommended 74 posts for the Delhi Waqf Board in November, 2018 but despite sanction of the aforementioned posts, Delhi Waqf Board passed the resolution seeking recruitment to 33 posts. The Government of Delhi had then advised to await the due sanction and to undertake recruitment in accordance with the advise of the Government. However, Delhi Waqf Board went ahead with the recruitment and violated the instructions of the Government. Even the approval of the CEO for issuance of advertisement for 33 posts was not obtained.

47. From the statement of CEO, it is prima facie shown that accused being the Chairman of Delhi Waqf Board had went ahead with the recruitment in violation of the instruction of the Delhi Government just to favour his relatives and members of his constituency. However, there is no material on record to show that any bribe was paid by any of the employees in securing a job as a contractual employee. Further, CBI had also chargesheeted the accused for similar allegations of recruitment of 32 employees in violation of rules and regulations in case RC No. 9A/2016/AC-III, N.Delhi dated 23.11.2016 wherein accused was not even arrested and even Section 409 IPC was not invoked.

48. Secondly, the allegations made against accused is grant of tenancies by accused at a lower rate of rent which resulted in loss to the exchequer of the State/ Waqf Board.

49. In the police file of ACB, details of 15 Waqf properties

which were rented out have been provided by Mohd.Khalid Hassan**,** UDC working with the Delhi Waqf Board and as per the details provided by him, properties were rented out pursuant to the advertisement published in the newspaper in 2018 and reserve price as per circle rate was also mentioned and a comparative table of the previous tenancies, rate of rent and new tenancy and new rent has also been provided. From the said document, it is apparent that tenancies have been created at a higher rent than the reserve price and also the rent is higher than the previous rent being taken from the earlier tenants. Therefore, from the said document, it is prima facie shown that no loss to the exchequer has been caused with regard to creation of tenancies pertaining to Waqf properties.

50. Further, I have also carefully perused the statement of Mohd.Khalid, who was the successful bidder with regard to Waqf property of Turkman Gate, Delhi, who had also deposited advance rent of Rs.67,386/-. However, as per his statement, he could not get possession as said property was encroached upon by one Sh.Mohd.Mehfooz, who had approached the Hon'ble High Court of Delhi to protect his possession. Therefore, from the said statement and the document annexed with it, it is apparent that possession of said property could not be handed over to Mohd.Khalid due to occupation of the same by one Sh.Mohd.Mehfooz, who had also approached the Hon'ble High Court of Delhi for the protection of his possession vide W.P.(C) 1833/2019 but the same was dismissed on 26.02.2018.

Therefore, non-handing over the possession of the tenanted property was due to the matter being pending in the Hon'ble High Court of Delhi and not due to some ulterior motive.

51. I have also carefully perused the statement of Kutubuddin, who is alleged to have paid bribe to obtain tenancy of property at Jhatikara village, Delhi. It has come in his statement that to obtain tenancy of the aforementioned property, he had paid Rs.7 Lacs bribe to one Rehan Ahmed. There is no allegation made by Kutubuddin having paid bribe to present accused and even Rs.1 Lac has been transferred by Kutubuddin into the account of Rehan Ahmed. No statement of Rehan Ahmed is on record to show that said amount was collected by him on behalf of accused.

52. Further, with regard to tenancy of Bombay Mercantile Bank, Daryaganj, it is an admitted case of the ACB that said tenancy was created way back in 2013 and accused had no role to play with regard to creation of said tenancy. Therefore, prima facie, there is no material on record to show that as to what extent loss was caused to the exchequer by grant of tenancy by Waqf Board during the tenure of present accused.

53. Regarding the allegation of mis-appropriation of Rs.3.20 crores, by way of payment of salaries to 32 contractual employees, it has come on record that accused being the Chairman had no exclusive control over the Waqf fund. Further, as per Section 77 of the Waqf Act, 1995, Waqf

Fund was required to be maintained by the Waqf Board and as per Section 77 (3) of the Waqf Act, 1995, the Waqf Fund shall be under the control of Waqf Board and the said fund was required to be utilized for repayment of loan, payment of salaries, allowances, payment of expenditure incurred by the Board etc. There is no material on record to show that grant in aid received by the Waqf Board in Waqf Fund was in the exclusive domain of the present accused being the Chairman of the Delhi Waqf Board or he had the power to deal with the Waqf Fund exclusively. Therefore, prima facie there is no material to show that entrustment of Waqf Fund to the present accused or his having exclusive dominion over the same.

54. Further, it is also an admitted case of the ACB that 32 contractual employees have been paid salaries amounting to Rs.3.20 Crores through bank transfer. There is no material on record to show that any contractual employee after withdrawing salary amount, has repaid the same to the present accused. Further, there is also no material on record to show that contractual employees were being paid salary without they performing the duties assigned to them. Therefore, prima facie entrustment of funds to the accused or its mis-appropriation is not made out and, therefore, the CBI in the previous case, had not invoked Section 409 IPC while chargesheeting the accused.

55. From the aforesaid discussion, it can be prima facie held that allegations against accused are not grave and serious in nature.

56. Further, it has also come on record that out of other 24 cases against accused, he has been acquitted / discharged in 20 cases. There is no material on record to show that accused had obtained acquittal in the previous cases by threatening the complainant as submitted by Ld.Addl.PP for ACB.

57. Further, the contention of Ld.Addl.PP for ACB that accused had violated the conditions of the Bail Order dated 12.03.2018 delivered in Bail Appln No. 522/2018 titled as Amanat Ullah Khan Vs. The State Govt. of NCT of Delhi by again assaulting the ACB officials when they had gone to raid the premises, deserves to be rejected as it is an admitted case of the ACB that when alleged assault on the ACB officials took place, accused was in their custody.

58. Accused is also not a flight risk as he is a sitting MLA of Delhi Vidhan Sabha and on previous two occasions also, he was the MLA of Delhi Vidhan Sabha. Further, accused has attended the previous 20 cases in which he has been discharged / acquitted which also shows that he has submitted himself to the process of law and has not absconded.

59. Further, there is no chance of tampering of the evidence as primarily evidence in the present case is documentary in nature which already stands seized by the ACB.

60. In the facts and circumstances, having regard to the principles governing the grant of bail as mentioned hereinabove, **the application filed by accused is allowed and he is admitted to bail subject to his furnishing**

personal bond in the sum of Rs.1 Lac with one surety of the like amount subject to the following conditions: –

(1) That accused will co-operate in the investigation and shall make himself available as and when required by the Investigating Officer.

(2) That accused will not in any way tamper with the evidence or intimidate or approach any witness in the present FIR.

(3) That accused will not indulge in a similar offence in future.

(4) That accused shall not leave this country without prior permission of this court.

61. However, it is made clear that nothing expressed herein above shall tantamount to expressing any opinion on the merits of this case.

62. A copy of order be supplied to both the parties through electronic mode.

Announced in the open court
Dated: 28.09.2022

VIKAS DHULL

Digitally signed by VIKAS DHULL
Date: 2022.09.28 20:33:31 +05'30'

(Vikas Dhull)
Special Judge (PC Act) (CBI)-23
(MPs/MLAs Cases) RADC
New Delhi