

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Bail Application No.2555/2008

% Reserved on : 19.1.2009
Date of decision: 27.1.2009

SHASHI KAUSHAL ...PETITIONER
Through: Mr.Dinesh Mathur, Sr.Advocate
With Mr.Harsh K.Sharma, Advocate

Versus
STATE ...RESPONDENT
Through: Mr.Navin Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. This order will dispose of the bail application filed by the applicant under Section 438 Cr.P.C. in case FIR No. 19/2008 registered under Sections 420/468/471 IPC r/w Section 120-B IPC along with Section 13(1)(c)(d) and Section 13(2) of the Prevention of Corruption Act.
2. In brief the prosecution's case is that source information was received in Anti Corruption Branch that some officials of Social Welfare and Child Development Department of GNCT of Delhi were involved in causing wrongful gain to themselves and wrongful loss to Government by indulging in connivance with each other for attainment of common object with the help of contractors for

procuring stores meant for meeting out day to day requirements such as logistic food, clothing, etc. It was found that inflated number of inmates was shown and the requirement of food and clothing etc. was placed accordingly. Normally, the requisition for supply of these items are initiated by the store keeper after assessing the ground reality and based on actual number of inmates. However, in this case, no report was called form the store keepers. It is stated that contractor Ravinder Goel, Rajeshwari Chauhan and Balbir Singh have already been arrested. It is further stated that Smt. Rajeshwari Chauhan in connivance with Balbir Singh Superintendent got financial clearance from the applicant Smt. Shashi Kaushal JD in respect of bogus bills against which no supply was made in OIS. These bills were not cleared by Shri V.N.Sharma, Shri R.C. Gupta and another R.C.Gupta all superintendents who remained posted as POS from time to time before posting of Balbir Singh. Ultimately, Balbir Singh Superintendent was brought as Superintendent POS and he in connivance with Smt.Rajeshwari Chauhan, applicant and other officials got clearance of these bills amounting to Rupees 28 lacs approximately. It is also alleged that the investigation has revealed that:-

1. Proposal for purchase of 200 coir mattresses and 200 wooden takhats for OHB-II was initiated by Smt. R. Chauhan even though she was not authorized to make any purchase for the institution. Smt. Shahshi Kaushal knowing full well that OHB-II had been separated and transferred to Sewa Kutir K. Camp from Manju Ka Tila wrongfully gave the sanction.
2. Direct proposal of Dy. Superintendent Entertained, thereby side lining the then Superintendent of POS Sh.

V.N.Sharma.

3. Administrative approval and expenditure sanction was accorded on 29.3.07 while supply order was already placed on 23.3.07 thereby indicating a well planned conspiracy between Smt. R. Chauhan and Smt. Shashi Kaushal beside others.

4. It is seen that when the Superintendent was not inclined to clear the bills, another Superintendent Balbir Singh was brought temporarily by the Joint Director for clearance of the bills.

6. When this whole matter was exposed by the NGOs and in the press, the stock meant for OHB was shown as shifted to Avantika, Rohini with the approval of Jt. Director where Smt.Rajeshwari Chauhan was already shifted. In fact there was no stock.

3. Apprehending her arrest the applicant filed an application for anticipatory bail before the Special Judge, Delhi, who vide its order dated 10th December, 2008 dismissed the same on the ground that the allegations against the petitioner are very serious.

4. It is submitted by counsel for the applicant that the applicant herein makes an unqualified undertaking that she has all intentions to participate and facilitate the investigation of the case. It is also submitted that bare perusal of FIR shows that the allegations leveled in the said FIR have nothing to do with the acts of the applicant inasmuch as the applicant is only a figure head and granted only administrative approval and expenditure sanction qua the proposal of expenditure initiated by the concerned department, who were supposed to make purchases only as per the codal formalities. It is submitted that once such administrative approval is accorded the file never came back to her. It is also submitted that the applicant is not the DDO qua the respective work or purchased made by the concerned Department. The purchases are made by a duly constituted purchase committee and the bills are to be routed

through accounts department who are also to ensure that codal formalities are complied with. Approval of District welfare officer is also taken before the purchases are made. It is submitted that though the FIR was registered on 24.6.2008, the applicant when asked to join investigation, she had joined the investigation despite her transfer to another Department.

5. It is also stated that till a few days prior to her filing anticipatory bail application, no attempt was made by the officials of Anti Corruption Branch to arrest her. Even otherwise, no purpose would be served in sending the applicant in custody as no custodial interrogation is required. Searches were made at her residence but nothing incriminating has been recovered from her residence. It is also submitted that it is the admitted case of ACB that the Hon'ble High Court of Delhi since the year 2004 is also monitoring the development activities as the respective Institutions. It is also submitted that the applicant is a lady and an innocent person. She is a single parent and her son has to appear for Class Xth Board examination. It is also submitted that the applicant is aged, sick and ailing parents to look after. The other co-accused have already released on regular bail. Counsel for the applicant has also relied upon a judgment in *Ram Mahesh Yadav Vs. State [2006 (2) JCC 1000 (Delhi)]* in support of her prayer for the grant of anticipatory bail.

6. The learned APP for the State has strongly opposed the application and has relied upon the following judgments:

(1) *State Rep. The CBI Vs. Anil Sharma, 1997 SCC (Cri) 1030.*

(2) *J.P. Thakur Vs. State (NCT of Delhi)*, 2055 III AD (Delhi) 87.

(3) *Er.K.K. Jerath Vs. Union Territory, Chandigarh and Ors.*, AIR 1998 SC 1934

7. It is submitted that in a case involving corruption by a public servant by abusing his official position, the courts are required to be slow in offering any protection and must give the Investigating Officer free hand to interrogate the accused so as to reach to the bottom of the matter and in this regard custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. It is thus submitted that in this case even though the applicant has joined the investigation but she is still required to be further interrogated and her custodial interrogation is a must and therefore, she is not entitled to anticipatory bail and her application is liable to be dismissed.

8. In the case of *Gurbaksh Singh Sibbia Etc. Vs. State of Punjab* [1980] 3 S.C.R. 383] which judgment is often quoted whenever the issue of the grant of anticipatory bail arises, following guide lines

have been laid down to be considered whenever the issue of grant/refusal of the application arises before the court;

- “1) Power under Section 438, Criminal Procedure Code, is of an extra-ordinary character and must be exercised sparingly in exceptional cases only.
- 2) Neither Section 438 nor any other provision of the Code authorizes the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far leveled.
- 3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.
- 4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant of anticipatory bail.
- 5) Where a legitimate case for the remand of the offender to the police custody under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.
- 6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.
- 7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and
- 8) Mere general allegations of mala fides in the petition are inadequate. The Court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.”

9. I have gone through the record including the case diary and the quotation file for the purchase of Takth and cloth shown to this Court. A perusal of the record goes to show that the applicant joined the investigation and has informed the department that she was looking after the work of more than 100 superintendents. The requisition for purchase of any Article is initiated at the level of the Superintendent and codal formalities

are required to be followed and required to be ensured by the Accounts Branch. There is also a role of purchase committee comprising of several members who scrutinizes details of such purchase. There is also a role of District welfare officer. From the material which is available in the case diary there is nothing which may go to show that the applicant is the beneficiary of any pecuniary advantage in the aforesaid transaction. The quotation file pertaining to the inviting of quotation shows that the applicant in fact raised queries about the sanction to be granted in respect of such purchases to the Account Department which was returned by the Accounts Branch without any objection and in fact a recommendation was made that the expenditure sanction may be granted. The members of the Purchase Committee which comprises of several officers including Superintendent OHB-II have recommended purchase after the grant of Administrative Approval and expenditure Sanction (3/N) which shows that the then superintendent was not sidelined. The investigation conducted so far does not show as to what was the role of the members of the purchase committee who are appointed by the senior officers. No statement is available on record of any senior officer such as Secretary/Director to point out what was the specific responsibility of the applicant in respect of the aforesaid transaction. The record also shows that on the one hand there was urgency to purchase the goods while Shri V.N Sharma remained on leave. There is nothing to show that if the

Superintendent is on leave than the Deputy Superintendent cannot put up the proposal for Administrative Approval and Expenditure Sanction so as to start the process of purchase. It is but normal that the next officer puts up the note when there is urgency. The administrative approval and expenditure sanction is subject to following the codal formalities which is to be ensured by the members of the purchase committee and the accounts department who is headed by an accounts officer. There is nothing on record to show that purchases were made twice and if so what happened to the first purchase. Nothing has been pointed out as to how the arrest of the applicant would substantiate the process of investigation more so when the main accused persons have already been released on bail and the applicant has already joined the investigation. It was admitted by the Ld. APP for the stated that the applicant had no power to post or transfer any person in the department and that the posting of Balbir Singh was done by senior officers. Thus the allegations that the applicant ensured posting of a convenient superintendent is without any basis. The record also goes to show that V.N.Sharma, Superintendent whose testimony is sought to be relied upon is yet to give his explanation about his conduct in having not put up the bills earlier by a detailed note. He is also required to explain as to what happened to the material purchased under his supervision. The role assigned to the applicant appears to be more of a supervisory nature. It may be that she might have

been negligent or lacked supervision.

10. In these circumstances, I allow the application filed by the applicant and direct that the applicant if arrested in connection with FIR No. 19/2008 under Sections 420/468/471 IPC r/w Section 120-B IPC along with Section 13(1)(c)(d) and Section 13(2) of the Prevention of Corruption Act, she shall be released on bail on her furnishing a personal bond in the sum of Rs.25,000/-(rupees twenty five thousand) with one surety in the like amount to the satisfaction of the Arresting Officer/Investigating Officer subject to the conditions that she will join further investigation as and when required by the Investigating officer/Investigating agency and would not object to her being put up for a lie detector test or a narcho-analyst test subject to medical fitness. She would not leave the country without prior permission of the Court.

11. Bail Application No. 2555/2008 stands disposed of. Record, if any, be sent back forthwith.

MOOL CHAND GARG, J.

January 27, 2009
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