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

+ CRL.REV.P. 662/2008

RAM MAHESH YADAV

..... Petitioner

Through Mr. Sunil K. Mittal, Mr. Harsh Khanna &
Mr. Kshitij Mittal, Advocates.

versus

THE STATE

..... Respondent

SThrough Ms. Fizani Husain, APP for the State
along with SI Anil Kumar, A.C. Branch.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **27.09.2010**

1. On oral prayer of the petitioner, the present revision petition is treated as one under Article 227 of the Constitution of India.

2. The petitioner, Ram Mahesh Yadav, challenges the order dated 4th September, 2008 framing charge under Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as IPC, for short) read with Section 7 and 13(2) of the Prevention of Corruption Act, 1988 against the petitioner. A separate charge has also been directed under Section 7 of the Prevention of Corruption Act, 1988.

3. Learned counsel for the petitioner has raised two contentions. Firstly, the petitioner was not caught with money in the trap and in this connection he relies upon order dated 2nd June, 2006 granting him anticipatory bail. Secondly, it is submitted that the charge sheet specifically records the time and records with precise details with time as what happened on 19th April, 2006 when the complainant Nikhlesh Sharma approached Anti Corruption Branch and thereafter a trap was laid and the co-accused Bhram Singh was arrested after he had taken the bribe amount. It is submitted that the complainant and

the Anti Corruption Branch could not have moved from one end of Delhi to another end and covered the distance of 25 kilometers in the time frame as mentioned in the charge sheet.

4. The charge sheet pertains to FIR No. 33/2006, which was registered on a complaint made by Nikhlesh Sharma, who was selling flowers from a shop in flower market, Lado Sarai. He has specifically named the petitioner-Ram Mahesh Yadav, a Patwari of DDA. He has stated that on 15th April, 2006, the petitioner came to his shop and stated that the complainant's shop shall be demolished because of the court orders. He demanded Rs.5,000/- from Nikhlesh Sharma in case he did not want his shop to be demolished. At that time, another person Mohd. Sagir was also present. Mohd. Sagir owns a flower shop in the same flower market. Nikhlesh Sharma has stated that thereafter the petitioner-Ram Mahesh Yadav was regularly coming into his shop and demanding money. As per the prosecution case on 19th April, 2006, co-accused Bhram Singh, who was working as a security guard in DDA and attached to the petitioner, came to the shop of the complainant and told him that his shop was to be demolished that day and the police was coming to the flower market. He was told that in case he wants to save his shop, he should talk to the petitioner. The complainant and co-accused, Bhram Singh met Ram Mahesh Yadav and he again reiterated his demand for payment of Rs.5,000/- as bribe money. The complainant pleaded that he had only Rs.2,000/- and could not pay Rs.5,000/-. The petitioner asked the complainant to pay Rs.2,000/- and pay the balance amount after 2-3 days. The petitioner thereupon asked the co-accused Bhram Singh to collect Rs.2,000/- from the shop of the complainant after 2-3 hours. The complainant made a complaint to the Anti Corruption Branch, a trap was laid after noting down the numbers of the currency notes and as per the charge sheet, the co-accused Bhram Singh was caught red handed with Rs.2,000/-, which were handed over by the complainant to Bhram Singh as bribe money.

5. Learned Additional Public Prosecutor has also drawn my attention to the statement of Mohd. Sagir. It is pointed out that Mohd. Sagir has referred to the

presence of the petitioner at the shop of the complainant and the demand for money in case he wanted to save his shop from demolition. Learned Additional Public Prosecutor has also drawn my attention to the statement of Rajiv Kumar Sharma, one of the panch witnesses.

6. Whether the complainant and Mohd. Sagir have made true statements, and whether the bribe amount was demanded by the petitioner, is a question of trial and evidence. At this stage, the statements made by the complainant and Mohd. Sagir have to be accepted and there is nothing substantial to show that both of them should be disbelieved and their statements should be disregarded. Recovery of money from the co-accused Bhram Singh in the trap is supported by the statement of the panch witness including Rajiv Kumar Sharma and other witnesses of the raiding party, who were members of the Anti Corruption Branch. With regard to time, whether or not it was possible to travel the said distance are all matters of evidence and trial. At this stage, the prosecution is entitled to rely upon the statements, which have been made by the panch witnesses and the members of the raiding party, which state that the recovery of bribe amount of Rs.2,000/- was made from co-accused Bhram Singh.

7. Anticipatory bail was granted to the petitioner on the ground that he was not present at the spot. The said order also records that the complainant had never come across the petitioner and seen him face to face and the petitioner had not demanded money from the complainant directly. As noticed above, in the charge sheet the facts stated are to the contrary. The charge sheet specifically records that the petitioner was a Patwari in DDA and had come to the shop of the complainant on 15th April, 2006 and warned that his shop was going to be demolished and he should pay Rs.5,000/- in case he wants to save his shop. Mohd. Sagir, who is owner of a nearby shop has corroborated the said fact in his statement under Section 161 of the Code. The complainant has stated that thereafter the petitioner-Ram Mahesh Yadav was regularly coming into his shop and on 19th April, 2006 the complainant had met the petitioner-Ram Mahesh Yadav with co-accused Bhram Singh on the main road near T.B.

Hospital where demolition was being carried out. At this stage, the statement and evidence relied by the prosecution has to be treated as correct and truthful and then examined whether an offence is made out, unless there are grounds and reasons to ex facie disbelieve and disregard these statements. The evidence relied upon by the prosecution is not to be dissected and scrutinized as at the time of final judgment. A strong suspicion justifies framing of charge.

8. Keeping in view the observations of the trial court, I do not see ground or reason to interfere under Article 227 of the Constitution of India. The petition is dismissed.

9. The observations made in this order are for disposal of the present petition and will not be construed as observations on merits binding on the trial court. The trial court will examine the case on merits without being influenced by the observations made in this order.

SANJIV KHANNA, J.

SEPTEMBER 27, 2010
VKR/NA