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

+ **BAIL APPLN. No.1626/2009**

% Judgment reserved on : 20th October, 2011
Judgment delivered on: 16th January, 2012

SUDESH KUMAR @ SUDESH CHAND Petitioner
Through: Mr. Siddarth Luthra, Sr. Advocate
with Mr.P.K. Dubey, Advocate

versus

C.B.I. Respondent
Through: Ms. Sonia Mathur, Standing
Counsel for C.B.I.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition is being filed for direction for release of the petitioner on bail in case FIR No.82/2005 under Sections 49, 49B(1) of Wildlife Protection Act 1972, registered at P.S. Kamla Market and subsequent second FIR on the same facts and same provision of law, being RC SIB 2005 E 0003 dated 30.05.2005 under Sections 49, 49B(1) of the Wild Life Protection Act, 1972.

2. Mr. Siddarth Luthra, Sr. Advocate appearing for the petitioner has submitted that on 31.01.2005 FIR No.82/2005 was registered by the officials of P.S. Kamla Market. Pursuant to the aforesaid FIR, on

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the same day, the petitioner was arrested and remanded to judicial custody.

3. Learned counsel for the petitioner has further submitted that on 01.02.2005 the investigation arising out of FIR No.82/2005, was taken over by the officials of the Wild Life Department.

4. He further submitted that after completion of investigation of the matter the Inspector of Wild Life filed a criminal complaint bearing No.572/2001 before the Learned ACMM, Delhi against eight persons wherein the petitioner was named as accused No.1, alleging inter alia therein commission of offence under Sections 49, 49B(1) of the Wild Life (Protection) Act, 1972. The learned ACMM, Delhi took cognizance of the offence punishable under Sections 49, 49B(1) and summons were issued against all the accused persons vide its order dated 29.03.2005.

5. It is further submitted vide order dated 26.04.2005, the petitioner was ordered to be released on bail, as much as petitioner has already served the custody of nearly 90 days and the investigation of the case was completed.

6. On 25.05.2005 the Chief Wild Life Warden, Delhi vide letter dated 20.05.2005 informed the CBI that the investigation arising out of FIR No.82/2005 has been completed, a complaint has been filed and the said complaint was sub judiced before the Court of learned ACMM and the consent was given to CBI for further action.

7. On 30.05.2005, the CBI registered second FIR bearing RC SIB 2005 E 0003 under Sections 49, 49B(1) of the Wild Life Protection Act, i.e. for commission of the same offence on the basis of the same allegations of the commission of same offence wherein P.S. Kamla Market had already registered FIR and complaint was filed after the completion of the investigation.

8. It is further submitted on 16.08.2005 the petitioner, who was already on bail in the complaint case arising out of FIR No.82/2005, was re-arrested by the CBI without cancellation of bail of the petitioner and in the absence of the permission of the competent court. On 17.08.2005 the CBI sought 15 days police remand of the petitioner from the court of Learned ACMM MCOCA was invoked against the petitioner but the Court of learned ACMM refused to grant police custody of the petitioner to the CBI, however, the petitioner was remanded to judicial custody, since then he is in judicial custody.

9. On 10.07.2005, DIG of C.B.I. granted approval to invoke Section 3(1)(ii), 3(2) and 3(4) of MCOC Act, 1999.

10. On 22.08.2005, CBI filed Criminal Revision Petition No.90/05 before the learned Additional Sessions Judge against the order of learned ACMM refusing to grant police custody to CBI.

11. Vide order dated 29.08.2005, the learned ASJ granted 10 days police custody of the petitioner to the CBI.

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12. Being aggrieved against the aforesaid order on 03.09.2005 the petitioner filed a Criminal Revision Petition No.661/2005 before this court which is pending for disposal.

13. He has submitted, the CBI had later filed a supplementary complaint on 23.12.2008 before the trial court against as many as five persons, namely the petitioner, Ritu, Babu, Badal and Sansar Chand for commission of offence under Section 120B IPC read with Section 51 of Wild Life (Protection) Act, 1972 r/w Sections 3(1) (ii), 3(2), 3(4) of the MCOCA, 1999 (as extended to NCT of Delhi), in total contravention and ultra-virus the procedure as prescribed by law. Further the CBI filed second supplementary complaint against accused Satyabhan under Section 120-B IPC r/w Section 51 of Wild Life (Protection) Act, 1972 r/w Sections 3(1) (ii), 3(2), 3(4) of the MCOCA, 1999.

14. The petitioner filed the bail application under Section 439, CrPC before the learned ASJ. The same was summarily rejected vide order dated 08.06.2009.

15. Being aggrieved by the order dated 08.06.2009, petitioner has filed the instant petition.

16. Mr. Siddarth Luthra, Learned Sr. Advocate submitted that during the custody in the remand, the confession statement under Section 18 of MCOCA was recorded by SP EOU-VIII and subsequently forwarded to the court. He has referred Section 167(2) of CrPC. For the convenience, the same is reproduced as under:

167. Procedure when investigation cannot be completed in twenty four hours.-

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding –

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;”

17. Learned counsel has submitted that the petitioner was arrested way back in 2005 and as per the provision mentioned above the

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investigating authority was supposed to file charge sheet maximum within 90 days, failing to which the petitioner was entitled for bail. However, the supplementary charge sheet was filed under MCOCA which is not a substantial offence therefore the petitioner would have been released on bail.

18. Learned counsel has pointed out that the instant bail application was moved in July, 2009 and the petitioner has already completed seven years in custody.

19. Learned counsel has referred Section 437 of CrPC which provides that when any person accused of or suspect of commission of any non bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before the court other than High Court and Court of Session, he may be released on bail, however as the person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment of life. Such person shall not be so released if such offence is a cognizable and he had been previously convicted of an offence punishable with death imprisonment for life or imprisonment for seven years or so and he has been convicted for two or more occasions of a cognizable offence punishable with imprisonment with three years or more but not less than seven years, provided that the court may direct that person as mentioned above be released on bail, if such person is under the age of 16 years or is a woman or is sick or infirm.

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20. Learned counsel has submitted therefore initially the petitioner was released on bail and thereafter the CBI filed the supplementary charge sheet adding the provisions of MCOCA. Thereafter arrested in MCOCA and the supplementary complaint was filed much after the 90 days against which prescribed the maximum limit under Section 167(2) of CrPC, failing which petitioner was entitled to get released on bail. Therefore, since the petitioner has already spent more than seven years in custody even otherwise, he is entitled for bail.

21. On the other hand, Ms. Sonia Mathur Standing Counsel for CBI submitted that initially the FIR No.82/2005 was lodged related to recovery of huge number of wild life animal skins was registered at PS Kamla Market, New Delhi on 31.01.2005 against the petitioner/ Sudesh Kumar and others. Subsequently, investigation was transferred to Delhi Wild Life Department to file a complaint against eight persons including the petitioner. On the basis of letter No.F.82/CWLW/Delhi/2005/1468 dated 20.05.2005 of the Chief Wildlife Warden the Govt. of NCT of Delhi, the investigation of the aforesaid case was transferred to CBI for further investigation and accordingly, the CBI registered RC-SIB/2005/E0003 in EOU-V. The letter of Chief Wildlife Warden was subsequently ratified by an order of Govt. of NCT of Delhi vide No.13/32/2005/HP/Estt. Dated 02.06.2005 respectively.

22. Learned counsel for CBI further submitted, the investigation of the case originating from the recovery effected by Delhi Police from accused Sudesh Chand @ Sudesh Kumar (Petitioner) on 31.01.2005



when from his possession a polythene bag containing a tiger skin was recovered at Ramlila Ground, Delhi. His disclosure led to recovery of two tiger and 8 leopard skins from Mrs. Ritu, a niece of notorious wildlife smuggler Sansar Chand. On the basis of the disclosure made by petitioner and co-accused Ms.Ritu, Delhi Police conducted search in godown located at Shadi Khampur from where 30 leopard skins, 42 other skins and huge quantity of animal derivatives were recovered.

23. Learned counsel further submitted that vide a Writ Petition (Civil) No.202/1995 the Hon'ble Supreme Court of India directed that CBI should investigate thoroughly not only about persons who may be apparently doing illegal trade of Wildlife animals and derivatives as carriers or agents but also about those persons who may be responsible behind such illegal trade/transaction so as to reach to the depth of the matter. Though the aforesaid directions were issued by the Apex Court for transfer of another Delhi Police case of P.S. Timarpur (also relating to huge recovery of Wildlife animals skins), it was considered worthwhile in order to comply with the directions of the Apex Court in letter and spirit.

24. Learned counsel further submitted that during the course of the investigation, it transpired that accused Sansar Chand alongwith his other associates including Sudesh Kumar (petitioner) was indulging in continuing unlawful activities for committing offences under the provisions of Wildlife (Protection) Act, 1972 and have formed a well organized crime syndicate. He had a group of associates who facilitated poaching, procuring, storage and transportation of skins.

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From the facts available on record, there is no doubt that crime syndicate controlled by accused Sansar Chand is one of the most dreaded Wildlife Crime Syndicate operating in the country and unless severe measures were taken, unlawful activities would threaten the many species to the brink of extinction.

25. Ld. Counsel further submitted that the accused Sansar Chand was arrested by CBI on 01.07.2005 thereafter he was sent to judicial custody.

26. Ld. Counsel has pointed out that after taking over the investigation of the aforesaid case intimation was to the competent court in this regard on 01.06.2005. During course of investigation and on the basis of the material and facts available on record the competent authority gave approval for invoking Maharashtra Control of Organized Crime Act, (MCOCA), 1999, as extended to NCT of Delhi G.S.R. No.6(E) dated 02.01.2002, against accused Sansar Chand and petitioner vide order dated 10.07.2005. She further submitted the petitioner was arrested by CBI on 16.08.2005 under MCOCA. Thereafter two supplementary complaints u/S 120-B Indian Penal Code, 1860 r/w Section 51 of Wildlife Protection Act, 1972 r/w Sections 3(1)(ii), 3(2), 3(4) of MCOCA, 1999 was filed before the designated court of MCOCA.

27. Ld. Counsel further submitted in pursuance of the Supreme Court directions, during the course of investigation, the provisions of MCOCA were invoked by the competent authority in accordance with Section 23 of MCOCA. The order dated 10.07.2005 contains all the



ingredients of offences under MCOCA, 1999 and it was not necessary that separate FIR has to be recorded in a prescribed format to investigate the offence under MCOCA, 1999. The said order records minutest details of the offences which were cognizable in nature. The original FIR i.e. Crime No.82/2005 registered at PS Kamla Market, New Delhi in part was investigated by the Wildlife Department of Delhi and complaint was filed by them in the appropriate court on 29.03.2005 in respect of the 'part', investigated by them. Filing of the complaint by Wildlife Department does not preclude CBI from further investigation into many other aspects including larger conspiracy, as CBI had only re-registered the FIR of Delhi Police, not of the Wildlife Department. The FIR of the Delhi Police was adopted and reproduced verbatim by CBI in the RC-SIB-2005-E-2003 dated 30.05.2005. To this effect the intimation was given to the competent court. The competent Court had taken note of this development in its order dated 11.07.2005. Subsequently, this case was transferred to the designated court of MCOCA on the request of CBI.

28. I have considered the rival contentions of learned counsel for the petitioner and learned counsel for the CBI. Admittedly, the petitioner was arrested in case FIR No. 82/2005 on 31.01.2005, and thereafter, released on bail on 26.4.2005.

29. I note that the CBI, on having been referred the matter, on 31.5.2005, lodged a new complaint vide RC-SIB-2005-E003, Delhi and re-arrested the petitioner on 16.8.2005. Undisputedly, the

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supplementary complaint was filed by the CBI on 23.12.2008 i.e. more than three years of his re-arrest.

30. It is also not in dispute that the aforesaid supplementary complaint initiating the provisions of MCOCA, was not filed within 90 days of his re-arrest.

31. Similar issue has been dealt by this Court in Crl. Rev. Pet. No. 317/2011 in a case of Dharamvir Singh @ Deepak vs. State of NCT of Delhi decided on 21.08.2011 while relying on the judgment of Supreme Court in Uday Mohanlal Acharya vs. State of Maharashtra 2001 Crl.L.J 1832. In that case the respondent was arrested on 1.4.2001 for the offences under Section 498A, 489B, 489C, 120B and 420 of Indian Penal Code, 1860. He was produced before the Metropolitan Magistrate on 2.4.2001 and he remanded the respondent to police custody first and later on to judicial custody. During the investigation, police discovered that organized crime under MCOCA had also been committed. The investigating agency sought sanction of the authority under the MCOCA for conducting investigation under the said Act. The relevant sanction was granted on 21.04.2001 and investigation into offence under the MCOCA commenced pursuant to the sanction. Finally, charge sheet was filed on 12.07.2001.

32. On the above fact, the Supreme Court held that the respondent/accused in that case would be entitled to bail on account of default of investigating agency to complete investigation within 90 days from the date of first remand of the respondent/accused. It was

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observed that since further investigation of the offence under MCOCA could relate to the same arrest and period of detention as envisaged under Sec. 167(2) Proviso (a) remains un-extendable.

33. I find no force in the submissions of the learned Special Judge dismissing the application of the petitioner seeking bail in view of proviso (a) to Section 167(2), CrPC as modified by Section 21 of the MCOCA. The period could not be computed from the actual date of arrest i.e. 31.1.2005, rather the date of his re-arrest on 16.8.2005.

34. The instant case is on a better footing than the case of Dharamvir Singh (Supra). Even if we compute the date of his arrest from 16.8.2005, even then CBI was supposed to file supplementary complaint within maximum 90 days as is provided under Sec. 167(2), CrPC, however, the supplementary complaint was filed on 23.12.2008 i.e. after the lapse of more than three years.

35. I am conscious that as per provision of Section 24(4) of the MCOCA, the petitioner/accused can only be granted bail if the Court is satisfied that there are reasonable ground for believing that he is not guilty of such offence and also that he is not likely to commit any offence while on bail.

36. However, keeping into view the above discussion and the fact that the petitioner has spent almost seven years in judicial custody in spite of his being entitled for bail within 90 days from his re-arrest on 16.8.2005.

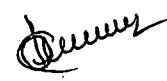
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37. I am of the view that the petitioner has made a prima facie good case for admitting him on bail.

38. Accordingly, he shall be released on bail on furnishing personal bond in the sum of Rs.50,000/- and two sureties of the like amount to the satisfaction of the trial court.

39. Criminal Bail Application No.1626/2009 is allowed.

40. *Dasti.*



SURESH KAIT, J

January 16, 2012

Ns/raj