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Delivered on 18.10.2023.

Neutral Citation No. - 2023:AHC:202895

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23833 of 2023

Applicant :- Prof. (Dr.) Sarvjeet Harbert And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Anuj Srivastava, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Heard Learned Counsel for the applicants, learned A.G.A for the state and perused the record.

This bail application has been moved on behalf of applicants Pro. (Dr.) Sarveys Herbert and Shri Ashok Sandeep Singh to enlarge them on bail in case crime no. 64 of 2023 under Sections 409, 419, 420, 467, 468, 471, 120 B IPC Police Station Naini, District Prayagraj.

It is argued by the learned counsel for the applicants that on the complaint of one Divakar Nath Tripathi, vide letter dated 2347/167 [Kri.Shi.Aa-](#) 18900(7)/16 dated 24.10.2018 of the Agriculture Education and Research Department Government of U.P and vide letter dated 23.1.2019 Audit-2, 2038/10-2018 -355(20)/2018 of Financial Department an inquiry was done by the Director of Local Fund Audit Department U.P. Prayagraj and it was found that Vice Chancellor and other Administrative Associates of Sam Higginbottom University of Agriculture, Technology and Sciences (hereinafter referred to as 'SHUATS') had made the following payments contrary to the rules:-

a. Payment of Rs. 32,00,000/- without obtaining grant approval under the heads of dissemination planning/ organizing/ strengthening/ training/ post event programmes,

- b. Payment of Rs. 69,40,125/- under the heads of salary allowance/travel expenses/ pay fixation/pay increments et.
- c. Direct payment of Rs. 1,70,24,088/- under the heads of driver/followers/ accountants and to the firms contrary to quotations and tenders.
- d. Unapproved payment of Rs. 1,02,907/- to the account of Directorate of Broadcasting and Agriculture Directorate on the basis of over time in travel allowances.
- e. Invalid payment of Rs. 4,87,764/- on account of contractor/ travel allowance/ prescribed distance.
- f. Irregular and invalid payment of Rs. 10,04,268/- out of the subsidiary grant account under the head of vehicle supply.
- g. Payment of Rs. 2,68,98,440/- under the head of salary / allowances on the basis of illegal appointments.

Thus, the total misappropriation/embezzlement of Rs. 5,56,57,592/- was alleged against the Vice Chancellor and other administrative officers of SHUATS including the present applicants on the basis of forged documents. It was said that all the accused persons including the applicants hatched a criminal conspiracy by executing the forged documents and dishonestly using them as genuine documents with the intention to cheat and embezzle the Government funds. On the basis of above two letters, two cases as case crime no. 63 of 2023 and case crime no. 64 of 2023 were registered by official of S.T.F. U.P. Field Unit Prayagraj. Case crime no. 63 of 2023 was registered with respect to illegal appointments made in the aforesaid institute and the Case crime no. 64 of 2023 was registered regarding financial irregularities based on special audit report committed by the accused persons including the applicants.

Appellant Professor Servjeett Herbert is the Pro-Vice Chancellor (Planning, Monitoring and Development) and Ashok Sandeep Singh is the former Office Superintendent, presently working as Assistant Finance Comptroller in SHUATS at Allahabad.

It is argued by the learned counsel for the applicants that section 419 IPC provides punishment for cheating by impersonation, while there is no such allegation in the FIR against the applicants. Essential ingredients regarding other sections imposed upon the applicants are also completely missing in the impugned FIR.

Apart from above two cases, 10 other cases are also pending against the applicant no. 1 wherein in two cases, the final reports have been submitted. The proceedings of case crime no. 318 of 2005 have been quashed. In five cases, he was not named in the FIR, and in all these five cases applicant no. 1 has been released on bail. In two cases, his arrest is stayed from the High Court/ Apex Court. And in above mentioned two cases crime nos. 63 of 2023 and 64 of 2023 the bail applications of the applicant no. 1 are pending before the competent courts.

Against applicant no. 2 Ashok Sandeep Singh, two cases; case crime nos. 63 of 2023 and case crime no. 64 of 2023 are pending. Case crime no. 64 of 2023 is the present case. In both these cases, his bail applications are pending.

The writ petition no. 6833 of 2023 of applicants and other co accused persons for quashing of the FIR in the present case was dismissed by this court on 21.7.2023 and the bail applications of both the applicants was also dismissed by the Trial court vide order dated 17.5.2023, hence the prayer is made accordingly.

The prayer was vehemently opposed by the learned counsel for the opposite party. It was argued that regarding various irregularities committed in this government aided university,

SHUATS a complaint was made by one Divakar Nath Tripathi and after conducting preliminary inquiry, the allegations made by Divakar Nath Tribpathi were found to be true. STF U.P. Unit Prayagraj while conducting preliminary inquiry found that in seven different Heads mentioned in FIR Rs. 5,56,57,592/- received as grant from the government were embezzled and misappropriated by the accused persons including the applicants. Thus the FIR case crime no. 64 of 2023 was lodged by the official of the STF wing U.P. Prayagraj against applicants and other 9 co-accused persons. The statement of the first informant, the statement of Shri Prakash Mishra, the then Senior Audit Officer who was one of the member of Special Audit Team and the statements of the other witnesses were recorded. As per reply of SHUATS, Krishi Gyan Kendra Sant Ravidas Nagar and Kaushambi was under Prasar Nideshalay of SHUATS which received government aid in its account. Applicant Dr. Sarvjeet Herbert acted as the Director of the Prasar Nidesalay for considerable period. He was the Registrar of the University since 2001 to 2006 and 2016 onward he was made pro-Vice Chancellor and as the Registrar and the Pro-Vice Chancellor, he was instrumental in illegal payment of Rs. 3,21,897/- towards Anthony Joseph Raj, Suresh Babu Gutela, Amita Abhilasha Lal, Mayur Kumar. Large amount was illegally paid to Shine Clije Mojej, Arpan Shering, Dr. Joy Dasan, Dro Dheeru Prakash, Dr. Vipin M. Prasad. The details of these irregularities find place in the special audit report.

Applicant no. 2 Ashok Sandeep Singh was holding the post of Office Superintendent and even after his retirement he was working as Assistant Financial Comptroller in SHUATS. Being Office Superintendent he was one of the important members of aforesaid crime syndicate and was also involved in all types of financial irregularities. He was also involved in all types of financial

irregularities which include Prasar Yojana expenditure towards wages, traveling, allowance etc. He was also found to be instrumental in illegal appointments of Ashish Ratan Mishra on the post of Associate Professor and Rahat Khan as an Assistant Professor who had illegally withdrawn/misappropriated from the government funds the amount to the tune of Rs. 25,27,707/- and Rs. 41,49,676/- respectively.

Apart from cases mentioned by the applicants as criminal history against Dr. Sarvjeet Herbert one more case being case crime no. 261 of 2014 under section 120-B, 193, 198, 199, 467, 468, 469, 471 IPC and section 3 Lok Nyas Adhiniyam, Police Station Cantt. District Prayagraj is pending against him. Previously a chargesheet dated 22.7.2023 was filed against applicants under sections 409 and 120-B IPC but later on, on the basis of material collected during investigation it was found that applicants had also committed offence punishable under sections 409, 419, 420, 467, 468, 471, 120-B IPC and therefore charge sheet under sections 409, 419, 420, 467, 468, 471 and 120-B I.P.C. was filed against both the applicants and some other co-accused persons. Thus, the prayer of bail was opposed.

Learned counsel for the State placed before the court the judgment in State of Bihar and another vs Amit Kumar alias Bachcha Rai, (2017) 13 SCC 751 and prayed that the applicants charged with economic offence of huge magnitude are not entitled for bail.

Again by placing the judgment in Y.S. Jagan Mohan Reddy vs. C.B.I (2013) 7 SCC 439, it is argued that the economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously.

Again judgments in Nimmagadda Prasad Vs. C.B.I., (2013) 7 SCC 466, P. Chidambaram VS. Directorate of Enforcement , (2020) 13

SCC 791, Serious Fraud Investigation Office Vs. Nitin Johari and another (2019) 9 SCC 165 and State of Gujarat VS. Mohanlal Jitamalji Porwal (1987) 2 SCC 364 and C.B.I. Vs. Ramendu Chatopadhyay Cr. Appeal No. 1711 of 2019 have also been placed before the court.

It is argued on the basis of above judgements that it is no doubt true that the nature of charge may be relevant but at the same time, the punishment to which the party may be liable, if convicted also bears upon the issue. Economic offences fall under the category of 'grave offence' while dealing with the bail application in such matters the court must be sensitive enough to the nature of the allegations made against the accused. Thus prayer of bail is opposed.

Admittedly in the case crime no. 63 of 2023 which was regarding the irregularities and illegal appointments in the University, the investigation in the matter has been stayed by the Apex Court and in the present case also out of 11 accused persons the arrest of nine accused persons has also been stayed. As the present applicants had been arrested earlier, so they could not get the benefit of staying the arrest of the accused persons in the case by the Apex Court.

It is argued by the learned counsel for the applicants that in the FIR, no specific role is assigned to the applicants. General role of embezzlement is shown against all the accused persons including the applicants. It is further argued that whatever amount regarding salary, fund, training, posting, travel expenses, pay fixation, increments and payments under the Heads of driver, follower, accountants, over time, travel allowances and towards illegal appointments of the staff is concerned, it is related to the alleged appointments and is the subject matter of the FIR case crime no. 63 of 2023, the investigation of which is stayed by the Apex Court.

Whatever appointments have been made by the applicant no. 1 those are done with the approval of the Vice Chancellor of the University and whoever is placed on the government pay roll is placed with the approval of the Vice Chancellor only. Out of the six members of Selection committee only 3 persons are implicated in the present case while the rest three have been left out without any excuse. All the appointment letters were issued by the Board of Directors with the approval of the Vice chancellor. The applicant no. 1 was merely a communicating authority. In this regard the attention of the court is drawn towards the power and duty of the Registrar of the society that according to the constitution of the University, the Registrar shall issue appointments/confirmation/suspension/ termination/ dismissal orders to all the teaching and non -teaching staff of the institute/ deemed to be university with the approval of the Vice chancellor.

Regarding applicant no. 2, it is claimed that he was mere the office Superintendent and was neither the appointing authority nor working as Board of Director, he only made recommendations which were approved by the Vice chancellor.

Learned Counsel for the State drew the attention of the court towards the appointment letter of M. Antony Joseph Raj dated 16.10.2001 issued by applicant no. 1 and the letter placing the services of the Mr. Antony on the Government pay role vide order dated 26.11.2002 issued under the signature of applicant no. 1. Again the attention of the court was drawn towards the appointment letter dated 24.3.2004 regarding appointment of Suresh Babu Guttala and the letter dated 31.5.2004 placing Dr. Suresh Babu Guttala on government financed post. The attention was also drawn toward the appointment letter of Mr. Mayur Kumar on State Government approved post vide letter dated 23.3.2004 and appointment letter of Mr. Abhilasha Amita David dated

4/10/2002, all signed by applicant no. 1, thus the involvement of applicant no. 1 was shown in the embezzlement. Again the attention of the court is drawn towards the letter dated 20.2.2014 signed by the applicant no. 2 as the Office Superintendent which is an appointment letter in the name of Dr. Ashish Ratan Mishra and another letter signed by applicant no. 2 regarding filling the six vacant posts. It is also argued that apart from issuing above letters regarding various appointments the applicants are also guilty of embezzlement under heads no. 1 to 6 mentioned in the FIR. Thus, it is argued that applicants are part and parcel of the syndicate of embezzlement, hence the bail is opposed.

If we go through the record, it is found that embezzlement of Rs. 3,21,987/- is alleged by applicant no. 1 regarding appointment of M. Antony Joseph Raj, Suresh Babu Guttala, Abhilasha Amit David and Mayur Kumar and also regarding purchasing the goods relating to the University. Apart from this, during working period of Dr. Servjeet from 2001 to 2006 an irregular payment of total Rs. 5,17,334/- is alleged to be made to Sine Klauzes Mauzaz, Dr. Arpan Seri, Dr. Dhiru Prakash, Dr. Joy Dosan, Dr. Bipin M Prakah. Regarding irregular appointment of Ashish Ratan Mishra, the embezzlement of Rs. 25,27,707/- and regarding the appointment of Rahat Khan the embezzlement of Rs. 41,49,675/- is alleged to be done by applicant Ashok Sandeep Singh.

If we go through the documents pertaining to the embezzlement specifically the letters regarding the appointments/recommendations done/ made by the applicants, all the appointments or placing the services of Assistant Professors/ Professors on the government pay roll by the applicant no. 1, are made with the approval of the Vice Chancellor. Applicant Dr. Servjeet Herbert has not issued any of the appointment letter or letter regarding placing appointment on the government pay roll in

his personal capacity. All these letters are issued with the approval of the Vice Chancellor. So far as the recommendation letters shown to be issued by Ashok Sandeep Singh applicant no. 2 who was working as Office Superintendent are concerned, all his recommendations are approved by the Vice Chancellor. Otherwise also regarding appointment of the staff (including teaching staff) the matter is pending before the Apex Court in case crime no. 63 of 2023 wherein the investigation has been stayed by the Apex Court.

So far as other allegations mentioned in the FIR regarding payments without obtaining grant approval under Heads of Dissemination/organizing/Strengthening/training/ post event programmes and the payment under the heads of salary allowance/ travel expenses/ pay fixation/ pay increments, direct payment under the heads of driver/ follower/ accountants contrary to quotations and tenders, unapproved payment to the account of Directorate of Broadcasting and agricultural Directorate on the basis of over time in travel allowance, invalid payments account of contractor/ travel allowance/ prescribed distance, irregular and invalid payments out of subsidiary grant account under the head of vehicle supply are concerned, these are the general allegations against all the accused persons including the present applicants, no specific allegation or specific documents issued by the applicants in this regard has been placed before the court. As per the constitution of the university, applicant no. 1 the Registrar was issuing all the orders with the approval of the Vice Chancellor and applicant no. 2 was making the recommendations which were again approved by the Vice Chancellor. In most of the cases shown as criminal history against applicant no. 1 either he has been bailed out by the co-ordinate benches of this Court or his arrest is stayed by the Apex Court or the final report has been submitted apart from

two cases, crime no. 63 of 2023 and crime no. 64 of 2023. Case crime no. 64 of 2023 is the present one while in case crime no. 63 of 2023 investigation has been stayed by the Apex Court. In the present case the arrest of the co accused persons who were not arrested till date is stayed by the Apex Court. All the sections involved in the present case are Magistrate triable sections. The applicants are languishing in jail since 3.2.2023 and specifically in the present case they are languishing in jail since 27.4.2023.

Thus, perusing the record, considering the facts and circumstances of the case, the nature of allegations, arguments advanced by the learned counsel for the parties and without expressing any opinion on the merit of the case, I find it a fit case of bail.

The bail application is allowed.

Let the applicants Prof. (Dr.) Sarvjeet Harbert and Shri Ashok Sandeep Singh, who are involved in aforesaid crime be released on bail on their furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions:-

1. The applicants will attend and co-operate the trial proceedings pending before the court concerned on the dates fixed after release.
2. They will not tamper with the witnesses.
3. They will not indulge in any illegal activities during the bail period.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the trial court shall be at liberty to cancel the bail and send the applicants to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 18.10.2023

Gss