

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11368 of 2022

Applicant :- Jitendra Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Mithila Bakhsh Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Shakib and Sri Mithila Bakhsh Tiwari, learned counsels for the applicant, Sri Anurag Verma, learned A.G.A. for the State and perused the records.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 246 of 2013, under Sections 409, 420, 120B I.P.C. and Section 13B of the Prevention of Corruption Act, registered at Police Station Gauriganj, District Amethi.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 11.04.2013 against three persons, including the applicant, who was posted as the Executive Engineer in P.M.G.S.Y. Public Works Department, Amethi alleging that the accused persons committed criminal misappropriation of Rs.2,40,00,000/- by making payments for certain works without the works actually being carried out.
4. In the affidavit filed in support of bail application, it has been stated that the applicant is innocent, he has been falsely implicated in the present case. Applicant's involvement in another case bearing Case Crime No.532 of 2013 under Sections 420, 409, 120B IPC, 13(2) P.C. Act, Police Station Gauriganj, Amethi has been disclosed, and the learned counsel for the applicant has submitted that the applicant's application for release on bail in that case is pending consideration.
5. On the same set of allegations, a disciplinary proceeding was initiated against the applicant and he was placed under suspension by

means of an order dated 11.07.2013. The applicant had challenged his suspension order by filing Claim Petition No.2078 of 2015 before the U.P. Public Service Tribunal, which was allowed by means of the order dated 13.01.2017 and the suspension order was set aside. The disciplinary proceedings against the petitioner culminated in an order dated 28.04.2021 whereby the applicant was demoted from the post of Executive Engineer to the post of Assistant Engineer, finding him guilty of violation of administrative/financial rules. The applicant was given charge of the post of Assistant Engineer on 29.04.2021 and he retired on attaining the age of superannuation on 30.04.2021.

6. The State has filed a counter affidavit *inter alia* stating that the applicant was guilty of having made the payment without following the prescribed procedure, without measurements of work and entry thereof and in the measurement done by the Junior Engineer, under a criminal conspiracy entered into with the contractor.

7. Learned counsel for the applicant has drawn attention of the Court to the order dated 29.04.2021, which directs the applicant to handover charge to another Executive Engineer and even this order addresses the applicant to be an Executive Engineer.

8. The punishment order mentions that the applicant was found guilty of violation of the provisions contained in paras 440 to 454 of the Financial Handbook Part VI.

9. Learned counsel for the applicant has submitted that para 456 of the Financial Handbook part VI authorizes the Executive Engineer to release 25% of the value of the materials as advance. He has submitted that the petitioner was given additional charge of the post in question, works in question were lying halted for the past six months, and in the interest of the work, the applicant had recommended and made payment of 25 per cent advance money in exercise of the power conferred upon him by the provision contained in aforesaid para 456.

10. The learned A.G.A. has submitted that the applicant evaded arrest and a proclamation under Section 82 Cr.P.C. was issued against him and, thereafter an attachment order was passed under Section 83 Cr.P.C. and yet the applicant did not surrender and he was arrested subsequently.

11. Learned A.G.A. has further submitted that in *Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439, Hon'ble Supreme Court has held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

12. However, in *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, the Hon'ble Supreme Court stated in the context of economic offences that:—

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to

deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

13. In ***Satender Kumar Antil v. CBI***, (2022) 10 SCC 51, the Hon'ble Supreme Court has quoted with approval the above quoted passage from *P. Chidambaram* (Supra) and has reiterated that “The principle that bail is the rule and jail is the exception has been well recognized through the repetitive pronouncements of this Court.”

14. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that in the disciplinary inquiry held against the applicant, he was found guilty of violating the provisions contained in financial Handbook part VI whereas the applicant does not dispute having made the payment as advance, which obviously is paid without the work being conducted; that advance payment *prima facie* appears to have been made in exercise of powers conferred by

the provisions contained in para 456 of the Financial Handbook Part VI; that in disciplinary proceedings held on the basis of same set of allegations merely an order of demotion was passed against the applicant and merely two days after passing of the aforesaid order, the applicant retired from service and presently, he is aged about 63 years, and that the applicant is languishing in jail since 01.06.2022 without absolutely any progress in trial and he cannot be left incarcerated indefinitely without expeditious proceeding of the trial, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid crime.

15. Accordingly, this bail application stands **allowed**.

16. Let the **applicant-Jitendra Kumar** be released on bail in aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.

(Subhash Vidyarthi, J.)

Order Date :- 28.10.2023
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