

In The High Court Of Judicature At Allahabad
Sitting At Lucknow

RESERVED

Judgment Reserved on: 18.10.2023

Judgment Pronounced on: 27.10.2023

Court No. - 16

Case :- APPLICATION U/S 482 No. - 10269 of 2023

Applicant :- Harish Chandra

Opposite Party :- Union Of India Thru. Secy. Railways Board New Delhi And 2 Others

Counsel for Applicant :- Jyotinjay Verma, Desh Mitra Anand, Ram Achal Gupta

Counsel for Opposite Party :- A.S.G.I., Anurag Kumar Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Jyotinjay Verma, the learned counsel for the applicant, Sri Anurag Kumar Singh, the learned counsel appearing for the C.B.I. and Sri Surya Bhan Pandey, assisted by Sri Mahendra Kumar Mishra, learned counsel appearing for Union of India, perused the written submissions provided by the learned Counsel for the applicant and the learned counsel for the C.B.I. and perused the record.
2. The instant application under section 482 Cr.P.C. has been filed seeking the following reliefs: -

“I) set aside the order dated 05.10.2023 issuing non-bailable warrant against petitioner, rejecting his application dated 15.02.2023 challenging sanction order & the order dated 10.10.2023 on application for recall/cancellation of the non-bailable warrant order dated 05.10.2023.

II) pass same order as order dated 25.07.22 passed in criminal misc.case no. 2012/2018 (u/s 482 Cr. P.C.) Zia Majeed Vs C.B.I. in same case crime no.

III) direct to restore the application dated 15.02.2023 of the petitioner challenging sanction order and further direct to decide the same within a month.

IV) direct to Special Judge (Anti Corruption) C.B.I. West, Lucknow to decide entire criminal proceeding relating to criminal Case No. 954/17, R.C.No.0062014A0024, Under sections- U/Sec-120B r/w 420,468,471,201, IPC & 13(2), 13(1)(d) P.C Act 1988, CBI/ACB, Lucknow within stipulated period.

V) pass order to prevent abuse of process of court and secure ends of justice.

VI) direct compliance of the law of the land in Satender kumar Antil's case

VII) pass any other order which this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

3. The proceedings against the applicant were initiated on 07.08.2014, when the CBI had registered FIR bearing RC No. 0062014A0024 under Sections 120-B read with 420, 468, 471, 201 IPC and 13 (2), 13 (1) (d) of the Prevention of Corruption Act, Police Station CBI/ACB, Lucknow. A copy of the F.I.R. has not been brought on record alongwith the application.
4. After completion of investigation, the CBI submitted a charge-sheet against the applicant but a copy of the charge-sheet has also not been placed before this Court. Therefore, this Court has to decide this application without knowing the nature of allegations against the applicant and the material relied upon by the prosecution.
5. Sri. Jyotinjay Verma, the learned Counsel for the applicant has disputed the authority of the learned Counsel for the CBI to advance submissions in the case and he has submitted that the opposite party no. 3 in this case is "C.B.I. Through its Director, New Delhi" and the learned Counsel for the CBI has not been instructed by the Director of C.B.I. to appear in this Case. The aforesaid objection is absolutely meritless as firstly, the learned Counsel for the applicant has not disclosed the source of his knowledge of the information that the learned Counsel for the CBI has not been instructed by the Director of C.B.I. and secondly, the C.B.I. having appointed Sri. Anurag Kumar

Singh to represent it in proceedings before this Court, he is entitled to appear before this Court and represent C.B.I. and it is not necessary that in each case, he should be personally instructed by the Director C.B.I. to appear before this Court.

6. The learned Counsel for the applicant has next submitted that the applicant is a Central Government servant and he was not arrested during investigation. The applicant has cooperated during investigation and has appeared before the investigating officer. The offences alleged against the applicant carry a maximum punishment of imprisonment for seven years. The petitioner had personally appeared before the trial court on 15.02.2023 in compliance of the order dated 08.02.2023 passed in Application under Section 482 Cr.P.C. No. 3856 of 2022 and he is continuously appearing since 2018 through his counsel. He has submitted that in view of the law laid down by the Hon'ble Supreme Court in **Arnesh Kumar versus State of Bihar** : (2014) 8 SCC 273, **Siddharth versus State of U.P.** : (2022) 1 SCC 676, **Aman Preet Singh versus C.B.I. through Director** : 2021 SCC OnLine SC 941 and **Satender Kumar Antil vs Central Bureau of Investigation & Ors**: (2022) 10 SCC 51, the applicant is entitled to be granted bail.
7. Learned counsel for the applicant has invited attention of the Court to the orders dated 21.03.2023 and 02.05.2023 passed by Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation & Others** : 2023 SCC OnLine SC 452 and **Satender Kumar Antil versus Central Bureau of Investigation & Others** : 2023 SCC OnLine SC 758 respectively and has submitted that law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil versus Central Bureau of Investigation & Ors**: (2022) 10 SCC 51 is the law of land and it is meant to be read and followed by everyone.
8. Before proceeding further, it would be apposite to note that the applicant has not filed this application seeking his release on bail. However, since the learned Counsel for the applicant has cited the

aforesaid judgments, I am referring to the judgment in the case of **Satender Kumar Antil** : (2022) 10 SCC 51, wherein the Hon'ble Supreme Court has issued the following guidelines regarding grant of bail: -

“Categories/Types of Offences

- (A) *Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.*
- (B) *Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.*
- (C) *Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.*
- (D) *Economic offences not covered by Special Acts.*

REQUISITE CONDITIONS

- (1) *Not arrested during investigation.*
- (2) *Cooperated throughout in the investigation including appearing before investigating officer whenever called.*
(No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

- (a) *Ordinary summons at the 1st instance/including permitting appearance through lawyer.*
- (b) *If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.*
- (c) *NBW on failure to appear despite issuance of bailable warrant.*
- (d) *NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.*
- (e) *Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.*

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.’

4. Needless to say that Category A deals with both police cases and complaint cases.

*5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that **where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.***”

9. The applicant had filed an Application U/s 482 Cr.P.C. No. 1668 of 2018 challenging validity of the sanction order dated 04.08.2017 on the ground that sanction was accorded without application of mind. The aforesaid application was dismissed by means of an order dated 09.11.2021, taking into consideration the submission of the learned Counsel for the CBI that after passing of the sanction order, the Court had taken cognizance of the offence and had passed an order summoning the applicant and in such matters, a Writ Petition would lie before a Division Bench. It was left open for the applicant to approach the appropriate forum against grant of sanction.
10. The applicant thereafter filed Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order, which was dismissed vide order 04.03.2022, in which it is recorded that the petitioner was initially appointed as a Junior Research Assistant (Chemical) in Research, Design and Standards Organisation (RDSO) in the year 1989. In the year 2008, he was appointed as a Chemist and Metallurgist in the Indian Railway Service. After the CBI lodged the

FIR against him, the sanctioning authority had granted sanction for his prosecution vide order dated 04.08.2017. The applicant had challenged validity of the sanction order by filing Application U/s 482 Cr.P.C. No. 1668 of 2018 and after dismissal of the same he had filed the Writ Petition.

11. The Division Bench deciding the Writ Petition relied upon the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar v. Airport Authority of India**, (2012) 1 SCC 532, wherein the Hon'ble Supreme Court has reiterated its earlier decision in the case of **Parkash Singh Badal versus State of Punjab**, (2007) 1 SCC 1, and has held that the challenge to the validity of sanction order, where a sanction order exists, can always be raised in the course of trial. Accordingly, the Writ Petition was dismissed leaving it open to the applicant to raise the issue regarding the validity of the sanction order in the course of trial.
12. Meanwhile, the trial Court passed an order dated 13.04.2022 issuing a non-bailable warrant against the applicant because of his continued non-appearance.
13. The applicant filed his second Application U/s 482 Cr.P.C. No. 2198 of 2022 seeking quashing of the order dated 13.04.2022. The aforesaid application was disposed off by means of an order dated 06.05.2022 taking into consideration the facts that a charge-sheet had been submitted on 20.09.2017, the trial Court had taken cognizance and the applicant had been appearing through counsel. It was observed in the order that if the applicant applied for bail within six weeks, his prayer for bail shall be considered and decided by the trial Court expeditiously in accordance with law laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another** (2022) 10 SCC 51. Although the application under Section 482 Cr.P.C. was dismissed, it was provided that for a period of six weeks or till the applicant surrendered and applied for bail, whichever is earlier, no coercive steps should be taken against him.

14. After final disposal of the Application U/s 482 Cr.P.C. No. 2198 of 2022, the applicant filed a Miscellaneous Application No. 3 of 2022 therein, but he got it dismissed as not pressed vide order dated 30.05.2022. However, it was left open to the applicant to move an application before the court below either under Section 438 or 439 Cr.P.C.
15. Thereafter the applicant filed another Miscellaneous Application in Application U/s 482 Cr.P.C. No. 2198 of 2022 for extension of time to file anticipatory bail application, which was allowed vide order dated 08.07.2022 granting further one week's and no more time to the applicant in continuation of the orders dated 06.05.2022 and 30.05.2022 and the protection granted to the applicant vide order dated 06.05.2022 was also extended for a period of one week.
16. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022.
17. The applicant then filed Anticipatory Bail Application No. 1268 of 2022 before this Court, which was rejected vide order dated 16.11.2022 observing that the applicant had already exhausted the remedy inasmuch as he was granted 6 weeks time to surrender before the trial court and apply for regular bail and he was given interim protection for the aforesaid period of 6 weeks. The application for anticipatory bail was rejected and the applicant was granted four days' time to appear before the trial court and apply for regular bail. It was provided in the order dated 16.11.2022 that in case the applicant surrenders before the Special Court and applies for regular bail by 21.11.2022, his bail application shall be considered expeditiously in accordance with law.
18. Without surrendering or even without appearing personally and applying for his release on bail, the applicant filed an Application before the trial Court challenging the validity of the sanction order, which application was rejected vide order dated 10.06.2022.
19. The applicant filed his third Application U/s 482 Cr.P.C. No. 3856 of 2022 seeking quashing of the order dated 10.06.2022. The said

application was disposed of vide order dated 08.02.2023 after taking into consideration the fact that the applicant had not appeared before the trial Court in compliance of the order dated 06.05.2022 passed by this Court in Application U/s 482 Cr.P.C. No. 2198 of 2022 and also in compliance of the order dated 16.11.2022 passed in Anticipatory Bail Application No. 1268 of 2022. The Court observed that for the aforesaid reason, no protection can be granted to the applicant. However, the Court directed the applicant to appear before the Trial Court within a period of seven days and file an application for his release on bail. It was also provided that the applicant may also file appropriate application challenging validity of the sanction order and those applications will be disposed of strictly in accordance with law in terms of the directions issued in the order.

20. Without surrendering before the trial Court and applying for bail, the applicant filed Second Anticipatory Bail Application dated 15.02.2023 before the trial Court, which was dismissed vide order dated 06.03.2023.
21. Thereafter the applicant filed his fourth Application U/s 482 Cr.P.C. No. 7625 of 2023, but after advancing his submissions in the case before this Court, the learned Counsel for the applicant got it dismissed as not pressed vide order dated 11.08.2023.
22. Thereafter the applicant filed a Miscellaneous Application seeking modification of the order dated 11.08.2023 passed in application under Section 482 Cr.P.C. No. 7625 of 2023, seeking liberty to approach this Court for the same relief again. This application was rejected vide order dated 26.09.2023.
23. Now the applicant has filed this fifth application under Section 482 Cr.P.C. seeking quashing of the non-bailable warrant issued against him because of his continued non-appearance before the trial Court in spite of repetitive orders passed by this Court directing him to appear before the trial Court.
24. The learned Counsel for the respondent Sri. Anurag Kumar Singh has submitted that in S.L.P. (Crl.) No. 9268 of 2022 filed by co-accused

Radhey Shyam, the Hon'ble Supreme Court has passed an order dated 22.08.2023 directing the Trial Court to complete the trial as expeditiously as possible but in any event, within a period of nine months from the date of the order. By filing numerous miscellaneous applications before this Court as well as before the Trial Court, the applicant has been trying to nullify the order dated 22.08.2023 passed by the Hon'ble Supreme Court by creating obstacles in the progress of the trial.

25. The learned counsel for the applicant has submitted that the applicant has throughout cooperated with the proceedings. Had the applicant intended to hamper the trial, he would not have moved applications for expeditious disposal of the trial before the trial court as also before this Court. However, the record speaks otherwise. While dismissing Application U/s 482 Cr.P.C. No. 1668 of 2018 challenging validity of the sanction order, this Court had provided in the order dated 09.11.2021 that the applicant may approach the appropriate forum against grant of sanction. Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order was dismissed by order 04.03.2022 leaving it open to the applicant to raise the issue regarding the validity of the sanction order in the course of trial. On 13.04.2022 the trial Court had passed an order issuing a non-bailable warrant against the applicant because of his continued non-appearance. The second Application U/s 482 Cr.P.C. No. 2198 of 2022 filed by the applicant challenging the order dated 13.04.2022. was disposed off by means of an order dated 06.05.2022 by observing that if the applicant applied for bail within six weeks, his prayer for bail shall be considered and decided by the trial Court expeditiously in accordance with law laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil** and it was provided that no coercive steps shall be taken during the period of six weeks, which period expired on 16.06.2022. The applicant was granted further one week's and no more time vide order dated 08.07.2022 and the protection granted to

him vide order dated 06.05.2022 was also extended for a period of one week, and the extended period expired on 13.05.2022.

26. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022. He applicant then filed Anticipatory Bail Application No. 1268 of 2022 before this Court, which was rejected vide order dated 16.11.2022 observing that the applicant had already exhausted the remedy inasmuch as he was granted time to surrender before the trial court and apply for regular bail and he was given interim protection for the aforesaid period, yet he was granted four days' further time to appear before the trial court and apply for regular bail. It was provided in the order dated 16.11.2022 that in case the applicant surrenders before the Special Court and applies for regular bail by 21.11.2022, his bail application shall be considered expeditiously in accordance with law. However, the applicant did not avail this opportunity of seeking bail and without surrendering and without applying for his release on bail, he filed an application challenging the validity of the sanction order, which application was rejected vide order dated 10.06.2022.
27. While dismissing Application U/s 482 Cr.P.C. No. 3856 of 2022 seeking quashing of the order dated 10.06.2022, this Court had observed in the order dated 08.02.2023 that the applicant had not appeared before the trial Court in compliance of the orders dated 06.05.2022 and 16.11.2022 passed by this Court and for the aforesaid reason, no protection can be granted to him, yet the Court had directed the applicant to appear before the Trial Court within a period of seven days and file an application for his release on bail and an appropriate application challenging validity of the sanction order and those applications will be disposed of strictly in accordance with law in terms of the directions issued in the order, but still the applicant did not apply for bail and he filed Second Anticipatory Bail Application dated 15.02.2023 before the trial Court, which was dismissed vide order dated 06.03.2023. The applicant then filed his fourth Application U/s 482 Cr.P.C. No. 7625 of 2023, but after advancing his

submissions in the case before this Court, the learned Counsel for the applicant got it dismissed as not pressed vide order dated 11.08.2023.

28. Although repetitive opportunities and directions were given to the applicant to appear before the trial Court and apply for bail and although protection from arrest was granted to him to enable him to appear before the Trial Court, the applicant did not avail the opportunities and complied with the directions and he continues to file repetitive applications creating obstacles in progress of the trial. The Hon'ble Supreme Court has passed an order dated 22.08.2023 directing the Trial Court to complete of the trial as expeditiously as possible but in any event, within a period of nine months from the date of the order, but the aforesaid conduct of the applicant is creating obstacles in implementation of the aforesaid direction of the Hon'ble Supreme Court.
29. In **Satender Kumar Antil** : (2022) 10 SCC 51, the Hon'ble Supreme Court has guided that *where the accused has not answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial*, he would not be entitled to get benefit of the other guidelines regarding grant of bail without being taken into custody.
30. The learned counsel for the applicant has submitted that the trial court should be directed to decide applicant's objection against the validity of the sanction order at the earliest. The applicant had already approached this Court on previous occasions by filing Application under Section 482 Cr.P.C. No. 1668 of 2018 and Criminal Miscellaneous Writ Petition No. 1085 of 2022 challenging validity of the sanction order, but he failed to obtain any relief from this Court. Therefore, this issue cannot be re-agitated by the applicant before this Court.
31. The applicant has sought a direction for expeditious disposal of the trial. The relief cannot be granted to the applicant because a direction to this effect has already been issued by the Hon'ble Supreme Court.

32. Section 482 Cr.P.C. recognizes the inherent powers of the High Courts to prevent abuse of the process of any Court or otherwise to secure the ends of justice whereas the present application itself is an abuse of the process of this Court and is designed to create hurdles in the process of dispensation of justice.
33. The applicant has not approached this Court with clean hands, as he has not annexed a copy of the FIR or the charge sheet, which would have disclosed the nature of allegations against the applicant and the material relied upon against him.
34. In view of the aforesaid discussion and keeping in view the aforesaid conduct of the applicant, this Court finds no ground to interfere in the orders passed by the trial Court and to give any relief to the applicant. The application lacks merit and is **dismissed**.

(Subhash Vidyarthi, J.)

Order Date - 27.10.2023

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