

Court No. - 16

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 2369 of 2023

Applicant :- Harish Chandra

Opposite Party :- Central Bureau Of Investigation, A.C.B.
Lucknow

Counsel for Applicant :- Jyotinjay Verma

Counsel for Opposite Party :- 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 for the respondent-CBI and perused the records.

2. The instant application has been filed by the applicants seeking anticipatory bail Criminal Case No. 954/2017, Crime No. RC0062014A0024, under Sections 120B r/w 420/468/471/201 IPC & 13(2) r/w 13(1)(d) P.C. Act, Police Station CBI, District Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged by CBI on 07.08.2014 against nine named accused persons, including the applicant and some unknown officials of RDSO, RITES, Railway Board and National Test House, Ghaziabad and others, alleging that during the period 2008 to 2013, the accused persons entered into a criminal conspiracy with the common object to cheat Indian Railways by supplying sub standard medium phosphorus brake blocks at exorbitant rates to different Zonal Railways by a firm namely M/s Riddhi Siddhi Udyog, Kolkata. The applicant was posted as Deputy Director (M&C), RDSO, Lucknow at the relevant time.

4. After investigation, the CBI submitted a charge sheet on 20.09.2017 against 14 accused persons including the applicant. The charge sheet inter alia states that Sri Radhey Shyam, the then Executive Director (M&C), RDSO, Lucknow, the applicant and Sri Om Prakash, the then ARO (M&C), RDSO, Lucknow in a criminal conspiracy with co-accused Ravindra Kumar Bhalotia, Proprietor of M/s Riddhi Siddhi Udyog dishonestly and fraudulently and by abusing their official position caused undue favour to the said firm through a series of biased and illegal actions, including delisting of competitor firms, hasty approval of unit-II of Riddhi Siddhi Udyog,

attempting to block alliviation of competitor firms of part-I by changing the quantity criteria. They did not timely dispose of renewal applications of some firms. The charge sheet further states regarding the applicant that a letter of Motive Power directorate was received in the office of M & C Directorate for taking necessary action on the report of sub-standard break blocks tested at RDSO and this letter was marked to the applicant. Further processing of this letter was not available in the M&C Directorate. The concerned clerk had confirmed that he had handed over the letter to the applicant.

5. In the affidavit filed in support of the application it has been stated that the applicant is an innocent government servant having no previous criminal history.

6. The learned counsel for the applicant has submitted that the offences alleged carry a maximum punishment of imprisonment upto seven years and in view of the law laid by the Hon'ble Supreme Court in *Satender Kumar Antil* 2022 10 SCC 51, which has been reaffirmed by the Hon'ble Supreme Court in 2023 SCC OnLine SC 452 and 2023 SCC OnLine SC 758 respectively, the applicant is entitled to be granted anticipatory bail.

7. Per contra, Sri Anurag Kumar Singh, the learned counsel for the respondent-CBI has submitted that the applicant had been summoned to face trial by means of an order dated 17.01.2018. He appeared before the trial court and filed an application challenging the validity of the sanction order but he did not file any application for his release on bail. The applicant filed an application seeking anticipatory bail before the trial court which was rejected on 27.07.2022.

8. The learned counsel for the respondent has submitted that the charge sheet levels similar allegations against the applicant and two other co-accused persons Radhey Shyam, the then Executive Director (M&C), RDSO, Lucknow and Om Prakash, the then ARO (M&C), RDSO, Lucknow and both the other two persons have been granted regular bail by this Court. He has submitted that the applicant should also seek regular bail as his case cannot be differentiated from the case set up against the aforesaid two persons.

9. In the case of *Satender Kumar Antil*, 2022 10 SCC 51, 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.”

10. The Hon'ble Supreme Court further held that:-

"98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

11. 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.

12. The applicant thereafter filed Criminal Misc. Writ Petition No. 1085 of 2022 challenging the sanction order, which was dismissed vide order 04.03.2022. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. The applicant filed an Anticipatory Bail Application before the Special Court, which was dismissed vide order dated 27.07.2022.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. The applicant thereafter filed his fifth application under Section 482 Cr.P.C. No. 10269 of 2023 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, which has been dismissed by an order

dated 27.10.2023.

25. 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.

26. In ***Sushila Aggarwal v. State (NCT of Delhi)***, (2020) 5 SCC 1, a five judges Bench of the Hon'ble Supreme Court has held that:-

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.

27. Therefore, this Court has to take into consideration the aforesaid facts of the case and the conduct and behaviour of the applicant for considering his claim of grant of anticipatory bail in furtherance of this second anticipatory bail application.

28. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that although the applicant was summoned by the trial court in the year 2018, and his application for anticipatory bail was rejected by the trial court as well as by this court and the applicant was granted repetitive opportunities by this court to appear before the trial court and file appropriate application for bail, the applicant has himself failed to avail the opportunities given by this Court and to comply with the directions issued by this Court to seek bail by putting in appearance before the trial court and, I am of the view that the applicant is not entitled to be granted pre-arrest bail.

29. The learned counsel for the applicant has next submitted that a co-accused Zia Majeed, who was an Engineer working in RITES, had filed an application under Section 482 No. 2012 of 2018 and while disposing of the aforesaid application by means

of an order dated 25.07.2022, this Court has provided that the applicant be enlarged on bail on his furnishing a personal bond and sureties. The order dated 25.07.2022 reads as under:-

"1. The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 25.9.2017 as well as the order dated 17.1.2018 and the entire proceedings of Case No.954 of 2017 (C.B.I. Vs. Radheyshyam ad others), arising out of RC No.0062014A0024, under Sections 120-B, 420, 468, 471, 201 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, pending in the court of Special Judge, Anti Corruption, C.B.I. (West), Lucknow.

2. After some arguments, Sri Nadeem Murtaza, learned counsel for the applicant submits that the applicant would join the proceedings before the learned trial court. He further submits that applicant was not arrested during the course of investigation and he is ready to furnish a personal bond and two sureties each to the satisfaction of the court concerned. He also submits that the only ground is that the applicant on furnishing a personal bond and two sureties each to the satisfaction of the court concerned, he may be enlarged on bail on the same day.

3. Sri Shiv P. Sukla, learned counsel appearing for the C.B.I. does not dispute the fact that the applicant was not arrested during the course of investigation and he cooperated during the course of investigation.

4. Considering the submissions advanced on behalf of the learned counsel for the parties, I am of the view that no purpose would be served by sending the applicant to jail at this stage. Therefore, the applicant may be enlarged on bail on his furnishing a personal bond and two sureties each to the satisfaction of the court concerned in light of judgment rendered by the Supreme Court in Criminal Appeal No.929 of 2021 (Aman Preet Singh Vs. C.B.I. Through Director). The applicant after release on bail, will cooperate in the trial and will not seek any adjournment or try to influence the witness or tamper with hit the evidence.

5. Subject to above observation and direction, the present petition stands disposed of."

30. So far as the applicant's claim for grant of benefit of the order dated 25.07.2022 passed by this Court in application under Section 482 Cr.P.C. No. 2012 of 2018 is concerned, the aforesaid application was filed for quashing of the charge sheet, the cognizance and summoning order and the entire proceedings of Case No. 954 of 2017. There was no prayer made for grant of bail in the aforesaid application. Although the court has inherent powers to pass any order in the interest of justice under Section 482 Cr.P.C. but that power cannot be extended to such an extent as to pass a positive order for the applicant's release on bail, without the applicant having made an application seeking his release on bail. Therefore, this Court finds itself unable to pass such an order in favour of the applicant.

31. In view of the aforesaid facts, this Court finds no reason to treat the applicant differently from the other co-accused person who have been granted regular bail and to grant pre-arrest bail tot he applicant.

32. The anticipatory bail application is ***rejected*** accordingly.

33. However, in case the applicant files an application for grant of regular bail, the same shall be considered and disposed of in accordance with the law laid down by the Hon'ble Supreme Court in ***Satender Kumar Antil (supra)*** more particularly the principle reiterated in para 98 of the report.

Order Date :- 27.10.2023

Pradeep/-