

**HIGH COURT OF TRIPURA
AGARTALA
B.A. 42/2024**

The Central Bureau of Investigation, through the Superintendent of police/ Head of Branch, Central Bureau of Investigation, Anti-Corruption Branch, Shillong, Meghalaya.

----Applicant(s)

Versus

1. Ashok Kumar Saha, son of Ramesh Chandra Saha, Director of Rose Valley Group of Companies, resident of Shibnagar, College Road Extension, P.O. Agartala College, District- West Tripura, Pin- 799004, presently, he is now in Judicial Custody in Presidency Correctional Home, Alipore , Kolkata (notice may be served through concerned Jail Superintendent.

2. Shibamoy Dutta, son of Sati Ranjan Dutta, Managing Director/Director of Rose Valley Group of Companies, resident of flat No. C/201, Diamond Town-II, Barbetia, P.O. Changual, Kharagpur, West Midnapore, West Bengal. Presently, he is in Judicial Custody in Presidency Correctional Home, Alipore, Kolkata (notice may be served through concerned Jail Superintendent.

---- Respondent(s)

For Petitioner(s)	:	Mr. B. Majumder, Deputy SGI
For Respondent(s)	:	Mr. BN Majumder, Sr. Advocate Mr. S. Majumder, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH
Order

10/09/2024

Heard Mr. B. Majumder, learned Deputy SGI appearing for the CBI, the applicant herein. Also heard Mr. BN Majumder, learned senior counsel assisted by Mr. S. Majumder, learned counsel for the respondents.

2. This is an application filed by the Applicant-CBI for cancellation of bail granted to the respondents by the learned Special Judge, CBI, West Tripura, Agartala in case No. Special (CBI) 09 of 2024 by its order dated 13.05.2024.

3. Learned Special Judge (CBI) has released the accused persons on bail vide Order dated 13.05.2024 imposing the following conditions:

“The accused persons, namely, Ashok Kumar Saha and Sibamoy Datta are allowed to go on bail on their furnishing a bail bond of Rs.50,000/- each with one surety of like amount, in default to JC till 16.05.2024 with the following conditions:

i) In case of any change of address, the accused person shall inform the same to the Court and the Investigating Officer.

ii) The accused person shall not leave India without the prior permission of the Court.

iii) The accused person is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv) The accused person shall not, directly or indirectly, tamper with the evidences of this case in any manner or try to influence the witness in any manner.

v) In case, it is established that the accused person has tried to tamper with the evidence, the bail granted to the accused person shall stand cancelled forthwith.

vi) The accused person shall remain present before the Court on each and every dates to be fixed by the Court.”

4. While considering the application for granting bail, learned Special Judge(CBI) had taken into account two decisions of the Supreme Court, ***Satender Kumar Antil Vs. CBI, reported in (2022) 10 SCC 51*** and ***Sanjay Chandra Vs. CBI, reported in (2012) 1 SCC 40*** which reads as under:-

“In the case of Satender Kumar Antil Vs CBI, reported in (2022) 10 SCC 51, the Hon'ble Supreme Court held as under:

"Economic offences (Category D) 90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in P. Chidambaram v Directorate of Enforcement [P. Chidambaram v Directorate of Enforcement, (2020) 13 SCC 791: (2020) 4 SCC (Cri) 646], after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field: Precedents 91.P Chidambaram v. Directorate of Enforcement (P. Chidambaram v Directorate of Enforcement, (2020) 13 SCC 791: (2020) 4 SCC (Cri) 646): (SCC pp. 804-805, para 23) "23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench Gurbaksh Singh Sibbia v State of Punjab, (1980) 2 SOC 565: 1980 SCC (Cri) 465) 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." 92. *Sanjay Chandra v. CBI Sanjay Chandra v. CB1. (2012) 1 SCC 40: (2012) 1 SCC (Cri) 26: (2012) 2 SCC (L&S) 397]: (SCC pp. 62- 64,. paras 39-40 & 46) "*

39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for term which may extend to seven years. It is, no doubt, true that the nature of the 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. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

Role of the court.

93. *The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.*

94. *Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."*

(emphasis supplied)"

In the case of Sanjay Chandra Vs CBI, reported in (2012) 1 SCC 40, the Hon'ble Supreme Court held as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

(emphasis supplied)"

Thereafter, the learned Special Judge(CBI) had observed:-

"The present case is based on documentary evidences and the documents relevant to the case have been recovered by the CBI. The investigation in the present case has already been completed and the charge sheet has already been filed by the CBI. There is nothing present before this Court that the accused has not co-operated the CBI during investigation. There is also no prayer for any custodial trial of the accused person. In the given scenario, considering the principles enunciated in the aforesaid reported judgments on the subject, I am of the considered opinion to allow the bail prayer of the accused person imposing strict conditions. "

5. I have meticulously perused the order dated 13.05.2024 passed by learned Special Judge (CBI), West Tripura District, Agartala. Challenging the said order, CBI has filed the present application for cancellation of bail of the accused persons and to set aside the impugned order dated 13.05.2024.

6. Mr. Majumder, learned Dy. SGI appearing for the CBI has submitted that there is serious apprehension that if the accused persons are released on bail, they may flee away and also may tamper the evidences already gathered by the Investigating Officer. Learned Dy. SGI has further submitted that respondents herein are the main accused of the case and if they are released on bail, then they may attempt to manoeuvre the witnesses.

7. I have considered the fact that the accused persons have been in custody for almost ten years. The period of imprisonment prescribed for committing offence punishable under Section 409 IPC is ten years. It is evident that investigation has been completed. All the relevant documents, necessary to prove the case, have already been seized by the investigating agency. There is no material before this Court that at any point of time during the process of investigation, the accused persons have tried to tamper the evidences or did not co-operate with the process of investigation.

8. In the case of ***Satender Kumar Antil (supra)***, the Hon'ble Supreme Court had considered the gravity of the offences and observed that *they were conscious of the fact that the accused persons were charged with economic offences of huge magnitude and, if proved, might jeopardise the economy of the country.*

Having observed thus, their Lordships observed that *they could not lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet was already filed before the Special Judge, CBI, New Delhi.* Thereafter, the Hon'ble Court held that *their presence in the custody might not be necessary for further investigation and viewed that the accused persons were entitled to grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by the CBI.*

9. In the instant case also learned Counsel appearing on behalf of CBI has expressed serious apprehension that the accused persons may not be available if they are released on bail. It is also submitted that the accused persons may also influence the witnesses of the case.

Yes, according to me, definitely these are the matters the Court is to keep in mind while considering the bail application of the accused persons. As regards the apprehension and as regards influencing the witnesses, in my opinion, the nature of the case entirely depends upon documentary evidences. It is established principle of law that documentary evidence shall prevail over the oral evidence. Furthermore, if any such incident is reported, then, CBI has the right to take recourse of law.

As regards, apprehension that the accused persons may evade the trial and may abscond or may leave the country, in that case, learned Special Judge in its Order dated 13.05.2024 while granting bail has taken sufficient caution and care.

10. I have considered the principles laid down in the case of ***Satender Kumar Antil (supra)*** and ***Sanjay Chandra vs. CBI***, reported in **(2012) 1 SCC 40**, as well as the judgment placed by learned Deputy SGI passed by the Hon'ble Supreme Court in ***Gautam Kundu vs. Manoj Kumar, Assistant Director***, reported in ***AIR 2016 SC 106***.

11. Having perused the case of ***Gautam Kundu (supra)***, it is surfaced that the Hon'ble Supreme Court refused to grant bail to the accused persons for the reason that learned Single Judge of Calcutta High Court had observed that "*I am unable to hold that the petitioner is not likely to commit any offence while on bail. As a result, I cannot persuade myself to grant bail to the petitioner at this stage. So, prayer for bail is rejected. The application is dismissed*". The said Order was passed on December, 16, 2015. Calcutta High Court refused the bail of the accused person, namely, Gautam Kundu, considering the "stage" of the investigation at that relevant point of time. Needless to say, now we are in the year 2024. The stage is totally different and cannot be compared to the "stage" in the year 2015.

12. As I said earlier, at present, investigation has been completed. Charge- sheet has been filed. Moreover, there is no prayer for custodial trial of the accused persons on behalf of the CBI, and the accused persons have been in custody for almost 10 (ten) years, the prescribed period of imprisonment under Section 409 IPC.

13. According to this Court, the grounds taken by the CBI to justify its prayer for cancellation of bail of the accused persons

are not tenable to the facts and circumstances of the present status and stage of trial of the case. The learned Special Judge(CBI) has already taken note of the seriousness of the offence allegedly committed by the accused persons. Learned Special Judge (CBI) in the order has taken all precautionary measures, and necessary conditions have already been imposed to ensure the presence of the accused persons during the course of trial.

14. After few days of registration of the case, the accused persons were arrested and since then the accused persons have been in custody. All the properties and bank accounts of their company have already been attached by the Government. The case is ready for trial. Learned Deputy SGI has not been able to furnish any information as regards the date of commencement of trial. So, delay to conduct trial may prejudice the accused persons. This Court must remain mindful of and adhere to the principles enshrined in Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. Furthermore, the accused persons have been arrested in connection with other cases also and at present they are in judicial custody at Presidency Central Correctional Home, Alipore, Kolkata, West Bengal.

15. For the reasons recorded and discussed here-in-above, I am not inclined to interfere with the order dated 13.05.2024 passed by Ld. Special Judge(CBI) releasing the accused-respondents on bail.

16. Accordingly, the instant application for cancellation of bail filed by applicant-CBI stands rejected being devoid of merit. However, the accused-respondents are directed to surrender their passport with the applicant-CBI, if not already surrendered.

Needless to say, the conditions imposed by learned Special Judge (CBI) are hereby confirmed.

Resultantly, the instant application stands dismissed.

JUDGE

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