

THE HIGH COURT OF TRIPURA
AGARTALA

BAIL APPLICATION 88 OF 2015
ALONG WITH
A.B. 77 OF 2015
ALONG WITH
A.B. 99 OF 2015

IN BAIL APPLICATION 88 OF 2015:

Sri Arnab Chakraborty,
S/O. Lt. Ardhendu Chakraborty,
Resident of Reshambagan,
P.S.-East Agartala,
District-West Tripura.

..... **Accused-Petitioner.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

IN A.B. 77 OF 2015 & A.B. 99 OF 2015:

Sri Arnab Chakraborty,
S/O. Lt. Ardhendu Chakraborty,
Resident of Reshambagan,
P.S.-East Agartala,
District-West Tripura.

..... **Accused-Petitioner.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner (in all the applications)	: Mr. P.K. Biswas, Sr. Advocate, Mr. P. Majumder, Advocate.
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For the respondent (in all the applications)	: Mr. R.C. Debnath, Addl. Public Prosecutor.
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Date of hearing	: 24.09.2015.
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Date of judgment & order	: 30.09.2015.
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Whether fit for reporting	: YES.
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JUDGMENT & ORDER

These three applications for grant of bail by the bail petitioner Arnab Chakraborty are being disposed of by one common order.

2. It would be pertinent to mention that 4(four) cases have been registered against the petitioner. He was granted bail in West Agartala Police Station Case No.156 of 2014 by this Court on 07.8.2015. One Bail Application being B.A. 88 of 2015 has been filed by the petitioner in respect of West Agartala Police Station Case No.60 of 2015 registered against the petitioner under Sections 120(B)/409/468/471/477(A)/420 of the Indian Penal Code (IPC) read with Sections 13(2), 13(c) and 13(d) of the Prevention of Corruption Act, 1988. Another Anticipatory Bail Application being A.B. 77 of 2015 has been filed by the petitioner in respect of West Agartala Police Station Case No.66 of 2015 registered against the petitioner under Sections 109/120(B) of the IPC under Section 13(2) read with Section 13(i)(c) of Prevention of Corruption Act, 1988. Another Anticipatory Bail Application being A.B. 99 of 2015 has been filed by the petitioner in respect of West Agartala Police Station Case No.180 of 2014 registered against the petitioner under Sections 403/420/468/471/477(A)/409/120(B) of the IPC and under Section 13 of Prevention of Corruption Act, 1988.

3. The facts leading to the filing of these cases are that initially West Agartala P.S. Case No.156 of 2014 was registered against the petitioner in which it was alleged that the petitioner Arnab Chakraborty in conspiracy with others had misappropriated huge amounts of Government money. It would be pertinent to mention that a complaint was initially lodged by the Joint Director of School Education with the Officer-in-Charge of the West Agartala Police Station on 05.9.2014 in which it was alleged that Sri Arnab Chakraborty who was cashier had forged the signatures of senior officials and had embezzled a sum of Rs.11,72,000/-. The allegation against Arnab Chakraborty is that he had forged the signatures of the senior officials and misutilised these amounts. On the basis of this FIR, West Agartala P.S. Case No.156 of 2014 was registered against the petitioner. During the course of investigation, the Investigating Officer found that the petitioner had not only embezzled an amount of Rs.11 lakhs and odd as mentioned in FIR No.156 of 2014 but he had also embezzled another amount of Rs.3,19,98,800/- and, therefore, another FIR being FIR No.60 of 2015 was registered. During the course of investigation, another FIR being FIR No.66 of 2015 has been registered in which the main allegations are that the petitioner has assets disproportionate to his known sources of income. Another FIR being FIR No.180 of 2014 was registered against the petitioner on 09.10.2014 in which the allegations are similar in nature but the extent of embezzlement is Rs.38,49,000/-. Therefore, there are

three cases wherein there is allegation of embezzlement of Rs.11,72,000/-, Rs.3,19,98,800/- and Rs.38,49,000/- and one case of disproportionate assets which is also based on the same embezzlements. At this stage, I am not going into the question whether separate cases should have been registered or all these cases should have been tagged in one FIR. The fact of the matter is that the documents relied by the prosecution in all the cases are virtually identical. The *modus operandi* of forging the signatures of the senior officials is also identical. The main difference is with regard to the different Banks from where the money has been embezzled. The charges against the petitioner are very serious. It is also alleged that he was absconding and, therefore, he should not be released on bail.

4. On behalf of the accused-petitioner, Sri P.K. Biswas, learned Senior Counsel, submits that the accused has been behind bars for more than one year and that basically for one offence he is being kept behind bars. It is submitted that any condition may be imposed but he cannot be kept in jail indefinitely.

5. On the other hand, Sri R.C. Debnath, learned Addl. P.P., has strongly opposed the grant of bail to the petitioner on various grounds. The main grounds are that the accused is not cooperating with the investigation and has not disclosed where he has kept the money which he has embezzled. The second ground is that Rajib Dasgupta who is one of the co-accused, is still

absconding. The said co-accused did not even attend his father's funeral and, therefore, the chance of the petitioner's absconding is also very high. It is also contended that the accused withdrew huge amounts in Kolkata and was apprehended from outside the State and, therefore, the chance of his absconding is very high. It is also contended that the accused has been trying to delay the trial of the case in which charge-sheet has been filed by repeatedly filing applications.

6. As far as the last objection is concerned, that is virtually meaningless. I have gone through the entire record of the case in which charge-sheet has been filed and I find that the applications filed by the accused are justified. All the applications filed by the accused are for giving access to the documents filed with the charge-sheet and this is a right of the accused and the prosecution which does not supply all the documents to the accused cannot be heard to argue that the accused is delaying the trial on this ground.

7. As far as the merits of the case are concerned, there is no doubt that the allegations against the petitioner are serious and, therefore, I had not granted bail to the petitioner initially approached for grant of bail. However, no person can be kept in jail indefinitely. As noted above, this Court is not going into the question whether 4(four) FIRs should have been registered or not but the fact of the matter is that after the complaint was filed by

the department during investigation, the police found that huge amounts had been embezzled by the accused. The accused was arrested in the beginning of September, 2014 in FIR No.156 of 2014. In that case, he was ordered to be released on bail and thereafter shown to have been arrested in West Agartala P.S. case No.60 of 2015. Though more than a year have elapsed in the three cases which are under consideration before me, the petitioner has not even been interrogated by the police still now. He was admittedly behind bars in FIR No.156 of 2014. The police was required to investigate the other FIRs also and any special investigation which has to be done by interrogating the accused could have been easily done while the accused was behind bars in connection with FIR No.156 of 2014. Not one question has been put to him in respect of the new three cases. Therefore, I do not understand how the police can urge that the custodial interrogation of the accused is required.

8. Earlier on 03.03.2015 I had rejected the bail application filed by Sri Arnab Chakraborty mainly on the grounds that the petitioner is involved in defalcation of huge amounts of money and had not surrendered willingly but was arrested from Kolkata and, therefore, there is chance of his absconding. More than 6(six) months have elapsed and the investigation has still not been completed. In ***Sanjay Chandra vs. Central Bureau of Investigation and other connected matters [2012 CRI.L.J. 702]***, the Apex Court held as follows:-

BAIL APPLN. 88 OF 2015;
A.B. 77 OF 2015;
A.B. 99 OF 2015.

“14. 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 can be 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. 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 un-convicted 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. Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the “pointing finger of accusation” against the appellants is ‘the seriousness of the charge’. The offences alleged are economic offences which has resulted in loss to the State Exchequer. Though, they

contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual."

9. On behalf of the State, reliance has been placed on the judgment of the Apex Court in ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, [2013 CRI.L.J. 2734]***. In that case, the accused was the son of a Chief Minister and the allegations against him was of having misappropriated huge sums of money exceeding Rs.3,000/- crores. Therefore, there is no similarity between the two cases. In the said case before the Apex

Court, it was also found that lot of transactions had taken place outside the country. The Apex Court held as follows:-

“14. On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by learned senior counsel for the appellant that since the appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

15. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

17. Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the

investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.”

10. In that case, the investigation was still at the initial stage. The Apex Court also directed that the charge-sheet be filed within a period of 4(four) months and the petitioner was given opportunity to file fresh bail application after filing of charge-sheet. As far as the present case is concerned, this Court had first rejected the bail application more than 6(six) months back. Despite that, the police has remained totally inactive and has not interrogated the accused in any of the other three cases. The allegations are virtually identical in all the 4(four) cases. Though the sums involved are different, the *modus operandi* is the same.

11. The general rule is bail, not jail. It may be true that the allegations against the petitioner are very serious but the fact remains that he has been behind bars for more than one year and even the charge-sheet has also not been filed in some of the cases. He has not even been interrogated in some of the cases.

12. Therefore, I am of the view that this is a fit case where the petitioner who has been behind bars for more than one year should be released on bail subject to certain stringent terms and conditions by furnishing solvent sureties.

13. Accordingly, it is ordered that the accused-petitioner Arnab Chakraborty shall be enlarged on bail on his furnishing a bail bond in the sum of Rs.10,00,000/- (rupees ten lakhs) with two sureties each in the like amount to the satisfaction of the learned Trial Court subject to the following terms and conditions:-

(i) That, the persons standing surety should furnish either details of amount held in Bank or details of property worth Rs.10 lakhs which shall be verified by the trial Court before releasing the accused-petitioner;

(ii) The petitioner shall not leave the town of Agartala without permission of this Court. The Police Authorities are permitted to apprise all the Airlines, Bus Agencies etc. of the details of the petitioner along with his photograph to ensure that he does not leave the State of Tripura;

(iii) The petitioner is also directed to report to the West Agartala Police Station everyday at 10 a.m. and shall also handover/furnish his mobile number to the Investigating Officer so that from his mobile number also his movements can be traced out;

(iv) The petitioner is further directed not to tamper with or in any manner influence the prosecution witnesses;

(v) The petitioner is further directed not to in any manner try to influence any of the prosecution witnesses;

(vi) The petitioner is further directed not to cause any hindrance in the investigation;

(vii) The petitioner shall appear before Court on each and every date of hearing and in case, he does not appear before Court, his bail bond shall be cancelled;

(viii) In case, the petitioner violates any of the conditions or tries to delay the trial the prosecution shall be at liberty to apply for cancellation of bail.

14. On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.

15. All the applications are disposed of in the aforesaid terms.

CHIEF JUSTICE