

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.2832 of 2015

Rajkishore Harbansh, S/o Late Tularam Harbansh, aged about 54 years, R/o 127 Phase-2, Rajkishore Nagar, Police Station Sarkanda, District Bilaspur (Chhattisgarh)

---- Applicant

Versus

State of Chhattisgarh, Through the Superintendent of Police, Prevention of Corruption Bureau, Bilaspur, District Bilaspur (Chhattisgarh)

---- Non-applicant

For Applicant:	Mr. S.C. Verma, Advocate.
For Non-applicant:	Mr. Om Prakash Sahu, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

03/07/2015

1. The accused/applicant has moved this bail application under Section 439 of the Code of Criminal Procedure, 1973 for releasing him on regular bail during trial in connection with Crime No.38/2011, registered before the Superintendent of Police, Anti Corruption Bureau, Bilaspur, for the offence punishable under Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988.
2. Case of the prosecution, in brief, is that the applicant had amassed wealth of Rs.1,64,54,897/- disproportionate to his known source of income while working as Superintending Engineer, PMGSY, Circle Bilaspur and thereby he committed the offence.
3. Mr. S.C. Verma, learned counsel appearing for the applicant, would submit that in the inventory made by the non-applicant vide Annexure A-2, the house situate at Raj Kishore Nagar on plot No.127/128 has been valued at Rs.2 crores and it is said to be owned by the present

applicant, whereas, as per the lease deed, it is the land owned by his mother Smt. Shiv Harbansh on permanent lease from Bilaspur Development Authority, Bilaspur granted on 27-4-1989 on a premium of Rs.6,000/-. Likewise, other properties have also been exceedingly overvalued. Mr. S.C. Verma would further submit that the alleged disproportionate property has already been identified by the team of Anti Corruption Bureau and the applicant is ready and willing to cooperate in the investigating. Mr. S.C. Verma would also submit that filing of charge sheet and granting of sanction is likely to take some more time and the applicant is in jail from 2-6-2015. The applicant has rendered 30 years of excellent service in the Department and no useful purpose will be served by keeping him in jail. Looking to his poor health condition, he be released on bail.

4. On the other hand, learned counsel appearing for the State opposing the bail application would submit that the applicant is a rank defaulter and is not cooperating in the investigation, as on 29-6-2011 a notice was served along with Form Nos.1, 2 and 3 to submit his explanation followed by another notice dated 24-9-2011 served through his Chief Engineer and thereafter, the reminder dated 30-4-2012 requesting him to submit the requisite information in Form Nos.1 and 2. Again in the year 2013, on 15-7-2013, notice under Section 91 of the CrPC was served to the applicant to submit explanation up to 25-7-2013 in Form Nos.1, 2 and 3. Lastly, on 6-8-2013 again providing Form Nos.1, 2 and 2, the applicant has been requested to submit explanation, but no such information was supplied by the applicant leading to issuance of statutory notice under Section 41A of the CrPC for his appearance before the investigating officer, but all efforts to seek explanation could not be materialized due to deliberate non-co-operation of the appellant,

thereafter, he has been arrested on 2-6-2015, as such, the matter is still under investigation as it could not be completed on account of complete non-co-operation on the part of the applicant. If he is released on bail, again the investigation is likely to be hampered and therefore, the applicant be not released on bail.

5. I have heard learned counsel for the parties.
6. A close and careful perusal of the material available in the case diary of Crime No.38/2011 would show that offence under Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 has been registered against the applicant on 20-6-2011. Inventory showing a property of Rs.3,86,65,000/- has been prepared and according to the prosecution, an amount of Rs.1,64,54,897/- is said to be the disproportionate property to his known source of income. Despite several notices for last four years till his date of arrest, the applicant failed to submit necessary information in Forms A-1, A-2 and A-3 leading to his arrest on 2-6-2015. Charge sheet has, still, not been filed obviously for the reason that the applicant has not cooperated with the investigation.
7. Very recently, in the matter of **Subramanian Swamy v. CBI**¹, Constitution Bench of the Supreme Court while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, unconstitutional, observed as under: -

“Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative

¹ (2014) 8 SCC 682

measure that corrupt public servants have to face very serious consequence.”

And again,

“Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corrupt officers into two classes as they are common crime doers and have to be tracked down by the same process of inquiry and investigation.”

8. Taking into consideration the nature and gravity of offence, further taking into account the attitude of the applicant in not cooperating in the investigation for last four years as the applicant despite several notices failed to provide necessary information and therefore the investigation has come to a standstill and that the charge sheet has yet not been filed, considering aforesaid facts and keeping in mind the binding observation of Their Lordships of the Supreme Court in the matter of **Subramanian Swamy** (supra), I am of the considered opinion that prima facie, it is not a fit case where the applicant can be released on bail. The application is, therefore, rejected.

Sd/-
(**Sanjay K. Agrawal**)
Judge