

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Criminal Case No.3040 of 2015

Dilip Kumar Diwan, S/o Late B.S. Diwan, aged about 50 years, Deputy Commissioner, CG Housing Board, Headquarter at Shankar Nagar, Raipur, R/o House No.B/17 CHPL, Model Town, Smriti Nagar, Bhilai, Tahsil and District Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through Station House Officer, Police Station Anti Corruption Bureau, Raipur, District Raipur (C.G.)

---- Non-applicant

For Applicant:	Mr. Kanak Tiwari, Senior Advocate with Mr. Varun Sharma and Miss Shailja Shukla, Advocates.
----------------	---

For Non-applicant:	Mr. Om Prakash Sahu, Govt. Advocate.
--------------------	--------------------------------------

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

24/08/2015

1. Invoking the jurisdiction of this Court under Section 439 of the Code of Criminal Procedure, 1973, the applicant herein, who has been arrested on 5-4-2015, has filed this application for grant of regular bail during trial in connection with Crime No.50/2014, registered at Police Station: Anti Corruption Bureau, Raipur, for the offence punishable under Sections 13 (1) (e), 13 (2) of the Prevention of Corruption Act, 1988; 200, 201, 420, 467, 468 and 471 of the IPC.
2. This is the second bail application filed on behalf of the applicant for grant of regular bail. First bail application has been dismissed on merits by order dated 15-5-2015 passed by this Court in M.Cr.C.No.1782/2015.
3. Case of the prosecution, in brief, is that the applicant has amassed wealth of Rs.7,73,51,876/- disproportionate to his known source of income while

working as Deputy Commissioner in Chhattisgarh Housing Board, Raipur and thereby committed the offence.

4. Learned Senior Counsel appearing for the applicant submits that first bail application of the applicant was rejected by this Court on merits on 15-5-2015 and thereafter, the circumstances changed and full-fledged charge-sheet running into 2,000 pages listing 30 charge-sheet listed witnesses has been filed on 1-7-2015 and on that basis, learned Senior Counsel submits as under: -

- The non-applicant State while calculating the alleged disproportionate property of the applicant has included the income and property of wife of the applicant, major son of the applicant Karan Diwan, brother of the applicant Yogendra Diwan, father-in-law of the applicant, sister-in-law of the applicant and nephew of the applicant. Elaborating his submissions, learned Senior Counsel would further submit that Yogendra Diwan resides separately at Lahroud halving his own property, raid has been conducted therein and his property has been taken into account while assessing the disproportionate property disproportionately and thereby filing the charge-sheet, which is impermissible in law.
- That, other relatives of the applicant whose property has been included while assessing the disproportionate property are not connected with this offence in question, there is no charge of conspiracy and there is no abetment against them and they are not public servants. Therefore, in view of the decision rendered by the Supreme Court in the matter of **Akhilesh Yadav v. Vishwanath Chaturvedi and others**¹, their income cannot be included while

1 (2013) 2 SCC 1

assessing the disproportionate property alleged to be held by the present applicant. Those properties held by relatives of the applicant are fully supported by income-tax returns filed under the provisions of the Income Tax Act duly accepted by the income-tax authorities and further the property owned by relatives of the applicant are sale deeds duly registered in accordance with the provisions of the Registration Act clearly passing consideration by the respective persons.

- That, the applicant has unblemished service career for last 25 years working in the statutory Corporation known as the Chhattisgarh Housing Board duly constituted under the provisions of the Chhattisgarh Housing Board Act, 1972. In order to attract Section 13 (1) (e) of the Prevention of Corruption Act, 1988, there must be pleading and supporting documents that the applicant is in possession of such properties disproportionate to his income or that any other person is in possession in his behalf. There is no document filed along with charge-sheet showing that the applicant is in possession of those properties which are alleged to be held disproportionate and merely alleging that the property held by others are the property of the applicant would not be sufficient, and he cannot be prosecuted under Section 13 (1) (e) of the said Act.
- The applicant has unblemished service career, he was never charge-sheeted for any offence nor he was having any criminal background, he is in custody since 5-4-2015, charge-sheet has already been filed, no custodial interrogation of the applicant is required and there is no question of tampering of evidence as held by the Supreme Court in **Sanjay Chandra v. Central Bureau of**

Investigation².

- Number of charge-sheet listed witnesses are 30 and thus, the trial is likely to take time as it has still not yet been commenced. Proving those voluminous documents would also take its own time and is not likely to conclude in the near future.
- That, the applicant is aged about 50 years and the case registered against the applicant is under Sections 13 (1) (e) of the Prevention of Corruption Act, 1988 and 420 of the IPC, unless he is released on bail, he cannot satisfactorily account which is required to do under Section 13 (1) (e) of the said Act, as such, his further custody in absence of requirement of custodial interrogation will not be in the interest of justice.
- The applicant has fully cooperated in trial and submitted all the information including the information in the shape of Forms A-1, A-2 and A-3 with regard to check period, therefore he be released on bail.
- The applicant is a senior officer of the Chhattisgarh Housing Board and at the relevant time was working as Deputy Commissioner and is not likely to abscond if he is released on bail.
- Lastly, learned Senior Counsel submits that break up of the alleged disproportionate property of Rs.7,73,51,876/- has not been clearly given by the non-applicant State while submitting charge-sheet.

5. Per contra, learned State counsel opposing the bail application would vehemently submit as under: -

- Number of purchases have been made by the applicant during the

² (2012) 1 SCC 40

service of 25 years but departmental authorities were not intimated for most of them.

- Four forged balance sheets have been filed in order to justify the disproportionate property held by the applicant.
- The gift deed given by mother of the applicant for Rs.25 lakhs is not registered as required under Section 123 of the Transfer of Property Act, 1882.
- Father-in-law of the applicant Mohit Ram Kuruwanshi has purchased property worth Rs.17 lakhs much after his retirement which clearly indicates that it is the money of the applicant by which the property has been purchased by his father-in-law and as such, the bail application of the applicant deserves to be rejected.

6. I have heard learned counsel for the parties and perused the case diary.

7. It is not in dispute that when the first bail application of the applicant was decided on 15-5-2015, charge-sheet was not filed and thereafter, charge-sheet has been filed on 1-7-2015 and certain other offences viz., Sections 200, 201, 420, 467, 468 and 471 of the IPC have been inserted against the present applicant. It is well settled that upon change of circumstances including filing of charge-sheet, second bail application can be entertained.

8. The question of maintainability of second bail application upon establishing the change of circumstances is no longer res integra and stand concluded by decisions of Their Lordships of the Supreme Court in following cases:

1. In a decision reported in **Babu Singh and Others v. State of Uttar Pradesh**³, the Supreme Court has held that updated consideration with further development is not barred, and observed as under:

3 AIR 1978 SC 527

“2....But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further, developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are, barred from second consideration' at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.”

2. Further, in the case of **State of Maharashtra v. Buddhikota Subha Rao**⁴ the Supreme Court has held that there must be substantial change to maintain the second bail petition and observed as under:

“Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation, which would mean a substantial change having a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence.”

3. Their Lordships of the Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Another**⁵ has held that if there is a change in the facts situation, then in spite of earlier application having been rejected, second bail application can be entertained, and observed as under:

“18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the

4 AIR 1989 SC 2292

5 2005(2) SCC 42

criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so.”

4. Likewise, recently in case of **Sanjay Chandra** (supra), the Supreme Court has held that change in circumstances like framing of charge and commencement of trial is a good ground to entertain second bail application and observed as under:

“19. Let us first deal with a minor issue canvassed by Mr. Raval, learned ASG. It is submitted that this Court has refused to entertain the Special Leave Petition filed by one of the co-accused [Sharad Kumar Vs. CBI (supra)] and, therefore, there is no reason or change in the circumstance to take a different view in the case of the appellants who are also charge-sheeted for the same offence. We are not impressed by this argument. In the aforesaid petition, the petitioner was before this Court before framing of charges by the Trial Court. Now the

charges are framed and the trial has commenced. We cannot compare the earlier and the present proceedings and conclude that there are no changed circumstances and reject these petitions.”

9. In view of the above, the second bail application of the applicant has been entertained upon filing of charge-sheet and case of the applicant is being examined.
10. It is not in dispute that first bail application of the applicant was rejected on 15-5-2015, at that time, allegation of the prosecution was that the applicant amassed wealth of Rs.4,99,74,582/- disproportionate to his known source of income while working as Deputy Commissioner in Chhattisgarh Housing Board, Raipur, thereafter, when this bail application was entertained, charge-sheet has been filed in which it is alleged that the applicant is found to have amassed wealth of Rs.7,73,51,876/- disproportionate to his known source of income and thereafter, offence under Sections 200, 201, 420, 467, 468 & 471 of the IPC has been inserted by the prosecution. Thus, there is material collected and filed against the applicant for aforesaid offences under the provisions of the Indian Penal Code which appears to be extremely serious in nature, as the applicant has tried to manipulate the records, as it is the case of the prosecution that four forged balance sheets have been prepared and filed in order to justify the disproportionate property held by the applicant.
11. Considering the entire facts and circumstances of the case, material collected by the prosecution which has now held to be that a property of Rs.7,73,51,876/- is found to be disproportionate to his known source of income and the offences subsequently charged to the applicant, particularly forged preparation of balance sheets to justify the property held by him and other connected allegation of making false declaration knowing

it to be true, and the applicant is said to have prepared fake receipt and filed in support of his defence supported by statement of Shriram Chouhan which are punishable under Sections 200, 201, 420, 467, 468 & 471 of the IPC, and punishment prescribed for the same and in view of the law laid down by Their Lordships of the Supreme Court in the cases of **Nimmagadda Prasad v. Central Bureau of Investigation**⁶ and **Subramanian Swamy v. C.B.I.**⁷, I do not consider the present case as a fit case to grant regular bail to the applicant by allowing the second bail application filed by him. The application deserves to be and is accordingly, rejected.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

6 (2013) 7 SCC 466

7 (2014) 8 SCC 682