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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.3421 of 2015

Pawan Kumar Agrawal S/o Radheshyam Agrawal Aged About 46 years R/o Saket Extension, Agrasen Chowk, Bilaspur Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Anti Corruption Bureau-Economic Offences Wing, Criminal District Raipur Chhattisgarh

---- Respondent

For applicant	:	Shri Kanak Tiwari, Senior Advocate with Shri Varun Sharma, Advocate
For Respondent/State	:	Shri R. K. Gupta, Deputy Advocate General

C A V Order

30/07/2015

The applicant has been arrested on 20-03-2015 on the allegation of commission of offence under Section 420, 467, 468, 471, 109, 120-B IPC and 13(2), 13(1)(e) of Prevention of Corruption Act under Crime No.05/2015 registered by Economic Offences Investigation Bureau, Raipur, Camp-Bilaspur.

2. Prosecution case is that co-accused-Alok Agrawal, a public servant, while holding the office of Executive Engineer in the Department of Water Resources of the State of Chhattisgarh, amassed huge wealth to the tune of more than Rs.30 Crores by corrupt and illegal means. Allegation against the applicant is that the applicant has been involved in the offence as conspirator and abettor on the allegation that he is the recipient of the benefit, which he derived through the corrupt means of his brother-Alok Agrawal to build up his business of contractorship by taking contracts of various public works in the

same department. There are allegations that the applicant along with his brother not only pressurized government officials of different ranks in the department to get his work done, but also one of the main allegation is channelizing the ill-gotten wealth of the public servant. It has been alleged that out of approximately Rs.30 Crores of ill wealth collected by the public servant through corrupt and illegal means, approximately Rs.8 Crores have been channelized in various activities by the present applicant. There are allegations that the contractorship business of the applicant is virtually run, managed and controlled by the public servant in the name of Mahamaya Builders. It has also been alleged that public servant pressurized number of his subordinate officials/Engineers to keep in their custody, huge ill-gotten wealth, out of which, substantial part was passed on to the present applicant. The Anti Corruption Bureau, upon receipt of information regarding collection of wealth through corrupt and illegal means, raided the premises of the co-accused as also the present applicant and it is the case of the prosecution that the applicant played an important and active role in perpetrating the corruption.

3. Learned Senior Counsel appearing for the applicant argued in extenso and submitted that the allegation regarding involvement of the applicant in collection of ill-gotten wealth through his brother are not based on any clinching evidence and only on the basis that the applicant has conspired with other accused, his brother, a public servant, in collecting and channelizing ill-gotten wealth, offence has been registered. Learned Senior counsel for the applicant argued that the applicant has been in the business of contractorship for the last about 12 years. He has been honestly disclosing his income, which has been duly assessed to income tax for the last many years and entire assets of the applicant are those, which have been earned by him through his business. It is next contended that the applicant gradually progressed in his business and in

the year 2007, he was registered as A-5 Class Contractor. The income derived through his business is fully disclosed and accounted in all the income tax returns filed by the applicant in respect of the check period 2004 to 2014, during which, he has been submitting income tax returns, which totals to Rs.7,56,58,038.71. None of the assets found in possession of the applicant during investigation which culminated in charge sheet, are undisclosed or unexplained. The Anti Corruption Bureau, in order to falsely implicate the applicant, has wrongly arrived at applicant's income during check period at low of Rs.4,33,89,143/-, which is much less than the duly disclosed income of the applicant in his various returns filed during check period. It is further submitted that the unsecured loans duly accepted in the scrutiny during assessment in various years have not been taken into consideration, though they are reflected in the audited balance sheets. Next submission of learned Senior Counsel for the applicant is that assets of other accused have been included in the assets of the applicant without any basis and only on the basis of imagination not supported by any material except that the applicant happens to be the brother of the public servant. The income and assets of H.U.F. disclosed in the balance sheets have also not been taken into consideration. The applicant had obtained huge loan from the bank, which has also not been taken into consideration. Depreciation of assets, withdrawals and other house hold items have also not been taken into consideration. To somehow make out allegation over valuation of immovable properties and machineries has been done. Each and every income of the applicant in his capacity as A-5 Class Contractor has been duly scrutinized and accepted by the Income tax Authority during the last 10 years, in respect of which, the applicant has duly paid income tax. Under various heads like expenditure, valuation of immovable properties, investment and shares, sale proceeds, redemption of shares, mutual funds, sale and purchase of vehicle, funds on account of work in progress, has not been properly computed and imaginary figure have been arrived at to somehow implicate the applicant only on apprehension that the applicant conspired and abetted commission of offence by co-accused and channelized ill-gotten wealth. Relying upon the judgment of the Supreme Court in the case of ***Akhilesh Yadav vs. Vishwanath Chaturvedi and others***[1]***,*** it has been vehemently contended that the law does not permit the investigating agency to enquire into the wealth of the applicant which he has earned through his own business, much less clubbing with the same, assets of his brother, for which, there is no material to make out a prima facie case that the applicant in any manner aided or abetted in commission of offence. There is no material to show that at any point of time, the applicant worked as Contractor or received money in respect of any work within the jurisdiction of his brother.

The other submission of learned counsel for the applicant is that all through during investigation, the applicant fully co-operated with the investigating agency and every information, which was sought through him, was duly submitted to the investigating agency. He was arrested on 20-03-2015 and thereafter, no further material has been collected from the applicant as all the informations have already been submitted by him to the investigating agency. After completion of investigation, the investigating agency has filed charge sheet against the applicant, which runs into approximately 10,000 pages and more than 302 witnesses proposed to be examined as prosecution witness. As the investigation is complete and charge sheet has been filed, there is no further need to keep the applicant in jail. As documents of the charge sheet are voluminous and more than 302 witnesses are to be examined by the prosecution, trial is not likely to be concluded early and the applicant may have

1 (2013) 2 SCC 1

to remain in jail for a longer period, even before, he is adjudged guilty of commission of offence, in which event, his important fundamental right of liberty would be seriously jeopardized. The applicant is neither having any criminal antecedents nor there is any clinching material to show that in the event of grant of bail, the applicant is likely to misuse his liberty or hamper fair trial by tampering or intimidating prosecution witnesses or to frustrate just and fair conduct of trial. Therefore, in view of the law laid down by the Supreme Court in the case of ***Sanjay Chandra vs. Central Bureau of Investigation*[2]*,*** the applicant is entitled to grant of bail by imposing conditions to ensure his presence during trial.

4. On the other hand, learned Deputy Advocate General opposed the prayer for grant of bail by submitting that there are serious allegations in the present case where the co-accused-brother of the applicant and a public servant, is charged of having collected more than Rs.30 Crores through illegal and corrupt means by misusing his public office. The material collected during investigation against the applicant prima facie makes out a case of direct and substantial involvement of the applicant in the alleged commission of offence as conspirator and abettor. It is submitted that during the period, co-accused, public servant was working in the department of Water Resources as Engineer, the applicant has amassed huge wealth showing sudden growth of his income during the check period. The prosecution witnesses have clearly stated regarding role played by the applicant as conspirator and abettor. There are serious allegations against the applicant that out of total amount of Rs.30 Crores of ill-gotten wealth collected by the public servant through corrupt and illegal means, approximately Rs.8 Crores were channelized and laundered through the present applicant and he is the main associate and conspirator.

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2 (2012) 1 SCC 40

The witnesses have said that crores of rupees, in cash, given to the witnesses, were passed on to the applicant. During the investigation, number of witnesses have stated that the applicant threatened and intimidated the prosecution witnesses to destroy incriminating material and most of the witnesses have alleged threat not only by the public servant but also by the applicant. Even though, charge sheet has been filed, the manner, in which, the applicant has conducted himself during investigation, it has given rise to serious apprehension that if the applicant is granted bail at this stage, when even charges have not been framed and material witnesses not examined, the applicant is likely to misuse the liberty and tamper with the prosecution witnesses and hamper fair and proper trial to bring home the charges against the public servant , applicant and other accused.

5. The prosecution case, as unfolded from the case diary and material, which were placed by the prosecution before this Court, prima facie indicates that during the check period, the public servant is alleged to have amassed huge wealth approximately Rs.30 crores through illegal and corrupt means. The allegation against the applicant is that from the statement of the witnesses, particularly the departmental witnesses, it has come that the applicant was being unduly benefited in various works of contracts. In the statement of these witnesses of the prosecution and the documents collected by the prosecution during investigation, it is alleged that approximately Rs.8 crores were channelized through the applicant. In the diary statement, it has come out that ill-gotten wealth used to be deposited by the co-accused with the sub-ordinate departmental officials and in turn, that was being channelized by passing it on to the present applicant.

6. Though, at this stage, this Court is not called upon to examine veracity of

these allegations, which would be a matter of examination during trial, the allegations prima facie appear to be serious in nature. There are statements of the departmental witnesses that a part of the ill-gotten wealth was transferred to the applicant. Some of the departmental witnesses have alleged that the applicant pressurized them to give false and misleading disclosure to mislead investigating agency and also threatened. It has also been alleged that the applicant also attempted to destroy incriminating evidence to thwart investigation. Learned State counsel, in particular, pointed out to this Court the statements of Gurdeep Singh Ajmani, Jaimal Suryawanshi and Satish Agrawal. The prosecution witnesses stated regarding passing of ill-gotten wealth to the present applicant.

7. Their Lordships in the Supreme Court upon survey of large number of decisions, in the case of ***Sanjay Chandra*** (supra) held :-

> **41.** "This Court in *Gurcharan Singh* v. *State (Delhi Admn.)*[8] observed that two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing."

8. In the aforesaid decision, the settled principles in the matter of grant of bail as laid down in the case of ***Prahlad Singh Bhati vs. NCT***[3]***,*** were also noted. In the case of ***Prahlad Singh Bhati*** (supra), the Supreme Court laid down the principles as follows:-

> *8*. "The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case

3 (2001) 4 SCC 280

and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of [the] evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing 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 or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words 'reasonable grounds for believing' instead of 'the evidence' which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

In the case of Sanjay Chandra (supra), the principles appliable in the matter of consideration for grant of bail, as laid down in the case of ***State of U.P. vs. Amarmani Tripathi***[4]***, were also taken into consideration. In that case, it was held:***

18. "It is well settled that the matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) *character, behaviour, means, position and standing of the accused*; (*vi*) likelihood of the offence being repeated; (*vii*) *reasonable apprehension of the witnesses being tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi*[17] and *Gurcharan Singh* v. *State (Delhi Admn.)*[8]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following

4 (2005) 8 SCC 21

principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan*[19]: (SCC pp. 535-36, para 11)

'*11.* The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay* v. *Sudarshan Singh*[20] and *Puran* v. *Rambilas*[21].)'

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In the case of **Sanjay Chandra** (supra), while noting that though offences are serious, it was observed that when there are no serious contention of the respondent that if the applicant is released on bail, he would interfere with the trial or tamper with evidence, it would not be in the interest of justice that the accused should be in jail for an indefinite period.

9. In a subsequent decision in the case of ***Gulabrao Baburao Deokar vs. State of Maharashtra and others***[5], the supreme Court noted, in the backdrop of serious allegations of commission of offence under Prevention of Corruption Act that attempts were made by the applicant therein to pressurize the witnesses and even the investigating agency and then proceeded to hold that by that time, it was probable that the applicant will be pressurizing the

5 (2013) 16 SCC 190

witnesses if he is not restrained. On this ground, the order of cancellation of bail was upheld, particularly taking into consideration the nature and seriousness of economic offences and its impact on the society being important considerations.

10. At the same time, the other aspect of the matter is that the prosecution has filed voluminous documents almost in 10,000 pages and more than 302 witnesses are proposed to be examined.

11. In the case of **State of Kerala vs. Raneef** [6], it was held that in deciding bail application, the aspect of delay in conclusion of trial is also an important factor.

12. Present is a case of serious allegation against the applicant of being involved in economic offences as co-conspirator and abettor with the main accused. Charge sheet has been filed and large number of witnesses are to be examined to prove voluminous documentary evidence on record. At the same time, this Court has noticed serious apprehension that in the event of grant of bail to the applicant, he is likely to tamper with the prosecution witnesses, in view of the statement of number of witnesses of the prosecution alleging that the applicant attempted to destroy incriminating evidence.

13. Taking into consideration all the aspects of the matter, keeping in view the principles laid down by the Supreme Court and striking balance between the individual liberty and societal interest of fair trial, on such serious allegations, in the considered opinion of this Court, it will not be proper to release the applicant on bail at this stage. At this stage, it cannot be said that detention of the applicant is so long, which entitles him grant of bail only on that count. There are many material witnesses, particularly departmental witnesses,

6 (2011) 1 SCC 784

who are required to be examined by the trial Court and it has to be ensured that tampering and intimidation does not take place. For all these reasons, I am not inclined to release the applicant on bail, at this stage. However, in the eventuality of there being any undue delay in trial, long detention without material progress in trial for reasons not attributable to the applicant and other accused and upon examination of material departmental witnesses involving the applicant in the alleged offence, the applicant would be at liberty to revive his application for grant of bail.

14. In the result, the application is dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge

Tumane