

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 110 OF 2015

STATE, THROUGH POLICE INSPECTOR.	... Applicant
Versus	
SHRI AGNELO TIAGO D'SOUZA.	... Respondent

Mr. S. R. Rivankar, Public Prosecutor for the Applicant.

Mr. S. D. Lotlikar, Senior Advocate with Advocate C. Padgaonkar for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 18th June, 2015

Oral Order:

By this application the applicant/State is seeking to challenge the order dated 7/3/2014 passed by the learned Special Judge, thereby granting anticipatory bail to the respondent.

2. The brief facts are that the respondent was at the relevant time working as a Senior Geologist and has since retired on 31/7/2010. An investigation was undertaken by the State in connection with illegal mining in Goa and certain records and files of the Directorate of Mines and Geology have been attached. The material allegation against the respondent is that while he was working as a Senior Geologist he had put up a note favouring condonation of delay in seeking the renewal of the mining lease being T.C. No.30/1940 situated at village Collem of Sanguem Taluka allotted to Dr. Prafulla Hede.

3. According to the respondent, the Revisional Authority had directed the Government to decide the main application for lease on merits and in accordance with law within the stipulated time. Thus according to the respondent, the note was put up in view of the direction of the Revisional Authority to decide the application for renewal of lease on merits. It appears that the application for renewal of lease was made in the year 1992 and the subject note by the respondent was put up in the year 2007. It further appears that a criminal offence at crime no.53/2014 was registered against the respondent under section 4(1), (1a), 19 r/w 21 (1) (2) of the Mines and Minerals (Development and Regulation) Act, 1957. This was on 19/9/2014. The offences so registered carry sentences which are not more than 2 years of imprisonment. It was on 26/2/2015 that the offences under section 13 of Prevention of Corruption Act r/w Section 120-B of I.P.C were included. According to the applicant/State there was a criminal conspiracy between various Government officers/authorities in grant/renewal of the mining lease and the same disclosed the offence of criminal misconduct by a public servant.

4. On inclusion of the offence under the prevention of corruption Act, the application for anticipatory bail was transferred to the Special Court. The Special Court by order dated 7/3/2015 has proceeded to grant the same on certain conditions. The Learned Special Court has

found that the respondent has co-operated with the investigating agency from time to time. It was also found that the custodial interrogation of the respondent is not necessary.

5. It is submitted by Mr. Rivankar, the learned Public Prosecutor that the observations made by the learned Special Court particularly in paragraphs 11 and 22 of the order dated 7/3/2015 would show that the learned Special Court has pre-judged the matter by holding that at the highest the allegation would amount to "misconduct as far as his service with the Government is concerned, inviting the departmental proceedings" and would not amount to any defence. It is submitted that these observations by the learned Special Court are not justified particularly when the investigation is still in progress. It is submitted that in view of the allegations that it is a case of criminal conspiracy, the custodial interrogation of the respondent is necessary to find out who were the superior officers involved in the offence. He, therefore submitted that the order granting anticipatory bail needs to be cancelled.

6. On the contrary it is submitted by Mr. Lotlikar, learned Senior Counsel for the respondent that the application for renewal of the mining lease was made as far back as in the year 1992 and even the subject note was put up by the respondent in the year 2007. It is submitted that since then, the respondent has retired from service in

the year 2010.

6. He submitted that the mere fact that the respondent had interpreted the order of the Revisional Authority in a particular manner in putting up the note would not lead to a prima facie case of the involvement of the respondent in the alleged offence.

7. He submitted that admittedly, the respondent was not the final authority/competent authority for the renewal of the mining lease. It is also submitted that the nature of evidence, if any, would be documentary in nature and as such, custodial interrogation of the respondent would not be necessary. He submitted that the learned Special Court has thus rightly exercised its jurisdiction, granting anticipatory bail.

8. I have considered the rival circumstances and the submissions made. Admittedly, the application for renewal of the lease was made as far as back as in the year 1992. The State Government had initially rejected the said application, against which Dr. Hede had approached the Ministry of Mines, Central Government under section 31 of the Mines and Minerals (Development and Regulation) Act, 1957. The stand taken by the State Government was that after the cut off date of filing "Form J" i.e. after 21/11/1988, there was no provision to condone the delay. It was so informed to Dr. Hede. Ultimately the Revisional Authority had allowed the revision

application filed by Dr. Hede and had remanded the application to the State Government for deciding the application on merits and in accordance with law. It would thus appear that apart from the fact that the allegations pertain to the period from 1992 to 2007. It would also appear that the applicant has co-operated with the investigating agency. The learned Special Court has noted that the only ground on which the prosecution is claiming custodial interrogation is that the respondent is not ready to disclose the names of the persons who had forced him to draft the note. On overall consideration of the rival circumstances and the submissions made and on perusal of the order passed by the learned Special Court it appears that it has rightly been found that there is no need for custodial interrogation. Thus, no case is made out for cancellation of anticipatory bail already granted.

9. Insofar as apprehension expressed on behalf of the State based on the observations in paragraphs 11 and 22 of the order granting bail is concerned, it is clarified that at the same would not be binding at the trial. Subject to this, the criminal application is hereby dismissed.

C. V. BHADANG, J.

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