IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [BA] No. 939 of 2015
[Deepak Khubchand Bajaj Vs. State of Mah. & another]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.P. Dharmadhikari, Sr. Adv., with Mr. D.V. Chauhan, Adv., for the Applicant.
Mr. S.S. Doifode, Addl. Public Prosecutor for the respondents-State.

CORAM : A.B. CHAUDHARI, J.

Reserved on : 18th December, 2015.

Pronounced on : 22nd December, 2015.

01. This is an application for grant of bail in Crime No. 3674/15 registered at Jaripatka Police Station, Nagpur, on 25th September, 2015 for the offences under Section 13 (1) (d), (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988, and Sections 406, 420, 468 and 471 read with Section 34 of the Indian Penal Code.

02. The Applicant is the Headmaster of Mahatma Gandhi Centennial Sindhu High School run by Sindhu Education Society at Nagpur. His wife is also working as a Headmistress in Onkarlal Sindhu High School at Nagpur. He is the Secretary of Sindhu Education Society which runs four Grant-in-Aid Schools plus eight other schools and one Junior College. He is also the office-bearer of Bharat Sindhu Multipurpose Society, which runs D.Ed., and M.Ed., Colleges.

03. The Anti-corruption Bureau had conducted an open enquiry in 2012 in respect of the affairs of the institutions run by these Societies and the applicant. On 24th September, 2015, in the evening, the Bureau had conducted raids on his residential and other premises and had seized a cash in the sum of Rs.18,15,493-00 from his custody, for which he had no explanation. According to the prosecution, the Bureau had also seized a cash in the sum of Rs. 13,00,000-00 from the Office of Sindhu Education Society and had found withdrawal of a cash of Rs. 14.25 lakhs on 5th September, 2015. Searches were carried out and thereafter the investigation is in progress.

04. The applicant had approached this Court for grant of anticipatory bail which request was rejected and, therefore, he had approached the Apex Court by filing a Special Leave Petition which the Apex Court rejected on 2nd November, 2015 and granted him ten days to surrender. The applicant surrendered on 12th November, 2015, and till 26th November, 2015, the Investigating Agency was granted Police Custody Remand of the Applicant and thereafter he has been lodged in Magisterial Custody Remand. On 26th November, 2015, the applicant applied before the Trial Court for grant of regular bail, which application stood rejected on 4th December, 2015. Hence this application.

05. In support of the present bail application, learned Sr. Adv. Mr. S.P. Dharmadhikari with learned Adv. Mr. Chauhan vehemently submitted that the police custody remand for about fourteen days was taken by the Anti-corruption Bureau and entire interrogation has been made from the applicant and that is the reason why the applicant was sent to the Magisterial Custody and is in magisterial custody. The fact that police custody remand is no more necessary is an enough indication that the custody of the applicant or his detention in jail is now wholly unnecessary. In this connection, he submitted that applicant's wife Veena was arrested and was released on bail with a condition to attend the Office of Anti-corruption Bureau daily after her release. Mr. Dharmadhikari submitted that she has been attending the Office of Anti-corruption Bureau everyday and has merely been returning back after signing the register. But on all these visits, not a single question has been asked to her and that is obviously because there is nothing further to be asked to her and even to the applicant, since entire interrogation and investigation has been completed but for filing of the charge-sheet in the Court. He then submitted that the Bureau investigated and in the reply, it is stated that CPU and hard disk, which were allegedly removed, are required to be recovered. But then, for that custody of the applicant is not required, since the applicant is ready to move out of Nagpur and reside elsewhere if there is any apprehension with the Bureau about the applicant tampering with the evidence or investigation in that behalf. He then submitted that there is no evidence against the applicant, whatsoever, and the figure of Rs. 414 crores arrived at by the Bureau as disproportionate assets is nothing but a figment of imagination. He, therefore, submitted that there is no reason why the applicant should be detained in jail and his liberty should be jeopardized any further.

06. In contrast, the learned Addl. Public Prosecutor submitted that there is a prima facie case made out against the applicant and there is voluminous evidence against him. Inviting my attention to the reply, the learned APP submitted that there are several salient features mentioned in the reply which show that the detention of the applicant is necessary for the purpose of carrying out entire investigation as mentioned therein. Learned APP then submitted that number of statements of the terminated employees etc., have been recorded and the statements during investigations clearly reveal that the applicant actually extorted money from the poor people for either granting employment or during the course of employment for the alleged unpaid amounts of installments of money. Not only that, the applicant even went to the extent of terminating the services of some of the employees if such employees did not make the complete payments in lieu of getting the employment from the society of the applicant. Learned

APP, therefore, submitted that the applicant actually for so many years exploited the employees and, thus, committed severe injustice to the poor people for enriching himself. The statements of the witnesses also show the huge properties amassed by the applicant who is a Public Servant. Not only that he also indulged in siphoning off the govt. grants in respect of the Food Supply Scheme of the Govt., to the school children by establishing his two firms, namely Garima Caterers and Garima Traders. Garima Caterers supplied the food as per the Govt., Food Scheme, while Garima Traders supplied computers and maintenance thereof. According to him, both these Firms are run by the applicant and his family members and, thus, huge Govt., money has also been diverted, resulting into misappropriation of Govt. funds. Learned APP, therefore, submitted that the applicant does not deserve any sympathy and since investigation is in progress and charge-sheet has not yet been filed and even thereafter looking to the seriousness of the offences committed by him, the application deserves to be rejected.

07. In reply, learned Sr. Adv. Mr. Dharmadhikari for the applicant submitted that the trial would go on after the charge-sheet is filed. But then, looking to the ultimate punishment provided in law, the applicant cannot be continued to be detained in jail and bail is the rule rather than jail and, therefore, the applicant should be released on bail and he is ready to abide by any conditions as would be imposed by this Court.

08. I have heard learned counsel for the rival parties at length. I have perused the entire record including the Case Diary and the police statements. I have perused the impugned order made by the learned Trial Judge rejecting the application for grant of bail. The following are the relevant observations made by the learned Trial Judge while passing the impugned order which I quote:-

> "9. ....However, in the present matter, the investigation is going on. The thorough investigation is required considering the alleged various transactions made by the applicant. He appears to be the main person managing the affairs of the said educational society. The investigation is concerning the said educational society and, therefore, if he is is released on bail, there is every possibility of his interference in the further investigation. It is true that accused No.2 is released on bail, who is the wife of the present applicant. However, considering the fact that the present applicant is shown as the main accused and the initial offence was registered against him and other relevant aspects, she was released on bail. Therefore, the present applicant cannot claim bail on the ground of parity. Considering these facts and as the investigation is in progress and involvement of huge moveable, immovable alleged disproportionate assets and other transactions, I am not satisfied to release the applicant on bail. ....."

09. The fact that the applicant and his wife both are Headmaster and Headmistress respectively of the institutions run by themselves speaks for itself. That apart, the applicant was arrested on 12th November, 2015 after his surrender before the Court pursuant to the order made by the Apex Court. The prosecution has in its reply given several details and rather the salient features as to the stage of investigation and as to how the investigation is not yet complete. It would be appropriate to quote the following from the reply filed by the prosecution:-

> "<u>Investigation is going on and is in progress on following points:</u>
>
> 16(1). Deepak Bajaj demanded amount for sanction approval to temporary Teachers of three granted School which are running under Sindhu Education Society, Jaripatka, Nagpur. Statement of 23 Teachers remaining regarding the same, if the accused released on bail, accused may pressurize or threaten them which will seriously hamper the investigation.
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> 16(2). Salary :- Statements were recorded of 20 Teachers and Clerk of granted School Mahatma Gandhi English Primary School and Kinder garden Shishu Vihar which are running under Sindhu Education Society, Jaripatka, Nagpur. They stated in their statement that on dated 1st or 2nd of every month clerk asked then to sign on salary register along with revenue stamps in which amount of salary was mentioned. But on dated 10 of every months Mr.Amit Masand was used to give then salary in closed envelop. Statements of remaining teachers of C.B.S.C. School and Junior College is yet to be recorded, who again may

pressurize/threaten to affect the investigation badly.

16(3). illegally Collection of various fees from student for granted School as following

1. Exam fee- 400/-
2. Computer fee 500/-
3. Security fee 90/-
4. I Card fee 45/-
5. Cancetion fee 15/-
6. Cycle Stand fee 300/-
7. Xerox fee 500/-
8. Dance (Single) 50/-
9. Dance Graup 200/-
10. Singing (Single) 10/-
11. Singing duet 20/- annual sports competition fee
12. Slow cycle race 10/-
13. Running 10/-
14. Three leged race 10/-
15. Sag race 10/-
16. Short put 10/-
17. Disc throw 10/-
18. Jovelien throw 10/-
19. Musical Chair 10/-
20. Memory Test 10/-
21. Drawing Competition 10/-
22. Fees collected from students 90/-
23. Poor fund 2/- to 10/-

24. School Uniform fee etc. collected from students. Statements of school students and their parents have to be recorded regarding the same.

16(4). Mid-day Meal Scheme :-

It is reveals that during 2013 to 2015, Mid-day Meal Scheme in three granted school of Sindhu Education Society, accused Shri Dipak Bajaj and Smt.Veena Bajaj were misappropriated of 19,75,331/- Rs. by preparing bogus bills in the name of Garima Caters, Jaripatka . Statements of Important witnesses are yet to be recorded regarding the same**,** if the accused released on bail, the available documentary evidences may destroy/ tamper.

16(5)Garima Multy-trade private ltd.

In 2013 accused Shri Dipak Bajaj and Smt.Veena Bajaj were made film named "Chehara the unknown Mask" under the banner of Garima Multy-trade private ltd by spending amount of Rs.3,50,00,000/- therefore Statements of the artists and all related persons of above films are yet to be recorded, if he released on bail, possibility of tampering of documentary evidences by him cannot be ruled out.

16(6).Danish Digital Photo Lab :-

During 2001 to 2004 accused Shri Dipak Bajaj was running business of Danish Digital Photo Lab which was close in 2004 that` s why instrument of Danish Digital Photo Lab where sold to Hira Photo Lab Nagpur. Statements of proprietor of Hira Photo Lab and relevant witnesses are yet to be recorded, if the accused released on bail, tampering of the documentary evidences cannot be ruled out.

16(7). Bank Locker :-

Smt.Veena Bajaj was stated that they having Bank Locker No.73 and 74 in Oriental Bank of Commerce Branch of Jaripatka, Nagpur as well as Bank Locker No.302 in State Bank India, Branch of Panchpowli, Nagpur. During the Police Custody of accused Dipak

Bajaj above mentioned three bank lockers were opened in the presence of panchas wherein 2.5 kg. Gold ornaments were found among one of the bank lockers. In that ornaments it is probable that one ornament is made of platinum. Valuation of that ornament will have to done by experts. According to our information there is more 15 lockers in the name of Dipak Bajaj and his family members. Hence investigation regarding such lockers is going on. If the accused released on bail, he may operate undisclosed bank lockers. Hence the evidences will be destroyed.

16(8-A) The Investigating Officer has recorded a statement Shri Konge who is working as a Supervisor in the said School who has specifically stated that, on 10.11.2015 the applicant Dipak Bajaj has directed him to give and register of minutes of Shikshak Palak Sangh 2015 and on 11.11.2015 the applicant has taken said three register from him, thereafter, on next day i.e. on 12.11.2015 applicant was surrendered before Police authority as such the applicant is taking, collecting such type of evidence from the witnesses by pressurizing them as well as tampering with the prosecution evidence. Therefore, the investigation is also going on.

16(9). Computer fee :-

Under the Sindhu Education Society, granted School 1. Mahatma Gandhi centennial Sindhu High School, Jaripatka, Nagpur 2. Omkarlal Sindhu High School, 3. Mahatma Gandhi Hindi Primary School (Non Grented) , Jaripatka, Nagpur. 4. Mahatma Gandhi English Primary School, 5. Khubchand Bajaj Central Public School, accused Dipak Bajaj collected computer fee from the students of above mentioned school by giving them receipt. During the investigation clerk smt.Disha Motwani, Mahatma Gandhi centennial Sindhu High School, Jaripatka, Nagpur stated in her statement that accused Mr.Dipak Bajaj and Smt.Veena Bajaj respectively secretary and president of Sindhu Education Society and as per direction of the applicant 10% fees deposited in the account of society and 90% amount diverted in Garmima Company and Hyman Company of applicant, hence, the investigation is on.

16(10). During the Police Custody remand Accused Dipak Bajaj, did not disclosed regarding following points hence investigation is going on it.

1. CPU and Hard disk in which financial transaction was done by him as well as taken away it and also not given said CPU and Hard disk to Investigating Officer. If the accused released on bail he may destroy this important piece of evidence.

2. 26 paper chits regarding loan amount of Rs. 3,97,16,27,297/-given to other persons that applicant did not given detail and also not given details of above loan and name of person hence investigation is going on this aspect.

16(11). Investigation is going on expenditure of Student Stores.

16(12). Investigation is going on expenditure of 24,52,980/- Rs. on air and rail journey by applicant & Bajaj family

16(13). Investigation is going on expenditure of 1 core Rs. on marriage ceremony of Dimpi Dipak Bajaj by applicant.

16(14). Applicant is a working as Headmaster And Secretary of the said institution therefore he is not entitled to open any company, proprietorship firm and other as well as con not do any business being partner, director and proprietor company being public servant. In spite of it applicant is a director, partner and proprietor of number of company and conducted a business therefore offences u/s 168 of Indian Penal Code is added and on this point investigation is going on to find out/trace out the companies, firm which is opened and owork by the applicant.

16(15) That, the applicant has not given the original copy of the immovable property during his remarks as well as also not given detailed information about the property. This is purchased in the name of himself or in the name of his relatives, friends and others as per the information the applicant is having number of immovable property. On this aspect the applicant was not cooperated. Therefore, the investigation is going on to ascertain all the information material evidence on this aspect.

As such, as per above para 16(1) to 16(15) the investigation is going on as well as during the investigation, the applicant has not cooperated and also not given satisfactory explanation on the contrary the applicant was only denied and given evasive reply by suppressive and correct fact as well as also not produce or given copy of all the relevant document related to all above allegation against him. During all the search the property seized on the relevant date i.e. on 24.9.2015 and 295.9.2015 and 29.9.2015 hence, the Pananchanama has prepared by giving copy of it to the accused and sometime the letter has also given to the applicant to give explanation about the dis-proportionate property found and seized from him as per the Panchanama. But till today the applicant has not given any written explanation to the Investigating Officer. On the contrary the applicant has to refuse to give explanation. It is, therefore, on the above aspects, points the detail investigation is in progress and going on to ascertain, to find out all the details, material evidence, documents, related other persons with the applicant while commission of offence and also Investigating Officer has to record the statement of number of witnesses in above all aspects.

17. That, the applicant is a Secretary of the Sindhu Education Society and working as Head Master in Mahatma Gandhi Sindhi Centinal High School and accused No. 2 Veena, Head Mistress, Onkarlal Sindhu High School-both said school are Government aided School and applicant and accused No. 2 are getting salary from Government through Education Officer (Secondary) Zilla Parishad, Nagpur. That there is 07 schools of the said Management/Institution out of which four schools are granted/Government aided school including the school of the accused. Coupled with applicant is getting remuneration/honorarium rupees 20 thousand per month being a Secondary of Sindhu Education Society and said society/School is getting salary/and non salary grants and others. Therefore, the applicant is comes under the ambits of public servant as

per the prevention of Corruption Act and Indian Penal Code.”

10. I have carefully perused the above objections raised by the investigating agency and I am satisfied that the investigation is not yet complete and it would be risky to release the applicant on bail; lest he would exercise influence even if he is asked to stay outside Nagpur. The investigations show that the applicant has amassed huge wealth and the same is accumulated or amassed by exploiting the poor and the needy for giving them employment. Not only that those who did not pay him were terminated from service and some of them have lost amounts in few lakhs because they did not make payment of the balance amount. Thus, even by paying some amount, they have been out of employment.

11. In so far as the Firms – Garima Caterers and Garim Traders are concerned, the statement of Smt. Leela Prakash Jambhulkar was recorded which clearly shows that she was paid Rs. 300/- per day and the food supply as per the Govt. Scheme, for which expenditure is fully reimbursed by the Govt., was being made by Garima Caterers, of which full control and receipt of money is in the hands of the applicant and his wife. Similar is the case with Garima Traders where entire money recovered from the students for computer operations went to this Firm for maintenance etc., with a clear cut conflict of interest the applicant.

12. That, the Bureau has prima facie stated the disproportionate assets in the sum of Rs. 414 crores and there is hardly any explanation from the applicant as to how such a wealth could be amassed while the applicant is working as a Headmaster of the school. Thus, the corruption has crossed all limits and has crushed the morality.

13. Be that as it may, the applicant certainly does not deserve to be released on bail and, in fact, his place is in jail, at least till the trial is over. The applicant may apply for expeditious trial to the Special Judge. The Special Judge may consider his request for expeditious trial and completion thereof. Hence the following order:-

O R D E R

[a] Criminal Application [BA] No. 939 of 2015 is rejected.

[b] The Special Judge to take up the case for trial on priority basis after completion of investigation and filing of a charge-sheet.

Judge

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