HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No.2092 of 2015

ORDER:

The petitioner, who is accused No.10, filed the present application under Sections 437 and 439 seeking enlargement on bail in C.C.No.20 of 2008 on the file of the III Additional Special Judge for CBI Cases, Hyderabad. A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 120-B, 420, 468 and 471 read with 468 IPC, Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 and Section 12 (1) (b) and 12 (2) of the Passport Act, 1967.

The allegations in the charge sheet are as under:

The Central Bureau of Investigation, Hyderabad (for short "CBI) laid a charge sheet against ten accused before the Court of Special Judge for CBI Cases, Hyderabad for the above mentioned offences. While filing charge sheet, the CBI showed accused Nos.1 to 3, 6, 9 and 10 as absconding. The said case was taken on file as C.C.No.3 of 2005 and NBWs came to be issued against the above mentioned accused. Later the case against accused Nos.1, 2, 6 and 10 was split up and the same came to be numbered as C.C.No.3 of 2006 against Abu Salem and three others including the petitioner. After tracing Abu Salem, the case was further split up against accused Nos.2, 6 and 10, which came to be numbered as C.C.No.20 of 2008.

The case of the prosecution in gist is as under:

On 20.09.2012 the C.B.I. Hyderabad, registered a case in R.C.No.34 (A) 2002-CBI, Hyderabad, on the basis of source information that Abu Salem accused No.1 impersonating himself as Ramil Kamil Malik, Smt. Rubeena (accused No.2) as Ms. Neha Asif Zafari and Smt. Monika Bedi (accused No.3) as Ms. Sana Malik Kamal obtained passports from Regional Passport Office, Hyderabad, during the year 2001, by furnishing false documents. The act was done in connivance with G.Srinivas (accused No.4), pass port clerk, O/o. the Superintendent of Police, Kurnool District and S.A. Sattar (accused No.5), Head Constable, Special Branch, Kurnool. Accused Nos.4 and 5 are alleged to have abused their official positions as public servants by submitting false verification reports and that C.A.Hameed (accused No.6) Passport Agent, Kurnool also conspired with the accused in submission of fake documents for obtaining passports. Basing on the above fake documents passports came to be issued in favour of accused Nos.1 to 3. The averments in the charge sheet further discloses that a case in Crime No.103 of 2002 of Kurnool I Town Police Station, was also registered for the offences punishable under Sections 417, 420 and 120-B IPC and Section 12 of the Passports Act, 1967 against accused Nos.4 to 7. Investigation revealed that one Faizan Ahmed Sultan (petitioner herein), who is the owner of M/s. Faizan Enterprises, Mumbai, involved in recruiting people for jobs, gave 10 passport size photographs each of accused Nos.1 to 3 to accused No.9 and asked him to obtain three passports from Kurnool under fake names, date of birth etc., It is stated that accused No.6, who is an unauthorized passport agent, collected all the particulars from accused No.9 and with the connivance of accused No.7, who is Mandal Revenue Inspector, obtained three false residential certificates in the names of Ramil Kamil Malik, Neha Asif Jafari and Sana Malik Kmal for accused Nos.1 to 3, and then handed over the same to accused No.6. The act of forgery and creation of these documents stands revealed through the hand writing expert. Accused No.6 also obtained fake transfer certificates alleged to have been issued by ZPP High School, Peddapadu, Kurnool District, in the name of Ramil Kamil Malik and two mark sheets in the name of Neha Asif Jafari and Sana Malik Kamal purported to have been issued from Hanuman Higher Elementary School, Kurnool as proof of date of birth.

One B.Abdul Gafar, working as clerk in Taj Mahal Bidi Company, Kurnool, filled the three passport applications of accused Nos.1 to 3 at the instance of accused No.6. After receipt of these three passport applications in Regional Passport Officer, Hyderabad, the personal particulars forms were sent to the office of Superintendent of Police, Kurnool, for verification of the antecedents, which were received in the office of Superintendent of Police, Kurnool on 31.05.2001 and 08.06.2001.

The averments in the charge sheet show that accused No.4, who was working as an Assistant in the Special Branch, handed over the personal particular forms of accused Nos.1 to 3 to accused No.5, who inturn submitted field verification reports without conducting any verification. Accused No.5 also enclosed the statements of six fictitious persons as alleged neighbours in support of the character and conduct of accused Nos.1 to 3. On the basis of these reports, three passports were dispatched by the speed post to the respective addresses mentioned in the passport applications. These speed posts were entrusted to Babu Miah, Postman of Beat No.2 for delivery. Accused No.8, Postman, Head Post office, Kurnool, approached Babu Miah, verified the delivery slip list and collected the two speed post articles by giving his acknowledgment on the delivery slip list stating him that he knew the addressee and would personally deliver the said articles while going home. On 27.08.2001 another speed post article containing the passport of Ramil Kamil Malik (accused No.1) was entrusted to accused No.8 for delivery and he delivered the same to one Aslam Khan, Cashier of Hotel Elite, Kurnool, where accused No.6 was working. Thus all the accused conspired together, obtained passports by submitting false documents and by making false disclosures have committed the above mentioned offences.

Learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true, the role attributed to the petitioner in the commission of offence cannot be said to be grave or serious in nature. He further submits that since the principal accused, who faced trial were ultimately sentenced to imprisonment of only six months by the Apex Court, continuation of detention of the petitioner in jail, who was already served more than four months is un-warranted.

On the other hand, the learned Special Standing Counsel for CBI Cases, opposed the application contending that merely because the other accused in the case were sentenced to imprisonment of only six months, does not by itself entitle the petitioner for bail. According to him, the Apex Court sentenced the accused having regard to the nature of allegations made against them and the same principle cannot be extended to other accused. He further submits that if the petitioner is released on bail there is every likelihood of he evading the process of law, since the petitioner who is resident of Mumbai is having contacts with under world and on an earlier occasion has evaded the process of law. Hence, he submits that is not desirable to release him on bail.

A perusal of the averments made in the charge sheet goes to show that the petitioner herein, who was involved in recruiting people abroad gave 10 passport photographs of accused Nos.1 to 3 to accused No.9, who inturn obtained three passports from Kurnool with the help of accused Nos.5 to 7. Therefore, the process of obtaining passports basing on fake and fictitious documents started from the petitioner, who is a resident of Mumbai. The accused would not have ventured to do this job, but for his connection with the principal accused of which accused Nos.1 is an underworld gangster and convicted in this case by the Apex Court.

The material on record further discloses that initially the case against accused Nos.1 to 3 and others was split up vide C.C.No.3 of 2006. After tracing of accused No.1, C.C.No.3 of 2006 was further split up against accused Nos.2, 6 and 10 which came to be numbered as C.C.No.20 of 2008. The record reveals that the petitioner herein was traced in the year 2015 by National Investigating Agency, New Delhi in R.C.No.6 of 2012 and on P.T.warrant he was produced before the Special Judge for CBI Cases, Hyderabad on 29.11.2014. The counter affidavit filed by the C.B.I. show that immediately after registering of the crime, the petitioner left the Country and after a gap of 12 years, the National Investigating Agency traced the petitioner and arrested him. Therefore, the apprehension of the prosecution that there is every likelihood of accused evading the process of law if he released on bail cannot be brushed aside.

As stated earlier, merely because the other convicted accused were sentenced to an imprisonment of six months by the Apex Court, does not by itself entitle the petitioner to bail. It is to be noted that sentencing the accused to imprisonment is discretion of the Court and there cannot be any hard and fast rule that the petitioner also should be sentenced to imprisonment of six months since co-accused in the said crime were imprisoned to six months. It all depends upon the circumstances of each case and the gravity of the offence with which the accused is charged. Having regard to the circumstances stated above, I am not inclined to grant bail to the petitioner.

Accordingly, the Criminal Petition is dismissed. However, it is made clear that the observations made in this order are only for the purpose of deciding the case on hand and the same shall not come in the way of the trial Court in dealing with the case in future. It is needless to mention that the trial Court shall take all possible steps in getting the matter disposed of at the earliest.

C. PRAVEEN KUMAR, J

30.03.2015

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