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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-26862 of 2015 (O/M)
Date of decision : 31.8.2015

Surjit Singh ..... Petitioner

Versus

Central Bureau of Investigation, Chandigarh ...... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Joginder Pal Patra, Advocate, for,
Mr. Jagjit Singh Sarao, Advocate, for the petitioner.

Mr. Sukhdeep S. Sandhu, Senior Standing Counsel, for respondent-CBI.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

This is second application filed by the petitioner for grant of regular bail in FIR No. RCCHG2011A0023 dated 30.11.2011, registered under Sections 420/465/467/468/471/477-A/120-B/109 IPC at Police Station CBI/ACB/Chandigarh. His earlier application for grant of regular bail was dismissed by this Court, vide order dated 23.12.2014, passed in CRM No. M-30984 of 2014.

Briefly stated, a criminal case was registered against the petitioner for forgery and misappropriation of bank money, amounting to Rs. 2,85,19,099/-. In this regard, FIR No. 80 dated 5.5.2009 was registered under Sections 420/465/467/468/471/477-A/120-B/109 IPC at Police Station City Kotkapura, District Faridkot, at the instance of Shri J.S. Kochher, Branch Manager, Punjab and Sind Bank, Kotkapura Branch, District Faridkot (in short 'the Bank'). Thereafter on 2.6.2009, the petitioner surrendered before the trial Court in case pertaining to FIR No. 80 dated 5.5.2009 and he was remanded to police custody for five days and thereafter sent to judicial custody. Later on 25.9.2009, the petitioner was enlarged on regular bail under Section 167(2) Cr.P.C. after remaining in custody for 3 months and 23 days. A report under Section 173 Cr.P.C. was presented in Court. The charges were framed against the accused/petitioner from 22.10.2001 to 6.4.2009. During the pendency of the trial, two different FIR Nos. 32 and 33 dated 8.2.2011 were got registered against the accused/petitioner by the said Bank on the allegations that Jagdev Singh son of Inder Singh was allowed to avail cash credit limit of Rs. 2 lacs on 6.7.2005 against the mortgage of land measuring 27 kanals 14 marlas, situated at village Behbal Khurd. Later on, Jagdev Singh disclosed to the said Bank that he owes nothing to the said Bank and that the land has been redeemed by the said Patwari. The anticipatory bail in the said case was declined by the Court. The petitioner has challenged the legality of the subsequent FIRs i.e. FIR Nos. 32 and 33 dated 8.2.2011 registered under Sections 420/465/467/468/471/477-A/120-B/409 IPC at Police Station City Kotkapura, District Faridkot, in this Court by filing CRM No. 8791-M of 2011, but the same was dismissed, vide order dated 23.8.2012 (Annexure-P-6). In the meantime, the petitioner was declared a proclaimed offender as he became absent before the trial Court in case pertaining to FIR No. 80 dated 5.5.2009 (Annexure-P-1).

It is further stated that, the said Bank filed CRM No. M-34998 of 2009, seeking direction to transfer the investigation pertaining to FIR No. 80 dated 5.5.2009, registered under Sections 420/465/467/468/471/120-B/109 IPC at Police Station City Kotkapura, District Faridkot, to the CBI. This Court, vide order dated 21.9.2011 (Annexure-P-7), transferred the investigation to the CBI, and the CBI was directed to complete the investigation within six months from the date of taking over the investigation. It is stated that now the petitioner was arrested on 12.2.2014 and he is entitled to regular bail.

I have heard learned counsel for the petitioner, learned senior standing counsel for CBI and have also carefully gone through the file.

On the last date, the CBI was directed to verify the certificate (Annexure-P-12), filed by Smt. Kulbir Pal Kaur, wife of the petitioner, regarding her domicile, which was issued by the Tehsildar. After the verification, the CBI has submitted its report alongwith other documents, which shows that the domicile certificate was issued on the affidavits filed by the Sarpanch, Municipal Councillor and the self attested affidavits of the wife of the petitioner and his (petitioner's) daughter. The attested photocopies of aadhar card, driving licence, photo voter identity card and ration card bearing the previous address i.e. Street No. 2, Green Avenue, Faridkot, were also attached with the verification report. The certificate of domicile has been issued only for the purpose of admission in the educational institution (technical/medical institutions only). In the affidavit, it is stated by Kulbir Pal Kaur, wife of the petitioner that earlier she was resident of Green Avenue, Street No. 2, Faridkot, Backside Dental College, and now residing at Kakkar Colony, Backside Matharu Workshop, Ferozepur Road, Tehsil and District Faridkot. It has been stated that while disposing of the previous application of the petitioner moved under Section 167 (2) of Criminal Procedure Code on 23.12.2014, this Court had observed that the said house in Green Avenue, Faridkot, was admittedly sold and that the petitioner had tried to mis-state certain facts regarding his residence before this Court, which were taken into consideration to dismiss the application. It was further noticed that the petitioner had become a proclaimed offender. It has been further contended on behalf of CBI that even now the domicile certificate was obtained on the basis of wrong facts by Smt. Kulbir Pal Kaur, wife of the petitioner.

The perusal of the facts and circumstances show that the petitioner was initially arrested on 8.2.2011. In the meanwhile, the petitioner was declared a proclaimed offender and thereafter was re-arrested by the Punjab Police on 29.1.2014. The CBI arrested the petitioner on 12.2.2014. It is also not a denying fact that so far challan has not been presented in the Court. It is also further brought to the notice of this Court that the offence under the Prevention of Corruption Act, 1988, has also been added. It is stated that there were 822 instances of fraud, spread over 8 years. According to the investigating officer, the embezzlement was done by 10 persons, which is to the tune of Rs. 4 to 5 crores. Therefore, the CBI took time to investigate the case. It is further stated that hopefully within four months, the challan will be presented. It comes out that now the petitioner is in jail for the last more than 1½ years without the challan being presented by CBI against him.

Now, the question would arise whether on account of mis-statement of certain facts regarding the address, can the petitioner be kept behind bars for indefinite period ?

I find that some balance has to be struck between personal liberty of the petitioner and the claim of the CBI. The petitioner cannot be kept behind bars for indefinite period without trial. Even under the Prevention of Corruption Act, 1988, he can be sentenced to imprisonment varying between three to five years as the maximum sentence of the offence is seven years. It being so, I am of the view that on account of non-presentation of challan for more than 1½ years and keeping in view the custody period already undergone, even before the presentation of challan, the petitioner is entitled to regular bail.

Now, the further question would arise about apprehension of CBI that the petitioner may again abscond. The apprehension can be met by imposing strict conditions.

In view of the matter, the petitioner is ordered to be released on furnishing personal bonds in the sum of Rs. 25,00,000/- with one surety in the like amount to the satisfaction of the learned Chief Judicial Magistrate, Faridkot, which will be of immovable property, subject to the following conditions :-

(i) that petitioner will reside at Kakkar Colony house i.e. house of his daughter at Faridkot during trial ;

(ii) that petitioner will report on every Monday to SHO, in whose jurisdiction Kakkar Colony, Faridkot, falls and the SHO shall further send the report to the CBI ;

(iii) that petitioner will not leave the country without the prior permission of the trial Court ;

(iv) that petitioner will not give any inducement, threat and promise to any witness and will not directly or indirectly contact any witness acquainted with the facts of the case ;

(v) that petitioner will also surrender his passport, if any, before the CBI after his release. If he does not have the passport, he will not be entitled to any passport till the conclusion of the trial ;

(vi) that the CBI will also inform all the ports and airports, directing them not to allow the petitioner to leave the country.

(KULDIP SINGH)
JUDGE

31.8.2015
sjks