

COURT OF CHHATTISGARH AT BILASPUR

M.Cr.C. (A) No. 1357 /2015

Mahendra Kumar Mishra, S/o. Shri S. K. Mishra, Aged About 48 Years,
R/o. Rohini Vihar, Police Station- Civil Lines, Tahsil & District Bilaspur
(Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).

---- Applicant

Versus

State Of Chhattisgarh, Through the Station House Officer, Police Station-
Kotwali, Korba, District Korba (Chhattisgarh).

---- Respondent

For Applicant : Mr. Prashant Jayaswal, Senior Advocate with
Mr. Himanshu Sinha, Advocate

For Respondent : Mr. Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER

02/03/2016

1. Apprehending arrest in connection with Crime No.386/2015 registered at Police Station- Kotwali, Korba, District Korba (C.G.) for the offence punishable under Section 467, 468 & 471 of the Indian Penal Code, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.
2. This is the second bail application. The earlier bail application was dismissed on 28.10.2015. Against that rejection order, the applicant preferred a petition(s) for Special Leave to Appeal (Crl.) No. 9828 of 2015 before the Hon'ble Supreme Court wherein their Lordship have on the submission made by the counsel for the applicant allowed withdrawal of the special leave petition to move this bail application before this Court again. Therefore, the instant bail application.

3. Mr. Prashant Jayaswal, learned senior counsel assisted by Mr. Himanshu Sinha, learned counsel for the applicant would submit that as per the law laid down in *Kalyan Chandra Sarkar v. Rajesh Ranjan & Another*¹ there is a change of circumstances as on earlier occasion certain documents could not be placed before this Court. It is submitted that certain documents were obtained under Right to Information (*for short "RTI"*) and thereafter the bail application is again moved. The counsel would submit that the successive bail application on the fresh grounds can be entertained. It is further submitted that the FIR was lodged by the Superintending Engineer, Public Health Engineering Department and the applicant was initially suspended on the ground that the applicant while posted as Executive Engineer in Public Health Engineering Division at Korba had prepared a forged Notice Inviting Tender (*for short "NIT"*) for construction of water harvesting at different sub-divisions and shown it to be published and attached the said NIT on record. The allegations are that the said notice was not actually published in the daily newspaper which should have been done through the Office of Public Relation, office of State. Subsequently, it is alleged that a false complaint was made so an enquiry was made and thereafter the FIR was lodged.
4. The counsel would submit that all false allegations were made against the applicant, consequently the State Government after evaluating its own document has revoked the suspension of the applicant by order dated 17.08.2015, which is placed as Annexure A-8. He further went through the FIR and would submit that the main gist of allegation is that the NIT letter dated 08.01.2015 was not received at the Advertisement Section in the Office of Public Relation and was not issued under the G No.16605 and therefore

¹ 2004 (2) C.G.L.J. 299

the NIT which was though stated to be published was actually not published. He referred to the letter dated 08.01.2015 filed as Annexure A-10 and would submit that the reference of letter dated 08.01.2015 is 84, which was issued by this applicant. The same was carried through one Runner Boy, which was delivered in the office of the Director, Public Relation, which is authorised to make publication of the NIT for State Government. It is contended that the letter along with NIT were handed over to the Publication Department of the State, which is evident from Annexure A-11 at page 104 wherein letter No.84 was said to have been received by the Runner Boy and said Runner Boy had also claimed his T.A. D.A. as per Annexure A-12 which would go to show that the said notices were handed over for publication to be made in the daily newspaper at the office of Public Relations.

5. It is further contended that as per Annexure A-5 a communication interse between Government Department obtained under the RTI reveals that the alleged advertisement number is referred as G 16605 and Memo No.084 dated 08.01.2015. The said communication is addressed by the Directorate of Public Relations to the Executive Engineer, Public Health Engineering, Division Korba, wherein this fact of publication of tender is fortified. The counsel also referred to the publication made i.e. paper publication, which is filed as Annexure A-4, which purports that the publication of NIT was made. He would further submit that the publication having been made, the Tender Evaluation Committee as per Annexure A-13 evaluated the respective tender and thereafter the tender was allotted. He therefore submits that on the earlier occasion, the dismissal was on the ground that no NIT was actually published in the newspaper which is negated by the document which is supplied by the State itself which are obtained under the

RTI. Therefore, the correct statement of facts were not brought before the Court to evaluate the case of the applicant and, as such, the applicant may be enlarged on bail.

6. Per contra, the learned State counsel opposes the prayer for grant of anticipatory bail and would submit that the Superintending Engineer, Public Health Engineering by a letter dated 08.07.2015 enquired from the Directorate Public Relations with respect to number of Tender i.e. G No.16605 and particulars of publication of the tender under Tender No.82 and Letter reference No.84. He would submit that as against such query by a letter dated 30.07.2015, the Directorate Public Relations replied to Superintending Engineer, Public Health Engineering which would reveal that no notice was actually received at the office of Public Relations and reference no. G No.16605 was with respect to one Veterinary Department Tender and not that of the Public Health Engineering of Korba. He further submits that according to the statement of the Editor of Paper Sunil Kumar, no such publication was made and the Runner Boy Mahesh Ram Yadav has also contended that the envelope which was bearing No.84 was taken back by this applicant before it was delivered. Therefore actually no publication was made and the applicant himself has prepared the document and inserted in the official document and thereafter has obtained the same under RTI and on that basis is claiming the relief before this Court.
7. Heard learned counsel appearing for the parties, perused the case diary and re-examined the documents filed by the applicant along-with the documents which are the part of the record of the case diary.
8. The primary projection by the applicant is that the NIT for the tender was sent to the Public Relation Officer of the State Government

from Korba to Raipur, which was duly received by the Public Relation Department and thereafter publication was made in the newspaper. The applicant has placed his reliance in a copy of the newspaper which is filed along-with the fresh bail application. During the argument, the applicant also shown entire full page of the paper which is filed as Annexure A-4. Annexure A-4 which is a paper filed by the applicant is of Chhattisgarh, Raipur, dated 15th January 2015.

9. Perusal of the case diary also contains a paper, which is a complete paper of Chhattisgarh, Raipur dated 15th January 2015. This is an original complete paper of Chhattisgarh, Raipur. The said original paper do not contain such advertisement. The statement of the Editor of such newspaper is also on record, which is of Sunil Kumar. He has stated that the NIT No.82 dated 08.01.2015 was not published on 15.01.2015 in the paper and along-with the statement, the copy of entire paper of 15.01.2015 was handed over to the police. He has further stated that he has not received any such NIT for publication in the newspaper from any Government Department.
10. The case dairy also contains a statement of Mahesh Ram Yadav, who was a Runner Boy, who has stated that he had not delivered the letter reference No.84 at Public Relation Office at Raipur. The statement shows that though he had received the envelope bearing No.84 along-with two other envelope subsequently he was called by the applicant and the envelope No.84 was taken back by the applicant. Therefore, the remaining two envelopes were delivered at Public Relation Office at Raipur. The Editor of the Chhattisgarh newspaper has further given it in writing that no such publication was made of NIT No.82 from the Public Health Department, Korba on 08.01.2015. Similar letter from the Public Relation Office addressed to Public Health & Engineering would show that G

No.16605 dated 13.01.2015 was not issued by the Public Health & Engineering, Korba but G 16605 was actually issued by the Joint Director, Veterinary, whereby certain tenders were issued.

11. Reading the documents, statement of Editor of the newspaper along-with the statement of the Runner Boy and the internal communication in between the Public Relation Office, Raipur and Public Health & Engineering, Korba letter dated 30.07.2015, prima facie would show that no such publication of tender was made. It appears that the same documents were inserted in the file and thereafter applicant has obtained the document under RTI. Prima facie it appears that the document Annexure A-4, which is a publication of the NIT in a paper was not published in the paper fortified by the Editor/ Manager of paper. The applicant however has filed a paper publication on record along with his bail application. In these circumstances, where from the applicant has obtained copy of paper i.e. Annexure A-4 becomes doubtful. Under these circumstances, taking into totality of the case, evaluating the statement of Runner Boy and Editor of paper and further internal communications between Public Health & Engineering, Korba and Public Relation Officer, which are part of the case diary are completely contradictory to the document produced by the applicant along with his bail application. Considering the entire documents, the prosecution holds the sway in it's favour.
12. In a result, I am not inclined to allow this application, as the subsequent prayer for bail on the basis of the papers appears to be prima facie concocted. Therefore, the application deserves to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge