

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 397 of 2016

Devendra Singh Kushwah, S/o. Shri Prahlad Singh Kushwah, Aged About 66 Years, Assistant Manager (Technical) On Contract, Department Of Food & Civil Supplies, R/o. House No. 109, Sundar Nagar, Raipur, Civil & Revenue Distt. Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through Anti Corruption Bureau, Raipur, Chhattisgarh.

---- Respondent

For Applicant : Mr. B.P.Sharma with Mr. Vivek Chopda, Advocates
For Respondent : Mr. Raj Kumar Gupta, Dy. A.G. with Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. ORDER

10.02.2016

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicant, who has been arrested in connection with Crime No.9/2015 registered at Police Station– ACB, Raipur, District- Raipur (C.G.) for the offence punishable under Section 109, 120-B, 409 & 420 of Indian Penal Code and Section 13(1) (d) r/w. 13(2), 11 of the Prevention of Corruption Act, 1988.
2. The first bail application is dismissed as withdrawn on 15.12.2015 in M.Cr.C. No.6943 of 2015.
3. Case of the prosecution, in brief, is that the applicant, who was working under Sandeep Agrawal in the Nagrik Aapurti Nigam was delegated with the duty to give a certificate of the quality in respect of paddy and the other food grains procured and to help one

Sandeep Agrawal in sampling process and when the various complaints came that the poor quality rice were procured by giving false certificate, the phone calls were intercepted of the officers and thereafter, the raid was conducted and different officers were arrested including the applicant and from the possession of the applicant, Rs.5,60,000/- from his house and Rs.1,22,715/- from his locker was seized. Subsequently, the rice which was subjected to test was found to be sub-standard and it is also the allegation of the prosecution that the applicant along-with other co-accused not only gave the false certificate for the paddy but also made an arm twisting method to the millers to accept the paddy which were of the sub-standard quality as otherwise they used to refuse the same which in turn would lead to financial burden for conveyance and stocking.

4. Mr. B.P. Sharma, assisted by Mr. Vivek Chopda, learned counsel for the applicant, submits that the applicant was a retired employee of Food Corporation of India and was working under Sandeep Agrawal to help him in sampling and according to the allegation of the State, the quality of rice which is permissible quantity at the time of procurement of the rice, 25% broken are accepted and at the time of delivery, 30% broken are accepted; meaning thereby the rice which were subjected to sample though were taken from the stocks not at the time of procurement but quality test was applied to that of 25%, which was meant at the time of procurement. In this aspect, the particular questions were raised in the Vidhan Sabha and the Government in its reply had contended that procurement has been made according to 25% at the time of procurement and 30% at the time of distribution in PDS. Therefore, virtually no case is made out against the applicant. He further

submits that the applicant is in jail since 20.03.2015, therefore, he may be enlarged on bail.

5. Per contra, Mr. Raj Kumar Gupta, Dy. Advocate General assisted by Mr. Anil S. Pandey, Govt. Advocate, would submit that the applicant along-with other co-accused have committed organized crime and they not only issued the false certificate of quality but they also made an arm twisting method to accept the quality rice and thereby required the rice millers to pay the amount. He further submits that the commodity was not only rice but sub-standard salt was also extended. He further went through the order passed by the co-ordinate Bench of this Court in M.Cr.C.No.3094/2015 and other connected matters decided on 16.07.2015 and would submit that the similar aspect has been considered by the co-ordinate Bench and the said plea as has been raised by the applicant has also been negated. He further referred to the statement of Arvind Singh Dhruw, Akhilesh Kumar Shrivastava, Smt. Sandhya Thakur & Mohd. Gulab and would submit that the way the offence has been committed, it amounts to organized crime; therefore, the applicant may not be enlarged on bail, as the bail of the other similarly placed co-accused have been dismissed.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. Perused the order passed by the co-ordinate Bench of this Court in M.Cr.C. No.3094 of 2015 and other connected matters. The co-ordinate Bench of this Court has dismissed the bail application of the co-accused taking into fact that Rs.3,43,96,965/- was recovered from the possession of the accused persons on a raid conducted by the Anti Corruption Bureau and not only huge unexplained money,

valuable articles and the disproportionate wealth was also recovered from the accused persons and from this applicant, an amount of Rs.5,60,000/- cash and from the locker Rs.1,22,715/- was recovered. This huge amount of cash from a retired employee who retired from F.C.I. raises considerable doubt. The basis of rejection of one of this ground was existing in rejection of bail application of the co-accused that the co-accused are in hold of unexplained huge amount.

8. Their Lordship in case of ***Subramanian Swamy v. Central Bureau of Investigation*** reported in ***(2014) 8 SCC 682***, has observed as under :

“Corruption is an enemy of nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequence.”

“Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision making power does not segregate corruption officers into two classes as they are common crime-doers and have to be tracked down by the same process of inquiry and investigation.”

9. In the instant case, while reading the statement of Arvind Singh Dhruw, Akhilesh Kumar Shrivastava, Smt. Sandhya Thakur & Mohd. Gulab would show that even the paddy and the other goods if they were of the standard quality but the quality Inspector and the

other accused when the rice was being tendered, it was being refused unless and until the money is paid at different stages from the quality Inspector to the Godown In-charge and even the Chowkidar. The witnesses who have deposed were few of the part of the organization and supplier and the applicant who is the part of organization who was working even after the retirement certainly would have a considerable hold over the organization and in case the applicant is bailed out then the position of the applicant cannot be ignored which he was holding; consequently, tampering of the evidence cannot be ruled out. The co-ordinate Bench has already dismissed the bail application of the other co-accused and in the opinion of this Court, the position of the applicant cannot be separated in the terms of corruption. Therefore, no separate privilege and entitlement can be highlighted. Accordingly, I am not inclined to release the applicant on bail.

10. Consequently, the bail application filed by the applicant under Section 439 of Cr.P.C. is rejected.

Sd/-
(Goutam Bhaduri)
Judge