IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Criminal Application (BA) No. 353 of 2017

Applicant : Deepak Khubchand Bajaj (in jail)

versus

Respondents : 1) State of Maharashtra, through Anti-Corruption Bureau, Administrative Bldg. No. 1, Civil Lines, Nagpur

2) State of Maharashtra, through Police Station Officer, Police Station, Jaripatka, Nagpur

Shri S. S. Voditel, Advocate for applicant

Shri S. J. Kadu, Addl. Public Prosecutor for respondents

Coram : S. B. Shukre, J

Dated : 7th July 2017

P. C.

1. This is an application filed by the applicant who is facing trial on the charge of committing various offences like the offences punishable

under Section 13 (1) (c) (d) (e) read with Section 13 (2) of the Prevention of Corruption Act and Sections 168, 193, 406, 409, 420, 467, 468, 471, 201 read with Sections 34 and 120-B of the Indian Penal Code.

2. The previous bail application filed by this applicant being Criminal Application (BA) No. 714 of 2016 has been rejected by this Court on merit by the order passed on 1st September 2016. Petition filed for seeking Special Leave to Appeal (Criminal) No. 7600 of 2016 against the order of this Court dated 1st September 2016 came to be dismissed by the Hon'ble Apex Court on 7.10.2016. Thereafter, this applicant moved another application before this Court being Criminal Application (BA) No. 117 of 2017. One of the grounds in that application was the deteriorating health condition of the applicant. However, the applicant withdrew that application. This Court, in its order dated 6th March 2017, granting leave to the applicant to withdraw the application, also granted liberty to move another application before the trial Court. Accordingly, the applicant moved yet another bail application before the trial Court. It was mainly on the health ground of the applicant. The trial Court rejected the application by the order passed on 24th March 2017. Below this application at Exhibit 61, it noted that proper medical treatment was being given to this applicant. Now, the applicant is before this Court in the present application.

3. I have heard Shri S. S. Voditel and Shri Shamal Kadu, learned Additional Public Prosecutor for respondent-State.

4. Shri Voditel submits that the health condition of the applicant is deteriorating and if the applicant is released on bail, he would be able to approach expert doctors of his choice and thus, could do something to ameliorate his health condition. In this regard, various orders have been passed by this Court from time to time in compliance with which this applicant has also been given appropriate medical treatment. Presently also, the applicant is being administered medical treatment and it is informed at the Bar that this treatment is being made available to the applicant as an indoor patient.

4. A detailed reply has been filed on record on affidavit by the Police Inspector, ACB, Nagpur. This reply is accompanied by various medical reports. On perusal of the reply and the medical reports, I am satisfied that the applicant is being given adequate and proper medical treatment. In fact, on this count, there is no grievance of the applicant as well and, therefore, I do not see that now the ground of this application resting on deteriorating physical condition of the applicant survives any longer. This can also be seen from the medical reports. The applicant has been diagnosed to be a patient of Type-II diabetes, Hyper-tension,

Hypotheyroidism and Gout. These are the conditions of human body which can be managed and brought under control by modern-day medical treatment/medicines. These techniques and medicines are available at the hospitals where the applicant is being administered medical treatment. The experts in these fields are also attending on the applicant. It is not the case of the applicant that medicines usually prescribed in such physical conditions are not available at Nagpur hospitals or there is paucity of expert and technical help in these hospitals. The medical reports also show that physical condition of the applicant is stable and that he is responding to the treatment. Therefore, I find no substance in the ground taken by the applicant in this regard and it is rejected accordingly.

5. On merits of the case, Shri Voditel has argued extensively. According to him, the charge made against the applicant is exaggerated and inflated figures are quoted so as to create a show that huge sums of money have been misappropriated and swindled by the applicant which, in fact, is not at all borne out from the evidence available at this stage. He submits that contradictory charges are levelled against this applicant when it is said that the applicant has accumulated disproportionate assets of Rs. 21 crores on the one hand and also said that he illegally engaged himself in some other trade while functioning as Secretary of the Sindhu

Education Society, Jaripatka, Nagpur which charges would fall and be punishable under Section 13 (2) of the Prevention of Corruption Act and Section 168 of the Indian Penal Code respectively. He submits that once it is stated that a person has engaged himself in trade or business or some economic activity, it would have to be accepted that such person would also earn some income. He further submits that considering the long period taken for computing total income, there can be spill-over of previous income. Thus, he submits that it is doubtful if the charge of accumulating disproportionate assets could be sustained and even if sustained, its magnitude would reduce considerably. He submits that the concept of illegal income or illegal remuneration or pecuniary advantage contemplated under the provisions of the Prevention of Corruption Act is the one which is related to money earned without labour. He submits that by framing a charge under Section 168 of the Indian Penal Code and also under Section 13 (2) of the Prevention of Corruption Act simultaneously, the inherent contradictions in the prosecution story have been exposed and, therefore, now a prima facie case has been made out by the applicant for his release on bail. In support of his submission, he relies upon **R. Sai Bharti v. J. Jayalitha & ors** reported in *(2004) 2 SCC 9;* **State of Maharashtra v. Pollonji Darabshaw Daruwalla** reported in *1987 (Supp) SCC 379* and **State of M.P. v. Awadhkishore Gupta & ors** reported in *(2004) 1 SCC 691*.

6. Shri Kadu, learned Additional Public Prosecutor for the respondents submits that the arguments so submitted on behalf of the applicant are a matter of defence and, therefore, they cannot be considered at this stage.

7. In the case of *R. Saibharathi v. J. Jayalalitha & ors* (supra), it is held by the Hon'ble Apex Court that unless the act complained of, which could be of participation in a public auction by a public servant, is expressly prohibited, Section 169 IPC would not be attracted. This principle of law, as rightly submitted by learned counsel for the applicant, would equally apply to the requirements of Section 168 of IPC offence which is about illegally engaging in a trade or business by a public servant. Unless there is an express prohibition imposed in this regard, a public servant cannot be held liable for commission of an offence punishable under Section 168 IPC just because he engaged himself in some trade. In the instant case, I could not come across any express prohibition against engaging in trade or business by a public servant, like the applicant, being present on record. But, I must say that this is not the only offence and there are several other offences like the ones under Sections 168, 193, 406, 409, 420, 467, 468, 471, 201 read with Sections 34 and 120-B of the Indian Penal Code registered against the applicant

and in respect of these other offences prima facie involvement of this applicant has already been found by this Court when it rejected the previous bail application on 1st September 2016. This Court would be bound by those observations. Therefore, no advantage could be given to the applicant at this stage for absence of any prominent material to support the charge under Section 168 of the Indian Penal Code made against the applicant. Then, such material can also appear later on during the course of recording of the evidence and for that purpose, the prosecution would be required to be given some opportunity.

8. In the case of *State of Maharashtra v. Pollonji Darabshaw Daruwalla* (supra), it has been held that when the period for computing the income is very long, the Court has to take into consideration a fact that the assets could be generated over a long period of time and there could be spilling over of the assets from the anterior period and if their existence is probabilised, that would go to reduce the extent and the quantum of the disproportion. In *Awadhkishor Gupta* (supra), it is held that concept of income under Section 13 of the Prevention of Corruption Act is confined to only that which is easy income involving no labour, no skill, no property and no investment. These observations of the Hon'ble Apex Court can certainly be considered for their application to the facts of this case. But then it would be possible only when there is detailed

evidence available on record and not at this stage of consideration of a bail application. Therefore, these rulings at this stage would render no assistance to the applicant.

9. Shri Voditel, learned counsel for the applicant has also submitted that this case does not have such stakes involved as would make the case of high economic magnitude, because out of Rs. 21 crores of alleged disproportionate assets, only Rs. 11 crores are sought to be attributed to the acts of this applicant. I do not understand as to how the stakes of crores of rupees would make the case as the one involving petty economic offences and I would only say that the argument is too far-fetched to be accepted by human reason.

10. Learned counsel for the applicant has also submitted his argument on such aspects as the Government not making complaint of misappropriation of its funds by the applicant; the applicant not misutilizing the funds and the resources received under the mid-day meal scheme; the applicant not misappropriating the computer fees collected from various children; the applicant not misusing the liberty if released on bail and possibility of fifteen teachers who have stated against this applicant regarding their paying illegally some commissions to the applicant being made co-accused in the instant case.

11. Shri Kadu, learned Additional Public Prosecutor submits that most of these arguments have already been considered by this Court and rejected. Therefore, now there is no occasion for this Court to address these aspects once again.

12. I think, learned APP is perfectly right. Most of these aspects have been considered by this Court when it rejected first bail application on 1st September 2016 and Special Leave Petition filed against this order was also dismissed by the Hon'ble Apex Court by its order dated 7.10.2016. While dismissing the SLP, the Hon'ble Apex Court observed in its order dated 7.10.2015, "No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India". On this, learned counsel for the applicant submits that it is well-settled that the order of this Court, by dismissal of the SLP, does not merge into the order of the Hon'ble Apex Court and that if the applicant is able to persuade the Court to exercise its discretion in his favour, it is permissible for the applicant to do so. In support, he relies upon **Bihar Legal Support Society v. Chief Justice of India & anr** reported in *(1986) 4 SCC 767* and **Hari Singh v. State of Haryana** reported in *(1993) 3 SCC 114*. The principles laid down in these cases are now well settled. The jurisdiction of the Hon'ble Apex Court under Article 136 of the

Constitution of India is extraordinary and it could be availed of for the purpose of preventing gross miscarriage of justice and, therefore, the jurisdiction is exceptional by its very nature. This would also mean that it is not in every case where some injustice has been done that the Hon'ble Apex Court would grant special leave and interfere. It is only when the extraordinary right and exceptionality of the case is demonstrated that the Hon'ble Apex Court would interfere. Even in a case where SLP is rejected, the order of the High Court does not merge into the order of the Supreme Court unlike when the appellate power is exercised. These are the principles of law which could be culled out from both these cases. It would then follow that rejection of SLP filed by the applicant against the order of this Court on 1st September 2016 would not mean that the order of this Court has merged into the order of the Hon'ble Supreme Court. But, the fact remains that most of the aspects now argued have already been considered by this Court earlier and rejected by following the settled principles of law, which are also reiterated in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan** reported in *(2004) 7 SCC 528*, now being relied upon by learned counsel for the applicant. So, this Court would be precluded from considering these aspects once again unless change in circumstances is demonstrated. However, no change in circumstances on this front has been shown by the applicant.

13. Two dimensions of the argument of learned counsel for the applicant, not considered by this Court earlier, as they were not argued, relate to those fifteen teachers giving a statement of extortion of money by this applicant also being party to the crime of corruption and the Government not making any complaint of misappropriation. I am not inclined to accept the argument on these counts. Prima facie, these teachers did not voluntarily make any offer to grease the palm of the applicant in order to get the appointments or retain their appointments. They were prima facie threatened and pressurised by this applicant to do so. This is the gist of their allegations which would prima facie make them victims of crime rather than the co-accused. Then, if the Government has not made any complaint, the teachers having equal interest in proper utilisation of public money, have raised the appropriate grievance, which is sufficient at this stage, to support the charge. Therefore, I do not see any glitz in these dimensions of the argument.

14. Thus, I find that there is no substance in this application and it deserves to be dismissed. The application stands dismissed.

S. B. SHUKRE, J