

AFR

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 19 of 2020

1. Suresh Chandra Khandelwal S/o Shri N.L. Khandelwal
Aged About 72 Years R/o Chadda Badi, Nehru Nagar,
Behind Luthra Hospital, Retired Chief Engineer, Public
Works Department, Bilaspur Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through A.C.B. Raipur, Unit
Bilaspur.

---- Respondent

For Applicant

Mr. Rakesh Pandey, Advocate

For Respondent /State

Mr. K.K. Singh, Govt. Advocate

Proceedings through Video ConferencingHon'ble Mr. Justice Prashant Kumar MishraOrder On Board20/8/2020

1. The applicant has preferred this application under Section 438 of the Cr.P.C. for grant of anticipatory bail, as he apprehends his arrest in connection with Crime No.44/2015, registered at Police Station ACB, Raipur, Unit Bilaspur, for offence punishable under Section 420, 467, 468, 471, 120-B & 427 of the Indian Penal Code; Section 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988; and Section 3 of the Prevention of Damage to Public Property Act.

2. As per the prosecution case one M/s Sundrani Construction Company was awarded work of construction of Bridge over Arpa river at Koni-Mangla-Bilaspur Road popularly known as 'Turkadih Bridge'. The work started in the year 2005 and was completed in 2007. During inspection of the work carried out by the said company it was found that certain piers were completely damaged. The steel liners in the piers were absent over the concrete bed which were to give support to the pillars and in absence of steel lining, the work had caused damage to the concrete to the extent of 50-60%. The liner was exposed over the river bed, but in lower part of the pier which found support at the rock below the river bed to form the base, the steel lining was completely missing.
3. It is the case of prosecution that the contractor along with officers of the Public Works Department including the applicant prepared forged document to demonstrate that the basement work has been carried out in accordance with the drawing, however, severe deviation from technical specification was made in construction, consequently the repair work had to be carried out almost equal to the cost/expenditure at the beginning. The total loss caused to the exchequer has been assessed at Rs.337.47 lacs. As against the present applicant the allegation is that he entered incorrect measurement to approve bills to the tune of Rs.17.00 lacs (approx.).

4. Shri Rakesh Pandey, learned counsel appearing for the applicant, would submit that the partners of the contractor company namely; Peetambar Das Sundrani has been granted anticipatory bail by order dated 20-9-2018 passed in MCRCA No.759 of 2017. In this case prayer for anticipatory bail of Murarilal Sundarani was dismissed, however, Murarilal Sundarani moved second anticipatory bail application bearing MCRCA No.1361 of 2018, which was allowed by the coordinate Bench of this Court vide order dated 14-11-2018. Learned counsel would further submit that the applicant was transferred from Bilaspur to Raigarh on 18-9-2007 prior to completion certificate given by some other Engineer. The applicant thereafter retired from service on 30-11-2009 on attaining the age of superannuation and is presently aged about 72 years.
5. Shri K.K. Singh, learned Govt. Advocate appearing for the State, *per contra*, would oppose the bail application. Learned counsel would refer to the order passed by the coordinate Bench in ***Vijay Dewangan v State of Chhattisgarh***¹ to argue that once the applicant has been declared absconding he is not entitled for anticipatory bail. He would also refer to the decisions rendered by the Supreme Court in ***Lavesh v State (NCT of Delhi)***² and ***State of Madhya Pradesh v Pradeep Sharma***³.

1 MCRCA No.83 of 2015 (decided on 4-3-2015)

2 (2012) 8 SCC 730

3 (2014) 2 SCC 171 : AIR 2014 SC 626

6. Rejoining the submission, Shri Rakesh Pandey, learned counsel for the applicant, would submit that the ratio laid down by this Court in *Vijay Dewangan* (supra), based on the decisions rendered by the Supreme Court in *Lavesh* (supra) and *Pradeep Sharma* (supra), is to the effect that when a person is declared absconder in terms of Section 82 of the Cr.P.C. he is not entitled for anticipatory bail, however, in the case at hand, the complete order sheets of the trial Court, filed along with the additional documents, would reveal that before declaring the applicant as an absconder, procedure prescribed under Section 82 of the Cr.P.C. has not been followed, therefore, the said judgment would not apply to the facts and circumstances of the present case.
7. In *Lavesh* (supra) as well as in *Pradeep Sharma* (supra) it has been held by the Supreme Court that when a person against whom a warrant has been issued is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C., he is not entitled the relief of anticipatory bail.
8. Section 82 of the Cr.P.C. provides that if any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself to avoid execution of warrant, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than

thirty days from the date of publishing such proclamation. The provision also prescribes the procedure for publication of proclamation. In sub-section (4) of Section 82 it is provided that if such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

9. In the case at hand, the applicant along with co-accused P.S. Chandel, Murarilal (already released on anticipatory bail by this Court), Narayan Das & Sunil Sundrani have been declared absconding on 3-4-2018 & 17-4-2018. These two order sheets of the trial Court are reproduced hereunder for ready reference :

3/4/2018

शासन द्वारा श्री के० एल० अग्रवाल विशेष लोक अभियोजक ।

अभियुक्त आर० के० वर्मा द्वारा श्री अनिल गुप्ता अधिवक्ता ।

अभियुक्त पीताम्बर सुंदरानी सहित श्री राकेश शुक्ला अधिवक्ता ।

(अभियुक्त आर० के० वर्मा न्यायिक अभिरक्षा से पेश)

शेष अभियुक्तगण अनुपस्थित ।

प्रकरण आज अभियुक्त आर०के० वर्मा एवं पीतांबर सुंदरानी के संबंध में आरोप पूर्व तर्क तथा शेष

अभियुक्तगण की उपस्थिति हेतु भी नियत है। अभियुक्तगण सुरेशचंद खण्डेलवाल एवं पी०एस०चंदेल को जारी गिरफ्तारी वारंट इस टीप के साथ अदम तामिल वापस प्राप्त कि, "वे फरार हैं।" अतः उक्त दोनों अभियुक्तगण को फरार घोषित किया जाता है। उक्त दोनों अभियुक्तगण के संबंध में स्थाई गिरफ्तारी वारंट जारी किया जाता है। अभियुक्त मुरारी लाल, नारायण दास एवं सुनील सुंदरानी के विरुद्ध माननीय उच्च न्यायालय द्वारा सी०आर०एम०पी० क्रमांक- 1798/17 में पारित आदेश दिनांक 22.02.2018 के पालन में गिरफ्तारी वारंट जारी नहीं किया जा रहा है।

अभियुक्त पीतांबर सुंदरानी की ओर से यह व्यक्त किया गया कि उसे अभियोग पत्र की प्रति प्राप्त नहीं हुई है, अतः प्रकरण में संलग्न अभियोग पत्र की प्रति अभियुक्त पीतांबर सुंदरानी को प्रदान की गई।

प्रकरण आरोप पूर्व तर्क हेतु भी नियत है। अभियुक्त पीतांबर सुंदरानी एवं अभियुक्त आर०के०वर्मा की ओर से उनके अधिवक्ता द्वारा आरोप पूर्व तर्क हेतु एक समय दिये जाने का निवेदन किया गया। अभियुक्त पीतांबर सुंदरानी की ओर से व्यक्त किया गया कि उन्हें आज ही अभियोग पत्र की प्रति प्राप्त हुई है तथा अभियुक्त आर०के० वर्मा की ओर से यह व्यक्त किया गया कि सीनियर अधिवक्ता आज नहीं आये हैं। अतः आरोप पूर्व तर्क हेतु समय दिया जावे। विचारोपरांत निवेदन स्वीकार किया गया। उभयपक्षों को निर्देशित किया जाता है कि वे आगामी दिनांक पर आवश्यक रूप से आरोप पूर्व तर्क प्रस्तुत करें।

प्रकरण में अभियुक्त पीतांबर दास सुंदरानी की जमानत सत्यापन रिपोर्ट तहसीलदार अभनपुर, जिला-

रायपुर से प्राप्त नहीं हुई है । अतः उक्त संबंध में पुनः ज्ञापन जारी हो ।

प्रकरण अभियुक्त आर० के० वर्मा एवं पीतांबर दास सुंदरानी के संबंध में आरोप पूर्व तर्क एवं शेष अभियुक्तगण की उपस्थिति एवं सत्यापन रिपोर्ट प्रस्तुत करने हुते दिनांक 17.04.2018 ।

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17/4/2018

शासन द्वारा श्री के० एल० अग्रवाल विशेष लोक अभियोजक ।

अभियुक्त आर० के० वर्मा द्वारा श्री अनिल गुप्ता अधिवक्ता ।

अभियुक्त पीताम्बर सुंदरानी सहित श्री राकेश शुक्ला अधिवक्ता ।

(अभियुक्त आर० के० वर्मा न्यायिक अभिरक्षा से पेश)

शेष अभियुक्तगण अनुपस्थित ।

प्रकरण आज अभियुक्त आर०के०वर्मा एवं पीतांबर सुंदरानी के संबंध में आरोप पूर्व तर्क तथा शेष अभियुक्तगण की उपस्थिति हेतु भी नियत है ।

अभियुक्त पीताम्बर सुंदरानी की ओर से हाजिरी माफी हेतु आवेदन पत्र उसकी तबियत खराब होने तथा उसके चलने फिरने में असमर्थ होने के आधार पर पेश । विचारोपरांत आवेदन पत्र में दर्शित कारण सद्भाविक प्रतीत होने से स्वीकृत ।

अभियुक्त सुरेशचंद्र खण्डेलवाल एवं पी०एस० चंदेल को जारी गिरफ्तारी वारंट तामील अदम तामील वापस प्राप्त नहीं ।

यह भी उल्लेखनीय है कि माननीय उच्च न्यायालय द्वारा सीआर०एम०पी० क्रमांक 1798/17 में पारित आदेश दिनांक 22.02.2018 के परिपेक्ष्य में अभियुक्त मुरारीलाल, नारायण दास एवं सुनील सुंदरानी के विरुद्ध गिरफ्तारी वारंट जारी नहीं किया गया था । माननीय उच्च न्यायालय द्वारा अपने उक्त आदेश में यह निर्देशित किया गया था कि उक्त तीनों अभियुक्तगण आदेश दिनांक 22.02.2018 से 45 दिवस के अंदर विचारण न्यायालय के समक्ष उपस्थित होकर नियमित जमानत आवेदन प्रस्तुत कर सकेंगे तथा यह भी निर्देशित किया गया था कि उक्त नियमित जमानत आवेदन के निराकरण तक उक्त अभियुक्तगणों के विरुद्ध कोई सख्त कदम (Coercive Steps) ना उठाया जावे । यहां यह उल्लेखनीय है कि आदेश दिनांक 22.02.2018 की तिथि से आज दिनांक 17.04.2018 तक 45 दिन की अवधि से ज्यादा अवधि व्यतीत हो चुकी है तथा उक्त आवेदक/अभियुक्तगण की ओर से कोई नियमित जमानत आवेदन प्रस्तुत नहीं किया गया है । अतः वर्तमान में माननीय उच्च न्यायालय द्वारा नियत 45 दिन की अवधि व्यतीत होने के पश्चात् भी उक्त अभियुक्तगणों द्वारा नियमित जमानत आवेदन प्रस्तुत नहीं किये जाने पर उक्त अभियुक्तगण के विरुद्ध गिरफ्तारी वारंट जारी किया जाना उचित प्रतीत होता है ।

उक्त अभियुक्तगण लम्बे समय से अनुपस्थिति है अतः उनकी अनुपस्थिति को देखते हुए अभियुक्त सुरेशचंद्र

खण्डेलवाल, पी०एस० चंदेल, मुरारीलाल, नारायण दास एवं सुनील सुंदरानी को फरार घोषित किया जाता है। उक्त सभी अभियुक्तगणों के विरुद्ध स्थायी गिरफ्तारी वारंट जारी किया जावे।

यह उल्लेखनीय है कि प्रकरण में अभियुक्त आर० के० वर्मा एवं पीताम्बर सुंदरानी की उपस्थिति हो चुकी है तथा अभियुक्त आर० के० वर्मा अभिरक्षा में भी है। अतः अभियुक्त आर० के० वर्मा एवं पीताम्बर सुंदरानी का प्रकरण अन्य अभियुक्तगणों से पृथक किया जाता है।

प्रकरण उक्त दोनों अभियुक्तगणों के संबंध में आरोप पूर्व तर्क हेतु नियत है।

अभियुक्त पीताम्बर सुंदरानी के अधिवक्ता द्वारा व्यक्त किया गया कि स्वास्थ्य खराब होने के कारण आज अभियुक्त उपस्थित नहीं हुआ है अतः आरोप पूर्व तर्क हेतु एक अंतिम अवसर प्रदान किया जावे। अभियुक्त आर०के०वर्मा की ओर से भी आरोप पूर्व तर्क हेतु एक समय दिये जाने का निवेदन किया गया। विचारोपरांत निवेदन इस निर्देश के साथ स्वीकृत कि आगामी दिनांक पर आवश्यक रूप से तर्क प्रस्तुत करें।

प्रकरण में अभियुक्त पीताम्बर दास सुंदरानी की जमानत सत्यापन रिपोर्ट तहसीलदार अभनपुर, जिला-रायपुर से प्राप्त नहीं हुई है आगामी दिनांक:- 27.04.2018।

10. A plain reading of the above two order sheets of the trial Court would manifest that before declaring the applicant as an absconder and not even a proclaimed absconder as Section 82 provides for, the procedure prescribed

thereunder has not been followed. In these two order sheets there is no direction for issuance of a proclamation as contemplated under sub-section (1) of Section 82 nor a declaration to the said effect, as contemplated in sub-section (4), has been made after expiry of the period for which the proclamation was issued. It is, thus, abundantly clear that the declaration of the applicant as an absconder is not in terms of Section 82 of the Cr.P.C., but it is by way of a mechanical exercise without following the procedure. Relevant part of the order sheet of the trial Court only says that since the warrant issued by the Court has not been executed it appears the applicant is absconding or concealing himself, therefore, he is declared as an absconder. In absence of issuance of proclamation such declaration of a person as an absconder would not debar him from applying and availing the benefit of anticipatory bail, if he is otherwise entitled for it on merits.

11. Reverting back to the merits of the matter, the partners of the construction company, who are more responsible for carrying out the construction work, have already been released on anticipatory bail. More importantly Murarilal Sundarani has been granted anticipatory bail on 14-11-2018, in his second attempt, after he was declared absconder by the trial Court along with the applicant on 3-4-2018 & 17-4-2018. The applicant is a retired Government servant, presently aged about 72 years, therefore, considering all relevant aspects of the matter,

this Court is inclined to release the applicant on anticipatory bail.

12. Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his executing a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one surety in the like sum to the satisfaction of the arresting officer with the following conditions:-

(a) he shall make himself available for interrogation by a police officer as and when required;

(b) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

(c) he shall not influence the witnesses during pendency of the trial.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri

HEAD NOTE

Procedure prescribed u/S 82 CrPC not followed before declaring an accused absconder. Such accused is not disentitled for availing benefit of anticipatory bail u/S 438 CrPC.