IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.432 of 2020

Anil Saini ….Applicant

Vs.

State of Uttarakhand ……Respondent

Hon'ble Alok Kumar Verma, J.

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with FIR No.366 of 2019, registered with Police Station S.I.D.C.U.L., District Haridwar for the offence punishable under Sections 409,420, 467,468 and 471 of the I.P.C.

2. In the scholarship scam, vide letter dated 17.04.2018 of Home Department of the State of Uttarakhand, a Special Investigating Team (S.I.T.) was constituted. The informant, Mr. Kamal Kumar Lunthi, Inspector, was appointed as a member of the Special Investigation Team. After enquiry, the informant lodged an FIR on 21.10.2019 against the Owner and Director of Krishna Private I.T.I., Village Kamalpur, Chhutamalpur, Muzaffarabad, District Saharanpur, Uttar Pradesh. The matter is investigated. After completion of investigation, charge sheet is filed against the present applicant-accused, Chairman of the said institute.

3. Heard Mr. Avtar Singh Rawat, the learned Senior Advocate assisted by Mr. Prasanna Karnatak, the learned counsel for the applicant and Mr. S. S. Adhikari, the learned Deputy Advocate General assisted by Mr. P. S. Uniyal, the learned Brief Holder for the State through video conferencing.

4. Mr. Avtar Singh Rawat, the learned Senior Advocate, submits that the applicant has been falsely implicated. The applicant

and others created a trust under the Indian Trusts Act, 1882, namely “Krishna Educational Trust”. The applicant was the Chairman of the Trust and by virtue being the Chairman of the trust, the applicant was also Chairman of the said Institute, created by the trust. However, the entire day to day affairs of the management of the said institution was entrusted to the Principal of the Institute. The applicant is running three educational institutions. Initially, as per the State Government Order dated 25.07.2006, the college fee and the scholarship amount of an institute, against the students from Scheduled Castes/Scheduled Tribes category studying in the institute, were to be transferred to the accounts of the institution with a direction that the institution after keeping the tuition fee to itself would release the scholarship amount to the accounts of the students. The State Government issued another Notification vide dated 14.11.2014 mandating therein that the student will register himself directly with the portal of the State Government after furnishing all the requirements as per the scheme and the institution to which he has taken admission on the said portal, he will also submit the documents in hard copies to the institution and will take admission in the institution. Then, the institution would send a list of students, who have taken admission in an institution, to the department of Social Welfare for verification and after having verified the State Government would release the entire amount to the accounts of the students and it was the student who has to pay the tuition fee to the institution concerned and the student will keep back the scholarship amount to himself.

5. Mr. Avtar Singh Rawat, the learned Senior Advocate, further submits that the applicant is languishing in jail since 07.01.2020, whereas, he has distributed the entire amount of scholarship to the Scheduled Castes students in the academic year 2014-2015.

6. According to the paragraph no.12 of the bail application, an FIR No.0044 of 2019 and the FIR of the present case are registered for the same cause of action. However, during the arguments, Mr. Avtar Singh Rawat, the learned Senior Advocate, submits that the applicant does not want to press the said paragraph.

7. Mr. S.S Adhikari, the learned Deputy Advocate General, appearing for the State opposed the bail application and submits that the officer of Social Welfare Department prepared a false physical verification report regarding the Scheduled Castes students and on the basis of verification report, the scholarship amount was disbursed by the Social Welfare Department, Haridwar in favour of the said Institute. As per the Government Policy dated 25.06.2007, scholarship was to be transferred/deposited in the account of the concerned students upto the year, 2014, but, the Social Welfare Department, Haridwar by hatching conspiracy with the present applicant got transferred the scholarship of the Scheduled Castes students into the account of the Institute of the present applicant, which was not disbursed to the Scheduled Castes students. During the course of investigation, it is found that some of the victims/students never visited the said Institute and some of the students, in their statements, stated that they attended the Institute but after some time they left it. These persons in their statements under Section 161 of the Code of Criminal Procedure, 1973 clearly stated that they had never received scholarship. During the course of investigation, this fact surfaced that the present applicant-accused was sole account holder of the alleged Institution, in which the scholarship of Scheduled Castes students was transferred by the Social Welfare Department.

8. Mr. S.S. Adhikari, the learned Deputy Advocate General, further submitted that if the applicant will be released on bail he may likely abscond or influence the witnesses. Apart this, there are three

other criminal cases against the applicant, as (i) Case Crime No.407 of 2019 under Sections 409, 420, 467, 468 and 471 of the I.P.C., (ii) Case Crime No.378 of 2019 under Sections 409, 420, 467, 468 and 471 of the I.P.C. and (iii) Case Crime No.0044 of 2019 under Sections 420, 466, 467, 468, 471 and 120-B of the I.P.C.

9. It is admitted fact that the present applicant-accused is Chairman of the alleged Institute. During the course of investigation, it is found that in the year, 2012-13, the scholarship amount of Rs.6,99,300.00 of 21 Scheduled Castes students and further, in the same year, scholarship amount of Rs.7,32,600.00 of 22 Scheduled Castes students, total of Rs.14,31,900.00 were deposited in the account No.180200500000131 of Punjab National Bank, Branch Fatehpur, Chhutamalpur, District Saharanpur. Further, in the year, 2013-14, scholarship amount of Rs.31,63,500.00 of 95 Scheduled Castes students was transferred into the said account of the alleged Institute, whereas, most of the Scheduled Castes students stated under Section 161 of the Code of Criminal Procedure, 1973 that they have not obtained any scholarship. During the course of investigation, it is found that the present applicant- accused being the Chairman was sole account holder of the said account and scholarship amount was withdrawn by the sole signature of the present applicant. From the perusal of the evidences, collected during the investigation, it prima facie appears that the present applicant was involved in the scholarship scam.

10. It is true that Section 439 of the Code of Criminal Procedure confers very wide power regarding bail. But, while granting bail, the High Court is guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, the possibility of the tampering with the evidences and such other grounds are required to be taken into consideration.

11. In **Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2004)7 SCC 528,** the Hon'ble Supreme Court has held that the law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind.

12. In the case of **State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21**, the Hon'ble Apex Court has held that it is well settled that the matters to be considered in an application for bail, are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence, (ii) nature and gravity of charge, (iii) severity of the punishment in the event of conviction, (iv) danger of the accused absconding or fleeing, if released on bail, (v) character, behavior, means, position and standing of the accused, (vi) likelihood of the offence being repeated, (vii) reasonable apprehension of the witnesses being tampered with, and (viii) danger, of course, of justice being thwarted by grant of bail.

13. In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie considering why bail is being granted particularly where an accused is charged of having committed a serious offence. Any order dehors reasons suffers from non-application of mind as observed by the Hon'ble Apex Court in **Ram Govind Upadhyay Vs. Sudarshan Singh and others, (2002)3 SCC 598**.

14. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In **Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another, 2018(1) CCSC 117**, the Hon'ble Apex Court has held that in serious offence, the mere fact that the accused was in custody for more than one year, may not be a relevant consideration to release the accused on bail.

15. In **Niranjan Hem Chandra Sashittal Vs. State of Maharashtra, (2013)4 SCC 642**, the Hon'ble Apex Court observed that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. The Hon'ble Apex Court further observed that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered; and the only redeeming fact is that collective sensibility respects such suffering as it is in consonance with constitutional morality. The emphasis was on intolerance to any kind of corruption bereft of its degree.

16. In **Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation, (2018)16 SCC 299**, the Hon'ble Supreme Court observed that the cancer of corruption has, as we all know, eaten into the vital organs of the State. Cancer is a dreaded disease which, if not nipped in the bud in time, causes death.

17. In **Nimmagadda Prasad Vs. Central Bureau of Investigation, 2014 (1) CCSC 120**, the Hon'ble Apex Court observed unfortunately, in the last few year, the country has been seeing an alarming rise in white collar crimes, which has affected the fiber of the

country’s economic structure. In controvertibly, economic offences have serious repercussions on the development of the country as a whole.

18. It would be inappropriate to discuss the evidences in depth at this stage because it is likely to influence the trial court. But, the evidences, collected during the investigation, prima facie indicate involvement of the applicant in the offence in question. No reason is found to falsely implicate the present applicant.

19. In view of the facts and circumstances of the case, there is no force in the submissions of the learned counsel for the applicant-accused and no good ground has been made out for enlarging the applicant on bail at this stage, therefore, the bail application is liable to be rejected. The bail application is rejected accordingly.

20. It is clarified that the observations made regarding the bail application are limited to the decision, in the light of the facts, provided by the parties at this stage, as to whether the bail application should be allowed or not and the said observations shall not effect the trial of the case.

(Alok Kumar Verma, J.)
16.09.2020

JKJ/Neha