

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE

The Hon'ble **Justice Arijit Banerjee**
And
The Hon'ble **Justice Bivas Pattanayak**

CRM No. 5100 of 2021

In Re: An Application for bail under section 439 of the Code of Criminal Procedure.

In the matter of : Md Enamul Haque.

versus

Central Bureau of Investigation

For the Petitioner:	Mr.Milan Mukherjee, Sr Adv.
	Mr. Sandipan Ganguly, Sr Adv,
	Ms. Sreyashee Biswas,Adv.
	Ms. Benajir Hasna, Adv.
	Mr. D Dutta,Adv.
For the CBI:	Mr. Y.J Dastoor, Id, ASG
	Mr. Phiroze Edulji
	Mr. Samrat Goswami

Heard on: 07.10.2021

Judgment on: 11.11.2021

BIVAS PATTANAYAK, J. : –

1. This is an application for bail under section 439 of the Code of Criminal Procedure in connection with Special Case no.01 of 2021(arising out of CBI FIR

no. RC 0102020A0019 dated 21.09.2020) under sections 120B/420 of the Indian Penal Code and sections 7, 11, 12 of the Prevention of Corruption Act, 1988.

2. The case of the prosecution in nutshell is that a preliminary enquiry (PE) being no. PE0102018A0004 was registered on 06.04.2018 by the CBI, ACB, Kolkata against Shri Satish Kumar, the then Commandant of 36th Battalion of Border Security Force (BSF), Md Enamul Haque, Shri Bhuvan Bhaskar s/o Satish Kumar and others on the allegation of misconduct by public servant. In the preliminary enquiry it revealed that cattle from India to Bangladesh across the international border of these two countries were sent in large numbers illegally by paying illegal gratification to the BSF personnel who were responsible to prevent cross-border movement of men and property and safeguard the interest of India. Further it is alleged that during the posting of Shri Satish Kumar as Commandant of BSF, 36th Battalion, between the period from 19.12.2015 to 22.04.2017, more than 20,000 cows were seized by Border Security Force when those were about to be transported across the border to Bangladesh, however neither any vehicle carrying the animals nor any person was seized or apprehended at the time of seizure. The cattle so seized were shown in the seizure memo of the BSF to be small in size/common breed in order to reduce the auction value of such cattle. Thereafter the seized cattle were put into auction immediately within 24 hours of seizure with the help of nearest Customs station at Jangipur, Murshidabad and the traders like Md Enamul Haque, Anarul Sk, Golam Mustafa in unholy nexus with the officials procured such cattle at a considerable lower price. It is further

alleged that in lieu of such favour, Md Enamul Haque used to pay Rs.2000/-per cattle to BSF officials and Rs.500/-to the concerned Custom officials. Besides the above, the officials of Indian Customs also used to take bribe of 10% of the auction price from the successful bidders like Md Enamul Haque, Anarul Sk, Golam Mustafa. Moreover, it is alleged that only the said batch of traders were allowed to buy the cattle at very low prices at the auctions. After showing the auctioned cattle to have been disposed of at local markets the same were illegally smuggled across the international border. Further Shri Satish Kumar got his son Shri Shri Bhuvan Bhaskar employed in the company of Md Enamul Haque at a monthly salary of Rs 30,000/- to Rs 40,000/- between May, 2017 to December, 2017 which reflects upon his close relationship with the partners of unholy nexus. On such basis a regular case was registered against the petitioner and others under section 120 B of Indian Penal Code and section 7, 11 and 12 of the Prevention of Corruption Act, 1988.

3. The petitioner, who was arrested on 06.11.2020 in connection with the aforesaid case and is in custody since then, seeks bail.

4. Learned Senior counsel appearing on behalf of the petitioner submitted that the CBI has lodged two cases against the petitioner over the self same set of allegation, the first being RC1(A)/2018/CBI/ACB/Cochin dated 31.01.2018 under sections 7,13(2) read with section 13(1) (a) & (d) of Prevention of Corruption Act registered by CBI, ACB, Cochin, Kerala and the second is the instant case being no. RC 0102020A0019 dated 21.09.2020 under section 120 B of Indian Penal

Code and sections 7, 11 and 12 of the Prevention of Corruption Act, 1988. The first FIR dated 31.01.2018 was initiated on the ground that a BSF Commandant namely J.D Mathew of the 83rd Battalion, Murshidabad, who was responsible for preventing smuggling activities, abused his official position and received illegal gratification from the petitioner. The petitioner was granted statutory bail on 07.05.2018. The petitioner was also permitted to travel abroad on three successive occasions by the order of the court at Kerala and he returned to India within the stipulated time. Further, after the forensic auditing of the 26 bank accounts of the petitioner was completed, all those bank accounts were unfrozen by an order of Hon'ble High Court of Kerala and the CBI had no objection to allowing the petitioner to operate those accounts. Moreover the learned court also directed that the passport of the petitioner be returned to him. The CBI did not file any application in the said case alleging violation of any terms of the bail enjoyed by the petitioner or that the petitioner has tampered with any evidence or influenced any witness.

4.1. It is further submitted on behalf of the petitioner that the allegation against the petitioner is that he along with his other associates formed an organised syndicate of cattle smuggling in Murshidabad by creating a close nexus with Satish Kumar (Accused no.1) the erstwhile Commandant of 36th Battalion of BSF, Murshidabad. However, the role of the petitioner is no different from the role ascribed to accused Satish Kumar, Anarul Sk and Md Golam Mustafa who have all been granted bail by the learned trial court. Moreover Abdul Latif Sk,

Atikur Rahman Kureshi, Rinku and Jenarul etc who were described as associates of the petitioner have not been made accused by the CBI and besides that the allegations *qua* the petitioner are the same as that against Anarul Sk (accused no.3) and Golam Mustafa (accused no.4) as is appearing at page no. 26 of the charge sheet. The grant of bail to accused no.3 and 4 by the learned trial court has not been challenged by the CBI and they did not have any objection. The present petitioner is similarly circumstanced with that of accused persons who have been granted bail by the learned trial court.

4.2. Further it is submitted on behalf of the petitioner that it is the case of the CBI that the petitioner provided bribe to Satish Kumar through petitioner's staff namely Manoj Sana and Ajijul Haq Molla, who deposited purported bribe money in the bank account of Tanya Sanyal (accused no.5 and wife of Satish Kumar) and Badal Krishna Sanyal (accused no.6 and father-in-law of Satish Kumar). But neither have they been made accused nor witness and as such there cannot be any link in the prosecution case against the petitioner without those persons being named either as accused as or as witness. Further the purported beneficiaries being accused no.5 and 6 have been granted bail immediately upon their surrender before the learned trial court. The prosecution did not object to the said bail. In the circumstances of the case the petitioner is better placed than accused nos.5 and 6.

4.3. Moreover, it is submitted on behalf of the petitioner that the prosecution has alleged that the petitioner used financial expertise of one Rajan Poddar his

auditor to show income out of the fictitious business activities as that of his wife namely Rasheda Bibi (accused no.7), in order to convert his illegal income into legitimate income of his wife. However Rajan Poddar, the auditor of the petitioner has not been made an accused and instead has been made a witness, though as per prosecution it is Rajan Poddar who showed income out of the fictitious business activities of the petitioner as that of his wife namely Rasheda Bibi (accused no.7) in order to convert the petitioner's illegal income into legitimate income of his wife. The prosecution cannot in the same breath say that the petitioner is guilty of any offence when Rajan Poddar has not been arraigned as an accused. That apart Rasheda Bibi (accused no.7) has been granted bail by the learned trial court immediately upon surrender and the prosecution did not object to her bail. Therefore there is no cogent ground or reason for further incarceration of the petitioner.

4.4. It is further submitted on behalf of the petitioner that he shall cooperate with the legal processes and does not pose any flight risk in view of the fact that the petitioner duly complied with notices under section 41A of CrPC issued to the petitioner in connection with the instant case. The petitioner attended the office of CBI in compliance to a notice under section 160 of CrPC. The learned Special Judge, CBI, New Delhi granted transit/interim bail to the petitioner with a direction to appear before the investigating officer at Kolkata after taking into consideration all the facts of legal compliance by the petitioner.

4.5. Moreover it is submitted on behalf of the petitioner that preliminary enquiry was registered on 06.04.2018 and the petitioner was arrested on 06.11.2020 after nearly 2 years and 6 months of registration of the preliminary enquiry. However there does not exist any allegation of the petitioner influencing any witness during such period. Further there is no likelihood of early conclusion of the proceedings. Moreover the petitioner cannot effectively defend himself against the charges brought against him by the CBI while being in custody.

In the light of their above submissions learned Senior advocates prayed for enlargement of the petitioner on bail.

5. In reply to the aforesaid contentions made on behalf of the petitioner, Learned Additional Solicitor General appearing for the CBI submitted that the petitioner formed an organized syndicate for cattle smuggling in Murshidabad along with other FIR named accused persons and many others and also entered into an unholy nexus with accused Satish Kumar, the then Commandant of 36th Battalion of BSF and managed free access to the International Indo-Bangladesh border for cattle smuggling. The petitioner provided illegal bribe to accused Satish Kumar through his staff by way of depositing crores of money in the bank account jointly maintained by accused Smt Tanya Sanyal (wife of accused Satish Kumar) and accused Shri Badal Krishna Sanyal (father-in-law of accused Satish Kumar) at Axis Bank, Salt Lake Branch. The dates of deposit mentioned in the handwritten diary of the said staff of the petitioner exactly matched with deposits reflected in the account statement maintained at Axis Bank. Further the petitioner using the

financial expertise of Shri Rajan Poddar showed fictitious business activities in the name of accused Smt Tanya Sanyal (wife of accused Satish Kumar). Further the petitioner had also used the financial services of his auditor namely Rajan Poddar for managing his illegal income out of cattle smuggling by way of showing fictitious business activities in textile and cotton yarn in the name of his wife namely accused Rasheda Bibi. The petitioner had also given crores of rupees to persons belonging to political party and local administration and also arranged false and fabricated sale deals of cattle at Birbhum in order to justify the disposal of cattle purchased by him through auction at Customs Department, Murshidabad, while those were actually smuggled to Bangladesh through the international border. The petitioner is a very influential person as would be evident from the fact that in spite of Look out circular (LOC) being issued in his name he was allowed to enter India on 01.03.2018 through Mehidipur Land Customs and therefore there is every possibility of his influencing the witnesses during trial which cannot be ruled out. Last but not the least the petitioner got arms licence issued by State government of Nagaland falsely declaring himself to be local resident though he never resided in the said State. In view of his above submissions he prayed that the petitioner, being the principal accused and kingpin in carrying smuggling activities across the border by bribing the government officials, should not be favoured with liberty of bail and therefore the same needs to be rejected.

6. We have heard the learned Advocates for the petitioner as well as for the CBI at length and perused the material placed before us in the case diary and the documents relied upon by the petitioner.

7. It is prima facie found from statements of witnesses recorded under section 161 / 164 of CrPC and available material that this petitioner formed an organised syndicate for cattle smuggling in Murshidabad through the international border of Indo-Bangladesh and he was assisted by his other associates namely accused Anarul Sk, Golam Mustafa and others. Further it is revealed that the BSF personnel used to seize the cattle from the person intercepted while trying to smuggle cattle from India to Bangladesh and those were sent to Customs Department for auction. No other persons apart from the petitioner and his men were allowed to participate in auction held of the seized cattle during 2015 -2017 and the cattle were awarded among them only, as the petitioner had close nexus with the government officials. The BSF officials also manipulated the breed, category and numbers of the seized cattle in the seizure memo at the instance of the petitioner. Thereafter the cattle were smuggled to Bangladesh through the Indo-Bangladesh Border and the BSF officials did not interfere with such smuggling of cattle by the petitioner and they provided smooth access. The material further reveals that the petitioner entered into an unholy nexus with accused Satish Kumar the then Commandant of 36th Battalion of BSF for free access to the international Indo-Bangladesh border for carrying out cattle smuggling and for the same he provided bribe to accused Satish Kumar through

his staff by way of depositing Rs.12.80 crores in the joint account maintained by accused no.5 namely Tanya Sanyal (wife of Satish Kumar) and accused no.6 namely Badal Krishna Sanyal (father-in-law of Satish Kumar). Thus prima facie it is apparent that this petitioner is the principal accused that ran the show in order to smuggle cattle through the Indo-Bangladesh Border and at his instance crores of rupees were given as bribe to the BSF Commandant for providing protection and smooth passage through the Border. Moreover, it is prima facie patent that the petitioner with the assistance of financial expertise of one auditor floated fictitious business activities in order to convert his illegitimate income into legitimate income. It is undisputed that the other case registered by CBI, ACB, Cochin, Kerala being no. RC1(A)/2018/CBI/ACB/Cochin dated 31.01.2018 against the petitioner under sections 7,13(2) read with section 13(1) (a) & (d) Prevention of Corruption Act is also on the ground of giving illegal gratification to one commandant of BSF. In the instant case charge sheet has been submitted by the CBI against the petitioner under sections 120B/420 of the Indian Penal Code read with sections 7, 11, 12 of the Prevention of Corruption Act, 1988.

7.1 Learned Senior counsel appearing on behalf of the petitioner sought parity on the ground that the petitioner is similarly circumstanced as of the accused persons who have been granted bail by the learned trial court. In this regard we are of the considered view that as from the material it prima facie appears that this petitioner is the kingpin at whose instance the entire gamut of the alleged

offence of smuggling cattle through the Indo-Bangladesh border was carried on, he does not stand on the same footing with the other accused persons.

7.2. It has further been pressed into service on behalf of the petitioner that one Manoj Sana and Ajijul Haq Molla allegedly deposited the purported bribe money in the bank account of the wife and father-in-law of Satish Kumar namely Tanya Sanyal (accused no.5) and Badal Krishna Sanyal (accused no.6) but neither they have been made accused nor witness and as such there cannot be any link in the prosecution case against the petitioner without those persons being named either as accused or as witness. Upon perusal of the case diary it appears that both the aforesaid persons have been examined by the investigating agency and their statements have been recorded under section 161 of the CrPC, however they have not been listed as witness in the charge sheet. Be that as it may, those matters and its consequences are to be decided in the trial and not mentioning of those witnesses in the list does not *per se* exterminate the petitioner of his involvement in the alleged offence.

7.3. It is further argued on behalf of the petitioner that as per the prosecution in order to convert his illegal income into legitimate income of his wife, the petitioner took assistance of one auditor namely Rajan Poddar, who showed income out of the fictitious business activities of the petitioner as that of his wife namely Rasheda Bibi (accused no.7), however he has not been made an accused and instead has been made a witness. The prosecution cannot in the same breath say that the petitioner is guilty of any offence when Rajan Poddar has not been

arraigned as an accused. Be that as it may, we are of the view that those matters and its consequences are to be decided in the trial.

7.4. It has been further argued on behalf of the petitioner that he has all along cooperated with the legal processes and thus he does not pose any flight risk. In our considered view keeping in mind the material available against the petitioner relating to his involvement in the alleged offence of serious nature, such ground can hardly be of any consequence.

7.5. Learned Senior advocates further argued on behalf of the petitioner that there is no reasonable apprehension that the petitioner would influence any witness in view of the fact that the petitioner was arrested after 2 years and 6 months of registration of preliminary enquiry, however, there is no allegation that during such period of preliminary enquiry till his arrest, the petitioner influenced any witness. In reply learned Additional Solicitor General has asserted on the point that in spite of having Look out circular (LOC) opened, the petitioner was allowed to enter India through Mehidipur Land Customs which clearly indicates the influential aspect. The fact that the petitioner did not influence any witness, in between the period of registration of preliminary enquiry and his arrest, has not been disputed. As regards the entry of the petitioner into India during existence of look out circular is concerned, we find from the letter dated 26.11.2020 of the Foreigners' Regional Registration Officer, Kolkata that the petitioner went to Dhaka from Kolkata Airport on 23.02.2018 at 16.05 hours and his departure immigration clearance was made on the said date at 15.15 hours and during

such departure the LOC against the petitioner could not be detected as at that time it was not opened. It is further revealed from the aforesaid letter that the petitioner entered India through Mahadipur Land ICP manned by West Bengal police personnel and at that time the LOC against the petitioner was active. However, there is no investigation to the effect that the petitioner by dint of his influence entered into India when the LOC was active. Be that as it may, we are not oblivious to the *modus operandi* undertaken by the petitioner for carrying out the illegal activities of cattle smuggling through the Indo-Bangladesh border by providing illegal gratification to the government authorities which on the face of it shows his conduct of influencing persons for getting things done at his instance. Such aspect constrains us to observe that the possibility of this petitioner influencing the witnesses in the trial cannot be ruled out.

7.6. Another argument that has been advanced on behalf of the petitioner is that in order to have fair adjudication under the law the petitioner needs to be released on bail as he cannot defend himself effectively while being in custody. Having considered the nature and gravity of the offence discussed in the foregoing paragraphs, we are of the view that such ground does not hold good.

8. We may profitably reproduce the observation of the Hon'ble Apex Court made in its decision passed in **Nimmagadda Prasad versus Central Bureau of Investigation** reported in **(2013) 7 SCC 466**:

“ 23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat versus Mohanlal Jitamalji Porwal and Anr (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p.371, para 5)

“5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed

seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

9. The Hon'ble Apex Court has also made similar observation in **Y.S Jagan Mohan Reddy versus Central Bureau of Investigation** reported in (2013) 7 SCC 439 which is reproduced hereunder:

“ 34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the

larger interests of the public/State and other similar considerations.”

10. Taking into consideration the materials as above, the nature, gravity and severity of the accusations and keeping in mind the observation of Hon’ble Apex Court, without expressing any opinion on the merits of the case, we are not inclined to allow the prayer of the petitioner for bail. Hence the same stands rejected. Any observation made in this order shall not be construed as any opinion on merits of the case of either of the parties.

11. The CRM no.5100 of 2021 is accordingly dismissed.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)

I agree.

(Arijit Banerjee, J.)