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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 27.7.2021

Order Delivered on 5-8-2021

MCRC No. 1039 of 2021

- Samund Ram Singh S/o Late Shri Nankun Singh Aged About 71 Years Retired O.S.D Excise Commissioner Office Raipur Chhattisgarh R/o Mig- 21, Nehru Nagar, Bilaspur (CG)

---- Applicant

Versus

- State Of Chhattisgarh Through P.S. State Economic Offences Wing/anti-Corruption Bureau, Raipur (CG)

---- Non-applicant

MCRC No. 1075 of 2021

- Samund Ram Singh S/o Late Shri Nankun Singh, Aged About 71 Years Retired O.S.D. Excise Commissioner Office Raipur (C.G.), R/o. - Peepal - 1/172, Housing Board Colony, Boriakala, Raipur, District Raipur (CG)

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station State Economic Offences Wing / Anti Corruption Bureau, Raipur (CG)

---- Non-applicant

For Applicant	:	Mr. Kishore Bhaduri, Sr. Advocate with Mr. Pankaj Singh, Advocate
For Non-applicant	:	Mr. V.R. Tiwari, Additional Advocate General with Mr. Vimlesh Bajpai, Government Advocate

Hon'ble Mr. Justice Parth Prateem Sahu

C A V Order

1. M.Cr.C. No.1039/2021 is preferred by applicant against the order dated 19.11.2020 passed by learned Special Judge (Prevention of Corruption Act) -cum- 1st Additional Sessions Judge, Raipur denying regular bail to applicant who is in custody in connection with Crime No.14/2019 registered against him at Anti Corruption Bureau/ Economic Offences

Wing, Raipur for the offence punishable under Sections 13 (1) (b) & 13 (2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code.

2. M.Cr.C. No.1075/2021 is preferred by the applicant against the order dated 12.1.2021 passed by the learned Sessions Judge (Prevention of Corruption Act) -cum- 1st Additional Sessions Judge, Raipur in Special Criminal Case No.2/2020 refusing to grant regular bail to applicant in connection with Crime No.12/2019 registered at Anti Corruption Bureau / Economic Offences Wing, Raipur for the offence under Section 7 (C) of the Prevention of Corruption Act, 1988 and Sections 409, 420, 467, 468, 471, 120B of the IPC.

3. As above two applications for grant of regular bail have been preferred by one and same applicant, the same were heard together and are being disposed of by this common order.

4. Case of the prosecution, in brief, is that on 11.3.1979 present applicant was appointed as 'Excise Officer' and he retired as 'Additional Commissioner (Excise)' in the year 2009. After retirement, applicant was re-appointed as 'Officer on Special Duty' on contract basis for a period of one year i.e. from 2009 to 2010. The period of contract was extended from time to time and lastly it was extended upto December, 2018. After verification of 'source information' received by the Anti Corruption Bureau, Crime No.12/2019 was registered against present applicant. Source Information was registered on

24.9.2019, the Station House Officer got the source information verified by the Inspector and thereafter Crime No.12/19 is registered. Allegation against present applicant in this crime is that between the year 2012 & 2017 present applicant while working as Officer on Special Duty had misused his office, entered into criminal conspiracy with liquor contractors and caused loss of Rs.1400 Crores to the State Government. While fixing sale price of country-made liquor for the year 2012-13, 2013-14, 60% profit on the lending price was provided to the liquor contractors / licensee and in the year 2014-15 & 2015-16, 50% profit was provided. For providing such profit, no reason has been assigned by present applicant in the files. Further, interpolation was made in files of proposal, it was not forwarded to the office of the then Minister In-charge and the decision was taken at the office level. It is present applicant who initiated proceedings for fixing of price of country-made and foreign liquor as provided under Niyam 16 & 17 of the Visthapan Niyam, 2002. By mentioning wrong proof liter in the boxes containing 180ml & 90 ml bottles as 6.75 in place of 6.48, benefited liquor contractors. Applicant has also brought into rounding off of prices by which also liquor contractors/licensees were benefited.

5. The Anti Corruption Bureau while investigating complaint registered Crime No.12/2019 for commission of offence punishable under Section 7 (C) of the Prevention of Corruption

Act, 1988 (amended as Prevention of Corruption Act, 2018) and Sections 409, 420, 467, 468, 471 & 120B of the Indian Penal Code submitted report before the Superintendent of Police, State Economic Offences Wing Investigation Bureau & Anti Corruption Bureau Chhattisgarh, Raipur by Shri Vivek Sharma, Inspector to the effect that present applicant has earned asset disproportionate to his income from known sources. Based on this report, crime bearing No.14/19 under Section 13 (1) (b) & 13 (2) of the Prevention of Corruption Act, 1988 (amended as 'Prevention of Corruption Act, 2018') is registered against present applicant. The percentage of disproportionate asset to the known sources of income of present applicant was worked out by the Investigating Officer at 120.79%. Along with present applicant, who is a public servant, his family members by name Smt. Meena Singh (Wife), Shri Shailendra Singh (son); Shri Janendra Singh (son), Shri Dipendra Singh (son), Smt. Saraswati Singh (daughter-in-law), Smt. Shikha @ Puja Singh (daughter-in-law) and Smt. Pankaj Singh (daughter-in-law) were also arrayed as accused in instant crime. Charge sheet in respect of Crime No.14/2019 was filed on 16.3.2020, whereas applicant was arrested on 19.11.2020.

6. In both the crime numbers, charge sheet before the Special Court at Raipur was filed prior to arrest of present applicant.

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7. Mr. Kishore Bhaduri, learned Senior Counsel for the applicant

would argue that applicant was holding post of Officer on Special Duty (OSD) after his retirement from service in the year 2009 and worked as such till December, 2018. The OSD has to work under the Excise Commissioner. All the proceedings drawn by present applicant in the note-sheets were to be forwarded to the Excise Commissioner, who in turn required to forward the same to the State Government as fixation of price of liquor is a policy decision which is to be taken every year. The decisions were to be taken at the end of the State Government based on the proposal made by applicant. He further submits that some documents are placed on record on behalf of applicant along with covering memo, which are note-sheets of the year 2013-14 prepared by present applicant, to show that after preparation of note-sheets / proposals, the same were forwarded to the Excise Commissioner and also to the then Minister In-charge. Fixation of price is done mentioning profit specifically after approval of the Minister In-charge of the Department. He referred to the documents filed along with bail application and submitted that proposal was forwarded to the Minister In-charge and the note-sheets bear signature of the Minister In-charge. Allegation of interpolation is totally false and baseless, as recorded by the Investigating Officer. He further submits that only at one place figure is handwritten but that is also not after marking any figure which is already written therein. Referring to Section 161 CrPC statements of witnesses P.L.Sahu, Iqbal Ahmed Khan, Rahul Singh Baghel, he submits that these witnesses have stated that it is present applicant who prepares note-sheet as proposal and the same is placed/ forwarded to the Excise Commissioner, who in turn forward to other higher authorities.

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8. Mr. Kishore Bhaduri, learned Senior Counsel argued that from the material available in the charge sheet/case diary in Crime No.14/2019, no offence as alleged under Section 13 (1) (b) of the Act would be made out. He submits that charge sheet has already been filed, applicant, who is aged about 70 years, is in jail since 25.11.2020, age old ailments started to grow, hence present applicant may be released on regular bail. In support of his submissions, he places his reliance on the decision of Hon'ble Supreme Court in case of **P. Chidambaram vs. Enforcement Directorate** reported in **(2020) 3 SCC 791**.

9. Per contra, Mr. V.R. Tiwari, learned Additional Advocate General representing the State would argue that in Crime No.12/2019 there is allegation against present applicant that by act of criminal conspiracy with liquor contractors, he has caused loss of Rs.1400 Crores to the State Government. He further submits that without following the guidelines for fixation of rates of liquor, present applicant has fixed minimum and maximum price of country-made & foreign liquor by adding 60% of the price as profit for the liquor contractors/licensees. No reason was assigned for providing such a huge profit to the liquor contractors/licensees. He submits that prior to 2012-

13 the profit added in price was upto 25 to 35% only, but suddenly the applicant on the basis of conspiracy with liquor contractors, had increased the profit ratio of liquor contractors upto 60% in the year 2013-14 and thereafter 50%. It is also argued that each box of 750 ml and 350 ml liquor bottle contains 6.75 proof liter of liquor. Likewise, each box of 180 ml & 90 ml bottle of liquor contains 6.48 proof liter of liquor, but present applicant has extended benefit to liquor contractors by mentioning 6.75 proof liter of liquor also in respect of boxes containing bottles of 180 ml & 90 ml. By this act the applicant has provided undue advantage and gain to liquor contractors / licensees. The liquor contractors were also granted illegal benefit by rounding off the price of liquor. Prior to 2012-13 there was no such mechanism/rule/policy of the State Government for rounding off the prices. In support of this contention, he referred to statements of Ravikant Jaiswal, Premlal Verma, Additional Commissioner (Excise) and Sanjeev Sharma recorded under Section 161 of CrPC. He further referred to statements of Gaya Prasad Sahu, Constable (Excise); Ratiram (Daftari Excise); Gokul Chandrakar (Retired Head Constable Excise), Nakchhed Sahu with respect to allegations in Crime No.14/2019. He submits that applicant has committed serious economic offences, estimated value of which is Rs.1400 Crores, hence he is not entitled for grant of regular bail. In support of his submissions, he places his reliance on the decision of Hon'ble Supreme Court in cases of **State of Bihar vs. Amit Kumar**

reported in **(2017) 13 SCC 751** and **Seniors Fraud Investigation Office Vs. Nittin Johari** reported in **(2019) 9 SCC 165.**

10. I have heard learned counsel for the parties and perused the case diary.

11. Taking into consideration the nature of offence, nature of allegations that applicant in his capacity as Officer on Special Duty is involved in the entire proceedings, as alleged; as per statements of witnesses recorded under Section 161 of CrPC, it is present applicant who had prepared proposals/note sheets and instead of forwarding the same to the higher officials, took the same by hand to the office of approving authority, he has fixed minimum and maximum price by fixing high percentage of profit to the liquor contractors; mention of proof liter in respect of cartons containing bottles of 180 & 90 ml at par with cartons containing bottles of 750ml & 350 ml as 6.75 proof liter of liquor; inventories made by the Investigating Agency in Crime No.14/19 and statements of witnesses recorded under Section 161 of CrPC, I do not find it to be a fit case where applicant should be enlarged on regular bail.

12. Accordingly, both the applications are rejected.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-