

21.12.2022.
15.
Ct.No.28.
as/PA
(Rejected)

C.R.M. (DB) 4394 of 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with CBI Case No.RC0102022A0003 dated 07.04.2022 under Section 420 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act.

In the matter of: Dr. Subires Bhattacharyya.
... Petitioner.

Mr. Amales Roy, Adv.
Ms. Mousumi Bhowal, Adv.
...for the Petitioner.

Mr. Arun Kr. Maity, Adv.
Mr. Anirban Mitra, Adv.
Mr. Amajit De, Adv.
...for the CBI.

Mr. Arindam Jana, Adv.
Mr. Bikram Banerjee, Adv.
Mr. Sudipta Dasgupta, Adv.
Mr. Arka Nandi, Adv.
Ms. Dipa Acharyya, Adv.
Mr. Sutirtha Nayek, Adv.
Ms. Shalini Ghosh, Adv.
...for the de-facto complainant.

1. Petitioner is the former Chairman of West Bengal Central School Service Commission, (hereinafter referred to as 'the Commission'). Noticing widespread corruption in the matter of appointment of assistant teachers in Classes IX and X under the auspices of the Commission, a learned Single Judge of this Court in WPA 5538 of 2022 directed investigation by CBI. Petitioner was not named as an accused in the FIR. He co-operated in the course of investigation. He was extensively interrogated. Finally, he had been arrested on 19th September, 2022. Investigation

is complete and police report has been filed. Sanction is awaited and there is little possibility of the trial commencing in near future. Petitioner is a reputed academician and there is little possibility of his abscondence or evading the process of law. Other accuseds have not been arrested. Hence, he prays for bail.

2. Mr. Arun Kumar Maiti with Mr. Anirban Mitra, learned Advocate for the CBI opposes the prayer for bail. He submits investigation has unraveled a deep rooted and widespread conspiracy in the matter of appointment of assistant teachers through the Commission. Petitioner was the former Chairman of the Commission, had overall control and was in charge of the day to day affairs of the Commission. He misused his position in the recruitment process in the following manner:-

- (1) Manipulations in OMR marks of referred candidates prior to publication of result of written examination;
- (2) Manipulations of Personality Test scores prior to publication of final Panel and Merit List in favour of some referred candidates;
- (3) Issuance of illegal Recommendation Letters by WBCSSC to undeserving candidates after the 7th phase of counseling.

As a result, undeserving candidates were selected in the course of counseling which followed. Hence, the bail prayer of the petitioner ought not to be allowed.

3. Mr. Arindam Jana with Mr. Bikram Banerjee, learned Advocates for the victims oppose the bail prayer.

They submit petitioner is one of the principal conspirators and had manipulated marks in the OMR sheets as well as personality test scores to enable appointment of undeserving candidates.

4. We have gone through the materials on record including the charge sheet filed against the petitioner and co-accuseds. Perusal of the charge sheet and materials collected during investigation show petitioner was the Chairman of the Commission from January, 2014 till July, 2018. Under his supervision selection process for appointment to the post of assistant teachers for Class IX and X in Secondary and Higher Secondary Schools was initiated. During the selection process it is alleged petitioner followed a non-transparent procedure viz., not uploading corrected answer papers on the official website as well as non-disclosure of the entire list of selected candidates. More particularly, petitioner instructed one Parna Bose (Programming Officer) to alter marks in the OMR sheets submitted by M/s. Nysa Communication Pvt. Ltd. — an agency entrusted for scanning and preparation of OMR sheets and upload the altered OMR sheets in the database of the Commission to favour referred candidates. Personality test scores were also altered at his behest. Consequentially, undeserving candidates were issued recommendation letters to attend counseling and were given appointments.

5. The role of the petitioner as the head of the Commission is pivotal in the selection process. He was in charge of the day to day functioning of the Commission and was suppose to ensure a free and fair selection of candidates. Instead of doing so, he indulged in stark illegalities which leave no doubt in one's mind with regard to his *prima facie* involvement in the illegal appointment of undeserving candidates in Government posts.

6. The purpose of setting up of a School Service Commission and that too under the leadership of a reputed academician as the petitioner would like himself to be described is to ensure purity and integrity in the process of selection and appointment of quality teachers who are entrusted with the duty to impart education to students who are the future of our nation. Petitioner as a prime player in the conspiracy betrayed such public trust and subverted the selection process through unlawful interference to favour the selection and appointment of undeserving candidates. Public posts were unlawfully allotted to recommended candidates through acts of nepotism and corruption. Petitioner was a willing facilitator to this enormous 'job scam'. Moreover, appointment of undeserving candidates to the posts of teachers in educational institutions, struck at the root of the right of students to access quality education. Gravity of the offence need not be further emphasised. Its impact on society is far reaching and dashed the aspiration of

many deserving candidates to public employment and cast a gloom on the academic prospects in the Government and/or Government aided Schools in the State.

7. It is strenuously argued there is no legally admissible material to show petitioner had played a role in the manipulation of the marks in the OMR sheets. Parna Bose, Programme Officer is an accused and her statement is legally inadmissible.

8. Conspiracies are not hatched in the open. They are products of dark liasons between conspirators. Conduct of the conspirators, their acts and illegal omissions before, during and after the conspiracy are inferential evidence to come to a conclusion with regard to the involvement of a conspirator. Petitioner was the head of the Commission and under his leadership selection process was initiated. Commission was entrusted to ensure a free, fair and impartial selection to the posts of teachers. He was in day to day charge of such activity. Gross and widespread manipulations of marks in OMR sheets maintained in the database of the Commission and in the personality scores of candidates under the stewardship of the petitioner gives rise to a *prima facie* inference of his culpability. These and other attending circumstances clearly establish his involvement in the crime.

9. We are conscious of the observations of the Hon'ble Apex Court in **Satender Kumar Antil vs. CBI**¹. In the said

¹ 2022 SCC OnLine SC 825

report, the Apex Court, inter alia, categorized offences in following four categories:-

- (i) Category A (offences with imprisonment upto 7 years);
- (ii) Category B (other offences);
- (iii) Category C (offences under special acts imposing restrictions on bail);
- (iv) Category D (economic offences).

10. The present case involves offences under Prevention of Corruption Act and would not fall in Category A but Category D. In the said report, the Court referring to the observations in ***P. Chidambaram vs. Directorate of Enforcement***², inter alia, held the gravity of the offence, object of the special law and attending circumstances are to be taken note of in addition to the period of sentence. Each case has to be decided on its own merit.

11. Grant of bail to public servants who indulge in corruption are to be considered on a different parameter. The reason is obvious. Acts of corruption by public servants not only affect the immediate victims but cause severe dent on the faith and confidence of society in fair and impartial public administration.

12. Judged from such perspective, mere attendance during the course of investigation or severity of punishment cannot be the sole criteria for consideration of

² (2020) 13 SCC 791

a bail prayer in the present factual matrix. Other weighty parameters like gravity of offence involving institutionalized corruption in matters of public employment need to be taken into consideration. Impact of the crime on society and the fate of innumerable victims viz., aspiring candidates in particular and students of the Government and Government aided school in general who stand deprived of quality education due to wrongful appointment also requires to be borne in mind.

13. We are cognizant that in ***Sanjay Chandra vs. Central Bureau of Investigation***³ the Apex Court observed bail ought not to be denied merely on the sentiments of the community. We have not been persuaded to come to a decision against the petitioner only on the score of sentiments of the community. Other relevant considerations have weighed with us. Petitioner has been implicated in another case involving similar allegations. Enforcement Directorate has also been directed to initiate enquiry in the matter. He is in custody barely for three months.

14. In view of the aforesaid conspectus, we do not consider it prudent to release the petitioner on bail at this stage.

15. We take note of the argument that there is little possibility of the trial commencing as sanction by the appropriate authority viz., the Chief Secretary to the State

³ (2012) 1 SCC 40

of West Bengal is awaited. Purpose of sanction is to protect honest and upright officers from undue and vexatious prosecution. Ample materials disclosing prima facie offence has been placed before us. We hope and trust the sanctioning authority shall take cognizance of the aforesaid facts and the necessity to take appropriate decision in the matter of sanction at the earliest.

16. With these observations, the prayer for bail of the petitioner is rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)