

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1110 OF 2022

Kapil Devprakash Rajput & Ors. .. Applicants

Versus

The Central Bureau of Investigation & .. Respondents
Anr.

...

Mr.Sanjeev Kadam with Mr.Prashant Raul i/b Mirajkar & Co. for
the Applicants.

Mr.Anil C. Singh, ASG with Mr.Kuldip Patil, Ms.Savita G.,
Ms.Amita Kuttikrishnan, Mr.Aditya Thakkar, Ms.Smita Thakur
and Mr.Pranav Thakkar for CBI, EO.B.

...

CORAM: BHARATI DANGRE, J.

RESERVED ON : 14th OCTOBER, 2022
PRONOUNCED ON : 21st DECEMBER, 2022

ORDER :-

1. The applicants seek their release on bail in CBI Special Case No.1639 of 2021, pending before the learned Special Judge for CBI, which arises out of R.C.No.68 of 2020.

2. The applicants were the partners in three firms, trading in packed milk/dairy products. For carrying the said business, the applicants availed various financial advances from the Central Bank of India, Mumbai Main Office, aggregating to sum of Rs.13 Crores. It is their case that on account of financial difficulties

faced, the amount was remained unpaid and in the year 2012, it got enhanced to Rs.10.88 Crores. This figure is reflected in the complaint made by the Bank to respondent No.1 as well as in the police report filed under Section 173 of the Code of Criminal Procedure (for short, "**The Cr.P.C.**").

3. The Bank had lodged written complaint on 03/09/2020 with CBI, which was registered as RC No.68 of 2020 invoking Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "**The PC Act**") and Sections 420 and 120-B of the Indian Penal Code (for short, "**The IPC**").

The case of the applicants is that they were called for investigation by the respondent/CBI and they extended their full co-operation in investigation, by remaining present before it. The applicants were never arrested and in the year 2021, a report under Section 173(2) of Cr.P.C. was filed, which resulted in registration of CBI Case No.1639 of 2021.

4. The applicants received summons from the Special Court to appear before it on 24/03/2022 and the applicants filed applications for bail, informing the Court that there is no case to arrest them at this stage, as on investigation being complete, there was no reason to have their custody and, particularly, when they have rendered their co-operation in the investigation.

5. On their appearance, the learned Special Judge rejected their applications for bail and remanded them to custody by order dated 24/03/2022. Hence, they preferred the application, seeking their release on bail .

6. When the application was listed before this Court, on 07/04/2022, by recording the contentions of the learned counsel that the applicants had appeared before the Investigating Officer and they have been duly interrogated and co-operated in the investigation, this Court granted an interim order securing their release on bail, subject to the condition of they reporting to the CBI, EOB, Mumbai, as directed.

7. Heard the learned counsel Mr.Sanjeev Kadam for the applicants, who had placed reliance upon the decision of Delhi High Court in *Court On Its Own Motion Vs. Central Bureau of Investigation*¹ as well as the latest decision of the Hon'ble Apex Court in *Satender Antil Vs. CBI*². He would submit that position of law in a scenario, where an accused was never arrested during the course of investigation and marked his presence subsequent to the filing of the police report before the concerned Court, directions have been issued to the effect that he shall not be arrested. The learned counsel would further submit that the gravity and severity of the offence has to be juxtaposed against

1 2004 72 DRJ 629

2 (2022) 10 SCC 51

the fact that the Investigating Officer never deem it necessary to arrest the accused during the course of investigation and in absence of the prosecution expressing flight risk, there can be no arrest.

Per contra, the learned counsel Mr.Patil for the CBI has laid emphasis on the role attributed to the applicants, which has been surfaced through the charge-sheet as well as the affidavit-in-reply filed by the CBI through the Inspector of Police on 21/04/2022. The learned counsel Mr.Patil would emphasis on the gravity of the offence, which is in the nature of an economic offence, affecting the financial health of the country and causing huge loss to the public exchequer.

8. I have heard the respective counsel and perused the charge-sheet, which is placed on record. I must take a note of the fact that the FIR is registered on 03/09/2020 and the charge-sheet came to be filed in the year 2021, which invoke Sections 471, 120-B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

9. As far as the present applicants are concerned, they face accusations for the offences punishable under the IPC, though it is alleged that they have conspired with each other to avail the bank loan on behalf of the firms and have defrauded the bank.

The public servants, Arvind Sethi and S.K.Roy are chargesheeted under the PC Act, by filing supplementary charge-sheet.

10. By order dated 07/04/2022, the applicants were released on bail, by recording a prima facie opinion that the learned Judge was not justified in taking the applicants in custody. The applicants were directed to report to the CBI, EOB as and when called for. Admittedly, the order continued to remain in force till date.

11. The Hon'ble Apex Court in *Satender Antil* (supra), took review of the provisions of "Bail" in the background of the fact that, Jails in India are flooded with under-trial prisoners and of this, majority of them have been charged with offences punishable for less than 7 years. In the backdrop of the mindset, the vestige of colonial India, on part of investigating Agency, notwithstanding the fact that arrest is draconian measure resulting in curtailment of liberty and it to be applied sparingly, is far from reality. Reiterating the principle "Bail is the rule and Jail is an exception", the Apex Court emphasized the presumption of innocence of a person, accused of an offence, through a legal fiction, placing onus on the prosecution to prove the guilt before the court.

On analysing the provisions pertaining to arrest,

contemplated in the Code of Criminal Procedure, their Lordships of the Apex Court deliberated on Section 170 of the Code which provided procedure to be followed when cases are forwarded to the Magistrate, where evidence is found to be sufficient and which contemplate that, the Officer shall forward the accused under custody to a Magistrate, empowered to take cognizance of the offence upon the police report and try the accused or commit him for trial.

12. By making reference to its earlier decision, in the case of **Siddharth vs. State of U.P.**³ (*supra*), it was held that this power is to be exercised after completion of the investigation by the Agency concerned. It is construed as procedural compliance from the point of view of the Court alone, where the investigating Agency has got a limited role to play. The observations to the following effect is the thrust of the decision and is found to be contained in Para 36, which read thus :-

“36. The scope and ambit of Section 170 has already been dealt with by this Court in *Siddharth v. State of U.P.*, (2022) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely

3 (2021) 1 SCC 676

forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.”

13. Liberty of a citizen has been considered to be essential requirement of the modern man and the quintessence of civilized existence. In a situation, where the custody of the applicants was not sought during investigation and only after filing of the charge-sheet, their release is opposed on the ground of gravity of offence, the prosecution fails to justify the power to detain. The right not to be denied reasonable bail, without cause is an essential element of an enlightened criminal justice system. The detention of the accused only on the pretext of the gravity of the offence, in my considered opinion, cannot sustain the impugned order, as perusal of the charge-sheet would reveal that the case of the prosecution is entirely based on documentary evidence and it is already crystallized in the charge-sheet. The further detention

of the applicants would be nothing but a punishment, which deserve to be imposed only after they face the trial and since the presumption of their innocence stand in their favour till they are convicted, in my opinion, their incarceration on completion of charge-sheet, is not justified. Hence, I deem it appropriate to confirm the order dated 07/04/2022, with the additional conditions being imposed upon them to the following effect, which shall be read in addition to the conditions, subject to which they were released on bail by this court. Hence the following order :

ORDER

- (a) Bail Application is allowed.
- (b) The order dated 07/04/2022 is made absolute.
- (c) The Applicants shall not leave the Country without prior permission of the Special CBI Court and they shall surrender their Passports, if any, before the Investigating Officer.
- (d) Needless to state that they shall continue to abide by the other conditions imposed upon them while releasing them on bail by the interim order.

14. All concerned to act on an authenticated copy of this order.

(SMT. BHARATI DANGRE, J.)