

29.11.2023
Sl. No.25
akd
[ALLOWED]

C. R. M. (DB) 4100 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 03.10.2023 in connection with CBI/ACB/Kolkata Case No. RC0102022A0005 dated 20.05.2022 under Sections 120B/201/420/467/468/471 of the Indian Penal Code read with Section 7 of the Prevention of Corruption Act.

And

In Re: ***Dr. Kalyanmoy Ganguly***

... .. Petitioner

Mr. Sandipan Ganguly .. Sr. Advocate

Ms. Manaswita Mukherjee

... .. for the petitioner

Mr. Arun Kumar Maiti

Mr. Anirban Mitra

Mr. Amajit De .. Id. Spl. Public Prosecutor

Mr. Arijit Majumdar

... .. for the CBI

Genesis of the case:-

1. Petitioner is a septuagenarian who was the Administrator of the West Bengal Board of Secondary Education from 2012. Thereafter, he was appointed as the President of the said Board and continued in the said position till 2022. During his tenure various illegal appointments of teaching and non-teaching staff were made to different schools in the State of West Bengal. During the hearing of a writ petition being WPA 12270 of 2021 (*Sabina Yeasmin & Ors. vs. The State of West Bengal & Ors.*). Learned Single Judge directed investigation by Central Bureau of Investigation into irregular appointment of candidates to the post of Clerk through 3rd RLST (NT), 2016 examination which came to be confirmed by a Division Bench of this court in MAT 199 of 2022, CBI registered the present case against the petitioner and others.

2. Crux of the allegation is that petitioner and others had entered into a conspiracy to issue illegal recommendation/appointment letters to unsuccessful candidates to fill up vacancies in Group 'C' posts in various schools in the State. Petitioner as the President of the Board had acted on forged recommendation letters issued by the then President of the West Bengal Central School Service Commission and issued illegal appointment letters to 381 unsuccessful candidates. It is further alleged that the petitioner had issued these appointment letters much after the panel had expired and contrary to the directions of the School Education Department.
3. In the course of investigation, he was arrested and remanded to custody. Presently he is in custody for 440 days. Initial charge sheet was filed on 30.09.2022 against the petitioner and fifteen other accused including the then Minister-in-charge of School Education. At that stage petitioner had approached this court seeking bail. CBI opposed the bail application on the ground that further investigation is in progress and money trail to the petitioner with regard to illegal appointments are being traced out. Under such circumstances, petitioner chose to withdraw the application for bail. Thereafter, another supplementary charge sheet dated 15.03.2023 was filed. Presently, petitioner has approached this court again seeking bail.

Arguments at the Bar:-

4. It is submitted on behalf of the petitioner that he is in custody for more than a year. It is further submitted petitioner had cooperated during investigation and had responded to the summons issued upon him. Two charge sheets have been filed and investigation in the present case so far as the petitioner is concerned is complete. In Special Leave Petition (Civil) Nos.4078-4079/2023, the Hon'ble Apex Court has directed the investigation to be completed within two

months. No sanction has been granted for prosecution under the Prevention of Corruption Act. There is little possibility of trial commencing in the near future. Petitioner is a super-annuated septuagenarian. He had suffered cardiac arrest in 2020 and is suffering from various old age ailments. There is no possibility of his abscondence or evading the process of law. Accordingly, he prays for bail.

5. Learned Advocate for the CBI strongly opposes the prayer for bail and submits petitioner is one of the prime conspirators in a deep rooted conspiracy to appoint undeserving persons to teaching and non-teaching posts in various schools in the State. He had close association with the then Minister-in-charge of School Education and his appointment was extended from time to time even in violation of the statutory Rules. He abused his official position and in flagrant violation of the Rules issued fake appointment letters on the fraudulent recommendations of a co-accused i.e. President of the West Bengal Central School Service Commission. He bypassed the regular channels of appointment and got the fake appointment letters issued by one Rajesh Layek, a contractual employee. Investigation is still in progress and release of the petitioner would impede the process of investigation and trial.

Principles governing grant of bail:-

6. Principles regarding grant of bail are well settled. They are as follows :-
 - a) *Nature and gravity of the offence;*
 - b) *Materials collected in course of investigation in support of the accusation and involvement of the accused;*
 - c) *Requirement of detention for the purpose of investigation/trial;*

d) *'Flight risk' i.e. possibility of abscondence or evasion of the process of law;*

e) *Possibility of commission of similar offences;*

f) *Intimidation of witnesses and/or tampering of evidence.*

7. The often quoted adage '*bail not jail*' is a dictum which illuminates bail jurisprudence more particularly at the pretrial stage. The continued detention of an accused who awaits a prolonged trial is an affront to the principles of presumption of innocence which is a part of the fasciculi fair trial rights under Article 21 of the Constitution of India. While examining the prayer for bail of the petitioner this court has borne in mind the well entrenched and hallowed principle of liberty of an individual.
8. At the same time, while considering the issue of '*bail or jail*' the Court requires to balance the cry of liberty of an undertrial against other equally weighty issues i.e. nature and gravity of offence, requirement of incarceration for the purpose of investigation, nature and impact of his release on the progress of trial etc.

Tripod test:-

9. In this backdrop this Court has applied the tripod test to the facts to determine whether continued detention of the petitioner is justified.
10. Firstly, we note petitioner is a superannuated individual. He is a septuagenarian and is suffering from frail health. He has strong roots in society. During investigation he responded to the summons issued by the Investigating Agency and was interrogated till the agency considered his custodial interrogation imperative for progress of investigation. These facts lead to the irresistible conclusion that there is no chance of abscondence or evasion of the process of law by the petitioner.

11. Second comes the issue of commission of similar offences.

Allegations involve abuse of the official position which the petitioner no longer holds. Accordingly, it is out of question that the petitioner would be in a position to commit similar offences.

12. Third relates to interference with investigation by intimidating witnesses and/or tampering evidence. Investigation in the present case has continued for more than a year. It centers around alleged fake appointment/recommendation letters which have already been seized. Two charge sheets have been filed and it is submitted at the Bar that the third and final charge sheet would be filed shortly in deference to the directions of the Hon'ble Apex Court. Evidence in the present case relates to documents already in the possession of the Investigating Agency and/or statements of public servants. There is remote chance of the petitioner influencing or intimidating such witnesses. In this backdrop it is highly improbable that release of the petitioner on bail would in any way interfere with the progress of investigation and/or intimidate witnesses.

13. It may also be relevant to note that in the opposition filed on behalf of the CBI, apart from stressing on the nature and gravity of the offence, there is no whisper that the petitioner would intimidate witnesses or tamper with evidence.

14. In light of the tripod test, we are of the view the petitioner is entitled to be released on bail.

Nature and gravity of the offences:-

15. There is another side to the issue too. Mr. Maiti has vehemently argued the role of the petitioner in the crime involving large scale corruption in high offices. Petitioner was the President of the Board and it is alleged he had wantonly abused his official position to issue fake appointment letters to fill up public posts. It is an aspiration of

every citizen to be in public employment. Such aspirations were dashed by the nefarious avarice of the accused persons of whom petitioner is one. No doubt the allegations are grave and involve corruption which adversely impacts the society at large but till date no money trail or disproportionate assets of the petitioner have been unraveled. We are informed at the Bar that an investigation under Prevention of Money Laundering Act has been registered by the Enforcement Directorate but petitioner has neither been interrogated nor arrested in the said case.

16. However, to continue undertrial detention of the petitioner merely on the gravity of the offence when the other requirements of abscondence, tampering etc. i.e. the tripod test does not justify such end would, in our estimation, amount to punishing the accused under the garb of undertrial detention. It must also be borne in mind that the offences, even if proved, would not attract mandatory life imprisonment.

17. Though the investigation appears to see some light at the end of the tunnel, in view of the large number of witnesses and voluminous documents proposed to be adduced in the two charge sheets filed till date, it is left to one's imagination when the trial would ultimately conclude.

Early conclusion of trial – a distant mirage:-

18. There is another hurdle in the matter. No sanction has been obtained from the appropriate authority for commencement of prosecution. In fact cognizance has not been taken on the charge sheet filed as yet. In view of the state at which the criminal proceeding is presently poised, we are of the opinion there is little possibility of its commencement even in the near future. Petitioner is

an old person who is suffering from various ailments. He is in detention for more than one year and two months.

19. In this backdrop continued detention of the petitioner would not be in consonance to the principles of justice and fair procedure which is just, fair and reasonable on the touchstone of Article 21 of the Constitution of India.

20. For these reasons, we are inclined to enlarge the petitioner on bail however, subject to strict conditions.

21. Therefore, the accused/petitioner, namely **Dr. Kalyanmoy Ganguly**, be released on bail upon furnishing a bond of Rs.50,000/- (Rupees Fifty thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Special Judge, CBI Court No.1, Alipore, South 24-Parganas subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever and on further condition that the petitioner, while on bail, shall not enter the jurisdiction of Park Street Police Station as well as Bidhannagar Commissionerate where the offices of the School Service Commission are situated until further orders. He shall cooperate with the Investigating Agency. Prior to his release, he shall deposit his passport, if any, before the trial court.

22. In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

23. The application for bail, thus, stands allowed.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)