

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.M. (DB) 4229 of 2022

Anubrata Mondal @ Kesto

Vs.

The Central Bureau of Investigation

For the Appellant	:	Mr. Kapil Sibal, Sr. Adv. Mr. Sandipan Ganguly, Sr. Adv. Mr. Ankur Chawla, Adv. Mr. Somopriyo Chowdhury, Adv. Mr. Karan Dudhwewala, Adv. Mr. Avik Ghatak, Adv. Mr. Dipayan Dan, Adv.
For the CBI	:	Mr. D.P. Singh, Sr. Adv. Mr. Arun Kumar Maiti, Adv. Mr. Anirban Mitra, Adv. Mr. Amajit De, Adv. Mr. Somnath Adhikary, Adv.
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. PP Mr. Rudradipta Nandy, Ld. APP
Heard on	:	03.01.2023
Judgment on	:	04.01.2023

Joymalya Bagchi, J. :-

Facts leading to the bail application:-

1. Petitioner is the President of the District Committee of All India Trinomool Congress. He was arrested on 11.08.2022 in the

present case. The case was registered by CBI alleging one Md. Enamul Haque and his associates had entered into conspiracy with BSF and customs officials to illegally smuggle cattle to Bangladesh. To enable the movement of the cattle through the Districts of Birbhum and Murshidabad, Md. Enamul Haque had obtained illegal favours from the petitioner, a powerful political satrap. It is contended the petitioner used his influence to facilitate the crime and received wrongful gains for his patronage.

2. In the course of investigation, CBI summoned the petitioner for interrogation but he evaded the process. He unsuccessfully challenged the summons before the High Court and even sought refuge in a hospital in Kolkata on the excuse of medical check up. Finally, he attended the interrogation on 11.08.2022 but refused to cooperate. Under such circumstances, CBI arrested the petitioner. Subsequently, CBI filed the fourth supplementary charge-sheet in the case wherein the petitioner has been shown as an accused. Bail prayer of the petitioner was turned down by the Special Court. Hence, petitioner has approached this Court seeking bail.

Arguments at the Bar:-

3. Mr. Sibal, Senior Counsel submits co-accuseds Md. Enamul Haque and Satish Kumar are on bail. Though CBI had not arrested other accuseds, petitioner was illegally arrested due to his political affiliations. It is strongly contended no legally admissible material has been collected to show petitioner is a conspirator in the crime.

Statements of witnesses are inferential and contradictory. Investigation is perfunctory and statements of most of the charge-sheeted witnesses have not been recorded by CBI. Allegations of threatening witnesses and/or subverting the judicial process are figments of imagination which have been manufactured to oppose the bail prayer. Accordingly, he prays for bail.

4. In response Mr. Singh Senior Counsel for CBI submits petitioner is one of the prime conspirators in the organized crime racket. Investigation revealed active association between Md. Enamul Haque and the petitioner and his personal security officer Sehgal (presently in custody) to facilitate the illegal movement of cattle through the Districts of Birbhum and Murshidabad to reach the international border. He even helped Enamul to procure fake sale receipts through one Montu Mallick for illegal smuggling of cattle. Unlike other co-accuseds who cooperated during investigation, petitioner not only evaded the investigation but resorted to various subterfuges to derail the investigation. Accordingly, he was arrested. Even after the arrest, his influence remains unabated and he is continuing to threaten witnesses through his men and agents. A crucial witness is untraceable. During the hearing of the bail application one of the witnesses was approached by the petitioner through his agent. Petitioner has considerable clout over the State Police Administration. In order to avoid the execution of a production warrant against him in connection with an ED Case registered in New Delhi, the State police illegally arrested him in a

fabricated criminal case which was belatedly registered after a lapse of one year. Investigating officers of the present case have been falsely implicated in connection with an unnatural death case in CBI custody. Even the Judge concerned had received threats resulting in registration of a criminal case.

5. In view of the aforesaid insinuations made against the State Police Administration, this Court issued notice upon the Public Prosecutor and called upon him to submit report with regard to the criminal cases registered in connection with the alleged threat held out to the Judge and also the subsequent case registered against the petitioner.

6. In response of the notice, learned Public Prosecutor has submitted reports with regard to the aforesaid cases. Reports are kept on record.

Principles governing bail:-

7. Grant of bail to an undertrial requires a fine balance between the right to liberty and presumption of innocence of an accused on one hand and public interest in the discharge of sovereign duty of the State to investigate, prosecute and punish an offender on the other hand. Detention of an undertrial is not to punish him even before he is pronounced guilty. The purpose of detention pending trial is to ensure smooth and proper administration of criminal justice.

8. To decide whether an undertrial ought to be granted or denied liberty, the Court is required to consider the following relevant factors:-

- (i) Gravity and seriousness of the accusation;
- (ii) Materials collected in support of the accusation;
- (iii) Possibility of the accused committing similar offences while on bail;
- (iv) Chance of abscondence;
- (v) Possibility of the accused influencing witnesses or tampering evidence;
- (vi) Character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;
- (vii) Impact of the release of the accused on society in general and the victims/witnesses in particular.

Consideration of the bail plea of the petitioner in the light of the aforesaid parameters:-

(i) Gravity of seriousness of the accusation:-

9. In *Satender Kumar Antil vs. CBI*¹ the Apex Court laid down broad guidelines in the matter of grant of bail. It classified offences in the following four categories:-

- (i) Category A (offences punishable upto seven years),
- (ii) Category B (other offences),
- (iii) Category C (offences under Special Acts wherein restrictions on bail are imposed) and

¹ (2022) 10 SCC 51

(iv) Category D (economic offences).

The gist of the accusation in the present case discloses an organized crime racket to smuggle cattle across international border by bribing BSF and custom officials. The nature of the accusation involves corrupt practices and falls in Category D, i.e., economic offences. Carving out a higher benchmark for bail in such cases, the Bench in **Satender Kumar Antil** (supra)² held period of sentence is not the sole determining factor to assess the seriousness of the accusation. The gravity of the offence, the object of the law and other attending circumstances are relevant. In **P. Chidambaram vs. Directorate of Enforcement**³ the Apex Court after referring to a catena of decisions held as follows:-

“19. ... Perusal of the cited decision would indicate that this Court had held that economic offences are also of grave nature, being a class apart which arises out of a deep-rooted conspiracies and effect on the community as a whole is also to be kept in view, while consideration for bail is made.”

The Bench further held each case is to be judged on its own merits.

10. Instant case relates to illegal cattle smuggling across international border which has far reaching impact on the economic and national security of the country. Petitioner as a powerful political personality illegally aided and abetted the cattle smuggler Md. Enamul Haque in the venture. He used his influence to ensure smooth passage of cattle through the Districts of Birbhum and Murshidabad to reach the international border in lieu of wrongful gains and amassed

² See para 90

³ (2020) 13 SCC 791

enormous illegitimate wealth. It is contended he is not the principal offender. As per prosecution case, power and influence of the petitioner was essential for the smooth operation of the cattle smuggling syndicate in the Districts of Birbhum and Murshidabad. Without his patronage the organized crime could not have been perpetuated. His role in the crime is pivotal and cannot be discounted as a minor one.

11. Mr. Sibal argued petitioner has been singled out and arrested out of political vindictiveness. To make this point he contended other accuseds, namely, Md. Golam Mustafa @ Patal, Rasheda Bibi, Tania Sanyal, Badal Krishna Sanyal and Sk Abdul Rahim were not arrested. Petitioner is a prominent political personality whose patronage provided the cover that facilitated the cattle smuggling trade. By no stretch of imagination his role in the crime can be compared with Md. Golam Mustafa and Rasheda Bibi who are the associates of the principal cattle smuggler Md. Emanul Haque. Tania and Badal are relations of the BSF Commandant Satish Kumar. Illegal gratifications received by Satish Kumar were transferred in their favour. Sk. Abdul Latif is also an associate of Md. Enamul Haque. Unlike the petitioner, all the aforesaid accuseds cooperated with the investigation. Hence, arrest of the petitioner cannot be said to be unlawful or actuated with malice. On the other hand, it appears to be founded on the gravity and the seriousness of the accusation levelled against him.

(ii) Materials collected in support of the accusation:-

12. Mr. Sibal strenuously argued no legally admissible material has been collected against his client. Mere inferences from statement of hearsay witnesses cannot justify detention. Petitioner is a conspirator in an organized crime racket. Conspiracies are not hatched in the open. It is common knowledge conspirators engage with one another in secrecy. Proof of conspiracy is essentially circumstantial⁴. Statement of a prosecution witness Sk. Abdul Rahim shows close nexus between Md. Enamul Haque and the petitioner and his personal security officer, Sehgal Hossain. His statement highlights regular payment of money to the petitioner. It is also alleged in the charge-sheet that the petitioner helped Md. Enamul Haque to procure ante-dated sale receipt from one Montu Mallick of Poshu Hat to facilitate cattle smuggling. These materials on record are corroborated by regular telephonic communications between Md. Enamul Haque, Sehgal Hossain and the petitioner. Materials collected during investigation indicate that petitioner used to talk with other conspirators through the mobile phone of co-accused Sehgal. It is argued the contents of their conversations are unknown. It is relevant to note CDRs show meeting of minds between the conspirators. Nature of the deliberations can be inferred from the statement of Sk Abdul who endorses payments made to petitioner by the cattle smuggler Md. Enamul Haque through Sehgal and another co-accused. These circumstances give rise to a reasonable

⁴ State (NCT OF DELHI) vs. Shiv Charan Bansal, (2020) 2 SCC 290 [para 44 to 46]

inference of conspiracy. Once existence of conspiracy is shown, acts of each conspirator in pursuance of the common intention would bind the others and establish their culpability⁵. Hence, we are of the view there are ample materials collected during investigation implicating the petitioner in the crime.

(iii) Influencing witnesses and derailing investigation:-

13. Mr. Singh strongly contends that petitioner is a man of paramount influence. While in custody, he continues to intimidate witnesses through his men and agents. That apart, he has overwhelming control over the State Police Administration. They assisted him to thwart the execution of a production warrant issued against the petitioner in the E.D. Case.

14. Mr. Sibal in reply submitted none of the intimidations or threats alleged by CBI can be traced to his client.

15. We have considered the materials on record. In the opposition filed by the CBI it is averred one of the vital witnesses, namely, Sh. Manoj Sana is missing. Statement of another witness has been placed before us which shows during the bail hearing he had been threatened by the petitioner from jail. Mr. Singh informs us steps are being taken to ensure witness protection.

16. Apart from the aforesaid materials showing intimidation of witnesses a very disturbing feature has come to our notice. A production warrant had been obtained against the petitioner by

⁵ See section 10 of the Evidence Act

Enforcement Directorate in a money laundering case registered against him in New Delhi. Immediately thereafter, on 09.12.2022 a criminal case, namely, Dubrajpur Police Station Case No. 266/2022 dated 19.12.2022 under sections 323, 325, 307, 506 IPC was lodged implicating the petitioner in a purported incident of assault which is said to have occurred one and half years ago. Though no medical papers in support of such assault were placed, the State Police Administration in post haste obtained police custody of the petitioner in the said case. Mr. Singh contends such exercise was a mala fide one and undertakes to abort the execution of the production warrant. We are informed that the legality of the production warrant is pending consideration before the Delhi High Court. To avoid pre-judging the issue we choose not to make any comment with regard to its legality save and except observing the arrest and police custody of the petitioner in the belated FIR registered against him appears to be an overzealous and unjustified exercise for reasons not far to seek.

17. From the materials placed before us, it appears that petitioner continues to wield considerable influence and had misused it to intimidate witnesses and/or subvert the process of investigation. Reliance on **P. Chidambaram** (supra) is wholly misplaced. In the cited case, unlike the present one, the Court found the allegations of influencing witnesses were unfounded. The Court observed:-

“17. ... In the present situation, the appellant is not in political power nor is he holding any post in the Government of the day so as to be in a position to interfere.

In that view such allegation cannot be accepted on its face value. With regard to the witness having written that he is not prepared to be confronted as he is from the same State, the appellant cannot be held responsible for the same when there is no material to indicate that the appellant or anyone on his behalf had restrained or threatened the witness concerned who refused to be confronted with the appellant in custody.”

18. The situation in the present case is entirely different. Petitioner continues to hold political office and materials show he is involved in intimidation of witnesses.

19. Further investigation with regard to the illegitimate wealth amassed by the petitioner through wrongful gain is continuing. To release of the petitioner on bail at this stage would adversely affect the morale and confidence of witnesses and seriously impact the collection of evidence during further investigation.

(iv) Bail on parity – circumstances peculiar to the petitioner:-

20. It is argued that Md. Enamul Haque, who is the principal accused is on bail. The public servant, i.e., Satish Kumar has also been enlarged on bail. Hence, petitioner ought to be released on bail on parity. Md. Enamul Haque was released on bail by the Apex Court after one year. Petitioner is in custody for about 5 months. He cannot claim parity with Md. Enamul Haque. In addition thereto, petitioner continues to hold a powerful political post. He has overwhelming influence not only in society but upon the State administration. Accordingly, he stands on a completely different footing from the co-accuseds including the public servant Satish Kumar who are on bail. Grant of bail on principle of parity requires assessment of the case of an undertrial vis-

à-vis co-accuseds from all perspectives. Paramount influence of the petitioner as a political heavy weight and materials collected showing misuse of such power to influence witnesses and derail the investigation places him in a unique position in comparison to others who are on bail. Enlargement of the petitioner on bail would have an ominous impact not only on the witnesses but on the smooth administration of criminal justice in the case.

Conclusion:-

21. For the aforesaid reasons, we are not inclined to enlarge the petitioner on bail at this stage.

22. Needless to mention observations in this order are for the purpose of disposal of this application and shall not have any bearing at the subsequent stages of the proceeding including trial which shall be decided independently and in accordance with law.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)