02.05.2024.
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Ct.No.28
as
(Rejected)

CRM (DB) 681 of 2024

In Re: An application for bail under Section 439 of the Code of Criminal Procedure in connection with CBI/ACB/Kolkata Case No. RC0102022A0006 dated 09.06.2022 under Sections 120B of the IPC read with section 420/467/468/471 of the Indian Penal Code and Sections 7A/ 8 of the Prevention of Corruption Act.

And

In Re: ***Kuntal Ghosh***

… … Petitioner

Sk Selim Rahaman,
Mr. Nazamul Acom Sarkar,
Mr. Arif Hossain,
Mr. Suvankar Mondal,
Ms. Gargi Mukherjee

… for the petitioner

Mr. Dhiraj Trivedi, learned DSGI,
Mr. Amajit De,
Mr. Arijit Majumder,
Ms. Supriti Sarkhel

…… for the CBI

<u>Genesis of the prosecution case</u>:-

1. Petitioner is a prominent youth leader of the political party which presently rules the State. A deep rooted conspiracy concerning illegal appointments of teachers in primary schools was unearthed during hearing of a writ petition being WPA 9979 of 2022. Noticing that the conspiracy was hatched by public servants in responsible positions of State administration including the Primary Education Board, the learned Single Judge directed Central Bureau of Investigation to conduct investigation.

Investigation proceeded and a number of reports were filed before the learned Judge. These reports disclose a disturbing state of affairs. The recruitment process for appointment of primary teachers in the year 2016 was submitted and over 300 illegal appointments were made. *Modus operandi* for such illegal appointments was unique. A decision was taken by the Board to award one mark to candidates who had fallen short by a mark in the Teacher Eligibility Test (for short 'TET'), that is to say candidates in general category who scored 89 marks and those in reserved categories who scored 82.5 marks were given an additional mark so that they may qualify for the recruitment process. However, the decision was not implemented uniformly in respect of all 431 eligible TET candidates. Only 264 of them were favoured with one mark. Some of these candidates awarded the extra mark were not even qualified for other reasons. But these candidates were favoured in lieu of illegal gratification.

2. This is where petitioner played his part in the conspiracy. He was one of the nodal persons who built a network throughout the state for collecting illegal gratification from undeserving candidates to procure illegal appointments. He was aided and abetted by his henchmen which included one Tapas Kr. Mondal and other sub-agents who collected over Rs.8 crores from a large number of candidates. During investigation, he was arrested but did not cooperate with the investigating agency. On the

other hand, he made allegations that the investigating agency had subjected him to threat and coercion to implicate important political leaders. On his complaint, the State Police administration registered criminal cases against the investigators. Presently the said cases have been stayed.

3. Be that as it may, it appears investigation continued and supplementary charge sheets have been filed. Materials collected during investigation show a number of unqualified candidates who had paid illegal gratification to the petitioner had been appointed. Notwithstanding these facts which disclose involvement of the petitioner to procure undue favour from public servants against illegal gratification, the investigating agency, for reasons best known to them, did not add offences under the Prevention of Corruption Act in the charge-sheet.

4. Learned Magistrate noticing these lacunae in the charge sheet took cognizance under section 7A of the Prevention of Corruption Act. Presently, further investigation is in progress to unravel the nexus of the petitioner with the office bearers of the Board for procuring illegal appointments to public posts. Investigation is also continuing to trace out the money trail from the petitioner to other influential persons. At this stage, petitioner has approached us for bail.

Arguments at the Bar:-

5. Learned counsel for the petitioner strenuously argues his client is in custody for more than a year. Initially, police report filed by CBI did not incorporate offences under the Prevention of Corruption Act. *Suo Moto* action on behalf of the Court in this regard is unwarranted. He was subjected to custodial threat and coercion. He also contends further investigation is in progress and there is no possibility of trial commencing in the near future. He may be released on bail.

6. Deputy Solicitor General vehemently opposes the bail prayer. He contends petitioner is a prominent leader of a political party. He has overwhelming influence in the State including the police administration. He engineered a false complaint against the investigators and a first information report was registered which has been stayed by this Court. He submits investigation has revealed the principal role played by the petitioner in collecting illegal gratification from underserving candidates to procure illegal appointments. The conspiracy hatched by the petitioner has daring dimensions. Not only did he create a fake website in the name of West Bengal Board of Primary Education to induce candidates to pay bribes to him, he even arranged for their mock interviews in the office of the Board itself. So much was his control over the officers of the Board. Petitioner has also been booked under PMLA as a conspirator for diverting, layering and reintegrating

proceeds of crime. In the event he is released on bail he shall influence the candidates and others whose evidence is vital to establish the crime. He shall also scuttle the further investigation with regard to the conspiracy between himself and other office bearers of the Board.

Analysis and findings:-

7. We have gone through the charge sheet. Allegations in the charge sheet disclose deep and pervasive corruption prevailing in the recruitment process of teachers in primary schools for the year 2016. Office bearers of the Board had entered into a conspiracy and devised an ingenious strategem to ensure appointment of favoured candidates who were ready and willing to shell out illegal gratification. Deserving candidates were ignored. Petitioner played a vital role to set up a web of agents and sub agents who approached these underserving candidates and procured illegal gratification. To enable this criminal enterprise he floated a fake website of West Bengal Board of Primary Education titled *www.wbtetresults.com.* Therefore, petitioner and his agents and sub agents induced candidates to pay them illegal gratification for wrongful appointments.

8. Notwithstanding the aforesaid allegations in the charge-sheet, we are surprised to note the investigating agency did not add offences under the Prevention of Corruption Act in the police report. Timely intervention by the trial Judge led to the addition of the offence under

section 7A of the Prevention of Corruption Act. A deeper scrutiny of the profile of the allegations would show they disclose graver offences under section 7 read with 13 of the Prevention of Corruption Act in addition to section 7A of the said Act. Petitioner and his associates did not only take illegal gratification in the name of public servants but also had ensured undue favour by way of illegal appointments to those underserving candidates. It shall be open to the prosecuting agency to seek addition of the aforesaid graver offences before the trial Court in accordance with law.

9. Gravity of the offence and *prima facie* involvement of the petitioner therein do not require further emphasis. It has been highlighted by the Apex Court[1] that in offences involving corruption in public offices, gravity of the crime ought not to be measured only with reference to quantum of punishment. Impact of such offences on the purity of public administration and rule of law are relevant considerations. In the present case the corruption has polluted the recruitments to primary schools. It is the fundamental duty of the State to provide free and compulsory education upto the age of 14 years. When this constitutional duty is polluted and devastated through the greed of public servants and their associates like the petitioner, gravity and magnitude of the crime must be

[1] P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791 (para 19);

seen through the prism of constitutional dereliction and not merely with reference to the quantum of punishment.

10. We are conscious that the petitioner is in custody for more than a year. It is strongly argued further investigation is in progress and there is little possibility of trial commencing in the near future. It is imperative under-trial detention ought not to be protracted unnecessarily lest it takes the character of a punitive one.

11. We have judged the continued detention of the petitioner from this perspective too. In the present case, further detention is necessary to insulate the process of further investigation with regard to the nexus of the petitioner with the office bearers of the Board. It is also necessary to trace out the proceeds of crime which were rooted through the petitioner to other influential persons. Though it is argued petitioner has been striped off his official role in the political party, he continues to have overwhelming influence and his release on bail shall overawe various candidates and other individuals who are vital witnesses to prove the involvement of the petitioner in procuring illegal appointments. It is also relevant to note petitioner has been implicated in offences under PMLA and complaint has been filed against him.

Conclusion:-

12. For these reasons, we are of the opinion this is not a fit case to grant bail to the petitioner at this stage.

13. Accordingly, prayer for bail is, thus, rejected.

14. Further investigation in the crime be carried on with expedition and concluded at the earliest.

15. Needless to mention observations made in the order are tentative and shall not have any impact on the subsequent stages of the proceeding which shall be conducted independently and in accordance with law.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**