



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 123 OF 2024

Purushendra Kumar S/o. Dhir Singh

..VS..

Central Bureau of Investigation (CBI), A.C.B., Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. G.M. Kubade, Advocate for applicant.

Mr. P.K. Sathianathan, Special Advocate for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13th MARCH, 2024

Apprehending the arrest at the hands of the police in connection with Crime No.RC0282024A0001/2024, registered by Central Bureau of Investigation(CBI), Anti Corruption Bureau (ACB), Nagpur on 03.01.2024 for the offence punishable under Sections 7, 7A and 8 of the Prevention of Corruption Act, 1988 (for short the "P.C. Act") and Section 120(B) of the Indian Penal Code(IPC), the applicant approached to this Court for grant of pre-arrest bail.

2. As per contention of the applicant, the applicant is a CCE graduate in Chemical Engineering and a post-graduate in Industrial Safety Management. In April 1993, the applicant was appointed as a Deputy Controller of Explosive at Calcutta. He was then posted at various places and promoted as Controller Explosive. Thereafter,

he was posted as a Deputy Chief Controller of Explosive at Chandigarh as well as at Chennai. In 2021, he posted at Nagpur as Head of Department. On the basis of experience and sound performance, he promoted as Chief Controller Explosive at Nagpur in February 2022. He is a very well reputed person.

3. It is submitted that the CBI, ACB, Nagpur on the basis of source of information crime is registered against one Shri Priyadarshan Deshpande, resident of Nagpur a private person and Shri Devi Singh Kachhawaha, Director of M/s. Super Shivshakti Chemical Pvt. Ltd., and one unknown officer of Petroleum and Explosives Safety Organization (PESO), Nagpur and one unknown person under Section 120(B) of the IPC read with Section 7, 7A and 8 of the PC. Act. It is alleged that information was received to the effect that the co-accused Devi Singh Kachhawaha, Director of M/s. Super Shivshakti Chemical Pvt. Ltd. Chittorgarh(Rajasthan) wanted to use its electronic detonator manufacturing capacity up to 75% till March 2024, which requires permission of Petroleum and Explosives Safety Organization (PESO) and the same is pending with PESO head office, Nagpur. The co-accused Shri Priyadarshan Deshpande is working as a Marketing Officer, M/s. Deepak Fertilizer and Chemical Pvt. Ltd. and was discharging his duty at Nagpur. The recitals further discloses that said Priyadarshan Deshpande was involved in a criminal conspiracy with unknown public servants of PESO, Nagpur and contacted

Shri Devi Singh Kachhawaha, who is the Director of M/s. Super Shivshakti Chemical Pvt. Ltd. for obtaining a bribe of Rs.10,00,000/- to get the pending work done. The officers of PESO have facilitating Shri Devi Singh Kachhawaha in lieu of bribe through Shri Priyadarshan Deshpande in the matter of amendments in the license of the above firm. The sources further disclosed that Shri Devi Singh Kachhawaha reached Nagpur on 01.01.2024 to deliver the bribe amount to Shri Priyadarshan Deshpande in two-three days for the unknown officers of PESO, Nagpur for the aforesaid purpose. On 03.01.2024 the co-accused Shri Devi Singh Kachhawaha and Shri Priyadarshan Deshpande were caught red-handed during the transaction of bribe of Rs.10,00,000/- at M/s. Super Print Government Shopping Complex, Seminary Hills, Nagpur in the presence of witnesses. Accordingly the First Information Report(FIR) was lodged against them.

4. During the trap proceedings on 03.01.2024, the house search of Shri Priyadarshan Deshpande was conducted by the CBI officers. During the search, the cash amount of Rs.1,19,57,840/- and gold items and incriminating documents, documents relating to pending works of various firms of PESO etc. were seized. Similarly, the house of the present applicant and one Vivek Kumar, Deputy Chief Controller of Explosive of PESI was also searched. During the house search of the present applicant, an amount of Rs.5,86,500/- along with the golden ornaments were seized.

5. As the house search of the present applicant was conducted and some amount was seized from his house, the applicant is apprehending arrest at the hands of police and, therefore, he approached to this Court for grant of pre-arrest bail.

6. Heard learned Counsel for the applicant Mr. Kubade. He submitted that the applicant is serving as a Chief Controller of Explosive at Nagpur since February 2022. By an order dated 13.12.2023 of Under Secretary to the Government of India, Ministry of Commerce and Industry, who had deputed the present applicant and one Shri S.D. Mishra to visit the manufacturing facility of M/s. Rotares SRG Schulz+Rackow Gastechnik GmbH in Germany from 08.01.2024 to 12.01.2024 excluding journey time. The present applicant and S.D. Mishra had purchased the air tickets to board the flight. He further submitted that on 03.01.2024, the applicant learnt that some officials of CBI had visited his residence and sealed the lock of his house and seized some amount. He also learnt that the raid was conducted in between 2.30 p.m. to 1.30 a.m. of 04.01.2024. The officials then visited the residential premises of other officials also. He submitted that as far as the allegations against the present applicant is concerned, from the recitals of the FIR, the involvement of the present applicant does not reveal as there is no allegations against him as far as demand and acceptance of bribe amount is concerned. He submitted that custodial interrogation of the present applicant is not

required. Moreover, in view of Section 17A of the P.C. Act, the authority has to obtain prior approval and without prior approval, no action can be taken against the present applicant. He further submitted that the learned trial Court has not dealt with Section 17A of the P.C. Act and wrongly rejected the application. He placed reliance on the procedure which is to be followed by the officials of the CBI in view of the CBI Manual and submitted that in view of the CBI Manual, the approval is required and CBI officials have to follow the procedure which appears to be not followed.

Considering that the CBI officials are not following the procedure which is mandated in view of the CBI Manual and no allegations are made against the present applicant, there is no *prima facie* case against him. In view of that and in view of the provision of Section 17A of the P.C. Act, the applicant shall be protected by granting anticipatory bail.

7. In support of his contention, he placed reliance on ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others***, reported in ***AIR 2011 SC 312*** and ***Ashok Kumar Vs. State of Union Territory Chandigarh, Special Leave Petition No.9949/2023***, decided on 01.03.2024.

8. *Per contra*, the learned Special Prosecutor Shri Sathianathan strongly opposed the said application on the ground that during investigation, the CBI officials have conducted the raid and the amount of Rs.5,86,500/-

is seized from the house of the present applicant. It also reveals during the investigation that the applicant has attempted flew away along with his family members and the tickets were arranged by the co-accused Shri Priyadarshan Deshpande. He placed on record the list of the passengers and the report of the Investigating Officer shows that payments of the tickets are paid by Priyadarshan Deshpande. During investigation, the Investigating Officer has recorded the statement of the co-accused Shri Priyadarshan Deshpande and the name of the present applicant is disclosed by him which shows that in the said scam. The present applicant is also involved and the some bribe amount is paid to the present applicant. Thus, *prima facie* case is made out against the applicant and he submitted that as far as the applicability of Section 17A of the P.C. Act is concerned, which is not required and it is not applicable. He submitted that considering the serious allegations against the present applicant that on his behalf, the co-accused Shri Priyadarshan Deshpande has acted, dealt with the other co-accused and the bribe amount was accepted, out of which some amount is already paid to the applicant.

He further submitted that from the statement of the co-accused it revealed that he has accepted the amount on behalf of PESO officers namely Shri P. Kumar, Chief Controller of Explosive, Ashokkumar Dalela and Vivek Kumar, both Deputy Chief Controllers of Explosive at PESO head-quarter Nagpur. Regards share of the bribe amount of these officers, Shri Priyadarshan Deshpande

further disclosed that 70% of the bribe amount is to be given to Shri P. Kumar, 15% of the bribe amount is to be given to Ashokkumar Dalela and Vivek Kumar as per work and remaining 15% is to be kept by himself. Thus, it reveals that the involvement of the present applicant is there and there is a *prima facie* case and, therefore, custodial interrogation of the present applicant is required and prays for rejection of the application.

9. Having heard the learned Counsel for the applicant and learned Special Prosecutor for the CBI and perused the investigation papers. There is no dispute as to the fact that the present applicant is the Chief Controller of Explosive at PESO Nagpur in February 2022. The investigation papers further shows that after registration of the crime, the house of the present applicant was searched and during the search, the amount to the tune of Rs.5,86,500/- along with the golden ornaments were seized. During investigation, the statement of the co-accused is recorded, from which it revealed that the company deals with the chemical components and therefore, he used to visit the PESO head-quarter Nagpur time to time and was familiar with the most of the officials of PESO head-quarter. During this process, he came into contact of other representatives of the companies dealing in the chemical/gas and having work with the PESO head-quarter. In this connection, he is having contacts with the PESO officers. It further reveals from the statement that such firms also offers bribe to the

PESO head-quarter officials, demand money/bribe in lieu of such work done or showing favour for them. He further disclosed that he used to accept such money on behalf of PESO head-quarter officers, mostly Shri P. Kumar, Chief Controller of Explosive, PESO head-quarter Nagpur, Shri Ashokkumar Dalela and Vivek Kumar, both Deputy Chief Controller of Explosive at PESO head-quarter, Nagpur. There is a share of these officers and he has also described how-much share is to be given to the present applicant and how-much share is to be given to the other officers. The statement of this co-accused discloses the involvement of the present applicant in the alleged offence.

10. While considering the application for anticipatory bail, the Court has to consider the parameters which are requires to be taken into consideration while granting the bail under Section 438 of the Code of Criminal Procedure. While considering the application under Section 438, where any person has reason to believe that he may be arrested such person can apply for grant of pre-arrest bail and the facets like the nature and gravity of the accusation, (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence, (iii) the possibility of the applicant to flee from justice and (iv) where the accusations have been made only with the object of injuring or humiliating the applicant by having him so

arrested, either reject the application forthwith or issued an interim order for grant of anticipatory bail. Thus, while considering the application, the Court has to see the nature of the offences, the requirement of the applicant for custodial interrogation and whether there is a possibility of fleeing away of the accused from the justice is required to be looked into. It is clear from the statements, objects and reasons that the purpose of incorporating Section 438 in the Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. At the same time, it is also requires to be looked into that the nature of the offence and the need of the custodial interrogation of the applicant involved in the crime.

11. The learned Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra*** (cited supra) wherein also these principles are considered and the guidelines are issued by the Hon'ble Apex Court, wherein it is held that while considering the ambit, scope and content of the expression "personal liberty" the term used in this Article is to include within itself all varieties of rights which goes to make up the "personal liberties" or man other than those dealt within several clauses of Article 19(1).

12. Though the object of Section 438 of the Cr.P.C. is to safeguard personal liberty of an individual, balance is

required to be established between two rights i.e. safeguarding personal liberty of an individual and societal interest and that grant of anticipatory bail particularly in offences like the present one which hamper the effective investigation. Power to grant anticipatory bail being an extraordinary power has to be exercised sparingly, more so in cases of economic offence or the offences like present one, such bail must be granted only on exception cases after application of mind in relation to nature and gravity of accusation, the possibility of the applicant to flee from justice. Power are to be invoked where cases alleged to be frivolous and the groundless.

13. In the light of the well settled principles laid down while considering the application for the anticipatory bail, in the present case, admittedly the connection of the applicant reveals from the documents collected which shows that the co-accused has purchased the tickets for the applicant and his family members and secondly the statement of the co-accused which discloses the involvement of the present applicant in the alleged offence. Thus, *prima facie* case is made out against the applicant.

14. The another limb of submission of the learned Counsel for the applicant in regard to the Section 17A of the P.C. Act. Section 17A of the P.C. Act reads as “Enquiry or Inquiry or investigation of offences relatable to

recommendations made or decision taken by public servant in discharge of official functions or duties”, which states that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval.

- (a) In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
- (b) In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
- (c) In the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

The First Proviso says that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

The Second Proviso further makes it clear that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

15. As far as application of Section 17A of the P.C. Act is concerned, after considering the allegations, admittedly, the co-accused Priyadarshan Deshpande, as per the allegations, hatched the criminal conspiracy with the PESO officials to get the pending work done and for that purpose agreed to accept some amount from the other co-accused. As such, in view of Section 17A of the P.C. Act, which in my view, at this stage is not attracted to the present case. Moreover, the first proviso of Section 17A of the P.C. Act makes it clear that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

16. The learned Counsel for the applicant also invited my attention towards the procedure which is to be carried out by the CBI officials were conducting the investigation. Admittedly, some guidelines are issued in the said Manual so it is up to the CBI officials to observe the said guidelines while conducting the investigation. At this stage, while considering the anticipatory bail application, there is nothing on record to show they have

committed any breach of the said guidelines. Therefore, at this stage, the contention of the learned Counsel for the applicant that they are not following the procedure cannot be accepted.

17. Considering the all above facts, admittedly, the *prima facie* case is made out against the present applicant to show his involvement on the basis of the statement of the co-accused. At this stage, considering that the powers to grant anticipatory bail being an extraordinary power has to be exercised sparingly and while the offence like the corruption is attributed against the accused, such an extraordinary power has to be exercised cautiously, such bail must be granted only in exceptional cases after application of mind. On application on mind, it reveals that there is *prima facie* case made out against the present applicant showing his involvement in the alleged offence. In view of that the powers cannot be invoked in favour of the present applicant at this stage and, therefore, the application deserves to be rejected. Accordingly, I proceed to pass following order.

The Criminal Application is **rejected**.

(URMILA JOSHI-PHALKE, J.)