



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.569 OF 2024

Diwakar s/o Balaji Sahare,
Aged about 55 years,
Occupation – Ex-employee working
as MTS at Nehru Yuva Kendra Sangathan,
Gadchiroli, R/o. Opp. Labhane Kirana
Stores, Ward No.23, Gokul Nagar,
Gadchiroli – 442605, Maharashtra.

.... APPLICANT

VERSUS

1) Central Bureau of Investigation,
through Anti Corruption Branch,
Bungalow No.23, Grees Road, Civil
Lines, Nagpur – 440001.

2) Smt. Archana Lahuji Chudhari,
Secretary, Nav Drushti Yuvati Mandal,
C/o. Dr. Pendam, Near Mama Saoji
Restaurant, Sneha Nagar, Post – Sakhara,
Taluka/District – Gadchiroli.

.... NON-APPLICANTS

Mr. Arjun V. Bobde, Counsel, along with Mr. Y.R. Kinkhede & Ms.
Shubhangi Jadhao, Counsel for the applicant,
Mr. P. Sathianathan, appointed Special Counsel for respondent No.1.

CORAM : NITIN B. SURYAWANSHI &
ABHAY J. MANTRI, JJ.

DATE : 8th JANUARY, 2025

ORAL JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **Admit.** Heard finally with consent of the learned Counsel
for the parties.

2. The applicant has invoked the inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code to quash the First Information Report (for short, "*FIR*") bearing No.RC0282019A0002 of 2019 registered by the Central Bureau of Investigation/Anti Corruption Bureau, Nagpur and Charge sheet filed pursuant to the said FIR and the registration of the Special ACB Case No.14/2019 for the offence punishable under Section 120-B of the India Penal Code (for short, "*IPC*") and 7(b) of the Prevention of Corruption (Amendment) Act, 2018 (for short, the "*Amended Act*").

3. **Factual Matrix :**

(a) The applicant worked as a multitasking staff member (Peon) at Nehru Yuva Sangathan at Gadchiroli. Respondent No. 2-The complainant, *Archana Lahuji Chudhari*, is the Secretary of Nav Drushti Yuvati Mandal at Gadchiroli, who lodged the complaint on 02-04-2019 to the Superintendent of Police, CBI, Nagpur, against one Akhilesh Prasad Mishra, Accountant, Nehru Yuva Kendra, Gadchiroli, alleging that he had demanded bribe of Rs.10,000/- to her as a reward for disbursing the grant of Rs.26,000/- sanctioned by Nehru Yuva Kendra, Gadchiroli to the N.G.O.-Nav Drushti Yuvati Mandal, Post Sakhara, Tahsil and District Gadchiroli.

(b) The complainant was not inclined to give a bribe. Therefore, she lodged the complaint with CBI/ACB, Nagpur, and the complaint was

registered and entrusted to CBI Inspector Smt. Kavita Isarkar for verification. On 02-04-2019, CBI Inspector Smt. Kavita Isarkar verified the complaint in the presence of the independent witnesses. During verification, it was disclosed that accused Akhilesh Prasad Mishra reduced the demand of bribe amount to Rs.7,000/-. At the time of trap, he had directed the complainant to give the bribe amount of Rs.7,000/- to the applicant/accused who was sitting outside the room. Pursuant to that, the complainant handed over the bribe amount to the applicant/accused, who accepted it and enquired about the quantum of the amount in the bundle. In response, the complainant informed him that it was Rs.7,000/-. Subsequently, during the trap, at the instance of applicant bribe amount of Rs.7,000/- was seized which was kept by the applicant in a register, in the presence of independent witness. Applicant's hands were found smeared with anthracene power. On completion of investigation, charge-sheet was filed on 21-11-2019 against Akhilesh Mishra (accused No.1) and applicant (accused No.2), under Section 120-B of the IPC read with Section 7(b) of the Amended Act, alleging that applicant along with Mr. Mishra entered into a conspiracy to demand and accept the bribe. The case is numbered as Special ACB Case No.14/2019. This application is filed for quashing of the said case.

During pendency of the trial, accused No.1-Akhilesh Mishra expired on 11-4-2021. Thereafter applicant came to be dismissed from service by order dated 09-12-2020.

4. Mr. A.V. Bobde, learned Counsel for the applicant, vehemently argued that the allegations against the applicant in the FIR are baseless and vague. No iota of evidence was brought on record. No allegation is made against the applicant about demanding illegal gratification. In the absence of it, it cannot be said that he is liable for accepting the illegal gratification as the same follows on-demand only. Therefore, he submitted that the contents in the FIR would not constitute an offence or make out any case against the applicant. He tried to point out from the FIR and Charge Sheet that all the allegations about the demand for money are against Akhilesh Prasad Mishra only. Hence, he canvassed that lodging the FIR and filing the charge sheet against the applicant was nothing but an abuse of the process of law.

5. He has further propounded that the complaint does not disclose any act of the applicant and his participation in the commission of the crime. However, he has been added to the array of accused only because he accepted the bribe amount on the say of accused No.1. Based on the said conduct of the applicant, it cannot be said that he was also involved or had any participation in the commission of the crime. As such, he submitted that the applicant is entitled to the relief as claimed.

To substantiate his contentions, he has relied upon the following judgments and pointed out the relevant paragraphs from the said judgments :

- (i) **C.M. Girish Babu V. CBI, Cochin, High Court of Kerala, (2009) 3 SCC 779; (Paragraph No.18.)**
- (ii) **B. Satyanarayana Murthy V. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152; (Paragraph Nos. 23 and 26;)**
- (iii) **Khushalchand Yashwant Gaikwad V. State of Maharashtra, 2018 SCC OnLine Bom 1073; (Paragraph No.23,) and**
- (iv) **Ankush s/o Rohidas Chavan V. The State of Maharashtra and Another in Cri. Application No.1884 of 2020, decided on 23-11-2022 (Paragraph No.6.).**

6. As against Mr. Sathianathan, learned Counsel for the CBI, strenuously opposed the petition, contending that sufficient material is collected during investigation showing involvement of applicant in the present crime, therefore, as per Section 7(b) of the Amended Act, applicant is rightly prosecuted. He also pointed out the relevant panchanamas and documents about the acceptance of the amount by the applicant, as well as the Forensic Science Laboratory Report, which corroborate to the said documents. Therefore, he submitted that the applicant is not entitled to claim the relief as claimed and hence urged for dismissal of the application.

7. We have appreciated the rival contentions of the parties and perused the charge sheet, record, and the judgments relied upon by the learned Counsel for the applicant.

8. It appears from the reply filed by the learned CBI Counsel that after filing the charge sheet, the applicant had moved an application for discharge before the learned Additional Sessions Judge. After considering the material on record, learned Additional Sessions Judge vide order dated 19-06-2023 rejected the said application. After rejection the said application, the applicant has invoked the inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code to quash the FIR and the proceedings arising thereof. However, in the application, the applicant has not disclosed the filing and rejection of the said discharge application by the learned Additional Sessions Judge. The applicant suppressed/concealed the said fact from this Court. In fact, it was incumbent on the part of the applicant to disclose it in the application.

9. The main thrust of argument of the applicant is that since he has not demanded any bribe amount, he is not liable to be prosecuted under Section 7 of the said Act. There is sufficient material on record to show that at the instance of accused No.1, applicant has accepted the bribe amount and has also asked as to how much is the said amount. This *prima facie* shows that applicant was aware that the same is the bribe amount, thereby showing his involvement in the conspiracy with accused

No.1. The material on record is sufficient to show his complicity in the crime. Applicant has failed to offer any explanation on recovery of the bribe amount from him as also about the traces of anthracene powder on his hands. There is *prima facie* sufficient material on record to frame charge against the applicant under Section 120-B of the IPC read with Section 7(b) of the Amended Act. It is settled legal position that Court is not to see whether there is sufficient ground for conviction of accused or whether the trial is sure to end in his conviction. At the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused vide ***Rajbir Singh v. State of U.P. and Another, AIR 2006 SC 1963.***

10. Perused the judgments cited by the learned Counsel for the applicant at Sr.Nos.1, 2 and 3. The said judgments dealt with Section 7 of the Act and not Section 7(b) of the Amended Act. In addition, after scrutinising the evidence and conclusion of the trial in appeal, the court acquitted the appellants, holding that mere recovery of the currency notes from the accused therein without proof of demand would not bring home the offence under section **7 of the Act**. However, in the case at hand, the offence has been registered under Sections 120-B of the IPC and Section 7(b) of the Amended Act. Therefore, the mandate laid down in the said judgments is not helpful to the applicant in support of his case.

11. Similarly, in the case of ***Ankush s/o Rohidas Chavan*** (supra), the facts were that investigation papers and the FIR would show that the amount was not paid and accepted by the applicant therein. But in the case at hand, the applicant's acceptance of the bribe amount is not specifically disputed by him. Therefore, the observations made in the said judgment are also not helpful for the applicant in support of his case.

12. For the aforestated reasons, we find the application devoid of any merit and same is therefore, dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN B. SURYAWANSHI, J.)

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