

(1996) 08 DEL CK 0067

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1753 of 1996

B. Sanjeeva Rao

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437

Penal Code, 1860 (IPC) — Section 120B

Prevention of Corruption Act, 1988 — Section 7

Citation : (1996) 3 AD 913 : (1996) 63 DLT 701 : (1996) 38 DRJ 583

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Dinesh Mathur, Mohit Mathur, Satish Tamta, Y.R. Rao and S. Lal, for the Appellant;

Judgement

N.G. Nandi, J.

(1) The petitioner-accused prays for bail in Rc No. 3(A)/96-ACU-1 u/s 120B read with Sections 409, 420 Indian Penal Code and Sections 7,11 and 13 (2) read with Section 13(1)(c))d) of the Prevention of Corruption Act, 1988.

(2) The prosecution case, as alleged in the Fir that the present petitioner as well as the other accused persons entered into a conspiracy with M/s. Karsan Limited with the object to cheat and frauding National Fertilizer Limited (NFL) - a company - Government of India Undertaking to the extent of \$ 38 million equivalent to 133 Crores of Rupees, in the matter of import of 2.00 lakhs MTs. of Urea in as much as 100% advance payment was made contrary to the normal practice adopted in the similar contracts, without safeguarding the interests of the company by containing insurance cover against non-performance and non-delivery of urea by M/s. Karsan Ltd. and also without opening a letter of credit. It is further alleged that this petitioner has received a sum of Rs.32.00 lakhs which was deposited in the account of three companies owned or controlled by him.

(3) It is mainly contended by Mr. Mathur, learned counsel for the petitioner, that

the investigation as far as this petitioner is concerned, is complete and now the investigation is to be done in foreign countries; that Sections 7, 11 and 13 of the Prevention of Corruption Act do not apply as the petitioner is not a public servant; that the role alleged to the petitioner is that he introduced co-accused Sambasiva Rao to the officers of the Nfl and it is the Nfl who entered into the deal with Karson Ltd.; that neither Section 409 nor Section 420 can be applied to the petitioner; that Nfl has acted through the Managing Director and not at the behest of the petitioner; that the petitioner has not figured anywhere and he is not concerned with the deal between Nfl and Karson Ltd. and the petitioner is not concerned either with Nfl or Karson Ltd.; that petitioner has no control over the funds of NFL; that if the petitioner is the recipient of Rs.32.00 lakhs, it is gratification/gift and no offence can be said to have been committed by the petitioner; that by the act of introducing the co-accused to the officers of Nfl it can not be said that any conspiracy has been hatched by this petitioner; that who defrauded Nfl, if at all it is so, certainly not the petitioner; that the passport of the petitioner is already with the CBI. As against this, it is submitted by Mr. Lal, learned counsel for Cbi that in the Fir the petitioner is not the one amongst the 14 persons shown as the accused in the FIR; that as far as this petitioner is concerned, the conspiracy is right from the stage of introducing the co-accused Sambasiva Rao to the officers of NFL; that accused sent local telephone calls to the Managing Director of Nfl while in Delhi whereas he sent 18 calls from Hyderabad between May 1995 to April 1996 to the Md of Nfl and also calls sent to Karson Ltd.; I have the statement of witness D. Malleshram Goud dated 9.6.1996 suggests the receipt of Rs.32.00 lakhs by this petitioner in connection with the deal between Nfl and Karson Ltd.; that the public fund of Rs.133 Crores is involved and the booty has been shared by all involved including the petitioner; that the offence relates to the economy of the nation; that it is to be investigated as to where the money has gone; that at this stage, it is difficult to say as to which of the accused has committed which particular offence but Sections 409, 420 and 120B Indian Penal Code are attracted; that illegal money has been received by the petitioner; that there is likelihood of the petitioner tampering with the prosecution evidence as he is an influential person; that the source and distribution of booty was agreed not to be disclosed; that the relief of bail can not be granted as the investigation is still not completed.

(4) Counsel for the respondent has referred to the statement of witness Shri D. Malleshram Goud which is to the effect that the witness is the Managing Director in the company of which co-accused Sambasiva Rao is a Chief Executive; that regarding the deal of urea by Nfl with M/s. Karson Ltd., the witness along with Sambasiva Rao had met the petitioner and the matter was discussed and then the petitioner met C.K. Ramakrishnan, Md of Nfl Along with Sambasiva Rao; that co-accused Sambasiva Rao and the petitioner travelled together in Indian Airlines flight and the payment of air ticket of the petitioner was made by the company of the witness whose Chief Executive is the co-accused Sambasiva Rao; that the petitioner along with the co-accused met the Md of Nfl on more than one

occasions and that the company of the co-accused Sambasiva Rao. was to receive about US\$ 4 millions as pay offs from Karsan Ltd. Turkey for the order to supply two lakhs Mt of urea; that the witness had received Rs. 28.00 lakhs as one of the Installment which was the part of 4 million US\$ and the same was spent by the witness and that the petitioner asked the witness to pay this amount and accordingly the witness issued three cheques of Rs. 10 lakhs, 10 lakhs and 12 lakhs, totalling to Rs.32.00 lakhs and this amount was paid to the three companies controlled by the petitioner in 1996 as per the instructions of the petitioner.

(5) It may be noted that Sections 7, 11 and 13 of Prevention of Corruption Act would not be attracted as the petitioner is not a public servant.

(6) The relief of bail has been refused to the petitioner by the court below mainly on the ground that the investigation is in progress and that the petitioner being an influential person there is likelihood of tempering with the prosecution evidence.

(7) What is required to be seen in the matter of grant of bail is the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tempered with, the larger interests of the public or the State and similar other considerations which arise when a court is asked for bail for a non-bailable offence. There would be a justification for denying bail to persons charged of high corruption/party to conspiracy as from such element, there is greater danger of the elimination of offence against them with free use of money power and the declining of the bail as not proper in the interest of justice to hamper the investigation/tempering with evidence by enlarging the accused on bail.

(8) Looking to the facts, as above, since the investigation is not completed, the request for bail does not deserve to be considered at this stage.

(9) In the result, the petition fails with a direction to conclude the investigation expeditiously.