
(2009) 08 JH CK 0045
In the Jharkhand High Court
Case No : A.B.A. No. 565 of 2009

Bhimal Ram

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 08 JH CK 0045

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : P.P.N. Roy, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. This anticipatory bail application has been placed before this Division Bench on being referred by the learned Single Judge, by his order dated 06/05/2009, whereby differing with the views expressed by an order passed by a Single Bench of this Court in the case of Dr. Fakir Chand Hembram @ Phakir Chand Hembram Vs. State of Jharkhand, , he opined that;-

(i) Successive anticipatory bail applications should not be entertained on the ground that one or other ground was not raised earlier, otherwise the stories may become endless and the investigation/trial will be delayed.

(ii) Grant of anticipatory bail to similarly situated co-accused may be a ground for regular bail, but it should not be a ground for renewing prayer for anticipatory bail. The court granting anticipatory bail may not be knowing about other orders granting or refusing anticipatory bail by other judges.

(iii) An event taking place after rejection of anticipatory bail, and by which the prosecution case against the petitioner is seriously shaken, may also be a ground

for regular bail, but should not be a ground for renewing prayer for anticipatory bail.

3. In order to answer the reference, firstly, it is necessary to notice the relevant facts of the case, which are briefly stated herein below.

4. The CBI registered a case being R.C. Case No. 4A/07-D under Sections 120B, 420, 467, 468, 471 IPC and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, against three named accused namely, Rajendra Prasad, Bhimal Ram and Ram Naresh Singh, the officials of Bharat Coking Coal Limited. On completion of investigation, CBI submitted charge sheet on 30/06/2008 in the case under the aforesaid sections, on the basis of which, cognizance of the offence alleged was taken by the Special Judge, CBI on 11/08/2008.

5. All the three charge sheeted accused approached the Special Judge, CBI, Dhanbad, for grant of anticipatory bail. The Special Judge, by his order dated 30/08/2008, rejected their prayer.

6. Against the said rejection of the prayer for anticipatory bail, two accused namely Rajendra Prasad and Bhimal Ram, filed an application before this Court for grant of anticipatory bail in A.B.A. No. 1946 of 2008, which was rejected after hearing, on its merit by order dated 21/10/2008.

7. As it appears, after about five months, these two petitioners again filed the present anticipatory bail petition, taking a ground that they are ready to deposit the alleged defalcated amount without any prejudice and further that the son of petitioner No. 2 Bhimal Ram has died and, therefore he was perturbed.

8. During the pendency of the present anticipatory bail petition, i.e. A.B.A. No. 565/2009, one of the petitioners namely, Rajendra Prasad was arrested by the police and, as such, on the prayer made on behalf of the petitioner, the name of petitioner No. 1 Rajendra Prasad was deleted, by order dated 17/07/2009. Therefore, now the prayer for anticipatory bail remains to be considered for the petitioner Bhimal Ram only.

9. The allegations, in short against the accused persons as it appears from the charge sheet, are that the accused Ram Naresh Singh, who has now been arrested, was the Accountant whereas, Bhimal Ram was the Cashier in Kutchy Balihari Colliery, PB Area, BCCL, Dhanbad. All the charge sheeted accused conspired together and in furtherance thereof, they had prepared false official records related to their salary and other allowances, and those records were used as genuine for the purpose of cheating the employer's fund to the tune of Rs. 5,18,467/- during the year 2003-2006, by abusing their official position as public servants and, thereby, caused wrongful loss to the tune of Rs. 5,18,467/- to the BCCL. For their wrongful gain the accused Rajendra Prasad opened his bank accounts in Bank of India, Karkend and State Bank of India, Balihari, whereas, the petitioner Bhimal Ram opened his bank accounts in Bank of India

Karkend, State Bank of India, Balihari and HDFC Bank, Dhanbad. The third accused Ram Naresh Singh opened his bank accounts in Bank of India, Karkend to deposit their defalcated amounts. Further allegation is that the duty of the Accountant, Ram Naresh Singh was to prepare the bank statements of the salaries and other allowances of the employees of Kachchi Balihari Colliery, Putki Balihari Area, Dhanbad to be sent to Area Office for preparation of cheques and subsequently to be sent to the respective banks for encashment of the amounts. The accused Rajendra Prasad and the petitioner Bhimal Ram, being Account Assistant and Cashier respectively, also used to prepare the bank statements. As a result of criminal conspiracy amongst themselves for causing wrongful loss to BCCL, and wrongful gain to themselves, they, while preparing the bank statements, fraudulently and dishonestly inserted their names and some amounts against their names in the bank statements, to be sent to the concerned bank, where they did not have their salary accounts and further they managed to credit the BCCL fund, as their salaries and other allowances to the tune of Rs. 5,18,467/-.

10. Mr. P.P.N. Roy, learned senior counsel appearing for the petitioner submitted that since the petitioner Bhimal Ram is now ready to deposit the alleged defalcated amount without prejudice and, therefore, in view of the judgment/order passed by a learned Single Judge of this Court in the case of Dr. Fakir Chand Hembram @ Phakir Chand Hembram Vs. State of Jharkhand, , the petitioner be granted anticipatory bail. According to Mr. Roy, there is no bar in filing a second application for anticipatory bail in a changed situation like the present one where now the petitioner is ready and willing to deposit the amount said to have been defalcated. In this changed situation this Court can consider the prayer of the petitioner and can grant anticipatory bail to him.

Mr. Roy, submitted that in similar circumstances different Single Bench of this Court have allowed the prayer for anticipatory bail in the case where the accused persons became ready to deposit the amount so defalcated. In support thereof, he placed photocopies of the order passed in A.B.A. No. 912 of 2002, A.B.A. No. 531 of 2003, A.B.A. No. 2059 of 2007 and A.B.A. No. 2328 of 2007.

11. The facts in the case of Dr. Fakir Chand Hembrom were that the accused petitioner in that case had moved this Court for the second time for grant of anticipatory bail, though on earlier occasion his anticipatory bail application was, dismissed with a direction to surrender in the Court below to seek regular bail. The said case was registered for the offence Under Sections 409, 420 and 120B of the Indian Penal Code read with Section 13(2)(1)(D) of the Prevention of Corruption Act. The said case was being prosecuted by the State Vigilance and was related to bungling in purchase of medicines and the allegations against that petitioner was that he obtained supply of the medicines from the sick companies at the rates much higher than what was approved by the Government causing heavy loss to the State Exchequer.

12. The learned Single Judge, after relying on the decision of the Full Bench of

the Rajasthan High Court in the case of Ganesh Raj Vs. State of Rajasthan and Others, as well as the decision of the Supreme Court in the case of. Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, , entertained the second application for grant of anticipatory bail and granted anticipatory bail to the petitioner on the condition that he shall deposit the entire amount of loss caused to the State Exchequer amounting to Rs. 1,73,130/-.

13. So far as the two questions namely, as to whether the successive anticipatory bail application should be entertained on the ground that one or the other ground was not raised earlier and the second question as to whether grant of anticipatory bail to a similarly situated co-accused can be made a ground for renewing the prayer for anticipatory bail as has been posed by the learned Single Judge, while refereeing this matter to the Division Bench are concerned, we find that the answer of both the questions are very much there in the judgment of the Supreme Court in the case of Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, .

14. No doubt, in the case of "Kalyan Chandra Sarkar" (Supra) the Supreme Court was dealing with a question for grant of regular bail to an accused who was in custody and he was granted bail by the High Court, in spite of the fact that on earlier occasions the prayer for bail was rejected several times by the High Court, as well as by the Supreme Court. The Supreme Court held in para-19 of the said judgment that the principles of res-judicata and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues, which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

15: It was also held in the said case that even though there may room for filing a subsequent bail application in case where earlier applications have been rejected but the same can be done only if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused, who has been denied bail earlier, can move a subsequent bail application.

16. The Full Bench of the Rajasthan High Court in the case of Ganesh Raj Vs. State of Rajasthan and Others, (Rajasthan)" after following the decision of the Supreme Court in the case of "Kalyan Chandra Sarkar" (Supra), in para-25 of its Judgment has held as follows:

25. In the ultimate analysis, placing reliance on the ratio indicated in Kalyan

Chandra Sarkar's Case (Supra), we hold that the second or subsequent bail application u/s 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Sessions Judge/ Additional Sessions Judge.

17. Grant or refusal of regular bail or anticipatory bail has to be made having regard to the nature of the crime, the circumstances under which it was considered, the back ground of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on the society and possibilities of retribution. The analogy for entertaining a subsequent or second application for bail or anticipatory bail when it was earlier rejected on merit, the consideration would be the same.

18. The change in the fact situation may differ from case to case. The Supreme Court in the case of State of Maharashtra Vs. Captain Buddhikota Subha Rao, while dealing with a case for grant of bail in almost similar circumstances, stated that "when we speak of change, we mean a substantial one, which has a direct impact on the earlier decision and not merely a cosmetic change which are of little or of no consequence".

19. Therefore, on consideration of the facts and law discussed above, we hold that the successive or subsequent bail application or anticipatory bail application on the same very ground on which it was earlier rejected on merit by a coordinate Bench cannot be entertained unless it is shown that there is a substantial change in the fact situation or in the law, which requires earlier view being interfered with or where the earlier finding has become obsolete. Change in fact situation, would never mean any new or additional ground, which was earlier available to the accused but that was not taken on the earlier occasion. Of course when any another co-accused of that very case, whose case is similarly situated with identical allegations, has been granted bail or anticipatory bail then in that case, it can be considered to be a change in the fact and on that ground the second application for bail/anticipatory bail can be entertained but in that case also, the question of grant or refusal of the prayer would certainly rest with the Judge exercising judicial discretion on consideration of the facts and circumstances of the case being dealt with by him and on nature of crime, circumstances under which it committed etc. which have already been enumerated above as per the judgment of the Supreme Court in the case of State of Maharashtra Vs. Captain Buddhikota Subha Rao, ".

20. Now coming to the facts of the present case, we find that admittedly, even according to the petitioner, change in the situation is that now he is ready to

deposit the amount allegedly defalcated without prejudice to him but in our view, this readiness of the petitioner to deposit cannot be said to be any change in the situation of fact or law as per the decision of the Supreme Court noticed above. At best, this can be an additional/fresh ground for reconsideration of his prayer, which was though available to him at the stage, when his earlier prayer for anticipatory bail was being considered but no such ground was taken nor at that time any readiness to deposit the amount so defalcated was shown by the petitioner.

21. Therefore, in view of the findings arrived at above, we are of the considered opinion that the petitioner has not been able to show any change whatsospeak of substantial change in the situation of facts or law and, therefore, this application for reconsideration of his prayer for anticipatory bail, which was rejected on its merit earlier, cannot be entertained and hence is rejected.

22. Consequently, this application is dismissed.