(2015) 07 AHC CK 0053

In the Allahabad High Court

Case No : Criminal Misc. Bail Application No. 37559 of 2014

Dinesh Kumar Singh	APPELLANT
Vs	
Central Bureau of Investigation, Economic Office Wing-IV and Others	RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120-B, 409, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 9

Citation : (2015) 3 ACR 2940 : (2015) 90 ALLCC 558

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Vikas Singh, Gopal S. Charurvedi, P. Chakravarty, Ajatshatru Pandey, Sudeep Harkauli and Nandit Kumar Srivastava, for the Appellant; Anurag Khanna, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J—This application under section 439 of the Code of Criminal Procedure has been filed by one Dinesh Kumar Singh with a prayer that he may be enlarged on bail in the first information report dated 2nd January, 2012 being RC No. 220-2012 E 0001, Police Station: CBI, EOU-IV, New Delhi, under section 120-B read with sections 409, 420, 468 and 471 of the Indian Penal Code as also under section 9 of the Prevention of Corruption Act, 1988 and substantive offences under sections 420, 468, 471 of the Indian Penal Code as also under section 9 of the Prevention of Corruption Act, 1988. It is appropriate for this Court to record the facts in short leading to the present bail application.

2. A welfare scheme in the name and style of "National Rural Health Mission" (hereinafter referred to as the "NRHM") was launched by the Central Government on 12th April, 2005 with a view to provide accessible, adequate, affordable, accountable and reliable health care to the public at large specially to the poorer section of the society residing in remote areas. This scheme was to be

implemented by the State Government and for the purpose a Memorandum of Understanding (MoU) was entered into between the Central Government and the State of Uttar Pradesh on 22nd November, 2006. It appears that in all, a total sum of Rs. 8579.38 crores was released by the Central Government for the State of Uttar Pradesh for proper implementation of the scheme.

3. A Public Interest Litigation bearing No. 3611 (MB) of 2011 (Sachchidanand (Sachchey) v. State of U.P. and others) was filed before the Lucknow Bench of the High Court alleging gross abuse and misappropriation of funds allocated for the scheme by the State functionaries in a planned and concerted manner. The High Court issued orders for the Director, CBI to conduct a preliminary enquiry in the matter of execution and implementation of the NRHM and utilization of funds at various levels. In pursuance to the above direction of the High Court, preliminary enquiry was conducted by the CBI. After conclusion of the preliminary enquiry, prima facie involvement of the accused in the crime was established, as a result whereof first information report was registered and investigation was proceeded with.

4. This Court may not deal with the minor details of the scheme and the investigation done by the CBI inasmuch as relevant facts in that regard are already recorded by the High Court in the case of Devendra Mohan v. C.B.I./EOU-IV/New Delhi 2013 (81) ACC 777 (SC).

5. After completion of the investigation, a charge-sheet dated 31st March, 2012 was filed against the accused, named therein (which did not include the name of the applicant D.K. Singh) with a request to continue further investigation in respect of the Remaining accused persons. First supplementary charge-sheet was filed by the CBI on 31st May, 2012 against two named accused, namely, Babu Singh Kushwaha and Ram Prasad Jaiswal. Second supplementary charge-sheet was filed by the CBI on 4th February, 2013 in which the present applicant D.K. Singh was also named as one of the accused being RC No. 220-2012 E 0001, Police Station: CBI, EOU-IV, New Delhi. It is alleged that the applicant has committed an offence under section 120-B read with sections 409, 420, 468 and 471 of the Indian Penal Code as also under section 9 of the Prevention of Corruption Act, 1988 and substantive offences under sections 420, 468, 471 of the Indian Penal Code as also under section 9 of the Prevention of Corruption Act, 1988. It has been stated in the charge-sheet that the applicant D.K. Singh, the then District Youth Coordinator, Nehru Yuva Kendra, Gomati Nagar, Lucknow Uttar Pradesh, was in fact looking after the affairs of Construction and Design Services (for short "C&DS"), a unit of U.P. Jal Nigam on behalf of Navneet Sahgal, the then Chairman of U.P. Jal Nigam. The applicant D.K. Singh is alleged to have agreed to get the work of NHRM allotted to M/s. Surgicoin in lieu of monetary consideration for Navneet Sahgal and on the consideration that work of at least about Rs. 2 crores is provided to R.K. Singh, Proprietor of M/s. Modern Interiors, Lucknow, a friend of the applicant D.K. Singh. Representative of Surgicoin are stated to have informed the matter to another accused Naresh

Grover, who agreed to pay the bribe amount and accordingly, the bribe amount was arranged by Naresh Grover and the same was paid to the applicant D.K. Singh in his office by the representative of Surgicoin. D.K. Singh after talking to Navneet Sahgal, informed the representative of Surgicoin to meet the other accused P.K. Bhukesh, the then Director, Construction and Design Services for obtaining the work relating to upgradation of 134 hospitals. It has been then stated that P.K. Bhukesh in presence of representative of M/s. Surgicoin enquired from D.K. Singh, whether he has got the bribe amount of Rs. 25 lacs for Navneet Sahgal and on the confirmation by D.K. Singh, P.K. Bhukesh called the other accused P.K. Jain, the then General Manager, C&DS and informed that all the work relating to the project is to be monitored by P.K. Jain. How much commission (bribe amount} is to be paid, other details relating to preliminary rates being higher to the extent of 5 times more than the prevalent market rates etc. only for the purposes misappropriating the Central Government fund and to accommodate the huge percental of bribe/commission to be paid to various accused public servants, Minister etc. have been disclosed in the impugned charge-sheet.

6. Work of upgradation of 114 district hospitals was awarded to M/s. Surgicoin, while in respect of 20 district hospitals work was provided to M/s. Modern Interiors and that the percentage of bribe amount/commission as demanded by public servants including the accused D.K. Singh were paid from time after being arranged by M/s. Surgicoin and M/s. Modern Interiors. To meet the said expenses, rates of supplied items were raised exorbitantly to nearly five times the market rate. Crores of rupees have been paid to the accused persons and the present applicant D.K. Singh to bag the contract under the scheme. It has been reported that R.K. Singh of M/s. Modern Inferiors, who was one of the beneficiaries was found to be an associate of the present applicant D.K. Singh. There was an entry of Rs. 15 lacs in the account of M/s. Agate Real Estate Pvt. Ltd., a company of Sandhya Singh wife of the present applicant D.K. Singh from the account of accused firm M/s. Modern Interior during the relevant period. This entry was made after M/s. Modern Interior received payment in respect of the part of the project handled by it. However, subsequently the entry was reversed. On the basis of analysis of call details, it was found that D.K. Singh was in contact with R.K. Singh during the relevant period. Similarly P.K. Bhukesh and the applicant D.K. Singh were also in contact with each other. Call details also reflect contact between representative of M/s. Surgicoin, R.K. Singh, Naresh Grover, P.K. Jain, Kartar Singh and B.N. Srivastava.

7. The applicant D.K. Singh was arrested on 15th November, 2012 in connection with the aforesaid case. His bail application came to be rejected by the Special Judge, Anti Corruption (CBI), Ghaziabad vide order dated 22nd February, 2013. The Special Judge, Anti Corruption (CBI) in his order has noticed that witness Ran Vijay Kumar in his statement had stated that the applicant D.K. Singh had helped him at different levels for getting the work awarded in different schemes and that SIM of Mobile No. 9415322801 was provided by him to the applicant

D.K. Singh. Similarly other witness Mushafir Singh in his statement had stated that the applicant D.K. Singh exercised his influence as District Youth Coordinator in various departments of the State of Uttar Pradesh and he had helped R.K. Singh for obtaining the work of different Government departments. The Special Judge after noticing the malady of corruption which had eroded the quality of life, held that it was an organized crime. It has also been held that entire community is aggrieved by economic offences. After referring to the judgment of the Apex Court in the case of State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, AIR 1987 SC 1321 : (1987) CriLJ 1061 : (1987) 2 Crimes 1 : (1987) 13 ECC 12 : (1987) 29 ELT 483 : (1987) 1 JT 783 : (1987) 1 SCALE 598 : (1987) 2 SCC 364 : (1987) 2 SCR 677 : (1987) 2 UJ 129 and other judgments of the Apex Court and High Courts, the Special Judge did not find any good ground to enlarge the applicant D.K. Singh on bail.

8. The applicant D.K. Singh preferred Criminal Misc. Bail Application No. 8237 of 2013 before the High Court. This application was allowed by a learned Single Judge vide order dated 5th December, 2013 and the applicant was granted bail. On the said date, bail was also granted to one other accused, namely, Ram Prasad Jaiswal also by the same learned Single Judge by means of a common order dated 5th December, 2013.

9. On 11th December, 2013, a correction application was served in the office of the learned Counsel for the CBI on behalf of Ram Prasad Jaiswal through his Advocate and it was mentioned that correction application would be taken up on 12th December, 2013. The correction application is alleged to be taken up out of turn on 11th December, 2013 in place of 12th December, 2013 by the learned Single Judge without notice to the learned Counsel for the CBI. On 11th December, 2013 itself, a counter-affidavit was prepared by the learned Counsel for the CBI and was served upon the Counsel for Ram Prasad Jaiswal. Similarly a correction application was also prepared and moved on behalf of the present applicant D.K. Singh without serving a copy of the same upon the learned Counsel for the CBI.

10. 12th December, 2013 was the last date of working of the learned Single Judge before whom correction applications were sought to be moved. Under order of the Hon''ble The Chief Justice, no assignment of judicial work was entrusted to the learned Single Judge on that day.

11. Surprisingly, an affidavit along with an uncertified copy of the order of the High Court obtained from the Internet was filed before the concerned Special Judge, CBI at Ghaziabad stating that the correction application has been allowed and therefore, the accused may be released on bail.

12. On coming to know of the said fact, the learned Counsel for the CBI went to the chamber of the learned Single Judge and informed that in case correction application is to be taken up, he may be informed so that he may oppose the same. The Private Secretary to the learned Single Judge informed that the

learned Single Judge will not pass any order on 12th December, 2012.

13. In such circumstances, a mention was made before the Hon''ble The Chief justice by the learned Counsel for the CBI pointing out the aforesaid facts along with a recall application and for the matter being taken up out of turn.

14. The Division Bench presided over by Hon''ble The Chief Justice vide order dated 13th December, 2013, after summoning the original records stayed the operation of orders dated 11th December, 2013 passed on the correction application filed on behalf of the applicants, namely, R.P. Jaiswal and D.K. Singh and directed that the matter may be placed before a Division Bench, presided over by Hon''ble Amar Saran, J.

15. The Division Bench, presided over by Hon''ble Amar Saran, J., allowed the recall application filed on behalf of the CBI vide order dated 16th January, 2014, as a consequence thereof order passed on the correction application dated 11th December, 2013 was recalled and correction application was directed to be heard by appropriate Bench. The CBI in the meantime filed a bail cancellation application. The bail cancellation application and the correction application all were nominated to Hon''ble A.P. Sahi, J. for consideration. The Hon''ble Single Judge, by means of the order dated 15th July, 2014, proceeded to cancel the bail which was granted in favour of the applicant D.K. Singh and provided that the accused shall remain in custody until orders otherwise.

16. This order of the Hon''ble Single Judge was subjected to challenge by the applicant D.K. Singh before the Apex Court by means of Special Leave to Appeal (Crl.) No. 6036 of 2014. The special leave to appeal was permitted to be withdrawn with observations under order dated 15th October, 2014. The Apex Court provided that special leave to appeal is being permitted to be withdrawn with a liberty to file a fresh bail application before the High Court and the High Court may consider the bail application without being influenced by the observations made in the impugned order. The learned counsel for the applicant-appellant D.K. Singh also brought to the notice of the Apex Court that there were three orders dated 13th December, 2013, dated 16th January, 2014, dated 1st April, 2014 of the High Court and that the observations made therein may also come in the way of the applicant while his fresh bail application is considered. He therefore, prayed that the High Court may be requested to consider the bail application uninfluenced by the observations made in the said orders. This payer was opposed by the Solicitor General appearing for the CBI and it was stated before the Apex Court that the said orders were not subject matter of the special leave to appeal before the Apex Court. The Apex Court however, observed on the said aspect as follows:

"We notice that these orders were passed in the context of the facts obtaining at that time. In the circumstances of the case, we request the High Court to consider the fresh bail application on its own merit."

17. I have heard Sri Vikash Singh, learned Senior Advocate and Sri Gopal

Chaturvedi, learned Senior Advocate assisted by Sri Ajatshatru Pandey, Advocate for the applicant, Sri Anurag Khanna, learned Counsel for the Central Bureau of Investigation (hereinafter referred to as the "CBI") and learned Additional Government Advocate for the State-respondent.

18. On behalf of the applicant, it is stated that the accused D.K. Singh was not named in the charge-sheet dated 31st March, 2012 and the first supplementary charge-sheet dated 31st May, 2012. It is only in the second supplementary charge-sheet dated 4th February, 2013, his name finds mentioned as one of the accused. It is stated that the accused has been in jail for more than 31 months as on date. The entire evidences as reflected in the charge-sheet against the accused are the statements of Girish Malik and Manvendra Chaddha, the other co-accused. It has been submitted that such testimony of the said co-accused is not corroborated by any other material evidence. It is also stated that P.K. Bhukesh, the then Director of C&DS, Lucknow has already been granted bail by the High Court on certain terms and conditions vide order dated 20th November, 2013 passed in Criminal Misc. Bail Application No. 12859 of 2013 (P.K Bhukesh v. State of U.P. and another), a copy whereof has been enclosed as Annexure-15 to the present bail application.

19. Learned Counsel for the applicant D.K. Singh, therefore, submits that the applicant may also be provided bail on same terms and conditions. So far as the allegation made against the applicant pertaining to entry of Rs. 15 lacs in the bank account of the company of the wife of applicant, namely, Sandhya Singh is concerned, it has been explained on behalf of the applicant that Sandhya Singh carries on an independent business and the entry was reversed only in a few days.

20. Initially, it was also stated before this Court on behalf of the accused applicant that there has been selective prosecution at the hands of the respondent-CBI inasmuch as on the statements of the two accused, namely, Girish Malik and Manvendra Chaddha, the present applicant has been charge-sheeted while Navneet Sahgal, who had also been implicated as being the main person for whom the bribe amount was being collected, has not been charge-sheeted for the reasons best known to the CBI.

21. It is with reference to the said plea of selective prosecution that this Court proceeded to require from the telephone service providers to furnish the call details of the calls made during relevant time from the given telephone numbers to the known telephone numbers of Navneet Sahgal. Various orders were passed by this Court from time to time but the enquiry had to be dropped by this Court only at the insistences of Sri Vikash Singh, learned Counsel for the applicant, who stated before the Court that because of the delay in the said process being completed, his client, namely, D.K. Singh was suffering and the Court, at this stage, may ignore the said plea and may proceed to consider the bail application on other grounds.

22. Hence, I proceed to decide the present bail application on the grounds pressed.

I may record the legal principles, which are to be adopted in the matter of consideration of bail applications involving economic offences, where huge loss of public funds is alleged.

The Apex Court in the case of Nimmagadda Prasad Vs. Central Bureau of Investigation, (2013) 5 AD 549 : AIR 2013 SC 2821 : (2013) CriLJ 3449 : (2013) 8 JT 18 : (2013) 3 RCR(Criminal) 175 : (2013) 7 SCALE 25 : (2013) 7 SCC 466 : (2013) AIRSCW 3795 : (2013) 4 Supreme 77 has observed as follows:

"(23) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country''s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, AIR 1987 SC 1321 : (1987) CriLJ 1061 : (1987) 2 Crimes 1 : (1987) 13 ECC 12 : (1987) 29 ELT 483 : (1987) 1 JT 783 : (1987) 1 SCALE 598 : (1987) 2 SCC 364 : (1987) 2 SCR 677 : (1987) 2 UJ 129 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:--

"5. ...The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest...."

(24) While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

(25) Economic offences constitute a class apart and need to be visited with a

different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

23. In State Vs. Amarmani Tripathi, AIR 2005 SC 3490 : (2005) CriLJ 4149 : (2005) 8 JT 517 : (2005) 7 SCALE 489 : (2005) 8 SCC 21 : (2005) 1 SCR 454 Supp : (2005) AIRSCW 4763 : (2005) 6 Supreme 492 the Apex Court held as under:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi, and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, AIR 2004 SC 1866 : (2004) CriLJ 1796 : (2004) 3 JT 442 : (2004) 3 SCALE 257 : (2004) 7 SCC 528 : (2004) AIRSCW 5465 : (2004) AIRSCW 1581 : (2004) 7 Supreme 461 : (2004) 4 Supreme 84 "

24. Sri Vikash Singh, learned counsel for the applicant D.K. Singh, had referred to the judgment of the Apex Court in the case of Sanjay Chandra Vs. CBI, AIR 2012 SC 830 : (2012) CriLJ 702 : (2011) 4 RCR(Criminal) 898 : (2011) 13 SCALE 107 : (2012) 1 SCC 40 : (2011) 6 UJ 4077 specifically paragraph-45 which reads as follows:

"45. In ''Bihar Fodder Scam'' (Laloo Prasad case) this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose."

25. Judged in the said legal background, I find that there are allegations against the applicant supported by evidence of the co-accused and the documentary evidence of the transfer of money to the tune of Rs. 15 lacs in the account of the company of the wife of the applicant namely, Sandhya Singh (which had

remained unexplained), from the account of the firm, which had been awarded the contract. Offences, as alleged, is a grave economic offence.

26. I am conscious of the fact that one of the co-accused namely, P.K. Bhukesh has been granted bail by the High Court on certain terms and conditions referred to above but the case of the P.K. Bhukesh, in my opinion, is distinguishable in view of the conduct of the applicant to subvert the justice, as has been prima facie noticed by the Division Bench of this Court, in its order dated 13th December, 2013 referred to above.

27. Similarly the other Division Bench in its order dated 16th January, 2014 has observed as follows:

"More alarmingly the issue relating to the jurisdiction of the learned Single Judge to hear all the three bail applications when only one was nominated to her gains significance. A Court not having been assigned the roster, the Presiding Judge cannot assume jurisdiction without nomination. There cannot be a presumption of implicit or implied nomination. Needless to mention that the Chief Justice is the master of the roster and the powers to nominate a case and the jurisdiction of a learned Judge to hear the same are all well defined and circumscribed as per the parameters laid down in the case of State of Rajasthan Vs. Prakash Chand and Others, AIR 1998 SC 1344 : (1998) CriLJ 2012 : (1997) 9 JT 492 : (1997) 7 SCALE 411 : (1998) 1 SCC 1 : (1997) 6 SCR 1 Supp : (1998) AIRSCW 1219 : (1997) 10 Supreme 122 ."

28. The Bench of the Hon''ble The Chief Justice under order dated 13th December, 2013 specifically observed as follows:

"Prima facie, it appears at this stage that the due course of justice and the due process of law have been subverted by the accused."

29. The Hon''ble Single Judge vide order dated 1st April, 2014, while hearing the correction application and bail cancellation application, had observed as follows:

"Having heard learned Counsel for the parties and having perused the Division Bench order dated 16.1.2014, it is evident that the Division Bench has clearly held that a matter not assigned to a Judge cannot be treated to be either impliedly or expressly nominated to the same Judge in a similar matter. It has been held that if a case is nominated, that would by itself not allow the learned Judge to assume jurisdiction in all other similar matters as the roster is not assigned to the same Judge."

30. In the opinion of the Court, any person, who tries to subvert the due course of justice with the help of influence or money power, must be informed in strongest possible terms that law will catch up on him at some point of time and that no person is mightier than law.

31. Sri Vikash Singh, learned Counsel for the applicant did submit that whatever had happened before the Hon''ble Single Judge, in the matter of hearing of the

earlier bail application, in the matter of making of correction application and in the matter of passing of orders thereon on 11th December, 2013, the same cannot be attributed to the applicant, it has all been done by the learned Counsel representing the applicant at that stage.

32. The argument made on behalf of the applicant has been so made to be rejected. No Counsel acts without the instructions from his client. All acts of the Counsel are directed for ultimate benefit of his client. Similarly no Judge can have knowledge of pending applications, unless it is brought to his/her notice by the Counsel representing the client concerned nor orders can be passed without the active participation of the client, in the manner it has been done in the facts of the case on 11th December, 2013.

33. In the totality of the facts and circumstances as are on record, I do not find it fit to grant bail to the applicant D.K. Singh. The present bail application is, therefore, rejected.

