
(2016) 08 JH CK 0002
In the Jharkhand High Court
Case No : A.B.A. No. 3939 of 2015

Gyanchand Prasad Agrawal	Vs	APPELLANT
State of Jharkhand through C.B.I		RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2016) 3 AIRJharR 626

Hon'ble Judges : Mr. Anant Bijay Singh, J.

Bench : Single Bench

Advocate : Mr. Nilesh Kumar, Advocate, for the Petitioner; Mr. K.P. Deo, Advocate, for the C.B.I

Final Decision : Dismissed

Judgement

Mr. Anant Bijay Singh, J.— Heard learned counsel for the petitioner and learned counsel for the C.B.I.

2. The petitioner is apprehending his arrest in connection with the case registered under Sections 120-B read with Sections 420/468/471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The prosecution case is that the petitioner's firm M/s Dolomite Mining Corporation in connivance with unknown officials of Bokaro Steel Plant and Public Analyst M/s Superintendence Company India (Pvt.) Ltd. Katni has dishonestly and fraudulently supplied the sub-standard quality of dolomite with silica content in the range of 1.5%, whereas the test report of the supplied dolomite conducted by the Research and Control Laboratory, actual; Silica content has been found to be far off the specification of the purchase order i.e. 1.5%. It further appears that during investigation it was found that after placement of the purchase order on 31/08/2008, petitioner's firm M/s Dolomite Mining Corporation had supplied

1,29,980 metrique tonne Dolomite against 1,69,000/- MT from 18.05.2008 to 29.04.2009 whereas M/s Bokaro Steel Plant has received only 1,27,560.67 MT. for which Goods receipt Note were issued under the signature of co-accused, i.e. officials of BSL and they have also issued the advice note to the Finance Department of the BSL for making payment to M/s Dolomite Mining Corporation. It also appears that the test of purchaser's sample at BSL R & C Laboratory shows that the Silica content was between 0.52 to 1.68%; whereas in the report of public analyst the Silica content has been shown 1.4%, thus the Silica content in the report of public analyst has been manipulated to be near the range of 1.5% as per the specification of purchase order.

4. Learned counsel for the petitioner has submitted that petitioner is Managing Director of Dolomite Mining Corporation, Bardwar and he has been falsely implicated in this case. It is also submitted that on 31.08.2008 for the procurement of 1,69,000/- MT Dolomite purchase order vide P 13.0/H015/99021 had been issued with specification Cao.28/32% minimum Mgo 20% Minimum and SIO2 1.5% maximum up to 2% with penalty. That out of total purchase order of 1,69,000/- MT the petitioner's Firm had supplied the articles and received by the Bokaro Steel Plant total 1,26,560.67 Mts from May, 2008 to April 2009. That during investigation each and every fact as stated above with respect to order and supply was found correct. Each and every document as well as status of the firms was found correct by the I.O and categorically mentioned in charge-sheet and final form has been submitted under Sections 120-B read with Sections 420/467/468 & 471 of the I.P.C and Sections 13(2) read with Section 13(1)(d) of the P.C. Act, It is also submitted that process under Section 82 and 83 Cr.P.C have not been issued till date and further that petitioner has preferred a Cr.M.P No. 1167 of 2010 which was admitted on 09.09.2010 and interim order has been passed and on 14.12.2014 the same has been dismissed, thereafter petitioner has filed this anticipatory bail application. So, learned counsel for the petitioner relied on the judgment of the Hon"ble Supreme Court reported in Sidhdharam Satlingappa Mehtre v. State of Maharastra & Others reported in (2011) 1 SCC 694, wherein in para- 112 of the judgment, the Hon"ble Supreme Court has laid down the facts and parameters which have been taken for consideration while dealing with anticipatory bail.

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:-

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

5. Learned counsel for the C.B.I has opposed the prayer for anticipatory bail and also referred to different paragraphs of final form and also referred to clause 2 of the terms & conditions of the NIT No. PUR/13-0/H-015 of M/s Bokaro Steel Plant, Sampling & Analysis shall be conducted at loading point by Public, Sampling &

Analysis shall be conducted at loading point by Public Analyst from the panel given by the purchaser, cost of sampling and analysis to be born by the seller. No public analyst was appointed either by M/s Bokaro Steel Plant or by M/s DMC, in the sampling and analysis clause of the NIT name of the public analyst was not mentioned by M/s. Bokaro Steel Plant. Shri D.D. Banerjee, who runs office for M/s DMC, informed Shri Suresh Tyadi the then Manager of M/s Superintendence Company of India Ltd. Katni for conducting the test of the dolomite being supplied to Bokaro Steel Plant. This has come in the oral evidence of Shri D.D. Banerjee. It is also submitted that investigation of this case is completed and final form has been submitted and cognizance has already been taken.

6. Taking all these facts that investigation of the case have been completed, final form has been submitted and cognizance have been taken. During course of investigation, petitioner herein has fully cooperated with the CBI personnel and whenever they were directed they appeared and cooperated in investigation. C.B.I. has never made any complaint for non-cooperation. There is no material on record to suggest that petitioner has interfered with the investigation or trying to influence the trial and the witnesses. Further the law laid down by the Hon''ble Supreme Court in the case of Sidhdharam Satlingappa Mehtre (supra), the petitioner, above named are directed to surrender in the court below within four weeks from the date of this order and in the event of his arrest or surrender the court below shall enlarge the above named petitioner on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five thousand), with two sureties of the like amount each to the satisfaction of learned A.D.J.-1-Cum-Special Judge, C.B.I, Dhanbad, in connection with R.C. Case No. 6A/2009/E, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. subject to further condition that one of the bailers shall be local resident of Dhanbad district, solvent person and petitioner physically present before the court below as and when directed. If they want exemption from appearance, they will inform the CBI in advance and after taking necessary permission from Special Court, CBI, they may be exempted from personal appearance.

7. Let the order be communicated to the court below.