

(2020) 06 SHI CK 0144

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 209 Of 2020

Hitesh Gandhi

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 419, 465, 466, 471
Prevention Of Corruption Act, 1988 — Section 13(I)(c), 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 173(2), 173(3)

Citation : (2020) 06 SHI CK 0144

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Nareshwar Singh Chandel, Jyotirmay Bhatt, Udayanand, Sushmit Bhatt, Anubhuti Sharma, Anshul Bansal, Anshul Attri, Manju Dhatwalia, Pankaj Kumar

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. The petitioner, a Vice-chairman of K.C. Group of Institutes at Nawashehar (Punjab), and Pandoga (H.P), allegedly is wholly solly of the group, and is under incarceration from Jan 3, 2020, after having been arrested by the Central Bureau of Investigation for entering into a criminal conspiracy with a few employees of State Government dealing with scholarships, cashier of the bank, and other persons, and withdrawing scholarship amounts of the students from scholarship schemes meant for the students belonging to the Scheduled Castes, Scheduled Tribes, and Other Backward Classes, to encourage and support them in post matriculation studies, has come up before this Court, seeking regular bail.

2. Status report stands filed.

3. I have read the status report(s) and have heard Mr. Nareshwar Singh Chandel, learned Senior Advocate, duly assisted by Mr. Jyotirmay Bhatt, Advocate for the

petitioner, Mr. Anshul Bansal, learned Special Prosecutor, duly assisted by Mr. Anshul Attri and Ms. Manju Dhatwalia, Advocates, and Sub Inspector Pankaj Kumar, Investigating Officer, Central Bureau of Investigation, Anti-Corruption Bureau, Shimla.

FACTS:

4. (i) The gist of the investigation traces its history to a number of complaints received by the Government of Himachal Pradesh regarding ghost scholarships, claim of scholarships of different persons, changing of categories of claimants from Scheduled Castes to Scheduled Tribes and vice-versa and various other aspects and opening of the bank accounts in the name of students to claim such scholarship. The matter was entrusted to the Central Bureau of Investigation.

(ii) After the investigation stood transferred to Central Bureau of Investigation, a case vide RC No.0962019A0002 under Section 409, 419, 465, 466 and 471 read with Section 120B of the Indian Penal Code and Section 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act at Police Station, CBI, ACB, Railway Board Building, the Mall Shimla, has been registered.

(iii) That on 3.1.2020, the Central Bureau of Investigation, arrested the petitioner and is in judicial custody.

(vi) During investigation, it transpired that at the time of admission, the students were asked to put their signatures on blank account opening forms, debit and credit vouchers, cheques and withdrawal forms by the KC Group of Institute.

PREVIOUS CRIMINAL HISTORY

5. As per the status report, there is no previous criminal history of the bail petitioner.

SUBMISSIONS:

6. Mr. Nareshwar Singh Chandel, learned Senior Advocate, has argued at length and cited various Judicial precedents.

7. Mr. Anshul Bansal, learned Special Prosecutor argues that the offence is grave and although they have filed Police Report under Section 173 (2) Cr.PC, but still investigation is going on. He further submits that due to the Lockdown to stop the spread of COVID-19 disease, the Investigation could not take place. He further submits that the petitioner is a rich and highly influential person, and in case he is released on bail, then he would tamper with the evidence, which would make it extremely difficult to bring accused to Justice.

ANALYSIS AND REASONING:

8. Pre-trial incarceration needs justification depending upon the heinous nature of the offence, terms of the sentence prescribed in the Statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, and doing away with victim(s) and/or witnesses. The Court is under an obligation to

maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

9. The Central Bureau of Investigation, has filed the final report under Section 173(3) Cr.PC relating to investigation qua Pandoga Institute of H.P. The report qua Institute of Nawashehar is pending. Without even referring to the pendency of report at Nawashehar, suffice it to say that even this report filed in the scam is incomplete and investigation is going on.

10. Due to the spread of COVID-19 Disease, the entire world faced strict lockdowns and there had been curfew for a considerable time in H.P. from the end of March, 2020. To conduct fair investigation, the Investigator would require to visit various offices and to meet various people, even most of which were closed and not available due to lockdown.

11. Mr. Anshul Bansal, learned Special Prosecutor for the Central Bureau of Investigation, submits that this scholarship scam is so big that it is going to unearth so many crucial facts and most of such documents and data, petitioner would be aware of. He further contends that in case this Court releases the petitioner on bail, then he shall destroy or tamper with such evidence.

12. This Court cannot be oblivious of the ground reality that investigation could not take place because of lockdown. In case, the petitioner destroys or tampers with the evidence, then it would be difficult to bring the accused to justice. Now, the lockdowns are slowly opening up and the things have started moving up. As such, the Central Bureau of Investigation would certainly need some time to complete the investigation.

13. Given above, the petition is dismissed. It is expected that the Central Bureau of Investigation would complete the remaining investigation at the earliest.

14. The magnitude of the scam is significant. The accused thwarted the government's efforts to create a level playing field for the underprivileged students belonging to the weaker sections of the society. Let CBI investigate on material aspects.

15. The petitioner shall be at liberty to file fresh bail application, either before Special/Sessions Court or in this Court, and dismissal of this petition shall not come in way of such decision.

16. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

The Court Master shall handover an authenticated copy of this order to the Counsel for the petitioner, and to the Learned Special Prosecutor, Central Bureau of Investigation, if they ask for the same.