(2014) 09 KAR CK 0231

In the Karnataka High Court

Case No : Criminal Petition No. 4468/2013

Kenche Maheshkumar — APPELLANT

Vs

Central Bureau of Investigation Anti Corruption Branch — RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

- Constitution of India, 1950 — Article 21
- Criminal Procedure Code, 1973 (CrPC) — Section 162(2), 164, 167, 167(2), 173
- Forest Act, 1963 — Section 24
- Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 23, 4(1), 4(1)(A)
- Penal Code, 1860 (IPC) — Section 120B, 379, 409, 411, 420
- Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(1)(c), 13(1)(d), 13(2)

Citation : (2014) 09 KAR CK 0231

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : Hashmath Pasha, Advocate for the Appellant; C.H. Jadhav, Senior Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B, J.—This petition is filed by petitioner-accused No. 6 u/s 439 r/w Section 167 of Cr.P.C. seeking his release on bail of the alleged offences punishable u/s 120B r/w Sections 420, 379, 411, 447 of IPC, u/s 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988, u/s 21 r/w Sections 4(1), 4(1)(a) and 23 of the Mines and Minerals (Development and Regulation) Act, 1957 and u/s 24 of the Karnataka Forest Act, 1963 registered in respondent-police station Crime No. R.C. 15(A)/2012.

2. As per the averments in the petition, the respondent CBI/ACB, Bangalore have registered a case in Crime No. RC 15(A)/12 for the above said offences on 13.9.2012 on the basis of suo moto report of Investigating Officer, on reference of Hon''ble Supreme Court of India vide its order dated 7.9.2012 in W.P.(Civil) No. 562/2009. After registration of FIR, investigation was commenced and during

the course of investigation, report was submitted to the trial Court for adding the offence u/s 409 of the IPC. On 2.5.2013 petitioner was arrested and he was produced before the Special Judge on the same day with remand application and obtained for police custody till 14.3.2013. After completion of police custody, again he has been produced and the Special Judge remanded him to judicial custody. Thereafter, investigation was continued and custody of the petitioner was extended from time to time. On 27.5.2013, Investigating Officer filed report before the Court below stating as charge sheet against the petitioner and some other accused. In the said report it is specifically mentioned that further investigation is in progress and therefore, sought for permission of the Special Judge, which was granted by him. It is specifically mentioned in the alleged charge sheet that further investigation is in progress in respect of employees of the petitioner and other accused persons. Though the alleged charge sheet was filed on 27.5.2013, the learned Special Judge did not take cognizance on the said charge sheet. But directed the office to verify and put up the same on 7.6.2013. Again on 7.6.2013 case was adjourned to 21.6.2013. Therefore, on 10.6.2013 petitioner who is in judicial custody since 2.3.2013 has applied for bail u/s 167(2) of Cr.P.C. on the ground that report filed on 27.5.2013 is not a final report as contemplated u/s 173(2) of Cr.P.C. but it is only a preliminary report without completion of investigation and therefore, since the investigation is not completed, petitioner is entitled for bail u/s 167(2) of Cr.P.C. Though the alleged report was filed on 27.5.2013 no cognizance was taken and detention of the petitioner was continued u/s 162(2) of Cr.P.C. beyond the period prescribed in it and further copies of the alleged charge sheet is not furnished to the accused as required under the law. Therefore, there is a clear violation of statutory provisions which is in violation of Article 21 of the Constitution. Hence, prayed for enlarging the petitioner on bail. Accused Nos. 1 and 4 also filed similar application and after hearing on the applications of the petitioner and other accused, trial Court by order dated 16.7.2013 rejected the application of petitioner on some untenable grounds.

3. In the grounds urged, it is pleaded by the petitioner that, detention of the accused u/s 167(2) of Cr.P.C. can be authorized to maximum period of 90 days and within that period if the investigation relates to the offence is not completed, petitioner who was in judicial custody was entitled to be released on bail u/s 167(2) of Cr.P.C. There is no provision under the Code of Criminal Procedure to file a piece meal report without completion of investigation, which is clear from the provisions of Section 173(2) of Cr.P.C. that the investigating officer can submit report only on completion of investigation. The Court has to take cognizance of the offence on a police report and the said report should be on completion of investigation and not on a preliminary report as filed in this case on 27.5.2013. The investigating Officer cannot split up his report in respect of the employer and employees, more particularly, when he is investigating the offence with the theory of conspiracy punishable with Section 120B of IPC. Section 173(8) of Cr.P.C. contemplates the scope of further investigation, but not

for continuing of investigation. What is mentioned in the report dated 27.5.2013 and in the order of the learned Special Judge dated 27.5.2013 is permitting for continuation of investigation. In this case, investigating officer has circumvent provisions of Section 173(1) and (2) of Cr.P.C. and tried to mis-utilize the provisions of Section of 173(8) of Cr.P.C. There is no period of limitation for investigation of any offence. What is contemplated u/s 167(2) of Cr.P.C. is if the person is in detention, his period of detention cannot be extended for more than 60 days or 90 days if the investigation relates to the offence is not completed within that period and in such an event the person who is in detention is entitled to be released on bail. Hence, he has sought to allow the petition and to release him on bail.

4. The respondent-CBI opposed the petition by filing objection statement contending that petition is not maintainable in law and it is liable to be dismissed in limine. The FIR filed in the trial Court in R.C. No. 15(A)/2012/CBI/ACB/BLR on 13.9.2012 may be treated as part of this objections. Petitioner has not approached this Court with clean hands and has suppressed the material facts. Based on the orders passed by the Hon''ble Supreme Court in W.P.(Civil) No. 562/2009 and connected matters on 7.9.2012, in which CBI has been directed to investigate the illegalities committed by various persons in the matter of export of iron ore from Belakeri Port Uttar Kannada District, Karnataka. So far as accused Nos. 1 to 7 are concerned, the investigation is completed with respect to transactions of M/s. Eagle Traders and Logistics and the evidence collected during investigation revealed that the petitioner and other accused persons i.e., A1 to A5 and A7 have committed the cognizable offences alleged in the FIR. After completion of investigation, charge sheet has been filed on 27.5.2013 before the trial Court against the above said accused persons i.e., Accused Nos. 1 to 7 in respect of the offences u/s 120B r/w Section 409, 420, 434, 447, 468, 471 of IPC and Sections 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988 for causing the loss of Rs. 198 crores to the Government Exchequer towards illegal sale and export of iron ore to an extent of 6.05 lakhs M.T. Further investigation is in progress into the role of M/s. S.B. Logistics, other iron ore sellers, mine owners, public servants and employees of Accused No. 1 Gali Janardhan Reddy, K.V. Nagaraj accused No. 5 and petitioner Sri. K. Mahesh Kumar, accused No. 6. On completion of further investigation, further final report u/s 173 of Cr.P.C. will be filed before the trial Court after conclusion of further investigation as against the said accused persons. The trial Court took cognizance of the said case vide Spl.C.C. No. 135/2013 on 16.7.2013. Before taking cognizance trial Court scrutinized the charge sheet and voluminous connected papers as per Rule 10 of the Karnataka Criminal Rules of Practice 1968. Specific roles played by each of the accused persons in the illegal mining and transportation of iron ore from Hospet and surrounding areas have been mentioned in detail in the said charge sheet. The respondent-CBI has collected sufficient materials to establish the guilt of accused persons with relevant documentary and oral evidence. The petitioner and K.V. Nagaraj, accused No. 5

were facilitating the transport of illegally extracted iron ore, Belekeri Port from different stockyards/mines in Bellary district at the behest of Sri. G. Janardhan Reddy, accused No. 1 and his associates. Sri. Kenche Mahesh Kumar was arrested on 2.3.2013 and was remanded to police custody up to 14.3.2013 and thereafter, he was remanded to judicial custody on 14.3.2013 after completion of police custody and presently, he is in judicial custody. The averments made in paragraph 9 of the petition are not correct. Charge sheet has been filed against the petitioner and six other accused persons on the basis of oral and documentary evidence available on record. Investigation is completed regarding the role of the petitioner and other six accused persons with respect to transactions of M/s. Eagle Traders and Logistics. The evidence collected during investigation revealed that petitioner and other accused persons have prima facie committed cognizable offences by illegal excavation of iron ore and its transportation from mining areas/forests of Karnataka and Andhra Pradesh shown in the final report vide paragraph 16.1. Further investigation is in progress into the role of M/s. S.B. Logistics, other iron ore sellers, mine owners, other public servants and employees of Sri. Gali Janardhan Reddy (A1), Sri. M. Alikhan (A4), Sri. K.V. Nagaraj (A5), Sri. K. Mahesh Kumar (A6) with respect to 1.69 lakhs M.T. of iron ore exported. The averments in paragraph No. 11 are not correct. Charge sheet has been filed within 90 days from the date of arrest of the petitioner. To verify the said matters, investigating officer has sought for permission for conducting further investigation. The trial Court after clarifying the said matters permitted for conducting further investigation in the above said matters. Averments in paragraph 14 are not correct. Trial Court has taken cognizance of the present case vide Spl.C.C. No. 135/2013 after considering relevant sections of Cr.P.C. Said charge sheet is not a preliminary report. So far as charges against the petitioner and other six accused persons is concerned, same have been fully investigated and substantiated with documentary and oral evidences collected during investigation. After confirming the said charges, a charge sheet has been filed by the Investigation Officer on 27.5.2013 before the trial Court. Petitioner is a very influential person. If he is released on bail, there is every likelihood of tampering evidence, threatening witnesses and destroying the evidence and information given by them to the Investigating Officer and thereby it will affect free and fair investigation which is pending in this case. The further investigation is also pending against the employees of the petitioner. Hence, it is prayed for rejecting the petition.

5. Heard the arguments of the learned counsel appearing for the petitioner-accused No. 6, learned Special Public Prosecutor and learned senior Counsel appearing for respondent-CBI.

6. Learned counsel for the petitioner during the course of arguments has submitted that the petitioner was arrested on 2.3.2013 and on the same day he was remanded to custody. He has submitted that the charge sheet was filed on 27.5.2013 in respect of the offences u/s 120B r/w Sections 409, 420, 434, 447, 468, 471 of IPC. That the said charge sheet filed on 27.5.2013 was on

incomplete investigation and hence, it was not the charge sheet as required u/s 173(2) of the Cr.P.C. As the charge sheet was not filed within 90 days from the date of remand of the petitioner to the custody, application was filed u/s 167(2) of Cr.P.C. on 10.6.2013 i.e., after 101 days from the date of remand of the petitioner-accused No. 6. Learned counsel also submitted that second charge sheet was filed on 12.8.2013 and final charge sheet was filed on 20.12.2013. This shows that only with an intention to deny the right of the accused persons to get released under the provisions of Section 167(2) of Cr.P.C. police have filed the report on 27.5.2013 without completing the investigation. In this connection, learned counsel drew the attention of this Court to the order dated 27.5.2013 passed by the Special Judge to the effect that Investigating Officer sought time to file supplementary charge sheet. Having regard to the magnitude of the matter, time sought for by Investigating Officer was granted. He has also submitted that in the charge sheet on page No. 114 at paragraph No. 24 it is mentioned that further investigation into the role of M/s. S B Logistics, mine owners, iron ore sellers, public servants, employees of Sri Gali Janardhan Reddy (A1), Sri. K.V. Nagaraj (A5), Sri. K. Mahesh Kumar (A6) and others is in progress. He also drew the attention of this Court to the signature of the Investigating Officer and the date put as 27.5.2013, so also, to paragraph No. 16 of the objection statement and submitted that it goes to show that investigation of the case was not completed as on 27.5.2013, the filing the first police report. The counsel further referring to paragraph No. 11 of the supplementary charge sheet on page No. 46 has submitted that this averment is not there in the first charge sheet and submitted that looking to prosecution material itself it clearly shows that the investigation was not completed within 90 days and the application is filed by the petitioner before filing the final charge sheet in the matter. He has submitted that investigation is not in respect of an accused person, but it is in respect of the offences involved in the case and that filing of the charge sheet in piecemeal is not permitted as per the provisions of Section 173(2) of Cr.P.C. Even with regard to the order dated 27.5.2013 said to have been passed by the Special Judge granting permission, is also without application of mind and that even after filing the charge sheet cognizance was not taken in the matter and the matter was posted for scrutiny of the charge sheet material, which is the administrative act and not the judicial function of the Special Court. Hence, the learned counsel submitted that petitioner is entitled to be granted with bail. In support of his contentions, he has relied upon the decisions filed along with Memo of Authorities dated 10.6.2014 at Sl. Nos. 1 to 12.

1. Dinesh Dalmia Vs. C.B.I.,

2. P.V. Vijayaraghavan and Others Vs. C.B.I. and Another,

3. Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another,

4. Sharadchandra Vinayak Dongre and others etc. Vs. V. State of Maharashtra,

5. Matchumari China Venkatareddy and Others Vs. State of Andhra Pradesh,

6. S.M. Purtado and Vs. Dy. S.P., C.B.I. and etc. etc.,

7. Aslam Babalal Desai Vs. State of Maharashtra,

8. Union of India V/S Thamiharasai (AIR 1995 SCW 2543)

9. Natabar Parida and Others Vs. The State of Orissa,

10. In Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni,

11. In Sayed Mohd. Ahmed Kazmi Vs. State, GNCTD and Others,

12. In Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others,

7. As against this, learned Special Public Prosecutor and the Senior Counsel during the course of his arguments has submitted that as on the date of filing the bail petition before the trial Court by the petitioner, investigation so far as the petitioner was completed. Referring to paragraph 11 of the supplementary charge sheet, it is submitted that it is in respect of accused No. 21, who is represented by accused No. 6, the petitioner herein. The learned Special Public Prosecutor drew the attention of this Court to paragraph Nos. 11, 15, 19, 20 and 24 of the charge sheet dated 27.5.2013 and submitted that this material clearly shows that investigation of the case was completed as against the petitioner herein in all respects and it cannot be said that the investigation was incomplete as on the date of filing of the application by the petitioner u/s 167(2) of Cr.P.C. It is submitted that as the charge sheet was filed within 90 days from the date of remand of the petitioner to the custody, he is not entitled to be released on bail. The Special Court has considered these aspects of the matter and has rightly rejected the bail application. No illegality has been committed by the Special Judge in rejecting the application. There are no valid and justifiable grounds to allow the petition and to release the petitioner-accused No. 6 on bail. In support of his contention, learned senior counsel for the respondent-CBI has also relied upon the decisions filed along with memo of authorities at Sl. Nos. 1 to 9 dated 16.6.2014.

1. Dinesh Dalmia Vs. C.B.I.,

2. Vipul Shital Prasad Agarwal Vs. State of Gujarat and Another,

3. Pragya Singh Thakur V/S State of Maharashtra (2011 (10) SCC 445)

4. Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation,

5. Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another,

6. Java Singh V/S CBI, Delhi High Court: Crl.M.C.2525/2008 D.D: 06/05/2009

7. Guna Alias Gunasekaran Vs. The State,

8. Pradeep Kumar Deo and Another Vs. State of Orissa,

9. Venkatarayanakota Krishnappa Raghavendra and Buvanahalli Muniyappa Nagesh Babu Vs. The State of A.P.,

8. I have perused the averments made in the bail petition and all the materials produced by the petitioner along with the petition collected by the Investigating Officer during investigation, so also, the decisions relied upon by both sides as referred to above.

9. Perusing the materials the brief facts of the case are that the case was registered on 13.9.2012 against M/s. S.B. Logistics-Accused No. 1, Sri. S. Muthiah, the then D.C.F of Bellary-Accused No. 2, Sri. S.P. Raju, the then Dy. Director of Mines and Zeology, Hospet-Accused No. 3 and others for the alleged offences under Sections 120B, 420, 379, 411 and 447 of IPC, under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, u/s 21 r/w 4(1) and 4(1)(A) and 23 of the Mines and Minerals (Development and Regulation) Act, 1957 and u/s 24 of the Karnataka Forest Act, 1963. During investigation an application was filed to include the offence u/s 409 of IPC in the FIR and this Court was pleased to accept the same. An application was also filed to include the names of Sri. Janardhan Reddy-A-4, Sri. M. Ali Khan-A-5, Sri. Swasthik Nagaraj-A-6 and Sri. K. Mahesh Kumar-A-7 as accused in the FIR and this Court was pleased to accept the same. During the course of investigation Accused Nos. 2, 3, 4 and 5 were produced before the Court by issuance of P.T. warrant and were taken to police custody for interrogation After expiry of the police custody, they were remanded to judicial custody. Sri. Swasthik Nagaraj A-6, Sri. K. Mahesh Kumar-A-7 and Sri. Manoj Kumar Shukla A-8 were arrested and taken to police custody for interrogation and after expiry of police custody, they were remanded to judicial custody and presently, they are in judicial custody.

10. The contention of the petitioner herein is that his date of arrest is 2.3.2013 and on the same day he was remanded to custody and the date of filing the first charge sheet, which according to the petitioner is on incomplete investigation was on 27.5.2013 i.e., after 87 days from the date of arrest of the petitioner and he filed the application u/s 167(2) of Cr.P.C. on 10.6.2013 i.e., on 101st day from the date of his arrest. The date of filing the second charge sheet is 12.9.2013 i.e., on 164th day and final charge sheet is on 20.12.2013 i.e., on 294th day. Hence, it is the contention of the petitioner that when the first charge sheet was filed, investigation was not completed and hence, it is not a report as contemplated u/s 173(2) of Cr.P.C. Another important contention of the petitioner herein is that the first charge sheet was filed on 27.5.2013 only with an intention to defeat the right of bail to the petitioner which is accrued to him as per Section 167(2) of Cr.P.C.

11. In view of the contentions by the petitioner, two important points arise for consideration:

(i) Whether the charge sheet filed on 27.5.2013 is on incomplete investigation and hence it is not the report contemplated u/s 173(2) of Cr.P.C.?

(ii) Whether petitioner has made out a case that first charge sheet was filed by the prosecution only to defeat his right to get bail as per the provisions of 167(2) of Cr.P.C.?

Let me examine the first charge sheet dated 27.5.2013. In paragraph No. 16.1 of the said chargesheet it is mentioned by the investigating officer that the investigation is complete regarding the role of Sri. G. Janardhan Reddy-A1, Sri Muthiah-A-2, S.P. Raju, A-3, Ali Khan A-4, Swasthik Nagaraj A-5, Sri. K. Mahesh Kumar A-6 and Sri. Manoj Kumar Shukla A-7 with respect to transactions of M/s. Eagle Traders and Logistics and the evidence collected during investigation has revealed that the above named accused persons have prima facie committed cognizable offences u/s 120B r/w Sections 409, 420, 434, 447, 468, 471 of IPC and Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

12. In paragraph No. 24 of the said charge sheet it is also mentioned that further investigation into the role of M/s. S.B. Logistics (FIR accused), Mine Owners, Iron Ore Sellers, public servants, employees of Sri. Gali Janardhan Reddy-A-1, Sri. K.V. Nagaraj-A-5, Sri. K. Mahesh Kumar A-6 and others is in progress. Supplementary charge sheet will be submitted before this Court after conclusion of the further investigation.

13. Looking to the charge sheet material dated 27.5.2013 totally 210 witnesses have been examined and 155 documents were filed along with the charge sheet. The statement of witnesses recorded during investigation and also the documents collected during investigation while filing the charge sheet dated 27.5.2013 shows that the Investigating Officer has collected the necessary material and has also mentioned in the charge sheet that investigation is complete so far as the present petitioner, by mentioning the names of some other accused persons at paragraph No. 16(1) of the charge sheet.

14. It is the contention of the learned counsel for the petitioner-accused that charge sheet is not the final report as contemplated u/s 173(2) of Cr.P.C. and that it shows that investigation is still pending and it is not completed. It is also the submission of the learned counsel for the petitioner that even after filing such report before the Special Judge cognizance was not taken on the basis of the said report and hence, it is also one of the reasons to say that it is not the final report. In the order passed by the Special Court on the bail application it is clearly mentioned by the Special Judge that after filing of the said report before the Court as the materials were voluminous, it was directed to the office to verify the materials and then put up the same as required under Rule 10 of the Karnataka Criminal Rules of Practice. The learned Special Judge while passing the order on the bail application has mentioned that when he was about to take cognizance of the matter, bail application was filed by the petitioner before the said Court and pending such application, it may not be proper on his part to take cognizance on the report submitted by the investigating machinery and that immediately after passing the order on the bail application, Court will take

cognizance on the report. These materials show that non-taking of the cognizance at that stage by the Special Court is not because that the report submitted by the Investigating Officer is not the report as required u/s 173(2) of Cr.P.C., but because of the reasons stated by the Special Judge in the bail order. Not only that, the contention of the prosecution in the charge sheet was that they have to investigate further to ascertain whether the employees of the present petitioner and the employees of the accused No. 1 were also involved in the commission of the alleged offences. So such further investigation is allowed as per Section 173(8) of Cr.P.C. and only on the basis of such statement by the investigating machinery that investigation is also to be done to know whether the employees of the accused No. 1 and the employees of the present petitioner are also involved in the case by itself will not make out a case that the report submitted by the Investigating Officer is not the final report u/s 173(2) of Cr.P.C.

15. I have also perused the decisions relied upon by both sides in this regard. Even in the order of the Special Judge the relevant portions of the said decisions are mentioned and they need not be again repeated here. As per the said decisions, further investigation u/s 173(8) of Cr.P.C. is permissible under law. It is true as submitted by the learned counsel for the petitioner that investigation is in respect of an offence and the case and not against a person. Even in this regard the Special Judge in his order has mentioned that three of the accused were arrested subsequently by the investigating officer and hence, it may not be possible for the Investigating Officer to submit the report in respect of all the accused persons at a time. The investigation process requires the investigating machinery to record the statement of the accused persons if they are coming forward to give their voluntary statement, seizure of materials at the instance of the accused or the statement u/s 164 of Cr.P.C. The Special Judge has discussed about these aspects in his order.

16. The contention of the learned counsel for the petitioner-accused that the said report has been filed only with an intention to defeat the valuable right of the accused person cannot be accepted because looking to the material collected during investigation it is not the statement of 2 or 3 witnesses recorded and collecting only some documents, but the Investigating Officer has collected 155 documents and recorded the statements of 210 witnesses. The materials also show that the Investigating Officer has examined the witnesses as shown at Sl. Nos. 211 to 215, but their statement is not recorded. Considering these aspects of the matter, it cannot be said that such report was filed without completion of investigation as against the petitioner and in a hurry to defeat the right of the petitioner to be released on bail. The learned Sessions Judge in his order has taken into consideration each and every aspect of the matter and has ultimately rejected the petition holding that charge sheet has been filed within 90 days from the date of arrest of the petitioner.

17. Looking to the entire materials on record, both legal and factual, I am of the opinion that petitioner has not made out a case for his release on bail u/s 167(2)

of Cr.P.C. on the ground that prosecution has failed to submit the final report as required u/s 173(2) of Cr.P.C. Hence, it is not a fit case to allow the petition and to release the petitioner on bail.

Accordingly, petition is rejected.

