
(1990) 11 DEL CK 0041

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1504 of 1990

K.K. Jajodia and Others

APPELLANT

Vs

State (Central Bureau of Investigation)

RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

Citation : (1991) 43 DLT 61

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : P.N. Lekhi, R.M. Tufail and S. Lal, for the Appellant;

Judgement

V.B. Bansal, J.

(1) Brigadier (Retired) R.S. Diol has moved this application under Sec. 439 of the Code of Criminal Procedure for being released on bail for the offences under S. 120-B Indian Penal Code . read with Sections 3 and 5 of the Official Secrets Act, 1923 and substantive offence under Sections 3 and 5 of the Official Secrets Act, 1923 (hereinafter to be referred to as the Act).

(2) R. S. Dwivedi, Deputy Superintendent of Police, C.B.I, filed a complaint against five persons including the petitioner in the court of Chief Metropolitan Magistrate for trial for the offences mentioned in paragraph No. 1. After committal proceedings the case has since been committed to the sessions court for trial and is pending.

(3) Case R.C. 4/1987-SIU. I was registered on 17th April, 1987 in Special Investigation Cell-I, Spe / C.B.I., New Delhi and during the investigation of this case residence of the petitioner was searched on 10th November, 1988. He was arrested on 11th November, 1988 and he continues to be in custody.

(4) According to the prosecution story a secret note on "Operational Requirement of Unitility Helicopters for the Army" was prepared by the Aviation Directorate towards the end of December, 1980. This Directorate was at that time headed

by Brig. Atma Singh. Copies of the secret note were forwarded to the Directorate General Military Operation and Additional Directorate General Perspective Planning at the Army Hqrs. Lt. Col. S.K. Singh met Brig. R.S. Diol on 6th February, 1987 for obtaining copies of the circular and instructions on procurement of weapons and equipment at that time. Brig. R.S. Diol asked for a copy of the note on Operational Requirement of Inutility Helicopters for the Army from Lt. Col. S.K. Singh. It is further the case of the prosecution that after obtaining the orders of Brig. Atima Singh Lt. Col. S.K. Singh obtained a copy of the aforesaid secret note in which some additions were made by Brig. Atma Singh in his hand in para 13 and it was submitted to Brig. R.S. Diol on 16th February, 1987 in his Dak Pad. It was returned back to the section with the instructions that the same be put up to him separately and accordingly it was submitted to him on 17th February, 1987. It is further alleged that no action was taken on this note and it was sent back to the Section after 20th March, 1987. It has further been alleged that on 18th June, 1987 Brig. Atma Singh, Officiating Additional Director General Army Aviation wanted the copy of the aforesaid note in which he had made additions in his own hand upon which Lt. Col. S.K. Singh collected the file containing the said note from the Section and it was submitted to Brig. Atma Singh through Brig. R.S. Diol and was ultimately taken into possession by Major Genl. Raghubanshi on 18th June, 1987. It is also alleged that a zerox copy of this note was recovered from the residential premises of K.K. Jajodia and his son A.K. Jajodia accused Nos. 1 and 2 on 21st April, 1987 and report received from Cfsi indicates that the zerox copy recovered from the house of the two accused had been prepared from the copy of the note which was forwarded to Brig. R.S. Diol accused.

(5) Learned counsel for the petitioner has submitted that the main accused in respect of the recovery of the copy of the note "Operational Requirement of Utility Helicopters for the Army" were K.K. Jajodia and A.K. Jajodia who were allowed bail in anticipation of their arrest by this Court on 19th August, 1987. He has also submitted that nothing was recovered from the petitioner and the note was submitted to him in his official capacity and it was found in the files in the department itself. He has also submitted that he I petitioner has been in custody since 11th August, 1988 and the main accused I having already been released on bail it is a fit case for the release of the petitioner.

(6) The application has been opposed by learned counsel for the respondent who has submitted that the zerox copy recovered from K.K. Jajodia and A.K. Jajodia was prepared from the copy of the note which remained in the custody of the petitioner and it would, thus, clearly indicate that it was the petitioner and petitioner alone who supplied the said copy of secret document to the said accused persons. He has also submitted that it was a document of sensitive nature and that bail should be refused to the petitioner.

(7) I have given my thoughtful consideration to these submissions and have also gone through the order dated 19th August, 1987 in Cr. M(M) 934 of 1987 K.K.

Jajodia v. State (CBI.) vide which anticipatory bail was allowed to K.K. Jajodia and his son A. K. Jajodia. A perusal of this order clearly shows the recovery of bunch of papers which were marked as 1 to 55 and included at item No 13 in the panchnama prepared about the recoveries effected from the houses search of the house of Jajodia. While granting bail to those two accused persons it has clearly been observed that details of the documents 1 to 55 were not mentioned and there was no Explanation as to why the description of this document was not mentioned. The recovery itself of the zerox copy has been doubted in the said order. It is the case of the prosecution itself that the petitioner asked for a copy of the said note from Lt. Col. S.K. Singh who after getting permission of his superior officer had sent a copy of the note to Brig. R.S. Diol. After this copy remained with the petitioner Brig. R.S. Diol the same was sent in the Section where from it was taken into possession by Maj. Genl. Raghubanshi on 18th June, 1987. Thus, it cannot be said that this copy of the note remained in the custody of the petitioner alone. It is not the stage for me to give a finding about the commission of the offence by the petitioner-accused. However, the totality of these facts, in my view, make out a case for bail of the petitioner especially when the two persons from whom a copy of the said note was recovered have already been allowed bail in anticipation of their arrest,

(8) As a result, I order for the release of the petitioner subject to his furnishing personal bond for Rs. 20,000.00 with one surety in the like amount to the satisfaction of the concerned court on the condition that he would not leave the country without the permission of the trial court. Bail granted.