

**(1987) 08 DEL CK 0001**

**In the Delhi High Court**

**Case No : Criminal M. (M) No. 934 of 1987**

K.K. Jajodia

APPELLANT

Vs

State (C.B.I.)

RESPONDENT

**Date of Decision : 19-08-1987**

**Acts Referred:**

**Citation : (1988) CriLJ 968 : (1988) 1 Crimes 177 : (1987) 33 DLT 64**

**Hon'ble Judges : M. Sharief-ud-din, J**

**Bench : Single Bench**

**Advocate : A.K. Sen, J.B. Dadachandji, K.K. Desai, D.C. Mathur, Amit Desai, S.S. Gandhi, Pramod Khai and S. Lal, for the Appellant;**

## **Judgement**

1. This motion for anticipatory bail has been made on behalf of the petitioner and relates to a case registered by C.B.I. u/s 120-B, I.P.C. and Ss. 3 and 5 of the Official Secrets Act. The petitioner along with his son and one Venugopal, a stenographer in the service of M/s. William Jacks Pvt. Ltd. since released on bail, are involved in the case.

2. The F.I.R. is based on a letter dt. 15-4-1987 received in the office of the C.B.I. and the case was actually registered on 17-4-1987. This letter has been written by one Navin Sikand of Trident Express, Freight Division of Trident Travels and Tours Pvt. Ltd. A-15/3, Vasant Vihar, New Delhi-110057. The following are the contents of the letter and the endorsement recorded thereon by S.P., C.B.I. :

### **INFORMATION**

A complaint dt. 15-4-1987 along with the documents mentioned therein received by Shri S. N. Tewari, Deputy Supdt. of Police, C.B.I., S.P.B., SIU, XI, New Delhi has been received in this office today i.e. 17-4-1987 through his Supervisory Officers. Complaint is being reproduced below :

Trident Express

Freight Division of Trident

Travels and Tours Pvt. Ltd.

A-15/3, Vasant Vihar,

New Delhi-110057

Telephone Nos 5 15-4-1987

and 674239

Mr. S. N. Tewari, DSP, CBI, CIU, NC., New Delhi

Dear Sir,

Our operation Supervisor Mr. Joy Thomas had received a set of documents vide Airway Bill No. 236 dt. 4-4-1987 for France from Mr. N. C. Dass Address : Kiran Bhawan, New Delhi and the documents were actually picked up by M/s. William Jacks, 1100 Ashoka Estate, Barakhamba Road, New Delhi. Telephone Nos. 3313168, 3313167. After receiving the telephone call for picking up the documents our Operation Supervisor instructed the Courier to pick up the documents from the said party. In the evening, when the courier handed the documents to the Operations Supervisor and stated that the mode of payment has been cash and he was asked not to endorse the Company's name on the docket as the documents were not of the company's and which was the reason he was paying white cash. Mr. Thomas felt uneasy and as he had the instructions to open all sample shipments and also check up documents shipments for international sector, he opened this envelop and found the documents to be of a secretive nature and he detained this set of documents to further inform me.

Upon being informed of the same, I contracted my Bombay Head Office to inform them of this and also asked them for our line of action. I was asked to get in touch with Mr. Tewari of C.B.I. and hand him this set of document. Upon procuring the telephone of C.B.I. from telephone directory, I called up to be said. There are two/three Tewaris and which one I have to contact. I further communicated with my Bombay Office asking them for the initials of Mr. Tewari and received a communication of the initials of Mr. S. N. Tewari. Upon further contacts, I was told that Mr. Tewari is on tour. Incidentally, I was speaking to Bombay Office, and also took the opportunity of speaking to yourself and you informed me that you will be returning on 14/4 and you will get in touch with me.

Incidentally, in the meanwhile, our operations office received another set of documents for Netherlands and from the same party, but which was picked up by another courier boy and was booked vide Airway Bill No. 893, dt. 13-4-1987. The shipper's name is Mr. Kashyap and again while booking the courier was informed the documents belong to his friend and he has asked him to forward by courier service and hence he is paying by cash and also the company's name is not mentioned. Upon receiving the load in the evening, Mr. Thomas again opened the documents as a check up routine and found the documents to be again of a secretive nature. These documents were also retained for handing over to you.

We are handing over to you the sets of documents along with our booking receipts per mentioned as Airway Bill for you to take necessary action you may deem fit.

#### DESCRIPTION OF THE DOCUMENTS

1. Vide Airway Bill, dt. 4-4-1987 - this set is containing pages 1 to 86 and pertain to defense matter (USER/EVALUATION TRIAL REPORT) OF RATAAC METAL FIELD RADAR (BRSR) PHASE I SURVEILLANCE. This is a zero set of documents. These sets of documents are in a brown cover consigned to Mr. Mare, Paris, France.

2. Vide AWB 893 dated 13-4-1987, this set contains pages 1 to 30 and are typed copies. This set of documents are in a white cover consigned to Mr. Seavers, Netherlands.

Sd/-

Navin Sikand

The perusal of the documents received by M/s. Trident Express Trident Travels and Tours Pvt. Ltd., A-15/3, Vasant Vihar, New Delhi - 110057 on 4-4-1987 reveal that it is a USER/EVALUATION TRIAL REPORT OF RATAAC - 8 - BATTLE FIELD SURVEILLANCE RADAR (BFSR) Phase 1. This report is a secret by the Army authorities regarding the suitability or otherwise of the radar, radar system and its components submitted by West Germany which were proposed to be procured by Govt. of India after necessary clearance.

The documents received by the aforesaid firm on 13-4-1987 are the drafts to be submitted by the desiring firm to the Govt. of India. The aforesaid facts disclose the commission of offences punishable u/s 120-B, IPC read with Ss. 3 and 5 of Official Secret Act, as well as substantive Offences punishable under Ss. 3 and 5 of the Official Secret Act, 1923.

A regular case is registered and the investigation is entrusted to Shri R. S. Dwivedi, DSP, CBI, SPE, SIU-1, New Delhi.

Sd/-

R. K. Bhatia

S.P., CBI, CIB, SIJ I

New Delhi."

3. In support of the accusation the prosecution is relying on three documents, two of which have been allegedly intercepted by the Trident Travels and Tours Pvt. Ltd. and one document is alleged to have been recovered on the house search of the petitioner.

4. The document received by Trident Travels on 4th April, 1987 when it was intercepted reveals that it is a secret report in respect of evaluation of Battle

Field Surveillance Radar, Phase I. This Radar was offered for sale by West Germany and it was evaluated by Army technicians in the light of Widely Advertised Claims of the manufacturer and this evaluation and testing was done on the presence of the representatives of prospective supplier. In short it is an evaluation report of the aforesaid defense equipment.

5. The second document received by the Trident Travels on 13-4-1987 are drafts of letters to be submitted by the desiring party to the Govt. of India and are not documents of the Government.

6. The third set of document allegedly recovered from the house search of the petitioner bears the title "Operational Requirements of Utility Helicopters for the Army". This document is alleged to be a secret document relating to the defense affairs of the State. It is, however, admitted that panchanama prepared at the time of alleged search does not indicate the description of the documents seized from the house search of the petitioner. At item No. 13 of the panchanama no description of this document is given and all that is stated is "a bunch of papers page 1 to 55".

7. Thus the aforesaid set of documents are being made the basis for levelling accusation against the petitioner. The matter even though discovered for the first time on 4-4-1987 was reported on 15-4-1987 and the case was registered on 17-4-1987. This was done even though Dy. S.P., S. N. Tewari was informed even on 4th about the nature of document on telephone by Shri Navin Sikand as is reflected by the contents of the F.I.R. Mr. Navin Sikand has stated in his letter to Shri S. N. Tewari that after finding that the document was of a sensitive nature he contacted his Bombay Head Office to inform them of this and asked for the line of action. He has stated that he was asked to get in touch with Mr. Tewari of C.B.I. and hand over this set of document. He has further stated that on getting in touch with the C.B.I. he was told that there are two to three Tewaris and to let them know which one of the Tewaris he would like to talk. Thereupon he further communicated with his Bombay Office and he was told to get in touch with Shri S. N. Tewari. On further contacts he was told that Mr. Tewari is on tour. He goes on to state that incidentally he was speaking to Bombay Office and also had the opportunity of speaking to S. N. Tewari who told him that he will be returning on 14-4-1987 when he should get in touch with him. This clearly shows that Shri S. N. Tewari, Dy. S.P., C.B.I. was in the Bombay head office of the Trident Travels when Mr. Navin Sikand was seeking instructions on telephone from his head office at Bombay. Even after the case was registered on 17-4-1987 no action seems to have been taken till 21-4-1987. The petitioner K. K. Jajodia had gone abroad on 4-4-1987 while his son A. K. Jajodia had also gone abroad on 19-4-1987.

8. Before proceeding further in the matter, in my view it is of utmost importance to take notice of some more events which took place during the course of investigation. On 26-5-1987 an application was made to the Court of Chief Metropolitan Magistrate by the C.B.I. to the effect that various attempts and

efforts were made by them to arrest the petitioner and his son but to no effect and, that since the petitioner and his son is evading their arrests a non-bailable warrant may be issued against them. I am told by learned counsel for the petitioner that this was done deliberately even though the C.B.I. on 25-4-1987 had disclosed it to the Press that the petitioner and his son are out of the country and this report up-to-date has never been contradicted showing thereby that the respondent despite having knowledge that the petitioner and his son were not in the country made a false report to the Court with a view to procure the warrant of arrest against the petitioner and his son. This warrant of arrest was handed over to one Inspector Mam Chand who reported on 15-6-1987 that all his efforts to arrest the petitioner and his son at known places have failed and that they are evading apprehension. Needless to state that this report is also being made on the warrant despite knowledge of the respondents that the petitioner and his son are not in the country and had gone abroad. On the same date, i.e. 15-6-1987 the C.B.I. makes an application for initiating proceedings under Ss. 82 and 83 of the Cr.P.C., again making false representation to the Court and got a proclamation issued. The Court is told that these proceedings were withdrawn by the respondent after it received a letter from J. B. Dadachandji, counsel of the petitioner informing the respondents that the petitioner and his son were not in the country and had gone abroad.

9. Mr. A. K. Sen, Senior Counsel, arguing motion for bail on behalf of the petitioner has urged that there are a large number of relevant and valid considerations which do entitle the petitioner to anticipatory bail. Mr. Sen powerfully urged that an effort has been made by the first informant to suppress the truth so as to leave enough room for false implications and manipulations; that there has been delay in the registration of the case and even though the document was found on 4th case was not registered till 17-4-1987 and it was only on 21-4-1987 that the first raid was conducted. Mr. Sen further contends that on 15-6-1987 a proclamation under Ss. 82 and 83 was got issued from the Court directing the petitioners to appear on or before 21-7-1987 and this was done on the basis that non-bailable warrants issued on 26th of May 1987 against the petitioner had been returned as it was reported that the petitioners were evading arrest. Mr. Sen urged that this proclamation was issued after the Court was given to understand that the petitioners were willfully absconding and evading service and this was done despite the knowledge of the C.B.I. that the petitioner and his son had gone abroad long before the commencement of the investigation. Mr. Sen further urged that even the non-bailable warrant was got issued against the petitioner and his son almost 1 1/2 month after the petitioner had gone aboard. Mr. Sen also urged that the proceedings under Ss. 82 and 83 of the Cr.P.C. have since been withdrawn by the respondents thereby conceding that these proceedings were wrongly initiated on non-existent grounds.

10. Mr. S. Lal while arguing against the motion has urged that this is a very serious and grave matter involving the security and sovereignty of the State inasmuch as the documents were of sensitive and secretive nature. According to

him the respondent is in possession of evidence to show that it was the petitioner and his son who, in fact, were dispatching these documents to their foreign links. Mr. Lal, Therefore, submits that this Court should be reluctant to grant bail in a matter of such sensitive nature.

11. Mr. Lal also urged that the nature and seriousness of the proposed charge, context of the evidence likely to lead to the making of the charge, a reasonable possibility of the petitioner's presence not being secured, a reasonable apprehension that the witness will be tampered with and the larger interest of public and State together with the gravity of the offence are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail.

12. Before I go into the details of the submission made it is in the fitness of the things to find out the scope and ambit of S. 438, Cr.P.C. In *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, , the Supreme Court has examined the various facets of this provision. The Supreme Court has observed in regard to the legislative intent of the provision :

"The Legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher Courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Ss. 437, 439, S. 438(i) uses the language that the High Court or the Court of Sessions "may if it thinks fit" direct that the applicant be released on bail."

13. While examining the amplitude of judicial discretion given by S. 438, the Supreme Court observed :

"The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions they may think fit while granting anticipatory bail, should be cut down by reading into the Statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Solicitor General. Our answer, clearly and emphatically is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and such conditions as the case may warrant. Similarly they must be left free to refuse bail if the circumstances of the case so warrant. On considerations similar to those mentioned in S. 437 or which are generally considered to be relevant u/s 439 of the Code."

14. While repelling the contention that the anticipatory bail cannot be granted unless it is shown that proposed allegation is mala fide the Supreme Court observed :

"It is understandable that if mala fides are shown anticipatory bail should be granted in generality of the cases. It is not easy to appreciate why an application for anticipatory bail must be rejected unless accusation is shown to be mala fide."

15. In regard to the scope and ambit of S. 438 the Supreme Court observed :

"The expression "if it thinks fit which occurs in S. 438(i) in relation to the power of the High Court or the Court of Session, is conspicuously absent in S. 437(i). We see no valid reason for re-writing S. 438 with a view not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it."

16. The Supreme Court also examined the fact as to whether the discretion vested in the Court u/s 438 can be exercised in relation to the offences punishable with death or life imprisonment unless the Court is satisfied that such a charge appears to be false or groundless and observed as under :

"We see no warrant for reading into this provision the conditions subject to which bail can be granted u/s 437(i) of the Code. That section, while conferring the power to grant bail in case of non-bailable offences, provides by way of exception that a person accused or suspected of the commission of a non-bailable offence shall not be so released, if there appears to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception in S. 437(i) should govern the grant of relief u/s 438(i) nothing would have been easier for the Legislature than to introduce into the latter section a similar provision."

17. The law on the subject is thus very clear and this Court's powers to grant anticipatory bail are unfettered. That, however, does not solve the issue which is essentially of exercise of discretion and, which discretion has to be exercised judicially in the light of facts and circumstances of each and every case.

18. Let me, Therefore, take up for consideration the contention of Mr. S. Lal, learned counsel for the C.B.I. that considering the sensitive nature of the document involving the security of the State and integrity of the country no anticipatory bail should be granted. I may, at the cost of repetition state that the documents discovered on 13th April, 1987 are the drafts of letters to be submitted by the desiring party of the Govt. of India and are not documents of the State. There is no indication that any document with the heading "Operational Requirements of Utility Helicopters for Army" was recovered from the possession of the petitioner when his house was searched. The contents of the Panchanama prepared at the time of search does not make a specific mention that it was recovered from the house search of the petitioner. It only mentions at item No. 13 that a bunch of papers pages 1 to 55 has been recovered without indicating the quality and content of the documents, thus leaving enough room for manipulations. In my view, Therefore Mr. Lal is not entitled to rely on this document while opposing the motion for bail. The Court is, Therefore, left with solitary document recovered on 4th April, 1987. This

document is a secret report in respect of evaluation of Battle Field Surveillance Radar Phase I. This Radar was offered for sale by West Germany and it was tested and evaluated by the Army technicians in the light of the widely advertised claims of the manufacturer and the evaluation and testing was done in the presence of the representatives of the prospective supplier. Court is told this equipment has not been purchased so far by the Govt. of India. I, in the circumstances of the case, Therefore, asked Mr. S. Lal to indicate to me as to in what manner this particular document, even though secret and relating to the defense affairs is calculated to be or might be or is intended to be directly or indirectly useful to an enemy or is likely to affect the security of the State. The only answer I got was that the document is a secret one and the fact that it was found to be in the possession of a person who had no business to retain it or to procure it, the case is of serious nature. It is true that if a person is found to have obtained a secret Government document without the authority of law it may amount to an offence. But to say that a document is such as to involve the security of the State must be shown to be so. I am making these observations with a view to examine the gravity of the offence alleged to have been committed.

19. That apart, I find some highly disturbing features in this case. It will be recalled that the first document is discovered on 4th. In para 2 of his complaint forming the basis of the F.I.R. Mr. Navin Sikand has clearly indicated that he got into touch with his head office at Bombay with a view to ask for the line of action he has to adopt and he was told to get in touch with Mr. Tewari. He again got in touch and was told to get into touch with Mr. S. N. Tewari. He has also stated that while talking to his Bombay office he also had the opportunity of speaking to Mr. S. N. Tewari, Dy. S.P. who told him that he will be returning on 14th April and that on his return he should get in touch with him. This is a very strange coincidence. Mr. S. N. Tewari is in the head office of Trident Travels at Bombay and has talked to the complainant on telephone. One does not understand the logic in Mr. Tewari's advising the complainant to get into touch with him on his return on 14th April. The matter is not reported to the C.B.I. headquarters and instead the complainant waits for Shri S. N. Tewari and only submits report to him on 15th April. Normally the matter should have been reported to the C.B.I. headquarters and even Mr. S. N. Tewari should have advised the complainant to pass on the document to the C.B.I. headquarters. The Court is left guessing why this is being done.

20. Viewing this circumstance in isolation, it may not be of very great importance though to me it appears to be somewhat abnormal. But in the light of subsequent developments and events, this circumstance does assume importance. I am told by the learned counsel for the petitioner that C.B.I. went to press immediately after the arrest of one Venugopal and disclosed that the petitioner and his son had gone abroad. This press report has not been contradicted so far and a photo copy of the same was shown to me. This shows that it was within the knowledge of C.B.I. that the petitioner and his son have

gone abroad. It is, in fact, on the basis that proceedings under Ss. 82 and 83 initiated against the petitioner and his son were withdrawn on 10th July, 1987. Despite this the investigation in this case applied to the Court of Chief Metropolitan Magistrate on 26th May, 1987 for issuance of non-bailable warrant against the petitioner and his son on the plea that various efforts were made to arrest them but they are evading their arrest. One is at loss to understand why a non-bailable warrant was procured by misrepresenting the facts. This was done in spite of the awareness of the investigation that the petitioner and his son had gone abroad and, there was no question of their evading their arrest. The C.B.I. after procuring the non-bailable warrants entrusted Inspector, Mam Chand the execution thereof. The report made on 15th of June 1987 is that despite efforts to arrest at known places no success could be achieved and the petitioner is evading apprehension. It is difficult to believe that any search was made for the petitioners. Considering the fact that investigating agency knew that the petitioner was not in the country, this false report on the warrant is deliberately made on 15-6-1987. On the same date a motion is made by the Investigation for initiating proceedings under Ss. 82 and 83 in which the petitioners were directed to appear on 21-7-1987. All these proceedings were taken against the petitioner and his son by representing to the Court that the petitioners were deliberately and willfully evading arrest and thereby the Court was given to understand that the petitioners were absconding. This was done despite the knowledge of the investigation that the petitioners had proceeded abroad long before the investigation was actually started. It is not understandable as to why it was thought proper by the investigation to adopt this most improper course of action. The proceedings under Ss. 82 and 83. Cr.P.C. were subsequently withdrawn on 10-7-1987 conceding that these proceedings were wrongly initiated. Mr. Lal says that this was only after a letter representing this fact was written by the counsel for the petitioner to the C.B.I. But on the basis of the totality of the facts of this case it is difficult to believe that the C.B.I. was not aware that the petitioner had gone abroad. Despite the awareness of C.B.I. that the petitioner has gone abroad and there is no question of evading arrest is made a sustained effort to do everything possible for harassing and humiliating the petitioner and procured orders by misrepresentation of facts. It is in the light of these further circumstances and facts that the delay in referring the matter to the C.B.I. from 4th of April to 15th of April and that too after proper deliberations with Shri S. N. Tewari assumes importance. Mr. Lal indeed has urged that other considerations such as securing attendance of the accused at trial or tampering with the prosecution evidence are matters which cannot be lost sight of. There is not even a subdued suggestion that petitioner is likely to flee from justice or to tamper with the prosecution evidence. In fact, Mr. Sen states that the petitioner K. K. Jajodia has undergone an operation in London and he has been advised post-operative rest for four weeks and that his son A. K. Jajodia is also there to look after his father. He submits that soon after his recovery the petitioner will be available. There is no question of his fleeing from justice as he is prepared to face the accusation.

21. In view of the peculiar facts and circumstances of this case and in view of some of the highly disturbing features indicated in this order, there is hardly any need for going into further details at this stage. The peculiar facts and circumstances of this case sufficiently warrant the exercise of discretion by this Court. For these detailed reasons the petition is allowed and it is directed that in the event of the arrest of the petitioner he shall be admitted to bail on his furnishing a bond in the sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of the arresting officer. This is on the condition that the petitioner shall co-operate with the investigation if and when called upon to do so during the day time. I am told that the petitioner has been advised for four weeks' rest. The petitioner shall return after a period of five weeks unless otherwise advised by his surgeon.

22. Petition allowed.