(2014) 11 KAR CK 0189

In the Karnataka High Court

Case No : Criminal Petition No. 2596/2014

K.V.N. Govindaraj APPELLANT

Vs

Central Bureau of Investigation Anti Corruption Branch RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 379, 411, 420, 447
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 11 KAR CK 0189

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : P.S. Rajagopal, Sr. Advocate for Nagendra Naik R., Advocate for the Appellant; C.H. Jadhav, SPL PP, Advocate for the Respondent

Judgement

A.V. Chandrashekara, J.—Petitioner is accused No. 4 in the criminal case bearing R.C. No. 17(A)/2012 registered by respondent-Central Bureau of Investigation (for short "CBI"). Offences alleged against the petitioner and others are punishable under Sections 120B, 420, 379, 411 and 447 of IPC and Section 13(1)(d) and 13(2) of Prevention of Corruption Act and also Section 24 of Karnataka Forest Act.

2. Learned 32nd Additional City Civil and Sessions Judge and Special Judge has rejected the bail application of the petitioner in Spl.C.C. No. 38/2014 by its order dated 29.3.2014. Hence, petitioner has approached this Court seeking regular bail under Section 439 of Cr.P.C.

3. Sri. C.H. Jadhav, learned counsel for CBI has filed a detailed objections opposing bail application on various grounds. Both advocates have filed documents supporting their contentions.

4. Heard the learned counsel for the petitioner/accused No. 4 and learned counsel for the respondent-CBI.

5. Pursuant to the order passed by the Hon''ble Supreme Court of India vide order dated 7.9.2012 in Writ Petition(Civil) No. 562/2009 and other connected matters, CBI ACB, Bangalore has registered a case against this petitioner and others for the offences mentioned above. Hon''ble Supreme Court has directed CBI to conduct thorough and intensive investigation including custodial interrogation of accused if required.

6. Charge sheet has been filed before the 32nd Additional Judge designated to try CBI cases on 13.1.2014. This petitioner K.V.N. Govindaraj was arrested on 27.11.2013 by CBI in another case bearing R.C. No. 14(A)/2012 and since then he is in custody. The presence of this petitioner has been secured in this case through a body warrant.

7. Allegation made against this accused in the present case is that accused No. 2- M/s. Swastik Steel Private Limited had been allotted a plot to stock their iron ore in leasehold land of M/s. SMSPL i.e., accused No. 5.

8. On 20.3.2010, accused No. 2 had stocked 34,842 MT of iron ore in the land of accused No. 5. On 26.3.2010, the forest officials of Government of Karnataka identified the same and marked the heap belonging to accused No. 2 in the land of accused No. 5 as heap No. 6 in respect of 27,000 MT of iron ore mines. Marking was done on 26.3.2010 by the forest officials. During the period between 21.3.2010 and 26.3.2010 i.e., the date of marking, accused No. 2 had brought 17,928.31 MT of iron ore to their plot in the land of accused No. 5 and between the date of marking i.e. 26.3.2010 and end of May 2010, accused No. 2 had brought 23,596.14 MT of iron ore. Between these two dates, they had brought in all 41524.45 MT of iron ore. Apart from this they also took 5031 MT of iron ore as loan from M/s. ILC Industries Ltd. on 18.4.2010.

9. Charge sheet filed in the present case discloses that on 7.4.2010, accused No. 2 sold 9,259 MT of iron ore to accused No. 5 who intern sold to M/s. Dreams Logistics Ltd. of which Mr. Vivek Hebbar is the Managing Director. Accused No. 2 further sold 14,865 MT of iron ore on 15.4.2010 and 9,894 MT of iron ore on 20.5.2010 to accused No. 5, who then exported the same by vessels belonging to MV.C.S. Rainbow respectively. Accused No. 2 in all had exported 42207 MT of iron ore to Elite Brilliant Ltd., Hongkong under shipping bill No. 124/2010 dated 6.4.2010. As such, accused No. 2 had a balance of 141.85 MT of iron ore only at the end of May 2010. These sales took place after the material was seized by the forest department and reported to the Jurisdictional Magistrate at Ankola. Therefore, it is alleged that accused No. 2 sold materials and accused No. 5 who purchased materials knew very well that the materials had already been seized by the Forest Department and hence they are criminally liable. By April 2010, accused No. 2 had already exported 42207 MT of iron ore.

10. The learned counsel for the petitioner has vehemently argued that Sri. Narendra G Hittalamakki accused No. 1 in the case has been granted bail by the Hon''ble Supreme Court in Criminal Appeal No. 1685/2014 on 11.8.2014 holding

that trial is not likely to be initiated in the near future. The said Sri. Narendra G Hittalamakki is accused No. 1 in the said case. He, therefore, requested this Court to release the present petitioner by applying principles of parity. Being an official of the post he is stated to have helped in exporting the iron ore by receiving bribe.

11. What is argued by the learned counsel for the petitioner is that this petitioner had obtained anticipatory bail in Crl.P. Nos. 8402/2010 and connected matters vide order dated 4.4.2011 in Criminal Petition No. 8403/2010 of this Court and his brother Mr. Nagaraj. K.V., who is accused No. 3 has also obtained anticipatory bail on the same day in the connected matter in Crl.P. No. 8333/2010. He has argued that the said order of anticipatory bail still holds good and same can be taken into consideration. He has further relied upon the order passed on 6.8.2014 by the 46th Addl. City Civil and Sessions Judge and Special Judge for CBI cases, Bangalore in Spl.C.C. 116/2012 wherein Mr. Gali Janardhan Reddy accused in the said case has been released on bail. Since the said Janaradhan Reddy, who also faces similar allegation is released on bail, the present petitioner is also entitled to be released on bail. Therefore, he has requested for applying principles of parity in the present case.

12. Perused the records.

13. On 20.3.2010, the Range Forest Officer, Ankola seized 5 Lakhs Tons of iron ore worth Rs. 150 Crores @ Rs. 3,000/- per ton. The seized iron ore had been handed over to Port Conservator, Belekeri Port to have the same in safe custody. This is an order passed by a responsible Officer of Forest Department, Government of Karnataka and seizure was also reported to the Jurisdictional Magistrate, Ankola. Accused No. 2, Swastik Steels (Hospet) Pvt. Ltd. had about 27,000 MT of iron ore and this is evident from the report submitted by Accused No. 5-SMSPL on 16.4.2010.

14. The present petitioner is the Director of accused No. 2-Company of which his brother Sri. K.V Nagraj is the Managing Director. Infact this petitioner had atoned his power in favour of one Vinod on 10.3.2010 i.e., two days after seizure of 5 Lakhs ton of iron ore by the Forest Officer on 22.3.2010. A contract was entered into between accused No. 5 and M/s. Divakar Mineral Company. Letter dated 16.11.2010 addressed by accused No. 2 to the Superintendent of Police, H & B Squad CID, Carlton House, Bangalore discloses that accused No. 2 had stocked 68,704 tons of iron ore on 20.3.2010, the date on which iron ore heap was seized by the Forest Authorities. It also discloses about the quantum of iron ore purchased between 20.3.2010 and 31.5.2010 and about that shipping bills bearing Nos. 124/2010 dated 6.4.2010 and 164/2010 dated 14.5.2010 along with Bill of Lading enclosed.

15. Admittedly, heap belonging to accused No. 2 had been marked as "6" by the Forest Authorities and it had been handed over to the Port Conservator to have the same in safe custody. It is not although the Directors of accused No. 2-

Company were unware of the seizure of the iron ore. Inspite of that, huge quantity of iron ore was illegally transported from the same heap.

16. It is very interesting to know that a writ petition was filed by the accused No. 2 in W.P. Nos. 15745-46/2010 (GM-FOR) before this Court against the Government of Karnataka and this petition was filed on 7.5.2010, long after the seizure of 5 Lakhs ton of iron ore belonging to accused No. 2 and other accused in different cases. In the said writ petition, prayer sought was to direct the State of Karnataka and Forest Authorities to release the iron ore belonging to accused No. 2. By the time writ petition was filed, accused No. 2 had already exported major portion of the stock of iron ore it had, through vessels. Therefore, just because Director of M/s. Dreams Logistics Ltd., one of the exporters of accused No. 2 has been released on bail, bail cannot be granted in the present case applying parity. Date on which writ petition was filed and the subsequent dismissal of the writ petition for non prosecution would speak in volumes against accused No. 2 company of which, this petitioner is the Director and his brother, who is in custody in the same case is the Managing Director.

17. There is lot of force in the submission made by the learned counsel for the CBI that the writ petition was filed to get the illegal transportation and export of iron ore by accused No. 2 legalised. Even otherwise, objections filed to the said writ petition on behalf of the Government at paragraphs 13 clearly indicates that no royalty had been paid to the government. Whenever iron ore is sought to be exported, it is necessary to ensure that royalty due to the Government is paid in the first instance in accordance with law and before removal of the same, geological permission will have to be obtained from the Department of Mines and Geology and as well as Way Permits in Form No. 27 or 28 from the Department of Forest have to be obtained. Further, during the movement of the vehicles carrying the iron ore or minerals, they should be stopped for scrutiny and verification of above documents at all check posts. Therefore, Government had contended before the Court in the said writ petition that earlier interim orders passed in W.P. No. 10347/2010 on 31.3.2010 cannot be a basis for seeking relief in the writ petition filed by accused No. 2.

18. What is argued before this Court by the learned counsel for the petitioner is that trial is not likely to commence and conclude in the near future and therefore the present petitioner cannot be detained and if detained, it will be pre-trial punishment.

19. This Court is conscious of the same. Taking into consideration the magnitude of the case and quantum of iron ore illegally extracted, transported and exported by accused No. 2 by adopting various means, this is not a fit case in which discretion could be exercised under Section 439 of Cr.P.C. at this stage. On the other hand, there must be some suitable direction to the Trial Court to frame charge and begin the trial at the earliest.

ORDER

20. Accordingly, petition is dismissed. Notwithstanding the dismissal of the petition, the learned Special Judge dealing with the special case to frame charges on or before 31.1.2015 without fail and thereafter fix the date of trial and to dispose of the matter preferably within nine (9) months from the date of framing charges.

21 If for any valid reasons, Special Court is not able to dispose of the said matter even after nine (9) months from the date of framing of charges, the petitioner is at liberty to approach this Court seeking regular bail under Section 439 of Cr.P.C.

Registry to send a copy of this order to Special Court for reference, at the earliest.