(2000) 05 PAT CK 0033

In the Patna High Court

Case No : Criminal Misc. No. 9573 of 2000

Lalu Prasad alias Lalu Prasad Yadav APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Citation : (2000) 05 PAT CK 0033

Final Decision : Allowed

Judgement

S.K. Singh, J.—Heard the parties.

2. The present application has been filed for release of the petitioner on regular bail in connection with Special Case No. 5 of 1998, arising out of R.C. 5(A) 98 (AHD), Patnadated 19.8.98 under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

3. A First Information Report was lodged by Sri B.N. Kharakwal, Deputy Superintendent of Police, C.B.I. New Delhi on 19.8.1998 to the effect that during the course of investigation of Animal Husbandy Deptt. (Shortly ''A.H.D.'') cases, materials have been brought on the record to the effect that the petitioner during his incumbency as the Chief Minister of Bihar between the period 1990-1996 acquired huge assets, both movable and immovable by corrupt or illegal means, which are disproportionate to his known source of income which has not been accounted for.

4. The First Information Report further goes to show that the petitioner owns immovable properties in the form of house and plots in his own name and in the names of his family members, which were acquired during the period 1990-1996 at Patna, Gopalganj and other places, which is worth Rs. 30,12,000/- approximately. The said F.I.R. further discloses that the petitioner also acquired huge immovable properties in the form of bank accounts, motor vehicles, ornaments, jewelleries, share certificates, F.D.Rs., N.S.Cs., etc. in his name and in the names of his family members to the tune of Rs. 20,44,193/-

approximately. Thus, he is said to be owning movable and immovable properties worth about Rs. 50,56,193/-.

5. The F.I.R. further goes to disclose that the petitioner''s income in the form of salary and other emoluments as Chief Minister of Bihar between the period 1990 to 1996 was to the tune of Rs. 5,04,000/- approximately and income from the dairy business shown to have been run by his wife was to the tune of Rs. 3,00,000/- totalling Rs. 8,04,000/- approximately. As such, as per F.I.R., the total disproportionate assets acquired by him during his period as Chief Minister was to the tune of Rs. 42,52,193/- approximately without taking into account and deducting the expenditure on household, other items and other aspects of life. The said F.I.R. also states that during the above-mentioned period, he and his family members were living very levishly and the petitioner was spending heavily in maintaining himself as well as his family members, who were only dependent upon him and were in possession of huge amounts in different banks in the form of deposits, shares, security, land and building, etc. and were maintaining a lavish life style and spending heavily.

6. After investigation, on 4.4.2000, the C.B.I, submitted charge-sheet against the petitioner and his wife, Smt. Rabri Devi, u/s 13(1)(a) of the Prevention of Corruption Act, 1988 punishable u/s 13(2) of the said Act.

7. Mr. P.N. Pandey, learned Senior Counsel appearing on behalf of the petitioner has vehemently argued that there is clear distinction between other cases relating to A.H.D. known as A.H.D. Scam and the present case. He has also submitted that the valuation done by the C.B.I. of the properties of the petitioner is inflated as properties acquired at village Mahuabagh, which is a rural area, have been shown within the town of Patna.

8. It has also been submitted that the Maruti Car, which was acquired by the petitioner after taking loan has also been valued by the C.B.I. as property alleged to be disproportionate to his own source of income.

9. According to the learned Counsel, even the property said to have been acquired by the wife of the petitioner and shown in her income return as self-acquired property has been added as property to have been acquired by the petitioner.

10. Mr. Pandey, learned Senior Counsel appearing on behalf of the petitioner, relying on Section 437(3) of the Code of Criminal Procedure stated that the maximum punishment for the offence is between 1 to 7 years, as such, the same was not a serious offence and in any view of the matter, as the allegation against the petitioner even on the face of it was of acquiring properties disproportionate to his known source of income only and as the petitioner is not likely to abscond and is a person holding status in the society and is a member of the Legislative Assembly, he should be released on bail during the pendency of the trial.

11. Mr. P.N. Pandey, learned Senior Counsel for the petitioner, has gone in detail

to explain the properties acquired by the petitioner to show that the said properties have been over valued by the C.B.I. and even the expense of the petitioner and his wife on Chhath Puja, etc. has been calculated and shown to be as expenses incurred by the petitioner. He has further relied upon several sale-deeds to show that actually the property acquired was of muchless value and if the income tax return of the petitioner is taken into consideration, which is still pending final disposal before the appellate authority of the Income Tax Department, the said property as acquired by the petitioner in his own name and the names of his family members cannot be said to be more than his known source of income.

12. Lastly, it has been argued by Mr. P.N. Pandey, learned Senior Counsel, that ordinarily in a case of having disproportionate assets than the known source of income generally bails are being granted to the accused-persons. In support of his contention, he has relied upon a judgment of the Delhi High Court in the case of Sukhram v. State through C.B.L. which was also u/s 13(2) read with Section (1)(d) of the Prevention of Corruption Act, 1988. The petitioner of the said case was a former Minister of the Union Cabinet and on search of various premises, cash amounting to Rs. 3,61,80,364/- was recovered, jewellery items amounting to Rs. 10,29,404/- was recovered and bank account having balance of Rs. 4,92,739/- was found and household articles amounting to Rs. 10,30,000/- were recovered. In addition thereto, there were other luxurious items, which were found and as far as movable property is concerned, a palatial house worth Rs. 20 lakhs was detected at Mandi, Himachal Pradesh a Multi-storeyed hotel valuing at Rs. 50 lakhs was found and another patalial three-storeyed building at D-42, Kaushambbi, Ghaziabad constructed by the petitioner of the aforesaid case valued at Rs. 1 crore have been detected. In addition thereto, an apple garden and a farm house were found, still the Delhi High Court taking into consideration the fact that as the application was for grant of bail, the Court was not required to go into detailed examination of evidence and prejudge the case and for that exhaustive exploitation of the merits of the case are not required in the order. The Court before granting bail in cases involving non-bailable offences, is to take into consideration matters such as the nature and seriousness of the offences, the character of evidence, circumstances, which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at trial, reasonable apprehension of witnesses being tampered with a larger interest of the public or the State and similar other considerations. The Court further held that the bail should normally not be withheld as a punishment if, after talcing into consideration other factors, the accused is entitled to grant of bail. Bail and not jail is the normal rule.

13. In the said judgment relying upon the judgment of the Supreme Court in Gurucharan Singh v. State reported in AIR 1978 SC 179 : Babu Singh and Others Vs. State of U.P., , Joginder Kumar Vs. State of U.P. and others, and AbdulMohasin Albahouth v. State 1985 (2) Cri 526, the Court has come to the conclusion that in non-bailable cases other than ones where the person has been

guilty of an offence punishable with death or imprisonment for life, the Court will exercise its discretion in favour of granting bail, subject to Sub-section (3) of Section 437 of the Code of Criminal Procedure, if it deems necessary to deal under it. Unless exceptional circumstances are brought in the notice of the Court which may defeat proper investigation and fair trial, the Court will not decline to grant, bail to the person, who is not accused of an offence punishable with death or imprisonment for life. The overriding considerations for granting bail, according to the above-mentioned Judgment as already mentioned above, are the nature and gravity of the circumstances in which the offence was committed, the position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice, of repeating the offence of jeopardizing his own life being faced with grim prospects of possible conviction in the case of tampering with witnesses, the history of the case as well as investigation and other relevant grounds. A person, who has committed a criminal misconduct u/s 13 of the Prevention of Corruption Act is liable to be punished with imprisonment for a term which shall not be less than one year but which may extend up to seven years.

14. Taking into consideration the judgment of the Supreme Court as referred to above, the Court released the petitioner of the aforesaid case on furnishing a personal bond of Rs. 2 lakhs with one surety of the like amount with certain conditions.

15. According to Mr. Pandey, learned Counsel for the petitioner, even taking into consideration the case of the petitioner of the aforementioned case, who was found to be in possession of the property both movable and immovable worth crores of rupees which was manifold more than his known source of income than that of the petitioner, still the Court did not deem it fit to keep him in custody and released him on bail when the case was still under investigation.

16. According to the learned Counsel for the petitioner, the charge-sheet has already been submitted and there is no chance of absconding the petitioner. As such, he should also be released on bail, in view of the ratio decided by the apex Court.

17. Mr. Rakesh Kumar, learned Standing Counsel appearing on behalf of the C.B.I. at the outset opposed the bail stating therein that the conduct of the petitioner was such that taking into consideration the same, he did not deserve the privilege of bail. According to the learned Counsel, the petitioner right from the initiation of Animal Husbandry Scam cases is making irresponsible statement with a view to malign and humiliate the Investigating Agency, i.e., the C.B.I. and even threatening the same with dire consequences. The petitioner is also making provocative statement that the C.B.I. will be "thrown out" of the State of Bihar.

18. It has further been contended by the learned Counsel for the C.B.I. that there was no mala fide intention of the C.B.I. and the C.B.I. was carrying out its statutory obligation in view of the direction of the Honi''ble Patna High Court.

According to him, a Division Bench of this Court by order dated 11.3.1996 in the case of Sushil Kumar Modi and Others Vs. State of Bihar and Others, had directed the C.B.I. to enquire and scrutinize all cases of excess drawals and expenditure in the Department of Animal Husbandry in the State of Bihar during the period 1977-78 to 1995-96 and lodge cases where the drawals are found to be fraudulent in character and take the investigation in those cases to its logical and, as early as possible, preferably within four mouths. The investigation by the State Police in cases already instituted shall remain suspended in the meantime.

19. It is contended by the learned Counsel for the C.B.I. that at the time of passing of the order by this Court as mentioned above, the State Police had already instituted 41 F.I.Rs. in different Police Stations in many of the Districts of Bihar relating to different occurrence and transactions.

20. It is further contended that against the aforesaid order dated 11.3.1995 of the Division Bench appeals were preferred before the Supreme Court and the Supreme-Court vide its order dated 19.3.96 reported in 1996 (1) PLJR 1997, affirmed the order of the Hon''ble Patna High Court with certain modifications. The said order reads as follows:

We are also of the opinion that to alleviate the apprehensions of the State about the control of the investigation by the C.B.I. it should be under the overall control and supervision of the Patna High Court. The C.B.I. officers entrusted with the investigation shall, apart from the Criminal concerned Court, informed the Chief Justice of the Patna High Court from time to time of the progress made in the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. After the investigation is over and reports are finalised, as indicated by the Division Bench of the High Court in the impugned judgment, expeditious follow-up action shall be taken. The High Court and the State Government shall co-operate in assigning adequate number of Special Judges to deal with the, case expeditiously so that no evidence may be lost.

21. In compliance of the direction of the Supreme Court, the cases, which are known as A.H.D. Scam, are being monitored by a Division Bench of this Court. The Division Bench in light of the order of the Supreme Court dated 19.3.1996 and while considering the petition filed on behalf of the C.B.I. for extension of the period for completion of the investigation by order dated 23.8.1996 directed the C.B.I. to file an affidavit as to why in view of the nature of materials already collected by them, separate cases with respect to the offence prescribed u/s 13(1)(e) of the prevention of Corruption Act, 1988 has not been instituted against the parties concerned. This Court by the said order also directed the C.B.I. to comply with other directions issued in C.W.J.C. No. 1617/96 Sushil Kumar Modi and Ors. v. The State of Bihar and Ors. connected cases.

22. It has further been contained that the Division Bench again by order dated 20.3.1998 observed that the C.B.I. was duty-bound to bring all such matters to

their logical and.

23. It has been argued by the learned Counsel for the C.B.I. that in view of the aforesaid direction of this Court and the apex Court, the present case was being investigated and the charge-sheet has been submitted. The allegations levelled by the petitioner in paragraph 47 and other paragraphs stating therein that the C.B.I. was prosecuting the petitioner with mala fide intention and the said action was politically motivated is nullified. The C.B.I. being an Investigating Agency was carrying its duty and in case of valuation of properties had rather taken a lenient view and the valuation of the property has been assessed keeping a very liberal view when actually the same was worth much more and it has clearly been stated that though the Maruti Car, which has been purchased by the petitioner was on loan and as such when the income of the petitioner has been taken into consideration after deducting the loan amount and as the loan amount has already been paid, as such, the valuation of the car had to be taken into consideration and therefore, according to him, the allegations made by the petitioner are bald and only a deliberate attempt to malign the Investigating Agency, which is discharging the duty cast upon it.

24. Mr. Rakesh Kumar, learned Counsel for the C.B.I. has further argued that keeping the merit of the case apart, the petitioner also does not deserve bail, as his conduct is such that he wants to demoralize the Investigating Agency by calling bad names and threatening it by organizing Dharna and making provocative statement. In this regard, certain instances were brought on the record, as would be clear from the counter-affidavit, filed by the C.B.I.

25. It has further been contended by the learned Counsel for the C.B.I. that even on 11.3.2000, the petitioner made a statement that the C.B.I. would not be allowed to function and "I will drive out the C.B.I. from Bihar". The said statement has been quoted in paragraph 10 of the counter-affidavit.

26. Learned Counsel for the C.B.I. has further contended that the gesture and belligerent demeanour of the petitioner in the Press conference give adequate inkling that he is about to use criminal force against the officials attached to the organization and the petitioner appears to be stead fast and stubborn in his impious resolve to attack and threaten the Investigating Agency and its officials and if the same is not brought to check, it would be difficult to uphold the rule of law.

27. According to the learned Counsel for the C.B.I. the said attack and threat begun at the time when the Investigating Agency moved the competent authority seeking sanction to file charge-sheets in the Special Court.

28. Mr. Rakesh Kumar Further contended that the petitioner also cannot take benefit of the case of Sukhram v. State through C.B.I. (supra), as in the said case, the Delhi High Court after taking into consideration the judgment of the Supreme Court had come to the conclusion that before releasing the petitioner on bail the conditions, which are to be taken into consideration, include

reasonable apprehension of witnesses being tampered with the nature and gravity of the offences and the petitioner being a repeated off rider. According to the learned Counsel, the petitioner is not an accused only in the present case but has been made an accused in many other cases in A.H.D. Scam in which charge-sheet has already been submitted and in one of them charges have already been framed.

29. It is further contended by the learned Counsel for the C.B.I. that the conduct of the petitioner goes to show his intention to tamper with the evidence demoralize the witnesses, who are mainly officials of the State Government so that they do not depose against him and also to demoralize the Investigating Agency. As such, according to the learned Counsel for the C.B.I, though on merit, the petitioner may be considered for grant of bail but in view of his conduct, as stated above, he does not deserve the privilege of bail.

30. It has strongly been contended by Mr. Rakesh Kumar, learned Counsel for the C.B.I. that the petitioner and his party men have all along been intimidating and bullying the C.B.I. through print and electronic media notwithstanding the conditions imposed on him by the Supreme Court while granting interim bail in another case. It has been stated that there is reasonable apprehension that the petitioner, who seldom believes the rule of law, may tamper with the evidence and gain over the prosecution witnesses to frustrate the end of justice. In the given backdrop, the petitioner does not entitle to be released on bail.

31. It has been submitted by the learned Counsel for the C.B.I. that the C.B.I. will take each and every effort in the light of producing witnesses on each and every date on day-to-day basis after commencing of the trial and there is every likelihood that the trial may be concluded within a very short period. It is further submitted that for the purpose of smooth trial without any interruption, the petitioner may not be allowed the privilege of grant of bail and accordingly, the present bail application may be rejected.

32. In support of this contention, learned Counsel for the C.B.I. has relied upon a judgment of this Court in the case of Dr. Krishan Mohan Prasad v. The State of Bihar reported in 1997 (1) PLJR 352, wherein a Single Judge of this Court has held that any person against whom serious allegations of fraudulent withdrawal of public money of more than Rupees 19 Crore have been levelled cannot be entitled to bail even if he is found to be suffering from serious ailment. The said judgment further states that the offence alleged against the petitioner is not only an offence against the State but it is an offence against the Nation and the very people. The petitioner and his co-accused by their alleged acts of commission and omission have made a deep cut on the jugular vein of the poor tax-payer of the country by fraudulently withdrawing and misappropriating the huge amount from the Government Treasury.

33. Further reliance has been made on a judgment of this Court in the case of Dr. Jagannath Mishra, Lalu Prasad @ Lalu Prasad Yadav, Ravindra Kumar Rana and

Vidya Sagar Nishad Vs. The State of Bihar, . A Bench of this Court held that the character of the evidence, circumstances peculiar to the accused, reasonable possibility of not being secured at the trial, apprehension of tampering with the evidence and witness, larger interest of the public and State are the consideration for grant of bail. According to the learned Counsel for the C.B.I. in view of the aforesaid decision, in the present case as there was apprehension of tampering with the evidence and witnesses and as the larger interest of the Public and the State demand non-releasing of the petitioner on bail, as the present case is off suit of the Animal Husbandry Scam cases by which the public at large have been put to a loss, the petitioner should not be granted the privilege of bail.

34. Further reliance has also been made by Mr. Rakesh Kumar, learned Counsel for the C.B.I. upon a decision of the Supreme Court in the case of State Vs. Jaspal Singh Gill, wherein the Supreme Court has held that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tempered with, the larger interests of the public or the State and similar other consideration.

35. According to the learned Counsel for the C.B.I. in view of the aforesaid decision as none of the conditions is fulfilled by the petitioner, he should not be granted the privilege of bail.

36. In reply to the aforesaid argument of the C.B.I. it has been contended by the learned Counsel for the petitioner that the petitioner has never interfered in any of the A.H.D. Scam cases. It has further been contended that the C.B.I. has submitted charge-sheet in R.C. Case No. 20A/96 when the petitioner was the Chief Minister of Bihar. Further in R.C. No. 64/96 and RC-5A/98 also charge-sheets were submitted when the Government of the R.J.D. was functioning in the State of Bihar. According to the learned Counsel, no witness was ever interfered or intimidated. No such complaint has been made to the Court in this regard by the C.B.I., earlier. The C.B.I., according to the learned Counsel for the petitioner in view of the news item, which was based on wrong reporting, was trying to misuse the statement of the petitioner, which has been misquoted. According to the learned Counsel, what the petitioner stated was that the petitioner on him own will not entrusted to that C.B.I. Only such cases will be entrusted to the CBI on which there are orders of the Court. Further, the petitioner stated that the State Vigilance Department would be strengthen to fight corruption.

37. It has further been argued that the petitioner has been granted provisional bail by the Supreme Court in R.C. 64/A/96. According to the learned Counsel, the said provisional bail has been extended for a period of three months by order dated 20.4.2000 and the petition of the C.B.I. for cancellation of his provisional

bail has been rejected in July 1999.

38. It has further been contended that the petitioner, who has been made an accused in R.C. along with others has been enlarged on regular bail by this Court and he is enjoying the privilege of bail. The petitioner has neither tampered nor misused the said privilege of bail and as such, according to the learned Counsel, the apprehension of the C.B.I. is ill-founded and the petitioner is ready to abide, by any condition laid down by this Court rather shall facilitate in disposal of the trial at the earliest in any manner as decided and directed by this Court.

39. Having given my deep consideration on the submissions and counter-submissions made by the learned Counsel for the parties, for the present, I am not expressing any opinion with respect to the case of either party because that may ultimately prejudice the case of one parry or the other.

40. Learned Counsel for the C.B.I. while vehemently opposing the bail has expressed his apprehension about the conduct of the petitioner relating to tampering with the evidence and witnesses and has brought certain provocative statements of the petitioner and his conduct and the conduct of his party workers on record.

41. The charge-sheet has already been submitted and it has been stated at bar that part of the police papers have also been served on the accused and for other voluminous documents on which the C.B.I. is going to rely, an application has been moved on which date has to be fixed for inspection of those records and the C.B.I. in its counter-affidavit specifically stated that, they would be producing their witnesses on day-today basis for early conclusion of the trial.

42. Learned Counsel for the petitioner has also stated that his client would fully co-operate for early logical end of the trial.

43. In view of the aforesaid submission, I direct the Special Judge, C.B.I. Patna to take steps for framing of the charges within a period of one month from the date of receipt/production of a copy of this order and in the event of framing of the charges, the Special Judge should take all necessary and positive steps so that the trial is concluded within a further period of six months from that date.

44. It is also made clear that the C.B.I. should fully co-opera c; and produce witnesses on day-to-day basis as undertaken by them in this Court. The petitioner is also directed to fully co-operate with the trial so that the same is brought to its logical end within the period stipulated above.

45. Taking into consideration the merits of the case, submissions of the parties and the fact that in R.C. 64/A/96, the petitioner has been granted provisional bail by the apex Court and in another R.C. Case No. 20(A) of 1996, he has been enlarged on bail by this Court and talking into consideration the apprehension of the C.B.I. I direct the petitioner (Lalu Prasad alias Lalu Prasad Yadav) to be released on provisional bail for a period of three months from today on furnishing bail-bond of Rs. 2 lakh with two sureties of the like amount each to the

satisfaction of the Special Judge. C.B.I. (AMD), Patna in Spl. Case No. 5 of 1998, subject to the conditions as laid down hereunder:

(a) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the. facts of this case so as to dissuade them, to disclose such Facts to the Court or to any other party.

(b) The petitioner will not tamper with the evidence or witnesses directly or indirectly.

(c) The petitioner will remain present before, the Court on each date fixed in the present case and shall abstain only on the prior written permission of the Court.

(d) The absence of the petitioner shall not be taken as a ground for adjournment in continuation of a trial.

46. The violation of the terms indicated above will render cancellation of the provisional bail granted to the petitioner and the Counsel for the C.B.I. is at liberty to move this Court in the event of such an eventuality.