(2008) 11 SHI CK 0005

In the High Court Of Himachal Pradesh

Meera Walia APPELLANT

Vs

State of Himachal Pradesh RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

Citation : (2009) CriLJ 1524

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—The petitioner; a Principal in the Government College, is seeking her pre-arrest bail in case FIR No, 6 of 2008 dated 22-5-2009 registered in Police Station SV and ACB Shimla under Sections 13(1)(c) and with 13(2) of the Prevention of Corruption Act.

2. Notice of the application was given to the respondent-State, S/Shri P. K. Sharma, learned Additional Advocate General along with Jeewan Lal Sharma, Special Prosecutor and J. S. Guleria, Law officer have put in appearance on behalf of the State.

3. Report of the facts has been filed and the matter has been perused and considered.

4. In brief, the prosecution case is that husband of the petitioner; Shri Subhash Ahluwalia is an IAS Officer. He remained posted as Principal Secretary-cum-Personal Secretary to the former Chief Minister, Himachal Pradesh. During the check period 2003-2008 he and his family members were allegedly possessing disproportionate assets to their known sources of income. After conducting the preliminary inquiry, final report was sent to the Government and it recommended for registration of the case, and the FIR was registered on 22-5-2008.

5. The questionnaire was given to Sh. Subhash Ahulwalia and his wife by the In vestigating Officer, which was replied. Both of them were interrogated for many days. The accused Subhash Ahulwalia was arrested and he remained in police

custody for about 8 days. The petitioner was also interrogated about ten times from morning till evening.

6. Till now, the investigation revealed that the husband of the petitioner is alleged to have purchased immovable properties at various places in his own name and also in the name his family members which were worth crores whereas he had shown to have spent about 35 lakhs. Thus it was highly under valued. However, the prosecution did not bring into the notice of this Court, the report of any expert or land valuer or the chartered accountant. Further scrutiny of 15 bank accounts had shown that as per the prosecution case, Shri Subhash Ahulwalia and his family members were having deposits in various accounts to the tune of Rs. 1,34,80,092/- whereas the petitioner was having the income from known sources during the check period 2003 to 2008 to the tune of Rs. 70.5 lakhs.

7. It is alleged that Shri Subhash Ahluwalia also did not file the mandatory annual property returns to the Government which was an indicator about his undisclosed assets and he did not mention the bank accounts in his name and in the name of the petitioner-wife which shows that the petitioner and her husband were having some more undisclosed bank accounts in different banks, which required to be unearthed.

8. The petitioner also undertook three foreign trips. Two of these trips were to USA and the other was to Thailand but there was no corresponding withdrawal from any bank account. The explanation given by the petitioner was vague.

9. It is also alleged that Investigation revealed, the petitioner and her husband had spent huge amount on the education of their children in USA, the source of which was unknown.

10. It is further alleged that husband of the petitioner was having six credit cards in the name of his family members and expenditure occurred through them also need detailed investigation. But there is nothing on record whether credit cards were in fact used during that time. However, the bail was objected to also on the ground that she is required for Narco-Test.

11. Shri P. K. Sharma, learned Additional Advocate General has vehemently argued that custodial interrogation of the petitioner is required to for the scrutiny of the various bank accounts held by the family members of Shri Subhash Ahluwalia, and some of the property was bought in name of the petitioner and a flat was also booked for Rs. 5.15 lakhs in her name with Karnak Towers, Gurgoan which is being built by OMAXE builders. Secondly, the petitioner indulged into a benami transaction of a landed property, purchased in the name of Smt. Sushila for Rs. 3 lacs whereas Vendor Smt. Attru Devi (now deceased) next day deposited an amount of Rs. Ten lakhs in her account in U.CO bank Bhar Gaura. Thirdly, the petitioner acquired four lockers in AXIS Bank, Panchkulla on 23-4-2007 which were operated once and later during investigation were found empty. Thus the petitioner is required to disclose about the contents thereof.

Fourthly, there were no withdrawals of money for meeting the expenditure for her foreign tours. Fifthly the total expenses for educating both the children were roughly 45 lacs, which is claimed to have been spent by the cousin of the husband of the petitioner. The details of which were not provided. Sixthly, the petitioner was required for Narco Test, at F.S.L. Karnataka on 25th November to 27th November, 2008. Thus her arrest is necessitated.

12. Mr. Sharma learned Additional Advocate General also argued that although a questionnaire with respect to the aforesaid points was given to the petitioner and her husband, they submitted their replies which were vague. During their interrogation nothing material came out. Thus, the custodial interrogation of the petitioner is sought.

13. Contra, Shri M. S. Chandel, learned Senior Advocate assisted by Shri N. S. Chandel, vehemently argued that the present case is a politically motivated case, which was registered in the month of May, 2008. Since then the petitioner and her husband were extensively interrogated. Even Shri Subhash Ahluwalia was arrested and was in police custody for about 8 days. It is further argued that proper explanation about the source of money spent on the purchase of the aforesaid property was supplied by the petitioner and her husband. The respondent did not bring on record till date to show that the value of the property was more than the consideration amount paid by the petitioner or her husband when purchased. The petitioner herein had been interrogated by the prosecution about ten times on different occasions for whole of the day. What was in their power and possession was revealed and handed over to the police. They have fully assisted the police in the investigation of case, there is no allegation of their fleeing or jumping out the bail. Further that holding of power of attorney of Smt. Sushila by the petitioner after one month of the sale, does not make out a case of benami transaction as the petitioner is also resident of the same area and nothing against her came out even in the statement of Smt. Sushila, who is alleged to have purchased the property of Smt. Attru Devi. It is also argued that the bank lockers were hired at Panchkula to keep some articles purchased, for the marriage of their daughter which was later on postponed. Out of four bank lockers only two were put to use. When the marriage was postponed, the articles were removed and returned in order to avoid unnecessary interest on the money spent. He further argued that the husband and the petitioner are the Gazetted Officers of the State, an amount of Rs. 1,56,734/- kept in the house, which was later used for Air Tickets from Delhi to Washington was not so big an amount which they could not have possessed. Source of that amount was also explained to the Investigating Officer. Further the learned Counsel submitted that expenses for education of the children of the petitioner were met by cousin of her husband for one year and thereafter both got employment in U.S.A. and they are the Income Tax payees, record of which was supplied to the Investigating Officer and if the investigating Officer requires certificate of that record would also be supplied.

14. Learned Counsel strenuously argued that When the petitioner and her husband have disclosed about the source of income and the prosecution is alleged to have collected the evidence against them, he failed to understand why the prosecution was insisting upon their Narco Test against their wishes just to humiliate them. He also questioned its constitutional validity. According to him, Ahluwalia''s are not the sacrificial goats, meant to slaughter with an ulterior motive, at the State expense.

15. I have given my thoughtful consideration to the rival contentions of the learned Counsel for the parties (sic) have examined the investigation record.

16. It is a settled law that while granting or refusing the anticipatory bail, Court is required to strike a balance so that individuals may be protected from unnecessary humiliation and faith of the public in administration of justice is not considerably shaken. Section 157 of the Code of Criminal Procedure provides a procedure for investigation of a criminal case and Section 438 of the Code deals with respect to the grant of anticipatory bail to the person apprehending the arrest. Both these sections are required to be read together. The Court is to consider whether process of the police to take measures for arrest of the offender is free from any extraneous pressure or is a normal feature in the course of investigation.

17. In the instant case, the investigating agency appears to have, collected sufficient evidence to which they could have. The explanation given by the petitioner and her husband is alleged to be quite unsatisfactory. The matter is now about its calculation by the experts, to which the investigating agency appears to have not resorted to.

18. The petitioner was available to the investigating Agency w.e.f. May, 2008 till the filing of the present petition, Even vide last order passed by this Court, the Investigating Agency was directed that in case the petitioner is required for the purpose of interrogation, they shall issue notice to her, so as to make herself available for the purpose of interrogation but the Investigating Agency did not think it proper to interrogate her and now her bail is being objected to on the aforesaid grounds.

19. Police during the investigation is required to collect the legal evidence against the offender and the accused has a statutory right of silence and has a constitutional protection. He is also presumed to be innocent unless contrary is proved. Thus in the totality of circumstances, the grounds for declining bail raised on behalf of the State are not at all convincing.

20. It is not disclosed as to how further investigation of the case would be hampered if the bail is allowed. The accused still remains under custody of the Court through a surety. Even the recoveries effected during bail are not hampered.

21. So far as the Narco test of the petitioner for extracting the self incriminating

evidence is concerned e.g. as to what was kept in the lockers and how the amount of Rs. Ten lacs was deposited by the vendor in her account etc. is wholly irrelevant for the said purposes. This type of test for inculpatory statement under the spell of mental deprecients or drugs which affects the mental faculty is inadmissible in law and in the given circumstances would be against the spirit of Article 20(3) of the Constitution of India.

22. Mr. Sharma, learned Additional Advocate General has referred to Section 53 of the Code with respect to examination of the accused by medical practitioner at the request of the police officer and according to him this scientific examination of the petitioner will afford evidence as to the commission of offence, but the word "evidence" as referred to in Section 53 talks about legal evidence, so any incriminating statement made by the accused during such examination cannot be said to be a legal evidence which could be used against him.

23. Although the field of criminology has expanded rapidly in the recent years and the demand for supplemental methods of detecting deceptions and improving the efficiency of interrogation have increased concomitantly. The investigating Agency has a statutory right to investigate the crime and to find out the truth. It is a valuable technique in blind murder cases, terrorist''s activities like bomb blasts to reach the actual accused where he is not known. But in my opinion, where the accused is known and the prosecution has collected the evidence against him and the statutory onus lies upon him to explain the known sources of income, in that case he cannot be compelled by making him dormant by drugs to state against him as it would be against the spirit of the Constitution as aforesaid.

24. Without further commenting upon the merits or demerits of the case, after going through the record of the investigation and the submissions made by the parties, suffice it to say that the petitioner can be enlarged on bail on appropriate terms and conditions.

25. Therefore, this Court doth order that in the event of arrest of the bail-petitioner, she be enlarged on bail on her furnishing bail bonds in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the arresting officer. This bail shall be subject to the following conditions that the petitioner shall:

a) make herself available for interrogation and co-operate with the investigation of this case, as and when required to do so by the investigating officer;

b) present in the Court whenever required to do so;

c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

d) not leave India without prior permission of this Court and the Passport, if not already impounded by the police, be surrendered to the concerned

Superintendent of Police by her within a period of 15 days; and

c) also furnish authenticated details of the Income Tax returns of her children to the Investigating Officer within a period of 15 days from today.

26. Any observation or reference made herein above shall not effect on the merits of the case in any manner. The petition stands disposed of accordingly.