
(2008) 02 DEL CK 0111

In the Delhi High Court

Case No : Bail Application No. 2326 of 2007

Mukesh Saini

APPELLANT

Vs

State Govt. of N.C.T. of Delhi

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0111

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ram Singh Soni, for the Appellant; Pawan Behl, APP., for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This is a petition u/s 439 of the Code of Criminal Procedure, 1973 ("CrPC") seeking regular bail in FIR No. 42 of 2006 registered at P.S. Special Cell, Lodhi Colony, New Delhi under Sections 3/4/5 and 9 of the Official Secrets Act 1923 (OSA) read with Sections 409/201/120B of the Indian Penal Code 1860 (IPC).

2. The Petitioner has been in judicial custody since 1st July 2006. His bail application was rejected by the learned Additional Sessions Judge (ASJ) on 11th October 2007.

3. On 10th June, 2006 at about 10.30 pm, based on a secret information received about one Mr. Shib Shankar Paul having illegally procured certain classified documents from his office at the National Security Council Secretariat (NSCS), Patel Bhawan, Parliament Street, New Delhi, for supplying to foreign agents, a search of the residence of Mr. Paul was conducted. One laptop computer, six CDs, two classified documents and a circular were recovered. During enquiry Mr. Shib Shankar Paul revealed that a pen drive contained large number of confidential files of the NSCS had been kept in the house of one of their acquaintances by his wife. Subsequently, the said pen drive was also

recovered and it was found to contain a large number of confidential files.

4. In his disclosure statement made by Mr. Paul after his arrest, he named the Petitioner here, Mr. Mukesh Saini, an NSCS officer as having developed intimacy with one Ms. Rosana Minchew, an US diplomat. The Petitioner and Ms. Rosana Minchew were the coordinators of Indo-US Cyber Security Forum meetings from the India and the USA sides respectively. The Petitioner retired as Commander in the Indian Navy on 2nd April 2006 after seeking voluntary retirement and joined Microsoft Corporation U.S.A as its Chief Security Advisor (India) eight days later. The police team reached the official residence Mukesh Saini at Arjun Vihar, Delhi Cantonment, Delhi on 11th June 2006 when it found that he had gone to USA to attend a meeting of the Microsoft Company. The search was conducted in the presence of his wife, Ms. Sweta Saini. During the search one CPU of home computer, two separate Hard Disks, four CDs and documents titled KRA canal (Thailand) and its impact on India and Draft report of Indian Nuclear Doctrine and some other documents were recovered. The hard disks drives, pen drives and CDs were analysed at the Cyber Lab, Special Cell, Lodhi Colony, New Delhi before sending them to CFSL for forensic analysis.

5. Relevant to the present application for grant of bail, it requires to be noticed that as far as recoveries effected from the Petitioner s residence are concerned, the documents titled Draft report of Indian Nuclear Doctrine was opined by the Joint Intelligence Committee of the NSCS as having been issued to all Indian students on 30th October, 1999 and also released to the media. The other document titled KRA canal (Thailand) and its impact on India was opined as not having been issued by the NSCS.

6. However, when the hard disks recovered from the Petitioner s residence were analysed by the Cyber Lab, Special Cell, Lodhi Colony, New Delhi, there were two secret documents found on them. The first was Minutes of meeting Indo-US Cyber Security Forum 28th January, 2003. In this respect a specific query raised on 30th June 2006 by the Assistant Commissioner of Police, Special Cell to the Chairman of NSCS as to the nature of the document. The Joint Intelligence Committee, NSCS, opined as under: Reference your letter dated June 30, 2006 on the above mentioned subject. The comments/opinion is as below:

(a) The document is a classified document as per the records.

(b) The possession of the said document at the residence of Shri Mukesh Saini on June 11, 2006 is unauthorised.

(c) If the seized document is passed onto an unauthorized person or any foreign agent, it can be used for purpose of prejudicial to the safety or interest of the state.

(d) The information in the document is connected with the security matters of the country.

7. The second document No. 46/12/2003-NSCS (CS) National Security Council

Secretariat Proposal for the creation of information sharing network amongst agencies was also referred for the opinion of the Joint Intelligence Committee. The opinion on that document reads as under:

- (a) The document and its contents are classified.
- (b) The possession of the document on the date of recovery can be termed as unauthorized possession.
- (c) The information/contents of the document if passed onto an unauthorized person or any foreign agent, can be used for purpose prejudicial to the safety or interests of the state.
- (d) The document is connected with the security matters of the country.

8. The Petitioner has been charge sheeted on the basis of above information and other evidence gathered during investigation for the offences aforementioned. It may be mentioned that after his arrest on 1st July 2006, the petitioner made disclosure statements on 1st, 7th and 13th July 2006.

9. Mr. Ram Singh Soni, learned Counsel appearing for the Petitioner was heard at great length. His submissions, inter-alia, were that there was no valid search warrant issued u/s 11(1) OSA for conducting the search. The complaint itself was neither dated and registered as required not supported by the relevant documents in terms of Section 3 OSA. The order of the learned Magistrate taking cognizance refers to certain other papers when in fact there were no such other papers. He sought to contend that the reports of the Joint Intelligence Committee and the National Security Council Secretariat were false and fabricated, that the seizure memos were not signed, the disclosure statements were fabricated and that basically there was no evidence at all against the Petitioner. As regards the fact that the Petitioner took voluntary retirement on 2nd April 2006 and joined Microsoft Corporation on 10th April, 2006, learned Counsel for the Petitioner sought to contend that there was nothing unusual about this and very often members of the State Security Agencies join Multi-national Companies (MNCs) upon their retirement.

10. As regards the records available with the NSCS about the specific dates of the meetings held between the Petitioner and Ms. Rosana Minchew of US Embassy, the learned Counsel for the Petitioner states that since she was part of the Indo-US Coordination Committee on cyber crime, exchanging documents with her was part of his official duty.

11. Mr. Behl, learned APP for the State vehemently opposes the grant of bail to the Petitioner. He refutes that there was no proper search warrant or that the complaint was properly registered. He says these are all matters of record to be proved at the trial. He points out that the crime is of grave nature, that there is a hard information available and forming part of the charge sheet to substantiate the charge against the petitioner u/s 3 OSA. There is also evidence to show that the Petitioner passed on the secret information to foreign agents prejudicial to

the security and defense of India. He points out that the even before the Petitioner took voluntary retirement from the Indian Navy, he was receiving active support from the highest level of the military in the US for his appointment in the Microsoft Corporation as its Chief Security Advisor for India.

12. On a perusal of case records and after considering the submissions of learned Counsel for the parties, this Court is of the view that the petitioner has not made out a case for grant of regular bail at this stage. The submission of learned Counsel for the Petitioner that there is nothing on record to connect the Petitioner with the commission of offences under the Sections 3,4,5 and 9 OSA and Sections 409, 201 and 120B IPC, for which he has been charge sheeted, is devoid of any merit. The recovery from the petitioner s residence of two documents found on the hard disk kept with him have been opined by the Joint Intelligence Committee of NSCS to be connected with the security matters of the country. It has also opined that the petitioner s possession of these documents was unauthorised and that such document if passed onto an unauthorized person or any foreign agent, can be used for purpose prejudicial to the safety or interests of the state. The disclosure statements made by the petitioner reveal the modus operandi by which the petitioner passed on the secret information to Ms. Minchew, the US Diplomat who he says promised him in return that he would be placed with an MNC. Then there is the email to the petitioner from a top level US military promising him assistance with finding employment with Microsoft Corporation as its Chief Security Advisor for India. This was in January 2006 even before the petitioner took voluntary retirement. The fact that the petitioner voluntarily retired from the Indian Navy as a Commander on 2nd April 2006 and was employed by Microsoft Corporation USA as it Chief Security Advisor for India on 10th April 2006 just eight days later, and with the help of the US military, is another significant factor in considering how the security interests of the country have possibly been compromised.

13. A weak argument was sought to be advanced by counsel for the petitioner that the type of information passed on was not that which would attract the more severe sentence of a maximum of fourteen years in terms of Section 3 OSA. This Court is unable to agree. The evidence gathered thus far prima facie points to the information passed on to foreign agents being connected with the security matters of the country and Therefore attracting the more severe punishment.

14. It is clarified that the observations in this order are tentative views of this Court formed on the basis of the material on record as at present and are not intended to influence the ultimate verdict of the trial court which will be based on an independent assessment of the entire evidence that comes on record.

15. The bail application is dismissed.

16. A copy of the order be given dusty to the counsel for the parties.