

(1990) 02 DEL CK 0015

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1921 of 1989

Nirmal Puri

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 23-02-1990

Acts Referred:

Citation : (1990) 40 DLT 542

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : T.S. Tulsi, P.S. Suri and S. Lal, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The petitioner, a former Lt. General of Indian Army who retired in the year 1985, was arrested on January 6, 1989. The petitioner is being prosecuted for offence u/s 120B read with Section 3/5 of the Official Secrets Act 1923 and Substantive Offences under sections 3/5 of the said Act.

(2) The facts as disclosed in the F.I.R. in brief are that the petitioner and Mr. Vinod Khanna, Chairman, Concorde Industrial Pvt. Ltd. a firm dealing in procurement of equipments for defense forces and representatives of various foreign firms like Saab, Missiles, Saab Instruments, M/s. Misar Spa etc, entered into a criminal conspiracy sometimes in 1984 at Delhi with the object to obtain/collect secret classified official unpublished records of the Army Headquarters regarding its vital requirements of tanks and communication sets etc. In pursuance of the said criminal conspiracy the petitioner obtained/collected following secret/classified/official/unpublished information during the year 1984-87 from the Army authorities :

(1)The requirements of light tanks for Army for performing the task of medium reconnaissance for the armoured divisions and strike corps as also as a Main Battle Tank for the Eastern theatre and the decision to import about 200 tanks. The assessment of the Army authorities for procuring these tanks either from

France or from Sweden and their mark. The effectiveness of these tanks and its gunnery Along with the results of the trials conducted. The postponement of the implementation of the procurement. The recommendations of Army authorities that Swedish tank is the favored tank. That the Swedes have also since mounted 105 mm guns on its tanks. Offer of the Sweden to fit these tanks with Night Vision Device fire control system etc and that they are likely to be with the country by 1987. Decision to manufacture by India not yet decided.

(2) Requirement of 4000 Vhf Radio Sets for AFV's and 1,000 High Frequency Radio Sets for AFV's. The range, frequency, transmission, capability of the required Radio sets.

(3) The requirement for 1000 Simulators. The signing of the contract in the end of May 1985 in respect of 60 Sim Fire Sets.

(3) The aforesaid secret/classified/official/unpublished information so obtained was passed on by the petitioner to Mr. Vinod Khanna. It was also communicated by the petitioner to Mr. Khanna that the present communication sets available with the Army of the make AMPR-25, 12 are obsolete and do not give the required range or reliability. He further communicated the name of the firm with Series number who have offered tactical-cum-gunnery simulators for evaluation which were to be competitive with ET-41 (SAAB SCANIA). Mr. Vinod Khanna received the said information in pursuance of the criminal conspiracy knowing fully well that the same have been obtained by contravening the provisions of the Official Secrets Act, 1923. The disclosure of the said secret/classified/official information to unauthorised persons or agents is likely to jeopardise the sovereignty and integrity of India or the Security of the State.

(4) According to the ease of C.B.I, the Income Tax authorities had conducted search on the premises of M/s. Concorde Industrial Pvt. Ltd. on 5.2.87 as a result of which various records were seized including a hand written note containing the aforesaid secret classified information regarding communication equipment, light tanks and training simulators. The hand written notes, according to the Cbi, are in the handwriting of the petitioner and the information contained in the said handwritten notes is of secret classified nature and pertains to Army Headquarters/Ministry of defense for the period 1980-85, The said information has not been made public or published by the Government of India and is not entitled to be ^ divulged to any unauthorised person/authority. The information contained in the said note has not been declassified. The proposal to procure such light tanks etc by the Government of India has not yet been abandoned. The disclosure of the information contained in the said notes to any unauthorised person would be prejudicial to the interest of the State and would affect the security of the State.

(5) This is petitioner's second application to this Court seeking enlargement on bail. The first bail application filed in this Court was rejected by Duggal J. on August 8, 1989. Regarding the stage of the case before the trial court, learned

counsel submitted that pre-charge arguments are being addressed.

(6) Along with the present bail application, one of the documents filed is Annexure "P-4". By Annexure P-4 the petitioner has attempted to briefly compare the statement in the alleged note of the petitioner with the contents of the official documents from which the information contained in the said handwritten note is said to be derived. By reference to Annexure "P-4", Shri Tuisi, learned counsel for the petitioner contended that if the information as contained in the secret documents as alleged by the Cbi, was in the knowledge of the petitioner, he would not have in the alleged handwritten note either given the incomplete information or incorrect information. Counsel contended that the information contained in the alleged handwritten note was is available in various magazines and journals. It was further contended that the said information could also be because of the petitioner's expertise and experience which he obtained during his 36 years meritorious service in the Army. The effect, according to learned counsel, is that the alleged note did not contain material which was available only in the secret and classified record of the Government. It was thus contended that there was no, prima facie, case against the petitioner even as per the case of the Cbi, and as such the petitioner is entitled to be enlarged on bail.

(7) With regard to contention that much of the material had been published in the magazines and journals, it may be noticed that similar argument did not prevail, when the first bail application filed in this court was rejected on 8th August 1989 by Duggal J. Sh. Lal learned counsel appearing for the Cbi had taken me through the various records containing secret and classified information and had also taken me through the handwritten note to prima facie show that the comparison made by the petitioner in Annexure "P-4" was not correct and it was misleading to a great extent. At this stage, I do not propose to comment on the merits of the respective contentions of learned counsel for the parties lest it may prejudice either of the parties. However, from a perusal of the record it cannot be said at this stage that no case has been made out by the prosecution. The case against the petitioner is in relation to military affairs of the Government for which punishment prescribed is imprisonment for a term which may extend up to 14 years. The offences for which the petitioner is being prosecuted are of serious nature. For considering grant of bail in such matters a greater degree of care is required to be exercised. At this stage, it is not possible to come to the conclusion that the material before the court is insufficient to sustain the conviction of the petitioner.

(8) It was also contended by the learned counsel for the petitioner that prosecution's case was not that any secret and classified information was being passed on to a foreign agent. The prosecution's case itself being that the secret information was passed on to a person who admittedly was dealing with Ministry of defense, a different consideration should prevail and not the same consideration which may prevail where the allegation is that secret information is being passed on to any foreign agent or an enemy. In my opinion, there is no

substance in the argument. Though it does appear that Ministry of defense was dealing with Mr. Vinod Khanna in connection with the supply of some defense equipment but the said fact is of no consequence as the prosecution case also is that Mr. Khanna was the agent of various foreign manufacturers of defense equipments. The question to be considered is whether the offence alleged is in regard to military affairs or not. As observed earlier, the prosecution case is that the petitioner in pursuance of the criminal conspiracy passed on secret and classified information in regard to defense matters to the co-accused Mr. Vinod Khanna.

(9) Relying on a decision of a single Judge of this Court in *Amin Chand & Ors. v State*, 1987 Cri. LJ 1434, it was contended on behalf of the petitioner that presumption as contemplated by Section 3(2) cannot be raised against the petitioner. The judgment relied upon is not helpful to the petitioner as this stage as in the cited case on appreciation of evidence the court came to the conclusion that inference u/s 3(2) or the Act can only be drawn if there is some proof, admissible material on record and not otherwise and in that context it was observed that the provisions of section 3(2) do not in any way dilute the burden of prosecution to prove its case. The cited judgment has no relevance for deciding the present application for bail.

(10) Considering the gravity of the offence for which the petitioner is being prosecuted and bearing in mind the totality of the circumstances, in my opinion, it is not a fit case to direct the release of the petitioner on bail. It is clarified that the observations made in this order shall have no effect on the merits of the case and the trial court shall not in any manner, be bound by any observations made in this order.

(11) For the reasons stated above. Cr. M. (M) 1921/89 is dismissed. Bail refused.