
(2012) 08 BOM CK 0189

In the Bombay High Court

Case No : Criminal Application No. 2735 of 2012

Pradeep Raisoni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409

Citation : (2012) BomCR(Cri) 161

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : P.M. Shah, with Mr. N.B. Suryawanshi, for the Appellant; P.P. Chavan, Spl. P.P. and Shri S.B. Talekar, Advocate to assist P.P., for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.

Rule. Rule made returnable forthwith and is heard by consent.

1. This is an application for regular bail. The applicant was in police custody for 11 days and since thereafter he is in judicial custody.

2. Application for bail filed before filing of charge sheet was rejected by the Trial Court as well as by this court.

3. After filing of the charge sheet, the applicant had filed fresh application for bail. It was rejected by the learned Sessions Judge, Jalgaon by order passed below Exh. 29 in Special Case No. 4 of 2012 by order dated 16.6.2012.

4. Present application for bail is opposed by the State. It is also opposed by Shri Narendra Bhaskarrao Patil, who claims to be a whistle blower. He has applied through Criminal Application No. 3072 of 2012 seeking leave to assist the prosecution to oppose the bail.

5. Heard learned Senior advocate Shri P.M. Shah i/b Shri N.B. Suryawanshi,

Advocate, learned Special Public Prosecutor Shri P.P. Chavan for the State and learned advocate Shri S.B. Talekar for the whistle blower for assisting the prosecution.

6. Perused the record annexed to the petition, as was tendered by the Public Prosecutor, and by the party assisting the prosecution. Perused the citations.

7. Submissions advanced in support of application are as follows :-

(A) After filing of charge sheet, the prayer for bail stands on totally different background as compared to the application for bail before filing of charge sheet.

(B) The fact that the charges are serious, do involve large financial magnitude which is pertaining to misappropriation of the public exchequer, or are pertaining to misappropriation of funds of local self-body, shall not by themselves constitute a ground for rejection of bail.

(C) In Sanjay Chandra s case in paragraph nos. 36 to 39 Hon''ble Supreme Court has observed that :-

Bare imputation or allegation of the offence being serious would never be adequate or to be seen in isolation. The court has to apply its mind to find out whether the allegation which leads to serious offence, which is the subject matter of charge, is really attracted.

(D) Considering the ratio as laid down in Sanjay Chandra, supra and other judgments, the applicant is entitled for grant of bail.

(E) If the entitlement of claim is made out the opposition thereto will have to be tested only on the ground of judicially recognized exceptions to the settled canon that Rule is bail and not jail

(F) Grounds of objection to bail if any raised and made out will have to be scrutinized strictly.

(G) The applicant is an influential person and is likely to tamper with the evidence or escape the law or would otherwise abscond, are the grounds which are not available on the facts of present case.

(H) The conduct of the applicant himself while in police custody and thereafter while in magisterial custody has never been unworthy or criticized. He was all throughout cooperative and he has never tried to avoid remaining in jail, on the pretext of health or otherwise.

(I) The applicant is a law abiding citizen and would be available for the trial.

(J) The trial is not likely to commence within a reasonable time in the background that 130 witnesses have been cited and the charge sheet itself consists of record which is around 5000 pages.

(K) The facts which have led to registration of offence are older than a decade.

The prosecution relies on the evidence which is in the nature of documents. Entire record is now in the court or in possession of the prosecution. Therefore, there is absolutely no possibility that applicant would tamper with the evidence.

(L) The grounds of influencing the prosecution or trying to tamper with the evidence, etc. recorded by the learned Special Judge while rejecting the applications for bail of Shri Jagannath Wani and Rajendra Mayur, etc. has no relevance whatsoever. In fact, present applicant's claim for grant of bail, and reliance thereon is erroneous and is liable to be denoted as extraneous.

8. In support of the prayer for bail, learned Senior advocate has placed reliance on various judgments. The judgments and the propositions for which concerned citation is relied upon are as follows :-

Sanjay Chandra Vs. CBI, .

(i) Bail is the rule and jail is the exception.

(ii) Detaining the accused in jail before trial would mean to detain him just for giving him the taste of incarceration.

(iii) Nature of charge is always relevant, however, the probable extent of punishment which may ensue has to be kept in mind.

(iv) If there are no allegations that the evidence may be tampered with, it will have to be borne in mind that the considerations which weigh at the time of grant or refusal of bail in non-bailable offences are whether the accused is likely to flee from justice or whether he is likely to tamper with the evidence.

(v) Heavy losses caused by the accused would jeopardise the economy of the country cannot be a relevant consideration.

(vi) That the charge is serious in itself, and in isolation would not constitute a good ground for refusing the bail.

Dipak Shubhashchandra Mehta Vs. C.B.I. and Another, .

Charge of economic offences of huge magnitude would not constitute a ground for refusal of bail.

Susanta Ghosh Vs. State of West Bengal,

(i) The possibility that the accused may flee from the trial and would tamper with the evidence should be founded on the ground of sound belief.

(ii) On the facts of the case it was found that it was a case of reinvestigation after reopening the investigation. The accused was a sitting M.L.A. and it was not likely that he would abscond.

1994 (2) Mh. L.J. 1803 Menino Lopes vs State of Goa

(i) While considering the grant of bail the court shall have to weigh the balance

of interest of the society. Yet the rights of the accused will have to be assessed by giving equal importance.

(ii) The possibility of the accused fleeing from justice should not be seen from the point of hyper sensitivity.

(1977) 99 BOMLR 535 Rafique A. Malik vs State of Maharashtra

When tampering was not charged during the process of investigation already conducted, opposing of the bail on the ground that the evidence may be tampered with, is not based on sound reasons.

Criminal Appeal No. 790 of 2012 (Arising out of SLP (CRL.) No. 9965 of 2011) Siddhartha Behura vs C.B.I.

9. The bail has been opposed by Shri Narendra Bhaskarrao Patil, the whistle blower. He has urged that :-

(a) The accused is the key person, who had participated in entire activity in conspiracy with the then and present M.L.A. Shri Suresh Jain and other accused.

(b) The main accusation is that all accused worked as his syndicate, and have committed breach of trust by misuse of the position of their elective office and political nexus.

(c) The accused are most influential persons, and the applicant was successful in preventing and stalling the investigation in totality. This was done sheerly by using official position and influence. The investigation practically remained in abeyance.

(d) Shri Suresh Jain the supporter of the applicant had visited jail and misbehaved with jail authorities. He did so because he wanted to favour and guard the applicant.

(e) Towards said conduct of Shri Suresh Jain an offence in relation to his conduct has been registered and the said conduct cannot be viewed as a conduct of the third party and unconnected to applicant.

(f) The sitting Hon ble Minister Shri Deokar has been granted bail. He was a Member of the High Power Committee. He was not arrested at any point of time, nor was he sent to the police or Magisterial custody.

10. Learned advocate Shri S.B. Talekar has relied upon various citations for relying on the point that in cases of serious nature bail should not be granted. Each judgment need not be separately discussed. The thrust of submission is that the graveness of offence should necessarily be accounted for.

11. The learned Special Public Prosecutor has opposed the bail on the ground that there is voluminous material on record demonstrating the involvement of the applicant in the commission of offence. The reliance is placed on certain glaring points, namely :-

- (1) The very process of floating of tender was based on conspiracy and act of breach of trust.
- (2) It was conspired to give the contract to a pre-decided agency. Accused were having vested interest in said firm.
- (3) The advertisements for calling tender was framed with such conditions that the terms would be un-acceptable in competitive bidding. The stipulation of completing the work within nine months was impossible to perform. Except the contractor firm who knew that this term was to be later on modified, due to the conspiracy, alone could offer and this has actually happened in present case.
- (4) Before and after allotment of tender, conditions of tender were altered to suit the conspired objects and prejudicial to the Council.
- (5) The entire offence relates to public money.
- (6) It is a clear and apparent case of criminal conspiracy for breach of trust and the offences are punishable with imprisonment for life.
- (7) The case of applicant is not comparable with the ratio of binding precedents laid down in the case of Sanjay Chandra supra.
- (8) In Sanjay Chandra's case, the offence was punishable with imprisonment for 7 years. In the present case Section 409 of the Indian Penal Code has been applied and application of Sections 409, 120B, etc. are strongly demonstrated.
- (9) Present is a case of an offence where the punishment which may ensue, may be that of life, and therefore the ratio laid down in case of Sanjay Chandra has no application in the present case.
- (10) On the facts of the present case it is seen that the case is far more serious than the case which was before the Supreme Court in the case of Sanjay Chandra considering the nature of offence.
- (11) Amount of money involved or the magnitude of offence involved in the case of Sanjay Chandra was undoubtedly far larger than one in the present case. However, the aspect of crime and sentence provided thereto which is involved in the present case is of far larger gravity than it was in Sanjay Chandra's case.
- (12) The acts of accused and other conspirators which have led to registration of the offence, its investigation and filing of charge sheet, do consist of series of events attracting imprisonment for life.
- (13) The conspiracy and act has continued openly peacefully until the offence was reported on 3.2.2006 by the then Municipal Commissioner.
- (14) Though the offence was registered way back in February, 2006 the investigation was stalled and did not move at all.
- (15) The investigation got some speed only after the investigation officer who

has filed first charge sheet took over the investigation.

(16) The circumstance which has been put forward by the applicant to indicate that the investigation in the offence could not be proceeded is that certain administrative inquiries were ordered by the Government in the matter and those were conducted and naturally the investigation could not progress. This plea of the prosecution is supported by the facts and record. However, the accused and his other conspirers and abettors were successful in influencing the State Government, the administration generally and the investigation machinery in stalling the investigation in every possible way.

(17) The accused persons had gone to the extent of succeeding in adopting a resolution by the Municipal Council, Jalgaon stating that the prosecution lodged by the Commissioner was based on misunderstanding should be withdrawn.

(18) The withdrawal of prosecution by adopting the resolution by the Municipal Council, Jalgaon is a matter of record, and therefore, whether the accused persons are likely to influence the investigation is not a matter based on hypothesis and is rather based on material very well available and borne on record.

(19) The applicant was initially President of the Municipal Council, thereafter Mayor and has remained in the office of Chairman of the High Power Committee.

(20) All throughout the accused applicant was in the position of influencing all concerned.

(21) The accused persons are positively in a position to influence, and present accused is one amongst the champions of the conspiracy.

(22) The accusation based on act of threats posed by Shri Suresh Jain, M.L.A. to the investigating officer cannot be seen in isolation in the background that all these accused persons have acted and are still acting as a syndicate.

(23) Learned Special Judge has not erred in relying on his own observations which were made while passing the order of rejection of application of bail of other accused. This reliance does not amount to reliance on extraneous considerations. The conduct of those accused has direct nexus with present applicant. It is not necessary to show that the present applicant is in any manner responsible for the acts of M.L.A. Shri Suresh Jain, since the acts of Shri Jain are certainly a part of a pre-decided plan. More over said M.L.A. is an accused and a conspirator / abettor in present crime. He is not a stranger or alien but is an inseparable accessory. His acts are prima facie attributable to present applicant.

(24) The accused who were successful in stalling the investigation for such long six years period would constitute a class apart and would not be entitled to compare their case, to any of the cases of the accused referred to in the precedents relied upon by the applicant.

(25) It would be too bold to say that applicant is not in a position to influence or

tamper with the evidence.

12. Learned Special Public Prosecutor Shri P.P. Chavan has placed reliance on nine sets of judgments on different points, which run to almost 40 in number and it would not be of much gain to refer to each one.

13. The basic point of law which has been laid down and consistently followed is well settled and retold in the case of Sanjay Chandra, as regards aspects to be considered while considering the prayer for bail after filing of charge sheet.

14. In the facts of this case, it would be safe for this court to proceed in the background that the commission of offence in isolation would not constitute ground for refusal of bail and all aspects involved shall have to be duly adverted.

15. Therefore, now this court has to examine as to whether on facts it is demonstrated by the prosecution opposing the bail that the applicant's case falls within the exceptions to the thumb rule that bail is rule

16. When the sequence of events as to how the irrefutable conclusion of conspiracy is emerging from the series of the transactions which constitute the offence, the gravity is spelt out as to how organized planned way was adopted in committing the crime. The gravity has to be viewed from the modus as to how the local self Government body was rendered slave and the manner in which its coffers were rendered personal booty for sharing and looting to own will of the conspirators.

17. Therefore, the factors which fall for consideration, upon which this court will have to decide whether there exists grounds for refusal of bail, has to be seen.

18. This court has examined all matters addressed by the learned advocates for the parties. As noted earlier, limited point to be considered by this court in this case is as to whether the apprehension that the accused/applicant is likely to tamper with the evidence or otherwise influence the trial, is based on reasonable foundation.

19. In the present case, it is seen that on facts as regards the position of the applicant the case stands on distinguishable footing than the cases of Sanjay Chandra, Susanta Ghosh and Dipak Mehta.

20. The cases falling in the group of Sanjay Chandra's case are the cases where the persons concerned have been charged for commission of offences which are punishable by imprisonment upto seven years. Those accused including bureaucrat Siddarth Behura were involved in offence of defrauding treasury.

21. Present is a case where the applicant was a person in power, along with accused who were equal in influence. He had decisive authority by virtue of his initial position as the head of the Municipal Council and later on as its decision making High Power Committee member and had participated in it. The offence for which the present applicant is charged is distinguishable from those cases and in the present case the charge is punishable with imprisonment for life.

22. The guiding test and yardstick is as to whether the charge is such that it is serious. It is seen from the charge sheet that conspiracy and breach of trust are the charges. It is a known phenomenon that conspiracy is an act done secretly and evident from acts which have surfaced, which are borne on record.

23. Thus, prima facie there is a strong, even strongest case against the present applicant for having participated in the commission of a very serious offence.

24. The question which this court is now considering is whether the present applicant and his other fellowmen who had joined in the conspiracy and breach of trust are likely to tamper with the evidence in the present case. The aspect of tampering has been addressed by the applicant keeping in view the basic fact that the evidence of breach of trust is entirely documentary and there is no possibility of tampering whatsoever, as entire documentary evidence is in possession of prosecution and / or the court.

25. Considering the totality of the circumstances of this case, the tampering cannot be viewed from the traditional and / or contemporary perspective. Tampering as is ordinarily connoted would mean pressurizing or otherwise cracking the witnesses or doing any other act which will result in destroying the prosecution case. In the case of present nature where considering the solitary or inter se loyalty of accused persons who had conspired the offence of breach of trust, oral evidence thereof at this stage is likely to be a matter of speculation.

26. The documentary evidence of breach of trust would essentially prove an unimpeachable inference of criminal conspiracy and the matter may ultimately go to the knowledge of the accused persons of various other facts.

27. The aspect of tampering, however, which has emerged in the present case has a totally different magnitude. In this case, the accused persons were successful in influencing the administration, the Government and the machinery who controls the investigation process and have secured the result that the investigation does not commence at all.

28. The influence exerted by the accused persons is not as little as tampering, but is a voluminous and mammoth like impact. Their acts are comparable to a cloud mass of locusts who eat out not a plant, but whole field or crop or the grassland. Seen from this angle of magnitude and attitude, apprehension of tampering would be too small a threat.

29. The aspect of tampering therefore receives in present case an unforeseen unprecedented dimension, and will have to be viewed differently.

30. Next aspect which may have to be dealt with is whether the trial is likely to commence early and the delay.

That there are 130 witnesses cited and 5000 documents in the present case. The delay, if any, is a horse on which the accused would ride. They are bound to be within their right not to admit any evidence relied upon by the prosecution and

the stance of the accused would decide the delay likely to be caused. If the case proceeds by not disputing the evidence which is indisputable the trial of the case may not at all be delayed. The result, which is very much vivid is that the trial may be delayed, however, delay which shall actually occur shall be contingent upon the approach and attitude of the accused persons. This being so, delay in the trial cannot be posed as a ladder to secure the bail. Therefore this aspect does not favour the applicant.

31. In these premises, this court is satisfied that the applicant s case falls in the exception where by looking to the possibility of their influencing the trial, the present accused who is one amongst the key persons does not qualify himself for getting bail. The application is rejected. Rule discharged.