

(2013) 02 AHC CK 0260
In the Allahabad High Court
Case No : C.M.A. No. 1143 of 2013

Pradeep Shukla

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 204, 309, 309(2)
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 2 ACR 1749

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Rajiv Gupta, Dilip Kumar and Sandeep Harkauli, for the Appellant;
Anurag Khanna, A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Sunil Hali, J.—After the application u/s 482, Cr. P.C. filed by accused Pradeep Shukla was argued, learned counsel appearing on behalf of accused Pradeep Shukla made a prayer that the coercive process issued by the trial court against this applicant after the submission of charge-sheet may be stayed or in the alternative a direction be issued to the trial court to accept the bail bonds on behalf of the applicant or release him on interim bail on the day he surrenders and moves an application for bail in R.C. No. 220 2012E 0002 under Sections 120B r/w Sections 420, 468 and 471. I.P.C. and Section 13(2) r/w Section 13(1) (d) of the Prevention of Corruption Act, P.S. C.B.I. E.O.U.-IV/E.O.-II, New Delhi till the final disposal of his bail application. Further, prayer has been made for staying the proceedings of charge-sheet. This prayer of the applicant is dealt with by this Court by way of a separate order.

2. It is contended by learned counsel for the applicant that after the process has been issued by the learned trial court Instead of accepting the bail bonds invariably directs the accused to be sent to judicial custody. It is contended that

the trial court is bound to accept the bail bonds and not to refer the accused to the judicial custody.

3. Accused was initially arrested in another F.I.R. and remained under custody for about three months. It is also admitted that accused was not arrested during course of investigation in this case. Investigation in the case was completed without the necessity of arresting the applicant. He further contends that the trial court has no power to refer the accused to judicial custody. The only course left open to him is to accept the bail bonds as provided u/s 88, Cr. P.C.

4. On the other hand, Mr. Anurag Khanna, learned counsel appearing on behalf of C.B.I. contends that the Court while exercising power u/s 482, Cr. P.C. cannot usurp the power of the trial court by granting bail. It is further contended that no direction can be passed by the Court either to grant interim bail to the accused or final bail to the accused on the same day as it is for the Magistrate to examine whether the accused is entitled to be granted bail or not.

5. It is further contended that the Court cannot issue any such direction whereby the power of the trial court is usurped while exercising its jurisdiction u/s 482, Cr. P.C. in granting bail.

6. I have considered the respective submissions advanced by the learned counsel for the parties.

7. In so far as the first prayer of the applicant that the proceedings before the trial court be stayed, same has become infructuous in view of the fact that all the applications have already been dismissed in view of the discussion made herein above.

8. Insofar as the second prayer of the applicant is concerned that he should be granted bail on the same day also cannot be granted as the applicant had already filed a petition seeking such a direction which he had withdrawn.

9. Coming to the last contention as to whether the trial court is competent to refer the accused to judicial custody. At the outset, it be noted that no such order has been passed by the trial court and the applicant has come up before this Court purely on apprehension.

10. It is trite in law that when an accused is summoned by the Court below he is bound to appear and furnish his bail bonds so as to ensure his presence during the course of trial. Intent and purpose of seeking bail bonds of the accused is to seek his presence during course of trial and bound him down in this behalf. While addressing the contention raised by the learned counsel for the applicant that the trial court is not competent to refer the accused to judicial custody after the charge-sheet is filed as matter of course has some force.

11. There are two stages when an accused can be sent to custody: one is at the time of investigation and the another after the charge-sheet is filed.

12. Section 167(2), Cr. P.C. deals with an issue of referring the accused to

custody during the course of investigation. This power is to be exercised if the court is satisfied and thinks fit and considers that detention is necessary may refer the accused to the custody for a period not exceeding 15 days. Admittedly, this power is to be exercised during course of investigation.

13. Section 309(2), Cr. P.C. confers the power on the court that after taking cognizance of an offence, or commencement of trial, if it finds necessary to postpone the commencement of or adjourn, any inquiry or trial, it may, from time to time for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody. This section assumes importance while dealing with the contention raised by the learned counsel for the applicant as to whether the Magistrate is competent to refer the accused to custody. Essential features of this sections is that the Magistrate has power to remand a person to Judicial custody if he is in custody. Therefore, the accused should be in custody at the time when such order of remand is passed. The court does not have power to refer the accused to judicial custody if he is not already in custody. However, this is not to say that the trial court which has taken cognizance cannot refer the accused to judicial custody if grounds do exist.

14. The above provision further consists of two parts; first part empowers the Court after taking cognizance of an offence or commencement of trial, if finds it necessary or advisable he can postpone the commencement of trial. The second part provides grant of adjournment if inquiry or trial from time to time after recording reasons. Sub-section (2) also gives discretion to the Court to remand the accused to custody if he is already in custody. The power of a Court to remand the accused to custody could be exercised either u/s 167 or 309, Cr. P.C. Once the charge-sheet is filed, period of remand u/s 167, Cr. P.C. comes to an end. If further custody is necessary, it can be done only u/s 309, Cr. P.C.

15. For that following conditions are required to be satisfied:

(a) that further investigation in the matter is under way after submission of charge-sheet;

(b) that the accused remains absconding during course of investigation for which his custodial interrogation is required to be done.

In order to Invoke the police custody of the accused at this stage, it must be shown that further investigation in the matter is in progress or accused has remained absconding during course of Investigation. In such situation, the Magistrate can refer the accused to police custody u/s 167, Cr. P.C. as the Investigating Agency would be deprived of an opportunity to interrogate a person during further investigation. If the Investigating Officer during further investigation is able to produce sufficient material and convince that his detention in police custody is essential for that purpose. The accused can be referred to police custody. Now once the Court has taken cognizance u/s 204, Cr. P.C. and procure arrest of the accused he shall be deemed to be under custody.

However, it is not an issue before this Court as no further investigation is under way nor the accused has remained absconding during course of investigation. Once the court has taken cognizance and issued process to the accused it is bound to issue coercive process to seek his presence. In that eventuality accused shall always be considered in custody. At this stage, after the filing of the challan the provision relating to grant of bail are applicable. The Court will in that eventuality examine the question as to whether the accused is to be directed to file bond u/s 88, Cr. P.C. or refer him under Judicial custody. While referring the accused in the judicial custody, the Court will have to consider the question of granting bail to the accused. Principles of granting bail are relatable to following things:

- (i) seriousness of the allegations;
- (ii) severity of punishment, the character of the evidence on which the charge is supposed to be sustained:
- (iii) tampering and intimidating the witnesses and chances of running away from the trial; and
- (iv) false implication of the accused, allegations levelled not believable and the wrecking vengeance for political or business reasons.

16. While considering this issue, Court has to keep in mind that the accused should not be involved in offences where the penalty is of death or life imprisonment. There is legal impediment in granting bail in such offences. However, in the matter where there is no legal impediment in granting bail accused have right to seek bail unless prosecution contends that (a) he is likely to influence the course of trial; (b) that he is likely to run away from the trial; (c) that he is likely to intimidate the witnesses. It is always to be understood that seriousness of charge is always to be an important factor. But that by itself would not debar the Court from granting bail because at the time of considering the bail application the Court is only required to see whether the accused will face trial or not. There has to be some material produced before the Court in this behalf that accused is not likely to face trial and in absence of that material courts cannot refuse granting bail in such type of cases.

17. Intent and purpose of withholding the bail is to ensure that the accused does not run away from the clutches of trial. In the present case, what is being contended by the learned counsel for the applicant is that the applicant was already in custody for more than three months in another F.I.R. relating to N.R.H.M. scam. Prosecution did not consider it necessary to arrest the applicant in this F.I.R. It is also admitted that applicant was not arrested during the course of investigation and after the filing of charge-sheet necessity of keeping the accused in custody will require some further reasons at this stage; which are primarily that accused is likely to influence the course of trial; that he will intimidate the witnesses and is likely to jump the bail. There is no such material shown by the learned counsel appearing for the C.B.I. to this Court. In absence

of any such material evidence trial court will have to consider the bail application of the applicant in terms of the aforesaid principles. It is trite in law that referring accused in judicial custody after the charge-sheet is filed is not a matter of course. It has to be passed only in terms of the aforesaid principles stated herein supra. It is also settled principle of law that bail should not be refused as matter of punishment. So while considering the bail application of the applicant trial court is expected to take into consideration all these factors and in case it finds that accused is entitled to bail in that eventuality he shall accept the bail bonds of the applicant. However, this matter is required to be decided by the trial court and this Court cannot issue any such direction to the trial court.

18. Law is settled that the Courts while exercising power u/s 482. Cr. P.C. cannot usurp the jurisdiction of Magistrate in granting or refusing the bail. It is also important that the accused cannot be granted bail unless he surrenders before the Court. In view of above, applicant is directed to surrender before the trial court on or before 19.3.2013. Till then coercive process issued against him shall not be given effect to.