

(1997) 01 DEL CK 0069

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No's. 2733 and 2742 of 1996

P.V. Narasimha Rao

APPELLANT

Vs

State (Central Bureau of Investigation)

RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Constitution of India, 1950 — Article 105(2)
Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1947 — Section 12
Prevention of Corruption Act, 1988 — Section 2

Citation : (1997) 65 DLT 159 : (1997) 40 DRJ 136

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : P.N. Lekhi, Vijay Chaudhary, Aman Lekhi, P.P. Malhotra, Arun Bhardwaj, K.C. Kaushik, Vipul Maheshwari, Sonia Malhotra, R.K. Anand, I.U. Khan, Arun Birbal, L. Sahni, Farida Khan, Manish Malhotra, R.D. Rana, Ratna Kochhar, A.K. Dutt and S. Lal, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The Special Judge after taking cognizance of the offence under the Prevention of Corruption Act, summoned the petitioner to appear before him on 30th October, 1996. Apprehending arrest at the hands of the Court immediately on his appearance before the Special Judge, the petitioner has filed this petition for the grant of anticipatory bail. The facts in short relevant for deciding this petition are :

(2) That after the general elections of 10th Lok Sabha in 1991, the Congress (I) emerged as the single largest party. On being invited by the President to form the Government, the Congress (I) under the leadership of Mr. P. V. Narasimha Rao formed the Government at the Centre. Monsoon session of Lok Sabha began on 26th July, 1993 with a no confidence motion being moved against the Government by Mr. Ajaya Mukhopadhyay, a CPI(M) MP. The effective strength of

the Lok Sabha at that time was 528 and the Congress (I) had 251 Members in the Lok Sabha. The Government headed by Mr. P. V. Narasimha Rao was thus short of 14 Members of Parliament for a simple majority since it required 265 votes to defeat the motion of no confidence. Though, the motion of no confidence was tabled on 26th July, 1993, however, the opposition parties had made, well in advance, known their proposal to move a no confidence motion against the Government. It is alleged that the Congress (I) under the leadership of Mr. P. V. Narasimha Rao started hectic exercise to secure the support of various opposition parties/groups in order to defeat the motion. It is also alleged that the petitioner along with his co-accused, namely, S/Sh. Satish Sharma, Buta Singh, Suraj Mandal, Shibu Saren, Shailendra Mehato, Simon Mirandi and other known and unknown persons entered into a criminal conspiracy to defeat the no confidence motion by resorting to giving and accepting illegal gratification as a motive or reward and in pursuance thereof the four Jmm MPs, namely, S/Sh. Suraj Mandal, Shibu Soren, Shailendra Mehato and Simon Mirandi accepted illegal gratification to vote against the motion and because of their votes and some other votes, the Government led by Mr. P. V. Narasimha Rao survived and the motion of no confidence was defeated.

(3) One Ravinder Kumar - President of Rashtriya Mukti Morcha, filed a complaint with the Central Bureau of Investigation alleging that Mr. P. V. Narasimha Rao had hatched a criminal conspiracy with S/Sh. V. C. Shukla, R. K. Dhawan, Satish Sharma, Ajit Singh, Bhajan Lal and Lalit Suri to prove the majority of the Government on the floor of the House by bribing some of the Members of Parliament by an amount of over rupees three crores. Even though the complaint disclosed the commission of a cognisable offence, no Fir was registered and the said Mr. Ravinder Kumar, Therefore, filed a petition in the High Court of Delhi for a direction to the Central Bureau of Investigation to register the FIR. After a direction had been given by a Division Bench of this Court, the Central Bureau of Investigation (CBI) registered an Fir against the petitioner and some of the other accused persons.

(4) During investigation it was revealed that various industrialists during that period paid a sum of about Rs.13 crores to Capt. Satish Sharma and it was from this amount that a sum of Rs.10 lakhs was paid to Simon Mirandi on or around 30th or 31st July, 1993 at the official residence of S. N. Safaya, Additional Private Secretary to Capt. Satish Sharma. Mr. Safaya had earlier brought this amount from Capt. Satish Sharma for payment to Simon Mirandi. Investigation also revealed that on 29th July, 1993 money was delivered to Suraj Mandal at his Ferozeshah Road residence in five suitcases and one bag. Again on 30th July, 1993 three bories and one suitcase were delivered at the residence of Suraj Mandal, which were later on taken away on the same day by Simon Mirandi to the residence of Shailendra Mehto. Currency notes contained in three bories and one suitcase were then counted at the residence of one R. K. Jetley an old acquaintance of Jmm MPs. The amount so received by Jmm MPs was stated to have been deposited in the names of the MPs with the bank immediately on or

after 31st July, 1993. It is, Therefore, alleged that the Jmm Members of Parliament had been given bribe by the Congress MPs for voting against the no-confidence motion to save the Government headed by Mr. P. V. Narasimha Rao. Charge sheet was thereafter filed in the Court of the Special Judge, who after taking cognizance of the same, summoned the petitioner.

(5) It is the contention of the petitioner that firstly, the Members of Parliament are not public servants within the meaning of the Prevention of Corruption Act and, secondly, even assuming that they were public servants within the meaning of the said Act and also assuming that money had been paid to some of the Members for voting in a particular manner in Lok Sabha during the vote on the motion of no confidence, the same cannot be made a subject-matter of Court proceedings due to the privilege and immunity given to the Members of Parliament by Article 105 of the Constitution of India. It is, Therefore, the contention of learned counsel for the petitioners that even if any bribe has been given to any Member of Parliament for his having voted in a particular manner during vote on no confidence motion, the same may be a subject matter of breach of privilege of Parliament but on that basis the Members of Parliament cannot be held liable in any Court of law. Article 105 of the Constitution reads as under :- Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof :-

(1)SUBJECT to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. (2)No member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. (3)In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978]. (4)The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

(6) Article 105(2) of the Constitution of India guarantees full protection to a Member of Parliament for anything said or any vote given by him in the Parliament. The contention of Mr. Anand is that anything done outside the Parliament for furtherance of an object to be achieved in the Parliament, there is a complete immunity by Article 105(2) of the Constitution. He also submits that Indian Constitution is modelled on the British Parliamentary system and in the United Kingdom offering to a Member of Parliament a bribe or reward in

connection with the promotion of, or opposition of any Bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof has been treated as a breach of privilege and not an offence under the common law. Unlike most other commonwealth countries, in the United Kingdom Members of Parliament are not liable for corruption offence either at common law or by statute in so far as their conduct occurs in the course of their duties as a Member of Parliament. They are also not considered to be public servant and hence not liable for the common law offence of official misconduct unless they are appointed as Ministers.

(7) He has also referred to the book Practice and Procedure of Parliament by Shakdhar, in support of his contention that giving and taking of bribe may be a breach of privilege of Parliament but cannot be an offence under the common law. According to Shakdhar "the conduct of Members involving corruption in the execution of their office as member is treated by the House as a breach of privilege. Thus, the acceptance by any Member of a bribe to influence him in his conduct as such member or of any fee, compensation or reward in connection with the promotion of, or opposition to any Bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof is a breach of privilege."

(8) In my opinion, the arguments of Mr. Anand will not be of any assistance to him as far as the present case is concerned. Though, at the stage of deciding this petition for anticipatory bail, it will be futile for me to go into the question as to whether a Member of Parliament can at all be tried for his having committed an offence under the Prevention of Corruption Act for something which he intended to do in Parliament, but prima facie, it appears to me that the immunity given to the Members of Parliament under Article 105(2) cannot be extended to those cases where they have committed an offence outside the Parliament or have entered into a criminal conspiracy to do something in the Parliament. Clause (viii) added in Section 2(c) of the Prevention of Corruption Act in 1988, defines a public servant to include any person who holds an office by virtue of which he is authorised or required to perform any public duty. This does not appear to be the position in the United Kingdom. For the reasons given later in this judgment, I am prima facie of the view that a Member of Parliament will be covered by clause (viii) of Section 2(c) of the Act. However, I am not, at this stage, making any observation on this point as I am deciding this petition for the grant of anticipatory bail de- hors the question of immunity to Members of Parliament.

(9) A Division Bench of Orissa High Court in Habibulla Khan Vs. State of Orissa and Another, , while dealing with a question whether an Mla was included within the meaning of Section 2(c)(viii) of the Prevention of Corruption Act, had held that an Mla does hold an "office" and perform public duty by virtue of holding that office as would appear from Chapter-III of para-VI of the Constitution. Therefore, though an Mla would come within the fold of the definition of "public servant", as given in Section 2(c) of the Act, he is not the type of "public

servant" for whose prosecution under the Act, previous sanction as contemplated by Section 19 is necessary. It was further held that though there may be an anomaly in the Court coming to the conclusion that an Mla was not the type of public servant for whose prosecution under the Act previous sanction required by Section 19 was necessary, as the Act did not make any distinction between one public servant and the another for purposes of previous sanction, however, that was the result which the Court could not truly and legally avoid.

(10) I am in agreement with the view taken by the Orissa High Court in Habibullah Khan Vs. State (Supra). I am prima facie of the opinion that the Member of Parliament is a public servant within the meaning of Section 2(c)(viii) of the Prevention of Corruption Act. Merely because there is no sanctioning authority for the prosecution of an Mp, it cannot be said that the provisions of the Act will not be applicable to him. The Prevention of Corruption Act had been enacted to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions. New clause (viii) has been added in Section 2(c) of the Act to include any person who holds an office by virtue of which he is authorised or required to perform any public duty. The Orissa High Court in Habibullah Khan's case interpreting this clause had held that the Member of Legislative Assembly does hold an "office" and performs a "public duty" by virtue of holding that office. Purpose of the Act is to punish a public servant who accepts any gratification as a motive or reward for doing an official act or for showing or forbearing to show, in the exercise of his official functions, favor or disfavour to any person or for rendering or attempting to render any service or dis-service to any person with the Government or Parliament or legislature or with any public servant whether named or otherwise. Act was passed to make more effective provision for prevention of bribery and corruption, which is a social evil. While interpreting a statute, the construction which would promote the general legislative purpose underlying the provision in question, is to be preferred to a construction which would not. If the literal meaning of the legislative language used would lead to results which would defeat the purpose of the Act, the Court would be justified in disregarding the literal meaning and adopt a liberal construction which effectuates the object of the legislature. In case, the Members of Parliament are exempted from the provisions of the Act merely because there is no sanctioning authority for their prosecution, in my opinion, the whole object of the Act will be frustrated. Therefore, while dealing with the cases of the Members of Parliament, the Act has to be given a liberal construction. It is for this reason as well that I am following the view taken by the Orissa High Court in Habibullah Khan's case. I am, Therefore, prima facie, of the view that the Members of Parliament being public servants can be prosecuted under the provisions of the Prevention of Corruption Act. In any case, the petitioner in this case has been accused of having committed an offence punishable u/s 120-B of the Indian Penal Code read with Section 12 of the Prevention of Corruption Act. No sanction u/s 19 of the Act is necessary for taking cognizance of an offence punishable u/s 12 of the Act.

(11) The question which now remains to be considered is whether in the facts of this case, the petitioner is entitled to the grant of anticipatory bail. The contention of Mr. R. K. Anand, Senior Advocate, appearing on behalf of Mr. P. V. Narasimha Rao as well as of Mr. P. P. Malhotra, Senior Advocate, appearing on behalf of Capt. Satish Sharma, is that there is no material on record to implicate the petitioners in the commission of offence and the case is politically motivated. Mr. Anand as well as Mr. Malhotra have taken me through the statements of some of the witnesses to show that the allegations made against the petitioners are wholly vague. Not only that the source of money has not been disclosed but the persons who had allegedly gone to the residence of the Jmm MPs to hand over the money have not been in any manner connected with the petitioners. Moreover, it is their submission that the petitioners have roots in the society. Mr. P. V. Narasimha Rao is the former Prime Minister of India and Capt. Satish Sharma had been a Minister in the Union Cabinet. Though, charge sheets have been filed against the Jmm MPs as well as petitioners, however, the investigation in relation to some unknown persons is still continuing and the charge sheets have been filed against the petitioner only on the ground of suspicion. There is a list of 180 witnesses which the prosecution intends to examine during the trial and the documents run into thousands which are to be proved by the prosecution during trial. According to learned counsel for the petitioners, as the trial is likely to take time and there has been no apprehension of the prosecution that the petitioners will tamper with evidence or flee from justice, it is a fit case that they should be directed to be released on bail.

(12) The allegations against the petitioner are that he had conspired with certain known and unknown persons for saving his Government by giving bribe to the four Jmm MPs and to certain other persons regarding which the matter was still under investigation. The petitioner, at this stage, is seeking protection of this Court till the time he appears before the Special Judge who has issued summons to the petitioner after taking cognizance of the offence and his application for the grant of regular bail is decided by the Special Judge.

(13) While exercising jurisdiction u/s 438 of the Code, the governing factor which is kept in mind by the Court is that there is apprehension of arrest by a person accused of non-bailable offence either at the hands of the police or at the instance of the Magistrate. A person who is yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which taking into consideration the facts and circumstances of each case, it is imperative to protect his freedom.

(14) The Supreme Court in CrI.A.No.2868/96, Chandraswamy Vs. Central Bureau of Investigation has held that unless the case of the accused person falls in clauses (i) and (ii) of Section 437(i) of the Code, he may be released on bail, of course, the paramount consideration would always be to ensure that the enlargement of such person on bail will not prejudice the prosecution case. A person seeking anticipatory bail is still a free man entitled to the presumption of

innocence. He is willing to submit to the restraints on his freedom, by the acceptance of conditions which the Court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(15) Investigation in this case, so far as the petitioner is concerned, is already over as the charge sheet has been filed in Court. Even the counsel for the Central Bureau of Investigation is not opposed to the grant of anticipatory bail to the petitioner till his appearance in the Court of the Special Judge. The petitioner has been accused of his having committed an offence punishable u/s 120-B of the Indian Penal Code read with Section 12 of the Prevention of Corruption Act. Maximum sentence provided by the Act for which the accused can be sentenced is five years and minimum is six months. I am conscious of the fact that in case it is proved that the petitioner was a party to the conspiracy of giving bribe to the Members of Parliament in consideration of their voting against the motion of confidence, then even if the maximum sentence to which he can be sentenced to is five years, the same will not dilute the gravity of offence. No person, more so a person who at the relevant time was the Prime Minister of the country can be allowed to dig the roots of democracy and subvert the same by indulging in these type of offences as it is not only an offence under the common law but it is also constitutional immorality. Petitioner cannot be allowed to get away with the same by raising an objection that it may be a breach of privilege of the Parliament but is not an offence under the common law. However, at the time of granting bail this Court has also to keep in view the observations of the Supreme Court in *Anukul Chandra Pradhan Vs. Union of India (UOI) and Others*, that while dealing with cases involving public men, no occasion should arise for an impression that the publicity attaching to these matters has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial. This requirement, undoubtedly has to be kept in view during the entire trial. As already mentioned by me above, the maximum punishment which can be given to the accused persons in this case in the event of their being found guilty is imprisonment for a period of five years and minimum is six months and it is, Therefore, not a case where clauses (i) and (ii) of Section 437(i) of the Code would apply. As already submitted by the Central Bureau of Investigation, the charge sheet in this case has been filed. The application for the grant of regular bail is already pending before the Special Judge and the same has not been disposed of on account of the pendency of this petition. Petitioner is enjoying freedom by virtue of an interim order of this Court and it has not been brought to the notice of the Court that during this period he has at any time tried to tamper with evidence or influence witnesses. The petitioner has been a former Prime-Minister of India and is always under the protection of the Special Protection Group (SPG) and his movements are known to everybody. He and his family members are residing in India. He is also suffering from serious medical problems. I have been informed that the case before the Special Judge is now listed for 8th January, 1997 for hearing on the bail application of the petitioner.

In my view, Therefore, in case the petitioner is granted anticipatory bail till his application is decided by the Court of the Special Judge or till a few days thereafter, I feel, he will not flee from justice or tamper with evidence.

(16) Allegations against Capt. Satish Sharma are that he had collected money from various industrialists and had paid the same to the four Jmm MPs as consideration so as to vote against the motion of no confidence on 28th July, 1993 on the floor of the House. Though, at this stage, I am not making any comments on the merits of the case as to whether the case against the petitioner is false and he has been implicated for political reasons, however, for the reasons stated above, I feel that Capt. Satish Sharma is also entitled to be released on anticipatory bail. He has been a former Union Minister and has roots in the society. I, Therefore, do not see any reason for him to flee from justice or tamper with evidence, in case, he is granted anticipatory bail for a limited period till such time his application for regular bail is decided by the Special Judge and a few days thereafter.

(17) In this view of the matter, I direct that each of the petitioners above named in the event of arrest either at the instance of the police (CBI) or at the instance of the Court of the Special Judge, be released on bail on his furnishing a personal bond in the sum of Rs.50,000.00 with one surety in the like amount to the satisfaction of the Arresting Officer/Superior Officer/Special Judge. This bail will ensure till the Court of the Special Judge decides the regular bail application of the petitioners and for a week thereafter.

(18) With these observations, the petitions stands disposed of.

(19) Any observation made in this order will not have any bearing on the merits of the case and the Special Judge would decide the application of the petitioner for the grant of regular bail without in any manner being influenced by any observation made in this order.