

(2011) 01 DEL CK 0319
In the Delhi High Court
Case No : Bail Application 34 of 2011

R. Dhanapal Raj

APPELLANT

Vs

Dig of Police, CBI and Another

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 438, 439
Penal Code, 1860 (IPC) — Section 12, 120B, 13(2), 7, 8
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2011) 2 AD 606

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Mukul Rohatgi, Siddharth Singla, Saurabh Kirpal and Paul Kanakraj, for the Appellant; A.K. Gautam for Respondent No. 1/CBI, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The Petitioner has filed the present petition u/s 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No. 02 Book No. 547 dated 20.12.2010 under Sections 120-B IPC and 7, 8, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 registered with Police Station: HOB/CBI/AC-III, New Delhi.

2. Counsel for the Respondent/CBI stated that a status report was filed in the Registry only yesterday. The same was not on the record. A copy thereof was handed over in the Court with a copy to the counsel for the Petitioner.

3. In a nutshell, the case of the prosecution is that as per the aforesaid FIR, the Petitioner, who is the Vice Chairman of Bar Council of India (BCI) and a Member of the State Bar Council of Tami Nadu alongwith Shri R.S. Rana, Member of Bar Council of Delhi are members of the Legal Education Committee (LEC). The LEC comprises of five members from the Bar Council of India and five co-opted members to represent the judiciary, the Law Ministry, the UGC and the academia. On information from a source it was found out that the Chairman of the Global

College of Law located at Naglok, Kushaliya, P.O. Hindon Nagar, Dasna, District Ghaziabad had started a course in LLB (integrated) and submitted an application to the BCI for recognition for the said purpose alongwith the required documents. To expedite the process of recognition by the BCI, Shri Manish Tyagi, one of the members of the Advisory Board of the College and a resident of Ghaziabad, contacted Shri R.S. Rana, Member of the BCI and the Petitioner herein on their mobile phones. The FIR mentions that Shri R.S. Rana entered into a criminal conspiracy with the Petitioner to demand illegal gratification from Shri Manish Tyagi for conducting an inspection of the aforesaid College and for giving a favorable report for the purpose of recognition of the college. The information disclosed that the BCI inspection team consisting of the Petitioner and Shri R.S. Rana had conducted inspection of the College in question on 25.10.2010. Subsequently, Shri R.S. Rana started negotiating over the gratification amount with Shri Manish Tyagi so as to give a favorable inspection report. Out of the negotiated bribe money, Shri Manish Tyagi had already paid a major part of the bribe to Shri R.S. Rana and the remaining amount of Rs. 1 lac was to be paid on 20.12.2010.

4. On receipt of the aforesaid information from a source, the CBI laid a trap in front of the BCI office, where the co-accused Shri R.S. Rana was found accepting bribe money of Rs. 1 lac from the accused, Shri Manish Tyagi in a vehicle. Both the accused persons were challenged by the CBI team outside the BCI office and subjected to a personal search. Cash amount of Rs. 1 lac was recovered from the co-accused Shri R.S. Rana alongwith other incriminating documents and later, both the accused persons, Shri R.S. Rana and Shri Manish Tyagi were arrested. However, the Petitioner herein had obtained an interim anticipatory bail from the High Court of Madras on 21.12.2010 and as a result, was not arrested.

5. It was further stated on behalf of the CBI that pursuant to the recovery of the bribe amount of Rs. 1 lac, search was conducted at the residences and the offices of the Petitioner and his brother-in-law at Chennai. During the course of the search, cash amounting to Rs. 74,10,500/- was recovered from the aforesaid premises apart from various inspection reports/files of other Law Colleges. Counsel for the CBI submitted that during the course of investigation, it was revealed that while conducting the inspection of the College on 25.10.2010, the Petitioner and the co-accused, Shri R.S. Rana had demanded bribe from the college authorities for granting recognition to the College, which was later reiterated by Shri R.S. Rana and subsequently, various amounts were delivered by the co-accused Shri Manish Tyagi.

6. The anticipatory bail application of the Petitioner was opposed by the counsel for the CBI, who submitted that there is sufficient evidence to show that an initial demand for payment of bribe was made by the Petitioner to the College through Shri Manish Tyagi for the purpose of providing a favorable inspection report to the college. He submitted that the said fact is fortified by the statement of a witness recorded u/s 164 of the Code of Criminal Procedure where the demand

made by both, the Petitioner herein and the co-accused Shri R.S. Rana at the time of the inspection has been mentioned. The said witness confirmed subsequent delivery of bribe money to co-accused Shri R.S. Rana through Shri Manish Tyagi and confirmed that the Petitioner herein had bluntly specified the bribe amount for giving a favorable inspection report. The statement of the aforesaid witness was corroborated by other college staff in respect of the visit and inspection of the College.

7. It is contended that the investigation was further corroborated by way of an intercepted telephonic conversation between the Petitioner and co-accused Shri R.S. Rana about their conspiracy to carry out inspection of the college and to give a favorable report after receiving handsome amounts of bribe money. In support of the aforesaid submission, counsel for the CBI handed over an additional status report in a sealed cover for the perusal of the Court apart from the file maintained by the Investigating Officer. He also drew the attention of this Court to the order dated 29.12.2010 passed in Writ Petition (Crl.) 1922/2010 filed by the two co-accused, Shri Rajender Singh Rana and Shri Manish Tyagi, and in particular, paras 7, 11, 12 and 16 thereof to state that even on parity, the present petition is liable to be dismissed, as in the aforesaid case, a coordinate Bench of this Court had declined the bail application of Shri Rajender Singh Rana filed u/s 439 of the Code of Criminal Procedure.

8. On the other hand, counsel for the Petitioner urged that gravamen of the accusation was actually the negotiations over the gratification amount between Shri Manish Tyagi and Shri B.S. Rana and the same did not involve the Petitioner. He submitted that the Petitioner had appeared before the officers of the CBI on 28-30.12.2010 at Delhi and his voice sample had been taken and as he had not avoided interrogation, there was no reason for rejecting his anticipatory bail application. It was further urged that the Petitioner is only a special invitee of the Committee, which comprises of 10 members and mere submission of the inspection report by him and Shri R.S. Rana would not itself amount to giving clearance to the College to run the course of LLB (Integrated). It was also urged that the grounds taken by the CBI to oppose the bail application were irrelevant and could not be the basis for considering the present petition as the custodial interrogation of the Petitioner was not specifically asked for. Counsel for the Petitioner contended that the case of the Petitioner is on a different footing from that of Shri R.S. Rana as the latter was already in custody and had filed a bail application u/s 439 of the Code of Criminal Procedure whereas the Petitioner has been granted anticipatory interim bail by the Madras High Court vide order dated 21.12.2010 and he has not breached any of the conditions imposed in the said order. He further stated that the entire sum of Rs. 74,10,500/- allegedly recovered did not belong to the Petitioner alone and that only a sum of Rs. 29 lacs was recovered from his premises, while the remaining amount was recovered from his brother-in-law.

9. This Court has heard the counsels for the parties and carefully considered

their respective submissions. The status report submitted in the sealed cover as also the file of the Investigating Officer has been perused. The contention of the counsel for the Petitioner that there is neither any allegation leveled against him, nor an iota of evidence that he was negotiating over the gratification amount with Mr. Manish Tyagi to give a favorable report in favor of Global College of Law, prima facie appears to be contrary to the statement of the witness recorded u/s 164 of the Code of Criminal Procedure. The said witness has stated that the Petitioner had bluntly demanded a bribe for giving a report favorable to the College, which conversation was corroborated by the intercepted telephonic conversation recorded by the CBI during surveillance. Further, the demand for bribe made by the Petitioner and Sh.R.S. Rana, is corroborated by the fact that Sh. Rana was nabbed while accepting bribe money of Rs. 1 lac from Shri Manish Tyagi on 20.12.2010 at Delhi. Mere grant of interim anticipatory bail to the Petitioner by the Madras High Court does not automatically entitle him to grant of anticipatory bail in the present proceedings. The order dated 21.12.2010 passed by the Madras High Court itself notes that interim anticipatory bail was granted to the Petitioner for a period of four weeks, to give him breathing time to move the appropriate court for grant of anticipatory bail and that the said limited relief was granted without going into the merits of the case, which were to be considered by the competent court having jurisdiction in that regard.

10. As per the counsel for the CBI, the investigation is still at the threshold stage. The Investigating Officer, present in Court, submitted that he has to travel to Chennai to record the statements of material witnesses and examine the evidence gathered till now. Having regard to the status of the Petitioner, who is not only a member of the State Bar Council of Tamil Nadu but also the Vice Chairman of the Bar Council of India, there can be no doubt about the influence that he wields in the society in general and the legal fraternity in particular. The relief sought by the Petitioner in the present petition for grant of anticipatory bail may result in hampering the investigation and influencing the material witnesses, whose statements are being recorded by the CBI.

11. In view of the aforesaid facts and circumstances, the nature of the allegations and the gravity of the offence, this Court are not inclined to grant anticipatory bail to the Petitioner. The present petition is accordingly dismissed. Needless to state that the observations made hereinabove are confined to the relief sought in the present petition, and shall not have bearing on the trial court. (HIMA KOHLI) JANUARY 27, 2011 JUDGE rkb