
(2022) 04 GAU CK 0002

In the Gauhati High Court

Case No : Bail Application No. 173, 229, 459 Of 2022

Ranjit Kumar Borah

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B

Code Of Criminal Procedure, 1973 — Section 162, 167, 167(2), 173(1), 173(2), 173(8), 439

Prevention Of Corruption Act, 1988 — Section 7, 8, 11, 12, 13

Citation : (2022) 04 GAU CK 0002

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : D Gagai, T K Misra, T J Mahanta

Final Decision : Dismissed

Judgement

1. All the three bail applications filed under Section 439 Cr.PC being connected and arising out of the same CBI case, the same are taken up together for common hearing and disposal. While the petitioner in BA/173/2022 is one Chintan Jain, who is not a public servant, the petitioners in the other two bail applications, namely, BA/229/2022 and BA/459/2022 are Shri Ranjit Kumar Borah and Shri Vijay Kumar Upadhyay, respectively, who are public servants. The concerned case is RC AC-12021A0011 under Section 120B of the IPC read with Sections 7/8/11 of the Prevention of Corruption Act, 1988 (for short hereinafter referred to as the PC Act).

2. The petitioners were arrested on 14.12.2021 and 15.12.2021.

3. I have heard Shri KN Choudhury, learned Senior Counsel for the petitioner, in BA/173/2022; Shri AM Bora, learned Senior Counsel for the petitioner in BA/229/2022 and Shri TJ Mahanta, learned Senior Counsel for the petitioner in BA/459/2022. The contesting CBI is represented by its Standing Counsel, Shri SC Keyal.

4. The case registered is with regard to criminal conspiracy, demand and acceptance of bribe by public servant obtaining undue advantage without consideration by public servant. The prosecution's version is that during the year 2020-2021, Shri Ranjit Kumar Borah, who was working as the Deputy Chief Electrical Engineer/Coaching, N.F. Railway entered into a criminal conspiracy with Chintan Jain, who is connected with a Company and a Firm at Patna and had extended undue favours in connection with various contracts of the NF Railway in lieu of demand and acceptance of illegal gratification. In the aforesaid manner, Shri Ranjit Kumar Borah was favoured with two numbers of immovable properties as illegal gratifications. However, on 28.10.2021, Shri Borah had demanded from Chintan Jain illegal gratification of Rs. 2.10 crores in lieu of the two immovable properties. There was also a demand for a mobile phone worth Rs. 1.3 lakhs by Shri Borah.

5. In course of the demand, various amounts were paid from time to time. On 14.12.2021, an amount was allegedly collected by one Shri Niraj Kumar, employee of Shri Chintan Jain from Shri Vijay Kumar Upadhyay, who was working as Chief Engineer (Electrical), N.F. Railway, Maligaon and was delivered to Shri RK Borah. It was at that stage, when the investigating agency had intervened and recovery of Rs. 15 lakhs (approximately) was made. Allegations of recovery of Rs. 2.12 crores (approx) from the residence of Shri Vijay Kumar Upadhyay at NOIDA is also there.

6. Both Shri Mahanta and Shri Bora, learned Senior Counsel for the two public servants have primarily submitted that their clients are entitled to default bail. By drawing the attention of this Court to the Charge Sheet, it is submitted that paragraph 16.25 would reveal that the same was filed without the investigation being complete. To substantiate the said contention, attention has also been drawn to the list of witnesses which contains 64 names whereas, the statements of only 27 numbers of witnesses were recorded. It is contended that without recording the statement of the cited witnesses, the investigation could not have been said to be complete. Shri Bora, learned Senior Counsel has been particularly critical of the investigation that the requirement of Section 7 of the PC Act, namely, demand and acceptance have not been proved. It is contended that the bail application was pending and the Charge Sheet was filed on the 58th day i.e., just two days prior to the expiry of the default period only to frustrate the operation of law under Section 167(2) of the Cr.PC. It is contended that if the rest of the witnesses were examined, the petitioners would have been entitled to default bail.

7. It is further contended on behalf of the petitioners that even otherwise, none of the 27 numbers of witnesses have made any implicating statements against the petitioners. It is further submitted that Sections 8 and 12 of the PC Act are not applicable. It is further submitted that no ingredients of Section 13 of the PC Act were made out.

8. Shri Mahanta, learned Senior Counsel appearing on behalf of Shri Vijay Kumar

Upadhyay additionally submits that the recovery of Rs. 2.12 crores (approx) is not from Guwahati but from his residence at NOIDA which was kept in connection with the marriage ceremony of his son scheduled to be solemnized on 15.11.2021. It is further submitted that the aforesaid amount recovered has no link with the present case.

9. Shri KN Choudhury, learned Senior Counsel for the petitioner, Shri Chintan Jain contends that admittedly, his client is not a public servant and therefore, there is no application of Sections 7 and 12 of the PC Act. He further contends that Shri Jain is not connected with M/S Sun Shine and only his father is one of the Directors. The works in connection with which the illegal gratification has been alleged were of 1½ years back and those works being awarded to the successful bidder in accordance with law, the question of any requirement or occasion to pay bribe was not there. As regards the Section 8 of the PC Act is concerned, it is submitted that the same section was not at all attracted as there are no materials regarding making of any inducement.

10. Endorsing the argument on the applicability of default bail, the learned Senior Counsel, Shri Choudhury has submitted that the said provision of law being a beneficial legislation, the same should be interpreted in such a manner that the object of the same which is towards protection of personal liberty is achieved.

11. It is finally submitted on behalf of the petitioners that in any case, considering the length of detention, the present applications for bail be favourably considered, as there is no further requirement of custodial interrogation. Shri Bora, learned Senior Counsel has specifically submitted that his client has hardly been interrogated and therefore, there is no requirement for further detention.

12. In support of the submissions made, the learned Senior Counsel for the petitioners have relied upon the following case laws:

- i) 2016 SCC OnLine Del 3730, State Vs. Hargyan;
- ii) (2019) 14 SCC 599, Achpal @ Ramswaroop Vs. State of Rajasthan;
- iii) 2020 SCC OnLine AP 1464, Akula Ravi Teja Vs. State of Andhra Pradesh,
- iv) 2020 SCC OnLine Raj 2127, Kamalesh Choudhury Vs. State of Rajasthan;
- v) 2021 SCC OnLine SC 532, Fakhrey Alam Vs. State of Uttar Pradesh.

13. In the case of Hargyan (supra), the Hon'ble Delhi High Court was critical of the aspect of acceptance of an incomplete report for which the accused was held to be disentitled to the benefit of 167(2) of the Cr.PC. The said case will not help the petitioners inasmuch, as in the present case, paragraphs 16.23 and 16.24 of the Charge Sheet clearly state that substantive offences were made out against the petitioners.

14. The Hon'ble Supreme Court in the case of Achpal @ Ramswaroop (supra) was examining a situation wherein on the completion of 90 days of prescribed period under Section 167 Cr.P.C., there were no papers of investigation before the Magistrate concerned. Under that circumstance, it was held that the learned Magistrate would have no alternative but to grant default bail to the accused person. However, in the instant case, where the default period is 60 days, on the 58th day, the Charge Sheet was submitted.

15. In the case of Akula Ravi Teja (supra), the Hon'ble Andhra Pradesh High Court came to a definite finding that the report filed was not a final one from which it was not possible to come to a conclusion that the offences were substantiated. Further, the Hon'ble Court had held that the same to be preliminary Charge Sheet. However, there is no such occasion in the instant case as the Charge Sheet itself mentions that the substantive offences were made out.

16. In the case of Kamalesh Choudhury (supra), the Hon'ble Rajasthan High Court in clear terms had recorded the contention of the I.O. that only 75 percent of the investigation has been completed and would be submitting the Final Report at the earliest. The facts of the case are clearly distinguishable from the case in hand.

17. In the case of Fakhrey Alam (supra), Hon'ble Supreme Court had come to the conclusion that the Charge Sheet not having been filed within the prescribed period of 90 days, the accused was entitled to default bail. However, on reading of the aforesaid judgment, the facts are entirely different. Initially, the case was registered under certain Sections of the IPC, the Arms Act and the UAPA Act, 1967. It may be mentioned that whereas for the offences under IPC and Arms Act the mandatory period is 90 days, for the UAPA Act, the same is 180 days. When the Charge Sheet was submitted on 04.09.2017, there was no charge under the UAPA Act and therefore, the default period ought to have been 90 days which was lost sight of and accordingly, the intervention of the Hon'ble Supreme Court had to be there.

The facts of the said case are completely distinguishable from the facts of the instant case.

18. Per contra, Shri SC Keyal, learned Standing Counsel, CBI submits that the principal thrust of the argument made on behalf of the petitioners claiming the benefit of default bail is prima facie misconceived and does not merit any consideration at all. He submits that the offence involved is an economic offence under the PC Act wherein, a huge amount of public is connected and therefore, the length of detention would not be the sole consideration for grant of bail. Accordingly, both the grounds which have been urged on behalf of the petitioners are without any basis and liable to be rejected.

19. Elaborating on his first objection regarding non-application of the ground of default bail, Shri Keyal, learned Standing Counsel submits that it is an admitted case that on the 58th day from the date of arrest that the Charge Sheet was

submitted. In the instant case, the mandatory period, as per Section 167 Cr.PC being 60 days, the claim for default bail cannot be entertained. The learned Standing Counsel submits that the present Charge Sheet is complete for the offences involved and it is neither a part Charge Sheet nor an incomplete Charge Sheet. Regarding the issue of examining only 27 numbers of witnesses out of the 64 numbers cited, it is the submission of the investigating agency that it is only the relevant witnesses who have been examined for the purpose of establishing the charges against the accused persons and the other witnesses are all formal witnesses.

20. In support of his submissions, the learned Standing Counsel, CBI has relied upon the following cases:

- i) (1984) 2 SCC 183, R.S. Nayak Vs. AR Antulay;
- ii) (2000) 5 SCC 88, State of M.P. and Others Vs. Ram Singh;
- iii) (2007) 8 SCC 770, Dinesh Dalmia Vs. CBI;
- iv) (2012) 9 SCC 446, Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu And Another;
- v) (2013) 7 SCc 439, YS Jagan Mohan Reddy Vs. Central Bureau of Investigation;
- vi) (2013) 7 SCC 466, Nimmagadda Prasad Vs. Central Bureau of Investigation;
- vii) (2013) 3 SCC 77, Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another, and
- viii) (2014) 8 SCC 682, Subramanian Swamy Vs. Director, Central Bureau of Investigation and Another.
- xi) 2022 0 Supreme (SC) 115, Serious Fraud Investigation Office Vs. Rahul Modi & Ors., and
- x) Bail Appn./3291/2021 (Rounak Ali Hazarika Vs. The State of Assam)

21. In the case of AR Antulay (supra), the Hon'ble Supreme Court was seized of a matter including to decide on a relevant date with reference to which a valid sanction is pre-requisite for prosecution of a public servant. The Hon'ble Court had answered that interpretation and construction of the provisions of the PC Act by the Court should be done in a manner so that it would advance the object and purpose and not defeat the same. It has further been laid down that if the words of the statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision.

22. In the case of Ram Singh (supra), the Hon'ble Supreme Court had made scathing remarks regarding the evil of corruption. The following observations made in the paragraph 8 of the said judgment are extracted hereinbelow-

"8. Corruption in a civilised society is a disease like cancer, which if not detected

in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence—shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.”

23. In the case of Dinesh Dalmia (supra), the Hon'ble Supreme Court has laid down that it is only in a given case when the Charge Sheet is not filed within the prescribed period and the investigation is kept pending, benefit of Section 167(2) proviso would be available to an offender. However, if a Charge Sheet is filed, the said right ceases to exist and does not revive only because of further investigation remains pending. For ready reference paragraph 39 is extracted hereinbelow:

“39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code.”

24. In the case of Ash Mohammad (supra), the Hon'ble Supreme Court while balancing individual liberty with public order has held that individual liberty cannot be accentuated to such an extent or alleviate to such a high pedestal which would bring in anarchy or disorder in the society.

25. In the case of YS Jagan Mohan Reddy (supra), the Hon'ble Supreme Court was considering the prayer for bail for offences, amongst others, under the PC Act. The Hon'ble Court had reiterated that economic offences constitute a class apart and laid down a caveat that while granting bail, the Court has to keep in mind the nature of accusation, evidence in support thereof, severity of the punishment, character of the accused, circumstances, larger interest of the public which are some of the factors to be taken into consideration.

26. In the case of Nimmagadda Prasad (supra), the Hon'ble Supreme Court reiterated the aforesaid view made in the case of YS Jagan Mohan Reddy.

27. In the case of Suresh Kumar Bhikamchand Jain (supra), the Hon'ble Supreme Court has laid down that regardless of whether sanction to prosecute had been obtained or not, if the Charge Sheet has been filed within the period stipulated under Section 162 Cr.PC, the right to statutory/default bail would not be

applicable.

28. In the case of Subramanian Swamy (supra), the Hon'ble Supreme Court had observed that corruption is an enemy of nation and tracking down corrupt public servant how high he may be, and punishing such person is a necessary mandate under PC Act.

29. In the case of Rahul Modi (supra), the Hon'ble Supreme Court has held that the indefeasible right of an accused to seek statutory bail under Section 167(2) Cr.PC arises only if the Charge Sheet has not been filed before the expiry of the statutory period. The conundrum relating to the custody of the accused after the expiry of 60 days has been held that such accused would be in the custody of the Magistrate till cognizance is taken by the relevant Court.

30. In the case of Rounak Ali Hazarika (supra), this Court after discussing the relevant case laws has held that while deciding an application under Section 439 Cr.PC in respect of serious offences, the individual liberty of the accused has to be balanced with the social security and the effect on the society. The bail in that case was rejected.

31. The rival contentions of the learned counsel for the parties have been duly considered and the materials in the Case Diary have been perused.

32. What intrigues this Court is that the thrust of the argument made on behalf of the petitioners is assailing the very lodging of the case and its continuance after completion of the investigation which, according to the petitioners, do not make out any offence. However, the issue before this Court is not the legality and validity of the case lodged and the only question which has fallen for determination is that whether the petitioners have made out a case for grant of bail. At this stage, the order dated 11.02.2022, a copy of which has been placed on record, may also be referred to. By the said order, the learned Special Judge, CBI, Assam has accepted the Charge Sheet and that order is not the subject matter of challenge in any proceedings.

33. As noted above, the mainstay of the argument made on behalf of the petitioners is that they are entitled to default bail and the only cue for making the said submission is an observation made in paragraph 16.25 of the Charge Sheet that a separate supplementary report will be submitted under Section 173(8) of the Cr.PC after conclusion of the investigation. To examine the said aspect of the matter, it is necessary to carefully sift the contents of the said paragraph which is extracted hereinbelow:

"16.25 That investigation in respect of obtaining CFSL Opinion on voice samples, other instances of bribe obtained / given by accused Ranjit Kumar Borah and other accused persons / suspects, investigation in respect of bribe obtained by accused Vijay Kumar Upadhyay, investigation on INR 02,12,99,000/- which has been recovered during residence search of accused Vijay Kumar Upadhyay, to examine other connected witnesses in the above instance of bribery and

involvement of Hawala transactions, investigation on an ATM Card of M/s Biswas Electric Works, Patna, recovered from the possession of accused Ranjit Kumar Borah and any other point cropped up during further investigation, is yet not complete. These points require to be covered during further investigation and separate supplementary report will be submitted U/s 173(8) Cr.PC after conclusion of investigation.”

34. A prima facie view after reading of the said contents is that a supplementary report would be submitted after completion of the investigation in respect of obtaining CFSL opinion on the voice samples, allegation of bribe, including that of Rs. 2,12,99,000/- recovered from the residence of Shri Vijay Kumar Upadhyay, involvement of Hawala transaction and any other point which may crop up.

35. To appreciate the said contention, the observations made in paragraph 16.25 of the Charge Sheet have to be read with the observations made in the preceding paragraphs which are extracted hereinbelow:

“16.23 That evidence collected during investigation clearly establishes that accused Ranjit Kumar Borah (A-1) was a public servant and by abusing his official position as a public servant, entered into a criminal conspiracy with other co-accused, demanded and accepted illegal gratification from accused Chintan Jain (A-2) and Nayan Chandra Jain (A-5) for himself by corrupt and illegal means for extending undue favours to M/s. Sunshine and also kept his illegal gratifications in cash and kind with them and the same was being taken back by accused Ranjit Kumar Borah (A-1) from Chintan Jain (A-2) and Nayan Chandra Jain (A-5) with the help of co-accused Niraj Kumar (A-3), and Vijay Kumar Upadhyay (A-4). Thus, offences U/s. 120-B IPC r/w Sections 7, 8 & 12 of the P.C. Act (As Amended in 2018), 1988 and substantive offence is made out.

16.24 Thus, the aforesaid acts of omission and commission on the part of the accused persons namely Ranjit Kumar Borah (A-1), Chintan Jain (A-2), Niraj Kumar (A-3), Vijay Kumar Upadhyay (A-4), and Nayan Chandra Jain (A-5) constitute offences punishable U/s. 120-B IPC r/w Sections 7, 8 & 12 of the P.C. Act (As amended in 2018), 1988 and substantive offence thereof.”

36. From the aforesaid two paragraphs, it appears that the materials gathered so far are sufficient to constitute the offences under Section 120B IPC read with Sections 7/8/11 of the PC Act.

37. With regard to the submissions of the CBI regarding non-examination of all the cited witnesses, this Court has examined the list of witnesses annexed to the Charge Sheet. This Court finds force in the contention made on behalf of the CBI that the remaining witnesses are formal in nature, as they consist of mainly officers/employees of the Railways, Bank and CBI and Ministry of Home Affairs. In any case, the burden is entirely upon the prosecution to prove the accusation in the trial and the same cannot be a factor while deciding a bail application.

38. The mandate of Section 173(1) of the Cr.PC is to complete the investigation

without unnecessary delay. As per Section 173(2), the report is to be submitted after such completion to the competent Magistrate giving the details enumerated. In the instant case, the said requirements appear to have been complied with.

39. The power vested upon the investigating agency by Section 173(8) of the Cr.PC is a wide power. The said sub-section opens up with the wordings "Nothing in this section shall be deemed to preclude further investigation..." which is in the nature of a non-obstante clause giving overriding powers. Under this provision, the investigating agency shall not be precluded by anything in the section from making further investigation in respect of the report which has been submitted under sub-section (2) and on obtaining further evidence, the same should be forwarded to the Magistrate in the form of a further report or reports regarding such evidence wherein the provisions of sub-sections (2) to (6) shall apply.

40. When the investigating agency itself has come to a finding that the substantive offences have been made out, as recorded in paragraphs 16.23 and 16.24 of the Charge Sheet, this Court in deciding a bail application cannot enter into the merits of such findings which are matters, strictly within the domain of the investigating agency. In any case, the said findings are neither the subject matters of challenge nor required to be dealt with by this Court, as no such occasion has arisen.

41. As noted above, the contents of paragraph 16.25 of the Charge Sheet would reveal that further investigation may be required mainly with regard to the amount of Rs.2,12,99,000/- which has been recovered from the residence of Shri Vijay Kumar Upadhyay which was not specifically mentioned at the time of lodging of the FIR. A bare look at the FIR would reveal that apart from the present three petitioners, other unknown public servants and private persons, are also involved. Section 173(8) of the Cr.PC having empowered the investigating agency to make further investigation, this Court is unable to accept the submission made on behalf of the petitioners that they are entitled to default bail.

42. Though the entire thrust on behalf of the petitioners was on default bail which has been negated by this Court, as held above, the attempt to make out a case for regular bail is also required to be dealt with even though the said attempt was a frail one.

43. From the side of the petitioners, it has been contended that even the statements of the 27 numbers of witnesses recorded so far, do not make out a case against the petitioners. The said contention is vehemently refuted by the CBI and Shri Keyal, learned Standing Counsel has also presented before this Court a tabular form of the gist of the statements recorded.

44. However, this Court is of the opinion that while deciding an application praying for bail, this Court would be loath to enter into the said aspect of the matter, as firstly, there is no occasion in a bail application to do so and secondly,

any observation made by this Court at this stage of consideration of a bail may cause prejudice to either of the parties. While the Code itself provides necessary avenues to pray for discharge before the learned Trial Court, this Court is of the opinion that it would not be prudent to usurp such powers as the same may amount to transgression of jurisdiction.

45. The Hon'ble Supreme Court in the case of Jasbir Singh Vs. State of Punjab, reported in (2006) 8 SCC 294 has laid down the importance of independence of the sub-ordinate courts in exercising judicial functions in the same manner which the superior courts enjoy.

46. In the instant case, the offence involved, undoubtedly is under the PC Act wherein huge amount of public money is involved which is intrinsically connected with the quality of the construction works allotted to the beneficiary firm. The amount involved is huge where recovery itself is approximately Rs. 2.13 crores. The Hon'ble Supreme Court in the cases of YS Jagan Mohan Reddy (supra), as reiterated Nimmagadda Prasad (supra), has held that in an economic offence of this nature, a separate yardstick is required to examine a prayer for bail. For ready reference, the relevant excerpts made in the case of YS Jagan Mohan Reddy (supra) are extracted hereinbelow:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

47. This Court has already noticed that the order dated 11.02.2022 of the learned Special Judge by which the Charge Sheet has been accepted is not the subject matter of challenge in any proceedings.

48. In that view of the matter, this Court does not find any merit in the applications seeking bail and accordingly, the bail applications are rejected at this stage.

49. Records produced by Shri Keyal, learned Standing Counsel are returned back.