

(1996) 09 DEL CK 0070

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 2136 of 1996

Runu Ghosh

APPELLANT

Vs

State (Central Bureau of Investigation)

RESPONDENT

Date of Decision : 01-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Penal Code, 1860 (IPC) — Section 120B

Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (1996) 4 AD 783 : (1996) 64 DLT 474 : (1996) 39 DRJ 221

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

Bench : Single Bench

Advocate : Satish Tamta, S. Lal and O.P. Verma, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The petitioner after having been arrested in case Rc No.3(A)/96/CBI/ACU Iv under sections 120-B and section 13(2) read with section 13(I)(d) of the Prevention of Corruption Act, 1988, has applied to this Court for being admitted to bail after her bail application was dismissed by the trial Court. A few facts which are relevant for purposes of deciding this petition in short are: That Department of Telecommunication (in short referred to as " DoT"), Ministry of Communication, Government of India, had issued a notice inviting tenders for procurement of 3,000 numbers of 2/15 Marr shared radio systems (in short referred to as the "system"). Out of these, 1,000 numbers were required for the year 1992- 93 while 2,000 were required for the year 1993-94. On scrutiny of the tenders, the Tender Enquiry Committee (TEC) recommended a price of Rs.3,54,000.00 per system with single antenna working including antenna coupler and isolator quoted by. M/s. Indotronics, being the lowest. The Tec also recommended together a counter offer on the same rate to M/s.Advance Radio Masts Limited (ARM) who had also submitted their tender. Rates accepted were inclusive of packing and forwarding charges exclusive of sales-tax, excise duty,

freight and insurance, etc. Another firm M/s. Shyam Electronics (in short referred to as "Shyam") also having type approval approached Tec for supply of the above systems and it was decided to split the order in two parts i.e. 300 systems to be supplied by Arm and 200 by Shyam against the said approval for entire supply of 500 systems by M/s. ARM. These orders were placed on 4th December, 1992 and till the placement of these orders, the price variation in respect of crystal and synthesized versions were not discussed anywhere and orders for both the versions were placed at the same price.

(2) For the remaining 2,000 systems it was proposed by DoT to procure the same from all those venders having type approval at the rate of Rs.3,45,000.00 per system. There were three firms, namely, M/s. ARM, Shyam and Punwire who. were having type approval for 2/15 Marr system. Mr. Paturu Rama Rao, the petitioner in Crl. M. (M). 2159 / 96, is the Managing Director of ARM. Smt. Runu Ghosh, the then Director (FA-V) in her note dated 25th May, 1993 pleaded for placement of orders of crystal controlled sets saying that it should not cause problem and she recommended 1,500 systems to be procured from Arm, 500 systems from Shyam and 200 from Punwire at the lowest rate of Rs.3,45,000.00 per system before February, 1994. It is also alleged in the Fir that as all the three firms were having type approval, a Price Negotiation Committee (PNC) was constituted and one of its member was Mrs. Runu Ghosh. During negotiations, the lowest price of Rs.3,40,750.00 per system together with one spare unit of LNA was offered by Shyam and also agreed to by Arm on 10th June, 1993. In the meeting, it was highlighted by the other two members of Pnc that the system based on crystal frequency design was of inferior quality as compared to synthesized versions but Mrs. Runu Ghosh did not agree with the minutes of the meeting as according to her it was not within the province of the Pnc to assess the quality of the system. Moreover, according to her, the faults and advantages of the system were not discussed in the Pnc meeting. Sh. N. G. Gupta, who was a member of the committee, was also at the relevant time DDG(RN), justified the price difference between crystal and synthesized version by quoting the DGS&D rate contract in which crystal version was cheaper by 34,170.00 vis-a-vis synthesized version. It is alleged that when Mrs. Runu Ghosh came to know about the approval of difference of rates between the crystal and synthesized version systems by the competent authority i.e. Member(P), she sent the file to Sr. DDG(TEC) for seeking certain clarifications without even consulting her seniors. It is also alleged that a letter dated 21st July, 1993 was received by Mrs. Runu Ghosh by speed post from M/s. Arm indicating the reduction of sales-tax from 4% to 2% by A.P. State Government, however, no action whatsoever was taken by her in that regard. She is alleged to have submitted the file directly to the then Minister of State for Communications, Sh. Sukh Ram on 5th August, 1993 instead of receiving clarifications from the Telecommunication Engineering Centre. On seeing the file, Mr. Sukh Ram advised to procure the system within a period of week's time without making any comment on price reduction as approved by the Member(P). On a proposal having been put up by the Director of

Mm Cell duly approved by the Minister of State, supply order dated 28th September, 1993 for 600 systems of synthesized versions and 300 systems of crystal versions was placed upon M/s.ARM at the rate of Rs.3,35,639.00 and Rs.2,98,469.00 respectively. Meanwhile, it appears that Arm requested to place more orders of crystal version at the same rate as that of synthesized version vide their letter dated 11th September, 1993. The request of the firm was received directly by Mr.Sukh Ram on 27th September, 1993 and he observed "how are we offering two rates against the same tenders since we have taken both crystal and synthesized at the same price earlier?" On these observations of Mr.Sukh Ram, the matter was again examined by the DoT and it was reiterated that as the synthesized version was definitely of a superior quality than crystal version, the price difference was justified. Mr.Sukh Ram, however, turned down the said plea of reduction in the price of crystal version, recommended by the PNC. DDG(PF) vide his note dated 9th December, 1993 suggested to get the rates redetermined after quick study of the relative merits of the two types of systems, however, Mr.Sukh Ram ignored all these recommendations and ultimately ordered for immediate compliance vide his note dated 9th December, 1993 for placing orders of crystal version also at the same rate as of synthesized version upon M/s.ARM. It is also alleged that by the aforesaid acts of Mr.Sukh Ram in his capacity as the Minister of State for Communications and Smt.Runu Ghosh in her capacity of Director(FA) being such public servants in conspiracy with amongst themselves and with owner of M/s.Advance Radio Masts Limited by corrupt or illegal means or by abusing their position as such public servants caused pecuniary advantage either to M/s.ARM or/and to themselves. It is alleged that by their acts, the Government had suffered a total loss of Rs.1,68,00,000.00

(3) The contention of Mr.Tamta appearing on behalf of the petitioner is that the petitioner in her capacity as member of the price negotiation committee was perfectly within her rights to object to the minutes which had been drawn up by the other two members of the price negotiation committee, as it was neither within the province of price negotiation committee nor they were fully qualified to comment upon the quality of the system. It was entirely for the technical committee to go into the question as to whether synthesized version was superior to the crystal version and consequently, according to Mr.Tarnta, the price negotiation committee could not recommend the reduction in the price of crystal version only on the ground that the same was inferior to the synthesized version, It is his contention that the petitioner in her capacity as an officer of the Government could differ with the minutes which had been drawn up and nothing unusual should be read into the same. According to him, no link has been established between her and M/s.ARM which could lead to the conclusion that she had gone out of the way to help M/s.ARM. The recovery of 15 watches from the residence of Smt.Runu Ghosh, according to Mr.Tarnta, was not such which could raise the presumption against her that she was involved in any alleged offence. None of the wrist watches, according to him, was of Rolex make as was

tried to be made out by the Cbi in its briefing to the Press. About the foreign currency equivalent to a little more than Rs.1,00,000.00 , the contention of Mr.Tarnta is that the same was a part of the foreign exchange which had been given to her for the visits she had undertaken abroad and she will fully explain the source of the money which has been recovered from her house, if an opportunity is given to her by the CBI. In any case, according to Mr.Tarnta, as the investigation is already over, no further recovery is required to be made by the Cbi and she being in custody for the last about one month, she was entitled to be admitted to bail.

(4) MR.LAL on the other hand contends that the petitioner is directly involved in the deal as she wanted M/s.ARM to be paid more and whenever she visited Hyderabad she stayed with Mr.Paturu Rama Rao and a pearl necklace was gifted to her by the company. According to him, two signed blank letter heads were recovered from her office and there was a direct communication of a letter dated 21st July, 1993 by M/s.ARM to Mrs.Runu Ghosh which clearly shows that she was involved in the matter. Mr.Lal has relied upon the observations of the Supreme Court in State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, . to contend that persons who are involved in the economic offences should be dealt with severally and, Therefore, according to him, the petitioner was not entitled to bail.

(5) At this stage of considering the application of the petitioner for the grant of bail, the Court is not required to go into the detailed examination evidence and pre-judge the case and for that exhaustive exploitation of the merits of the case are not required in the order. The Court before granting bail in cases involving non-bailable offences, is to take into consideration matters such as the nature and seriousness of the offence, the character of evidence, circumstances which are peculiar to "the accused, a reasonable possibility of the presence of the accused not being secured at trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations. Bail should normally not be withheld. as a punishment if, after taking into consideration other factors, the accused is entitled to the grant of bail. Bail and not jail is the normal rule. The two paramount considerations, namely, likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring fair trial of a case in the course of justice. Due and proper weight should be bestowed on these two factors apart from others. There cannot be a set formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling the bail.

(6) In State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another (Supra), the facts were that the accused was acquitted by the trial Court and his acquittal was confirmed by the High Court. During the arguments in the High Court, a request was made on behalf of the State for adducing additional evidence u/s 391 of the Code of Criminal Procedure in order to remove the alleged formal defect in the proof of the mint master and this request of the State was rejected by the High

Court. Against the judgment of the High Court, an appeal was preferred to the Supreme Court and dealing with this part of the order of the High Court the Supreme Court observed :- "Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved the report completely supported the case of the prosecution that the gold was of the specified purity. To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a person non-gratia whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters Which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National interest. The High Court was Therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court u/s 391 of the Code of Criminal Procedure."

(7) The Supreme Court was, Therefore, not concerned with the grant of bail nor was it concerned with the ultimate conviction of the accused but it was concerned only with that part of the judgment of the High Court where the request of the State for leading additional evidence was rejected. In my view, these observations though are relevant for deciding the matter finally, however, at the time of grant of bail, the considerations which" weigh with the Court are the seriousness of the offence and whether the accused would be readily available for trial and whether he is likely to use the discretion granted in his favor by tampering with evidence.

(8) The petitioner is a senior officer of the Government of India. She has roots in the society. Her family is also residing in Delhi. I, Therefore, do not see any reason as to why she should flee from justice. On the basis of the Fir and the material on record. I feel that the entire case is based upon the documents. Premises of the petitioner has already been searched and I do not feel any further recovery is to be effected. She has already been interrogated during the time she was in custody. I do not feel any further investigation is to be carried out. In any case if any further investigation is to be carried out, the petitioner enlarged on bail will always be available for investigation. During the course of arguments, I was informed by Mr.Lal that another case of possession of assets

disproportionate to her known sources of income, has been registered against the petitioner, however, I am presently not dealing that case and in my view registration of the other case will have no effect upon decision of this bail application.

(9) For the foregoing reasons and without, Therefore, in any manner commenting upon the merits of the case and in the facts and circumstances of this case and keeping in view the fact that the petitioner is a lady and is already in custody for about one month, I admit the petitioner to bail on her furnishing a personal bond in the sum of Rs. 1,00,000.00 (Rupees One lakh only) with one surety in the like amount to the satisfaction of the trial Court. The petitioner will surrender her passport, if not already surrendered, with the investigating agency and shall not tamper with the evidence. She will always make herself available for investigation as and when required by the investigating agency and shall not leave the country without prior permission of the Court.

(10) Any observation made in this order will have no bearing on the merits of the case.