

(2002) 09 CHH CK 0008

In the Chhattisgarh High Court

Case No : Misc. Criminal Case No. 1117 of 2002

Santosh Kumar Agarwal

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 167, 167(2), 438
Penal Code, 1860 (IPC) — Section 120B, 379, 409, 411, 420
Prevention of Corruption Act, 1988 — Section 12, 13(1)(D), 13(1)E, 13(2), 7

Citation : (2002) 4 CGLJ 256

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : P. Diwakar, for the Appellant; N.K. Shukla, A.A.G., Ashok Verma, D.A.G. and Sharmila Singhai, Deputy Govt. Advocate, for the Respondent

Judgement

Fakhruddin, J.—This order shall also dispose of 1161/2002 (Milan Singh), M. Cr.C. No. 1446/2002 (Sonsai), M. Cr.C. No. 1577/2002 (Madho Prasad Soni) and M. Cr.C. No. 1614/2002 (Vithu Das Besekar).

2. The applicant has filed the instant petition u/s 438 of the Code of Criminal Procedure for grant of anticipatory bail. The applicant apprehends his arrest in connection with the Crime No. 52/2002 registered at P.S. Bhilai Bhatti District-Durg for the offence punishable u/s 120-B, 420, 379 and 411 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that the applicant is a proprietor of "Shri Hari Om Transport Company" powerhouse Bhilai. The applicant is carrying this business since last about 4 years. For transporting the goods from one place to another, the applicant hires the vehicles from their owners and provide the same to the consumers and the applicant does not have any vehicle in his own name. The transport company of the applicant was awarded with a contract by the Bhilai Steel Plant for transporting certain raw material (Ferro alloys) from the subsidiary unit of Steel Authority of India Ltd. situated at

Chandrapur (Maharashtra). The said raw material was to be transported by the applicant from Chandrapur to Bhilai. As per the procedure, the applicant is only required to provide a vehicle to the unit of Chandrapur and the employees of the said unit use to load the raw materials. The said raw material is being unloaded at Bhilai by the employees of the Bhilai Steel Plant. Before allowing the truck to leave from Chandrapur, the entire truck is to be sealed by the unit namely "Maharashtra Electrosmelt Limited" by putting their seal. Before getting the entry in Bhilai Steel Plant, the said seal is being checked by the Security staff and then the sample of the material is being taken. After getting the report from the laboratory that the material is good enough, the truck is being permitted to get entered to the unloading unit of the plant. As the applicant is not having his own truck for transporting the goods he depends upon other truck owners. The present contract is being carried out by the applicant since about one year and even prior to this in the previous terms also, the applicant has successfully carried out the transportation work. Till today no complaint whatsoever has been raised by anyone regarding the efficiency of the applicant or regarding the quality of the raw material, which is being supplied by the Maharashtra Elektrosmelt Limited unit. In fact regarding the quality, the applicant does not come in picture except the fact that after providing the truck he gets the amount towards the transportation charges.

4. Apart from the transporting business in the name and style of Shri Hari Om Transport, the applicant submits that he has got other business also and as a result of which he is hardly available at Bhilai. Most of the work of transportation is being looked after by his Power of Attorney Holder Shri Satyanarayan Agarwal who is younger brother of the applicant. Even said Satyanarayan Agarwal does not look the entire business but he too has appointed various employees for taking of the business.

5. It is pointed out by counsel for the applicant that in two of the trucks which are owned by Shri Mritunjay Singh and Gurudayal Singh, the raw material which was supplied by the Maharashtra Elektrosmelt Limited unit was found below the standard quality and there was some mixing in the same. The said mixing in the raw material is alleged to have been found by the complainant in the evening of 9-4-2002. As soon as the applicant came to know about some foul play in the said dealing, he immediately got the report lodged through Milan Singh (co-assused) on 10-4-2002 to the police station, copy of which is annexed with the petition as Annexure A/2. It is contended that a bare look of the above document will reveal the fact that the applicant himself was worried about the incident and this is mainly because he is very cautious and careful not only for his business but also for his reputation. The applicant was expecting full co-operation from the Bhilai Steel Plant and also from the police authorities to find out as to who has done the mischief. To the utter surprise he, his brother and his supervisors have been implicated by the police just to defame them. It is alleged by the prosecution that when the adulterated Ferro Alloys was found, the enquiry was made from the drivers. It is further alleged that the drivers have told the police

that they have done some mixing in the premises of Bansi Lal Agarwal. The drivers and Bansi Lal Agarwal have been made accused and made statement. It is submitted that the prosecution is relying upon the statement of accused made to police that the mixing/adulteration in the raw material was done at the instance of Satyanarayan Agarwal i.e. the younger brother of the applicant. The applicant has been made accused just because he happens to be a proprietor of "Shri Hari Om Transport Company"; otherwise there is no direct allegation against the applicant for committing any offence. It is contended on behalf of Santosh Kumar Agarwal that his family is one of the most reputed families of the State of Chhattisgarh. The applicant's younger brother namely Satyanarayan Agarwal who has also been made accused is a leader of opposition party (BJP) and it seems to settle the political and personal score by rival group that Santosh Kumar Agarwal has been made accused, vehemently contended counsel for the applicant.

6. The applicant has filed a document dt. 10-4-2002 Annexure A/2 which is quoted below:

7. The State has filed its written reply (M. Cr.P. No. 3762/2002) in opposition to the bail application. It is appropriate to reproduce the reply:

1. That according to the prosecution one Inspector C.I.S.F. namely Rajbir Singh lodged a report that when he was posted for inspection of trucks which were loaded by the materials to be supplied to Bhilai Steel Plant, on 9-4-2002 he checked the truck No. M.P. 09 K-9361 and Truck No. M.P. 23-6787 in which silko Manganese was loaded. Immediately he called another Chageman M.P. Swarnakar for checking the materials. Thereafter he called the officers and then inspected the materials. On checking it was found that manganese was not of standard quality (i.e. sub-standard and spurious) and some other materials have been mixed in the huge quantity. During enquiry it was found that the materials was transported by Hari Om Transport Company, Bhilai. During investigation it was also found that some of the officers of Bhilai Steel Plant are actively involved in this case.

2. That applicant Santosh Agarwal is the owner of Hari Om Transport Company and the said material was loaded from Chandrapur and delivered to Bhilai Steel Plant by the trucks, which are hired by Santosh Agarwal. Though Santosh Agarwal has not played any active role in the said offence, but he has executed power of attorney in the name of his brother Satya Narayan Agarwal, who is the main accused of the said incident because he has full knowledge about the act done by his brother and his associates.

3. That applicant Milan Singh who was the main co-accused was supervisor at the time of incident of manganese scam. In his supervision the sub-standard materials has been loaded in the trucks from Chandrapur to Bhilai Steel Plant. It is clear from the statement of Gurudayal Singh u/s 164 Code of Criminal Procedure. In the statement it is further revealed that the applicant gave bribe to

different officials of Bhilai Steel Plant for consumption of spurious materials, which was supplied by his employer, i.e. Santosh Agarwal and Satyanarayan Agarwal.

4. That the applicant Sonsai was working as Technical Assistant (Sampling) in the Research Control Laboratory in Bhilai Steel Plant. He has to collect the sample for laboratory from the trucks, but he has lifted the sample superficially from the truck and because of his act the spurious materials could not be detected because he did not lift the spurious materials properly. As per the statement of Mukesh Tiwari and Gurudayal u/s 164 he has taken bribe from Rajnarayan and malafidely lift the sample and not in proper way.

5. That the applicant Madho Parsad Soni was posted as Chargeman/Ram Material Inspector in Raw Material Department of Bhilai Steel Plant. He did not supervise unloading of materials, which was visibly sub-standard from the truck before arrest of this applicant; Bhilai Steel Plant has also placed him under suspension. He has also taken bribe from Rajnarayan for helping the transporter in supplying the spurious materials to Bhilai Steel Plant.

6. That the applicant Vithu Das was the Dy. Manager at the time of incident. He did not supervise the materials while being unloaded as the materials in the truck was visibly substandard. Further the trucks were allowed to be unloaded without proper sampling. He was required to remain present at the time when trucks were unloaded but deliberately absented from the spot. He has to supervise the subordinates during collection and analysis of samples but he deliberately omitted all these things. Against this act, the Bhilai Steel Plant has placed him under suspension and a vigilance enquiry has been instituted and is still continuing.

7. In the last date of hearing the Hon"ble Court desired that why Satyanarayan Agarwal who is one of the co-accused was taken into custody from Hospital. It is not the true fact. In fact he himself has taken discharge voluntarily from the Hospital at about 12"O Clock on 15-5-2001. Thereafter he has been arrested at 4"O Clock on the same date. From the documents annexed herewith, it is clear that he has taken discharge against the medical advise. The relevant medical discharge card, arrest panchnama, etc. are attached herewith.

8. That as regards the standard of megnese supplied to the Bhilai Steel Plant, an analysis has been conducted by Maharastra Electro Limited, Chandrapur, who is the supplier of the magnese, and it was detected that against the requisite percentage of manganese i.e. 60.33% the truck seized contains 20.88 in Trucks No. MP 09 K-9361 and 11.77% in truck No. MP 23 6787.

8. Learned Counsel for the State was repeatedly asked and questioned about reply of the State with regard to Santosh Agarwal but the stand of the State is that though Santosh Agarwal has not played any active role in the said offence but he has executed power of attorney in the name of his brother SatyaNarayan Agarwal, who is the main accused of the said incident, and he has full knowledge

about the act done by his brother and his associates.

9. The applicant had filed an application on 1-5-2002 (I.A. No. 1873/ 2002) for amendment on the ground that the application before this Court was filed on the basis of the information and the offences mentioned in the bail rejection order dt. 19-4-2002 but the applicant came to know that the police has also registered the offence u/s 409 of IPC as such he wants to add this offence in the instant application. This application has been allowed on 11-9-2002.

10. On 14-8-2002 when the matter came up for hearing this Court pointedly asked learned State counsel as to whether offence under the provisions of Prevention of Corruption Act has been registered against the private individuals or not. Learned State counsel replied that against the officers of the Bhilai Steel Plant, the offence under the provisions of Prevention of Corruption Act has been registered and sanction is awaited. On 21-8-2002 learned State counsel informed the court that she sought instructions and she was informed by the Investigating Officer Shri Rai that no case under the provisions of Prevention of Corruption Act has been registered against the private individuals. In the order dt. 23-5-2002 passed by the Sessions Judge, Durg in B.A. No. 828/2002 it is mentioned that on 1-5-2002 charge of committing offence u/s 13(1)(D) of Prevention of Corruption Act has also been levelled against the brother of the applicant. It is only when on 5-9-2002 the matter was heard and on 6-9-2002 application for amendment (I.A. No. 4769/2002) has been filed on behalf of Milan Singh in M. Cr.C. No. 1161/2002 it came to the knowledge of this Court that offence under Sections 7, 12, 13(2), 13(1)D, 13(1)E of the Prevention of Corruption Act has also been registered against some private individuals.

11. With regard to the applicants who are employee of Bhilai Steel Plant Vithu Das Besekar (M. Cr.C. No. 1614/2002), Madho Prasad Soni (M. Cr.C. No. 1577/2002) and Sonsai (M. Cr.C. No. 1446/2002) it is contended that they have remained in jail for 90 days, challan could not be filed by the police and trial Court had to released them u/s 167 of the Code of Criminal Procedure.

12. Counsel for the State submitted that the authorities are not granting sanction to prosecute the accused-employees of the Bhilai Steel Plant. The vigilance enquiry is also not progressing and the Bhilai Steel Plant has taken no departmental action. The Investigating Officer was present in the Court who stated that prosecution has forwarded the case for getting sanction of these persons who are employees of Bhilai Steel Plant on 31-7-2002 along with all document but the sanction has not been granted. It is also stated that the matter has been referred even to the Chairman of Steel Authority of India Ltd.

13. Learned Counsel for the applicant submits that Vithu Das Besekar and Madho Parsad Soni (employee of the Bhilai Steel Plant) themselves are complainant but have been implicated in the crime in question. He submits that in para-8 of the application of Vithu Das Besekar it has been mentioned that "in the present case the material which was brought to the applicant was sampling and was not of

standard quality and therefore the applicant gave a report saying that the material is not up to the standard. The two reports of the applicant were sent to the D.G.M. and they are the part of the record. In para-6 it is stated that he is working as Deputy Manager in the Research and Control Laboratory and he was never subjected to any departmental enquiry nor has ever been punished by the department in his 35 years of service. In para-7 it is stated that "as per the procedure which is prevailing in the Bhilai Steel Plant, any raw material which is being supplied comes to the gate of the Plant where it is being checked by two different security departments, thereafter the Raw Material Department receive it and in the said department the seal is being opened. This seal has to be opened in the presence of various officers of the department including the department of vigilance and a nominee of the Transporter. In para-9 it has been stated that "the applicant has been implicated just because the Higher Officers of the Plant want to shift their liability upon the Junior Officers and in fact the applicant has been made "scapegoat". In para-10 it is stated "an vigilance enquiry has also been made but the department has not even given the charge-sheet to the applicant till today." On the other hand learned State counsel submitted that the accused who are employees of the Bhilai Steel plant are under suspension.

14. Learned Counsel for the applicant contended that Santosh Agarwal and his brother Satya Narayan Agarwal are the person who have been roped into the crime in question because of political ill-will because Satya Narayan Agarwal is office bearer of Bhartiya Janta Party. It is also submitted that the brother of the applicant Satya Narayan Agarwal was taken into custody from the hospital at Bombay where he was getting treatment, he was not produced before the nearest Magistrate and even the transit remand was not taken, and (sic).

(sic)the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

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It was read. Shri rai was questioned whether Constitution of India is there in his office and in the police stations. He stated that Constitution of India is not there in his office or in the police stations.

17. In the instant case the prosecution could not get sanction from the Bhilai Steel Plant to prosecute its employees under the provisions of Prevention of

Corruption Act and could not file challan within the period of 90 days and that is why the Trial Court had to release them u/s 167 of the Code of Criminal Procedure; the prosecution is facing difficulties in investigating the matter as according to the prosecution the alleged mixing was being done in Chandrapur which falls in the State of Maharashtra, after mixing it was being supplied to Bhilai Steel Plant which falls in the State of Chhattisgarh and the raw material was being consumed/sold in the areas which fall in the State of Haryana; the applicant's defence is that he has been falsely implicated in the crime in question as his brother is an office bearer of a political party; and the stand of accused-employees of Bhilai Steel Plant is that higher officers of the Bhilai Steel Plant are involved in the crime in question but the prosecution has not interrogate them. Learned Counsel for the parties while referring to a decision Tehsildar Singh Vs. State of M.P., pointed out that in a situation like this wherein the interest of justice demands and through probe was required to avoid miscarriage of justice the matter was referred to the C.B.I. for investigation afresh. Relevant portion of the decision rendered in the case of Tehsildar Singh Vs. State of M.P., is quoted below :

Under the circumstances, counsel for the parties submitted and agree that the matter is such one which requires fresh investigation by the Central Bureau of Investigation. In the opinion of this Court, the facts which have emerged require due investigation by the C.B.I. It is not disputed that Subedar Singh had died. It is also not disputed that he died homicidal death. According to the prosecution, documents, i.e. F.I.R. dying declaration, which is recorded on 18-4-2000 so the innocence of the accused Tehsildar Singh, who on investigation made subsequently and on the statement of the doctor recorded on 18-6-2000 and the investigation, has been made an accused, as stated by the counsel representing him. In view of the above to avoid miscarriage of justice, the matter needs thorough probe. Accordingly it is directed that the matter shall be investigated by the C.B.I. afresh. All parties to render due cooperation to C.B.I.

18. During the course of agreement counsel for the parties, especially State counsel was heard at length regarding investigation. Learned Counsel appearing for the State as well as counsel for the applicant submitted that in view of the facts and circumstances which have emerged and noted by this Court the case is such which may be handed over to the C.B.I. In the facts and circumstances and the questions raised and as the investigation is required to be done in interstate level involving three states i.e. Chhattisgarh, Maharashtra and Haryana, and as alleged that not only two trucks but the investigation in being made about 68 trucks involving crores of rupees it would be just and proper that the matter is such which needs thorough probe and the C.B.I. being expertise will be in a better position to enquire the matter like present one.

19. In that view of the matter, having heard learned Counsel for the parties, considering the facts and circumstances and material on record in the opinion of this Court it would be just and proper that the matter be investigated by the

C.B.I. afresh.

20. The C.B.I. may investigate the matter without being influenced by any of the observations made by the trial Court or by this Court. The documents in original be entrusted to the C.B.I. for needful and expeditious investigation in accordance with law.

21. Learned Counsel for the applicant pointed out that Banshi Agarwal, and Satya Narayan Agarwal who are said to have the main accused in the crime in question have been allowed bail by the trial Court therefore some protective order be granted to the applicant. Learned State counsel submitted that the State has moved application for cancellation of bail of these two accused persons, but nothing has been placed on record by the State.

22. Learned Counsel for the applicant further submitted that in view of the report of the State the applicant-Santosh Agarwal is said to have not played any active role hence in that view of the matter and in view of the decision of Apex Court in the case of Salauddin Abdulsamad Shaikh Vs. State of Maharashtra, some protective order be allowed to the applicant. Vide order dt. 24-4-2002 the applicant was allowed 15 days interim bail from 25-4-2002 to 6-5-2002. It is submitted that during this period of interim bail the applicant had approached the Station House Officer and Superintendent of Police to take bail but the bail was not taken. It is also submitted that during that period he did not misuse the liberty granted to him.

23. Having thus considered the facts and circumstances of the case and in view of the decision in the case of Salauddin Abdulsamad Shaikh Vs. State of Maharashtra, it is directed that in the event of arrest the applicant- Santosh Agarwal shall be released on bail for a limited period of two month on his furnishing a personal bond in a sum of Rs. 1,00,000/- (One Lac) with one solvent surety in the like amount to the satisfaction of the Arresting Officer. He shall surrender his passport to the concerned Superintendent of Police/Arresting Officer and shall not leave India without permission of the Court; he shall co-operate in the investigation and shall periodically appear as directed by the S.P. Drug of C.B.I. The applicant shall apply for regular bail before the competent Court wherein the court concerned shall decided the same on merits in accordance with law after noticing and hearing the C.B.I. as well; and if any adverse order is passed the same shall not be given effect to for a further period of two weeks.

24. So far as case of the applicant - Milan Singh (M.Cr.C. No. 1161/ 2002) is concerned, his case is distinguishable with that of the case of Santosh Agarwal. Counsel for the applicant submits that it is only on 5-9-2002 during hearing in Court it was informed by the prosecution that offences under the provisions of Prevention of Corruption Act have also been added. It is stated that it was Milan Singh who filed application dt. 10-4-2002 (Annexure A/2) with the S.H.O. The said application has been filed here in High Court contended state counsel as the

order rejecting bail does not show that this was filed before the court below. It is submitted that the State be given opportunity to file reply about the same. The case of Milan Singh is distinguishable than that of Santosh Agarwal. Counsel for parties submit that applicant-Milan Singh be given liberty to apply for bail afresh before the special Court along with all documents which he wants to file. He is granted liberty to file afresh before the Court below, which will decide afresh on its own merits in accordance with law after noticing and hearing the prosecution and C.B.I. The application of Milan Singh is disposed of with liberty to file afresh as stated above.

25. So far as application of Sonsai (M.Cr.C. No. 1446/2002), Madho Parsed Soni (M.Cr.C. No. 1577/2002 and Vithu Das Besekar (M.Cr.C. No. 1614/2002) are concerned they remained in custody for 90 days and have been released by the court below u/s 167(2) of the Code of Criminal Procedure as the challan could not be filed. State counsel submitted that they are under suspension. Learned Counsel representing these applicants stated that they remained in jail and have been suspended on the ground that criminal case is pending, they may take such steps which are warranted. So far as bail Petitioners are concerned they are disposed of and the C.B.I. would examine each individual's case including applicants in accordance with law.

26. During the course of argument Shri Rai, Investigating Officer stated that copy of the Constitution is not there in the office of the S.D.O.P. and Police Stations. If that be so, the Govt. is expected to at least provide Constitution and such other law books which are required in the offices of the Superintendent of Police, City Superintendent of Police, Sub Divisional Officer (Police) and Police Stations. It is stated that the government publication contains Hindi as well as English. Constitution may be provided forthwith.

27. Before parting, it may be mentioned that on 11-9-2002 while concluding the arguments Miss Singhai, Deputy Govt. Advocate appearing for the State submitted that the newspaper at Durg may publish the news today itself. On this aspect Miss Singhai on the one hand and Shri Diwakar on the other hand continued addressing vehemently and forcefully till 5.15 p.m. Suffice to say that so far as matters regarding publications are concerned the law is well settled. This Court hopes that the concerned correspondents/ reporters would go through the orders carefully before publishing it, as great care and caution is required while publishing the orders or news thereof. This Court would not like to observe much more at this stage except mentioning that law is well settled on this aspect and due care and caution should be taken by all concerned.

28. Certified copy, as per Rules. Copy to the State counsel.