

(2011) 01 AP CK 0077

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 13302 of 2011

State

APPELLANT

Vs

Smt. Y. Srilakshmi

RESPONDENT

Date of Decision : 02-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2), 482
Penal Code, 1860 (IPC) — Section 409, 468

Citation : (2011) 01 AP CK 0077

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.R.L. Nageswara Rao

1. This is an application filed u/s 439(2) read with Section 482 of the Code of Criminal Procedure , 1973 to cancel the bail granted to the respondent herein who while working as a Secretary to the Industries and Commerce Department, Government of Andhra Pradesh, Hyderabad is said to have been involved in criminal conspiracy and the other offences in granting lease to Gali Janardhana Reddy and another and the case being popularly known as Obulapuram Mining Company Case(O.M.C). A crime in RC.No. 17(A)/2009 was registered on 07-12-2009 against which O.M.C has gone in Writ and obtained stay of the proceedings and ultimately the stay was vacated on 16-12-2010 and thereafter the investigation was taken up by the C.BI and in the course of investigation the accused Gali Janardhana Reddy and another were arrested on 05-11-2011 and additional offences under Sections 409 and 468 IPC were added. After interrogating the respondent herein, she was arrested on 28-11-2011 and remanded to the judicial custody and obtained police custody from 29-11-2011 to 01-12-2011 and subsequently the respondent herein filed CrI.M.P.No. 2322 of 2011 while in police custody on 30-11-2011 even before complete interrogation and counter was filed on 1-12-2011 and heard on the same day and by the order

dated 02-12-2011 the Special Judge for CBI Cases, Hyderabad has granted bail. Questioning the said order, the present Criminal Petition is filed to set aside the same.

2. The respondent herein claimed that she was a Postgraduate with brilliant academic and service career and her husband was also an I.P.S Officer and she comes from a respectable family and there was no blemish in her service and the allegations about favouring O.M.C is not correct and she has acted bona fide in disposing of the files put by the subordinate staff and according to her she did not sign the draft G.Os nor append her signature and therefore she being a woman and also having chronic ailment of "Prinzmetal Angina" she may be released on bail.

3. The C.B.I has filed a counter contending inter alia that she has acted with high speed and also with all endeavour to favour O.M.C in collusion with D.Rajagopal who was the Director of Mines and processed the applications to favour O.M.C and ignoring the genuine applications of others and also the procedure to be followed in dealing with such applications.

4. The offence in this case is said to be that O.M.C obtained two leases to an extent of 68.50 hct. and 39.50hct on the pretext of using it for "captive" consumption and not for any export or other thing and it is sought to be used for Steel Plant proposed to be set up by it. This information was furnished to the Government of India by the respondent herein and the permissions were obtained but subsequently when the G.O.Ms.Nos.151 and 152 were issued, the respondent in connivance and consciously omitted the purpose of the lease as "captive mining" and thereby facilitated illegal mining on the permits obtained on the lease by exporting the iron ore by O.M.C from the neighbouring mines and amassed huge wealth. It is said that the respondent, Director of Mines and others are active participants in the conspiracy to benefit the O.M.C.

5. In consideration of the bail application during the stage of investigation or some times even after the investigation and filing of the charge sheet, the broad principles are settled and in this connection it would be useful to refer to the judgment of the Supreme Court in State Vs. Amarmani Tripathi, wherein it was held in para.18 as under:-

It is well settled that the matters to be considered in an application for bail are (1) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati Vs. NCT, Delhi and Gurcharan Singh Vs. State (Delhi Admn.)). While a vague allegation that the accused may tamper with the evidence or witnesses

may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to following principles relating to grant of bail stated in *Kalyanchandra Sarkar v. Rajesh Rajan*

11. The law in regard to grant or refusal is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the Court in support of the charge. (See *Ram Govind Upadhyay Vs. Sudarshan Singh* and *Puran Vs. Rambilas.*).

6. The learned Public Prosecutor representing C.B.I contends that the order of bail granted by the learned Judge is not proper and relied on a decision reported in *Subodh Kumar Yadav Vs. State of Bihar and Another*, and if while granting the bail irrelevant material were taken into consideration and the judicial discretion was arbitrarily exercised, the bail cannot be granted. He has also relied upon another decision reported in *State of Maharashtra Etc. Vs. Dhanendra Shriram Bhurle Etc.*, where under it was held though detailed examination of evidence is not to be undertaken, reasons for prima facie conclusion should be given.

7. It is needless to say that the case has got its serious ramifications and the illegal activities of O.M.C and other Mining Companies is a matter of consideration before the Supreme Court and the Supreme Court appointed Empowerment Committee and it has found conclusive evidence of illegal mining. This particular crime is also a matter of consideration before the Supreme Court and the learned Judge is conscious about this fact.

8. The gravity of the offence cannot be disputed and the actions of the public servants if not in the interest of the State and violative of the duties and the responsibilities, it can be a serious offence. It is to be noted that in a criminal conspiracy or abetment, they can rarely be proved by direct evidence and even if documentary evidence is there, the oral evidence with regard to those documents and relevancy has to be collected during the investigation and

naturally by examining the witnesses.

9. Keeping in view the principles laid down by the Supreme Court, the case has to be considered and find out as to whether the reasons considered by the learned Judge is proper.

10. The respondent was said to be a Secretary to Industries and Mining since 17-05-2006. The several documents and the correspondence with regard to granting of lease which is in dispute is between the period 09-01-2007 to 18-06-2007. The respondent claims that she has nothing to do with granting of the lease since a provisional lease was already granted on 08-11-2005 and 10-11-2005 and in pursuance thereof only, the further action was taken.

11. At this point, it is to be noted that two provisional leases were granted, one relating to 68.5 Hectares on 10-11-2005 and another relating to 39.481 Hectares on 08-11-2005 to the O.M.C. The conditions in these leases are quite mandatory stating that the mining plan approved by the Indian Bureau of Mines for the subject area to be submitted within six(6) months for consideration of the mining lease application and if they fail to submit the same, it will be presumed that they have no interest. They have to also get clearance from the Forest Department. Evidently, the conditions applied in these G.Os were not fulfilled and within six months no mining plan or permission from the Forest Department were produced. It was on 03-01-2007 O.M.C has submitted the mining plan and the Director of Mines and Geology addressed a letter recommending for grant of mining lease. It is interesting to note that with regard to this 68.5 Hectares of lease with reference to Column No. 4 whether the application was submitted within the time or not, the Director of Mining noted that the application was submitted within the extended time. Therefore, after 10-11-2005 till 03-01-2007 when it was submitted, O.M.C was silent and even no extension was sought. As can be seen from the recommendation of the Director of Mines on 09.01.2007 in proceedings No. 35279, the first extension was given from 09-05-2006 to 08-11-2006 and under the same proceedings second extension was given from 09-11-2006 to 08-05-2007. Therefore, this clearly goes to show the extension was given with retrospective effect and the respondent herein cannot therefore say that what was done was only with reference to the G.O. dated 10-11-1985. It is further to be noted that it was only on 10-01-2007 after the recommendations from the Director of Mining, G.O.Ms.No. 7 dated 10-01-2007 was given diverting 68.50 Hectares of Forest land in reserved forest for the purpose of mining in favour of O.M.C. Therefore, even by the date of recommendation on 09-01-2007 by the Director of Mines the Forest clearance was not there. The proposed extended timing referred by the Director was not ratified and only in the final G.O it was mentioned so. But, even without ratification of extensions after receiving the proposals from the Director of Mines the respondent has addressed a letter dated 18-01-2007 to the Government of India informing about the pending applications which were received prior to the notification calling for the application and which were received subsequently. In

that recommendation the merits and de-merits of O.M.C and Vinayaka Mining Company were considered and it was stated that the Company is planning to establish an integrated Steel plant at Bellary and needs the mining lease. On this recommendation of the respondent, the Government of India by its letter dated 30-03-2007 directed the respondent to furnish comparative charts of merits of all the applicants including those who have been treated as pre-mature and pass and send copy of reasoned order for rejecting the applications of remaining applicants evaluating as per the criteria in Section 11(3) of M&M (D&R) Act,1957.

12. After this letter, the respondent herein addressed a letter on 21-04-2007 giving reasons but without complying with the directions of consideration of all the applications but informing that formal orders will be given on receipt of the approval from the Government of India. After this on 25-05-2007 the Government of India has granted approval for granting lease subject to the statutory Rules. It was thereafter on 31.05.2007, 27 show cause notices were submitted to the applicants to show cause as to why the applications shall not be rejected. In fact these letters were said to have been despatched latter and a simultaneous order was passed on 18-06-2007 rejecting the applications and also taking into consideration the approval of the Government of India, issued two G.O.Ms.Nos.151 and 152 granting lease. In fact, G.O.Ms.No. 151 is a subject matter of consideration in W.P.No. 9723 of 2007 and other cases. 13. Therefore, it is quite clear that a clearance was obtained from Government of India informing that O.M.C intends to set up an integrated Steel Plant and iron ore is needed for that purpose,(the reference can be made to letter dt. 21-04-2007 to G.O.I, order dt. 18-06-2007 rejecting the application of Sathavahana Ipsat Ltd vide memo No. 491/Miii(1)/2007-37 and order dated 5.06.2007 on application of M/S Gimpex Limited in memo No 15477M-iii(1)/2006-4 where it was stated that OMC badly needed the area of 39.481 hct. for exploitation of iron ore for captive consumption for M/s Brahmani Industries Ltd). Evidently, it was never intended to be for the purpose of "export". However, G.Os 151 and 152 dated 18-06-2007 does not prescribe this purpose thereby it is said to have facilitated the criminal illegalities.

14. At this stage it is suffice for me to say that High Court in W.P.No. 9723 of 2007 has considered all these factors and allowed the writ but, however, the Writ Appeal was allowed for giving an opportunity to O.M.C to file a counter and Writ Petition is pending. This reference is only made for the simple fact to show that the respondent herein who was the party to the writ proceedings is aware of the G.O and she cannot say that she has no knowledge or concern about the contents of G.O. The narration of the above facts clearly goes to show as to how within a short period between 18-01-2007 to 31-05-2007 decisions were taken even though for a period of more than one year after the provisional lease, O.M.C was silent. The respondent herein cannot say that she was not associated with the process and sanctioning of the lease. It was only during her time all the decisions have been taken culminating the beneficial G.Os to the O.M.C. and she is competent authority.

15. The above reference of the facts has been necessary for me to be mentioned in order to consider the legality of the order passed by the learned Judge in granting bail. The above narration clearly goes to show as to how strong prima facie material is available about the involvement of the respondent. Further the respondent cannot claim that the recommendations of the Director of Mines and Geology who is Accused No. 3 (D.Rajagopal) were only considered and acted, since all the correspondence with Government of India has emanated in her name and her department is alone competent to grant or refuse lease. All other orders were passed on 18-06-2007 by respondent when Gos 151&152 were issued.

16. As can be seen from the order of the learned Judge in Para.13, which is as follows:-

Here if we go through the contents of the counter in opposing the bail application, it is said that the petitioner after receiving letter from Government of India on 30-05-2007, immediately issued show cause notices to various applicants wherein she showed favour to M/s.Oblulapuram Mining Company Pvt., Ltd and discarded the claim of other applicants on flimsy grounds and even before the replies received. she (petitioner) granted lease to M/s.Obulapuram Mining Company Pvt. Ltd.. on 18-06-2007 is a very good material fact for the investigating agency and to get it substantiated by adducing legal evidence during the course of trial but as on today since every thing is in the shape of documents which are already in possession of CBI, I feel that the same would not come in our way of considering the request of the petitioner for grant of bail.

17. Therefore, if the learned Judge feels that it is a material fact for investigation but discarded the claim of the investigating agency saying that there is documentary evidence already on record and that can be considered, this reasoning is not right application of law. Mere documents will not be sufficient unless the relevancy and the oral evidence of the aggrieved applicants is recorded during investigation. Therefore, the above ground for grant of bail fails.

18. So far as the second ground in rejecting the claim of the C.B.I that several people are coming forward to reveal the things before the C.B.I about the involvement of the respondent in the alleged conspiracy, the learned Judge did not answer this point straightly and skipped off by reasoning that the respondent may not be in a position to meddle as all the documents are in possession of C.B.I. This is again a fallacious reason. To prove a conspiracy it is very difficult from the documents alone to prove charge and even if that can be inferred, when oral evidence is coming forward to prove the charge, the investigating agency cannot be deprived of it. Therefore, this ground is also not proper.

19. Thirdly, another ground is that 90 days period from the date of arrest of Accused Nos.1 and 2 is nearing completion and in all probability the C.B.I appears to be making its effort to come up with a charge sheet as submitted by it before the Apex Court and came to a conclusion that the investigation is

almost nearing its completion and that her further detention may not be necessary. If the learned Judge is to look into the submission before the Apex Court or the order made by the Court, then he would have been clear in his mind. The C.B.I never informed to the Court that the investigation against this respondent is completed. In fact it is the plea that further investigation as to several aspects has to be taken up. If the learned Judge is conscious of the fact that the matter is pending before the Supreme Court he should have thought of seeing the order of Supreme Court in S.L.P.Nos.7366 and 7367 of 2010 where under it was held as follows:-

1/7 the Status report filed in C.B.I case No. R.C.17(A)/2009, Hyderabad (Obulapuram Mining Case) it has been stated that C.B.I will complete the investigation and file the charge sheet on or before 04-12-2011, after taking into account the stipulated period of 90 days. The investigation is being carried out on day-to-day basis under the supervision of Joint Director, C.B.I, Hyderabad. Place the matter on 20-01-2012, on which date this Court would like to see the charge sheet which the C.B.I proposes to file.

20. Therefore, even if part of investigation is completed and charge sheet is filed, still the Supreme Court intended to see the charge sheet. In fact this was considered by me in Criminal Petition No. 13303 of 2011 in considering the cancellation of bail of Accused No. 3-D.Rajgopal. Prudence should have dictated the learned Judge that in view of the order of the Supreme Court it is not proper to have ordered for release of the respondent even before the charge sheet against the Accused Nos.1 and 2 is filed and even before the investigation against respondent is completed. It is difficult to visualize that the C.B.I is not going to charge the respondent in that charge-sheet. In fact, there are several material allegations of criminal offences against the respondent. It is not a case where the C.B.I has reported that even if the charge-sheet is not filed against the respondent, her detention is not necessary. On the other hand, the C.B.I informed the Court that the investigation is at crucial stage.

21. In fact, there are several allegations about the culpability of the respondent in the charge sheet and apart from examining the witnesses about the illegalities and favours indulged by the respondent, oral evidence is sought to be collected.

22. The further reason which the learned Judge has taken into consideration is that the petitioner is a woman and she is not keeping the good health. The learned Judge did not say what is the seriousness of the health problem. In fact, the respondent was attending to her duties normally at all times prior to her arrest. General check-ups and minor problems of health are all common and the learned Judge without applying and without giving any reasons has definitely erred in granting bail stating that her health is not proper. The privilege being a woman is also misconceived taking into consideration the gravity of the offence.

23. Therefore, none of the grounds considered by the learned Judge are proper and tenable and the order of bail cannot but said to be arbitrary.

24. I am conscious of the fact that in considering the application for cancellation of the bail, challenging the very validity of it, this Court also should be very cautious.

25. The conspiracy as already stated cannot be proved by documentary evidence alone and unless oral evidence is entirely collected by the investigating agency, mere documentary evidence is not sufficient and such right of investigating agency cannot be deprived.

26. There is more than sufficient material available on record as to how the respondent was associated with grant of lease and issuing of G.Os which ultimately favoured the O.M.C ignoring the vital condition of the purpose of lease being for "captive mining" for the proposed Steel plant to be set up by O.M.C in the G.O. If this condition is there, the possibility of giving several permits for export could not have been facilitated.

27. In the decision in Amarmani Tripathi (first cited), the Supreme Court laid down that in considering the bail, the status, conduct of the accused person is to be taken into consideration apart from the nature and gravity of the charge. The Criminal jurisprudence has developed where- under if a person accused of an offence denies the material evidence available against the person and takes a false plea, in cases of circumstantial evidence that can be used against the accused.

28. In this case so far as the status and position of the respondent is concerned, there cannot be any two opinions since she is an I.A.S Officer and her husband is an I.P.S Officer. She claims to be a brilliant and intellectual person and has got higher level of understanding. Having said so it is really sad and unbecoming responsibility of the Secretary to a Government to contend and plead that the orders of the Government were issued without her knowledge in her name. Evidently, the orders were issued in her name and she cannot disown the authenticity or the legality of it. Her claim that she did not initial the G.O or see the G.O is reflecting her higher degree of intelligence and being conscious of the effective omission evidently intended to benefit O.M.C, she might not have put her initials. This is real culpable criminal conspiracy. But the statement of her subordinates clearly goes to show that she has got every knowledge and G.Os were issued with her concurrence. If the Secretary of the Government is to disown the contents of order of the Government issued in her name, it is only betrayal of the duties.

29. The respondent cleverly wants to shift the blame on the subordinate staff. All this has to be mentioned by me for the reason that consideration of the bail shall be based on character of the person involved in the crime as referred in the judgment first cited.

30. It is to be further noted that there is a conspiracy between the respondent and other accused and other accused were already in judicial custody and as against this respondent the investigation is not completed and if she is at large

until the investigation is completed she will take all the advantages to destroy the evidence against her and others when particularly some evidence is forthcoming against the respondent. Therefore, the grant of bail will thwart the interest of justice, one of the conditions which is to be kept in mind as per the decision first cited.

31. In cases of this nature and when there is influence and power for the respondent and her husband, it will not be desirable or proper to expect the investigating agency to disclose as to what is the nature of evidence they intend to collect and further investigation to be taken up by them, when particularly the cooperation of the respondent during the course of police custody is said to be minimal.

32. Therefore, in view of the above circumstances, I have no hesitation in holding that the order passed by the learned Judge is not legal and is liable to be set aside and since investigation against the respondent is not yet completed, it will be hazardous for the investigating agency to gather the entire evidence if the respondent is to be on bail.

Accordingly, the Criminal Petition is allowed and the order dated 02-12-2011 of the learned Judge in Cr.M.P.2322 of 2011 is set aside and the bail application is dismissed. The respondent is directed to surrender before the concerned Court on or before 06-01-2012 failing which C.B.I is at liberty to arrest and produce her before the Court.