(1995) 06 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 1429/95

Vasudeo Kukreja APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-06-1995

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 439
Foreign Exchange Regulation Act, 1973 — Section 13, 19, 44, 56, 8
Penal Code, 1860 (IPC) — Section 302

Citation : (1995) 51 ECC 80 : (1995) ECR 26 : (1995) 80 ELT 274

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : H.S. Oberoi, for the Appellant; A.H. Khan, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Shri Oberoi, counsel for the applicant argued that in view of provisions of Sections 8, 9, 13, 19, 44 and 56 of Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA for short), the act which is alleged to have been done by the applicant, would be at the most punishable for a sentence of RI for seven years. He further submitted that the applicant is a person serving in bank having no criminal history and therefore, he would not abscond. Shri Oberoi further pointed that the prosecution allegations show that he attempted or made preparation to commit the offence which has been made punishable u/s 56 of FERA. He prayed that applicant be enlarged on bail in view of judgment of Supreme Court in the matters of Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, and Bhagirathsinh Judeja Vs. State of Gujarat, .

2. Shri Khan, counsel appearing for non-applicant submitted that applicant has been charged for committing an offence which is punishable under provisions of FERA and the prosecution is in possession of some material to show that prima

facie he has committed the offence which is punishable under the relevant provisions of FERA. He further submitted that if the court comes to the conclusion that applicant deserves to be bailed out, some conditions to be imposed on him, directing him to attend the office of Central Excise & Customs, Indore on particular days so as to make him available for the purpose of interrogation whenever required in the course of investigation. He further submitted that sufficient security needs to be taken for ensuring his presence for the trial.

3. I perused the case diary for the purpose of ascertaining the seriousness of the part which has been alleged to have been played by the applicant so far as alleged offence or offences are concerned.

4. It is pertinent to note that the prosecution allegation in respect of the accused are to be considered for the purpose of ascertaining the seriousness of the act alleged to have been committed by the accused at the time of consideration whether the applicant should be released on bail or not.

5. In the matter of Gudikanti Narasimhulu''s case (supra), the Supreme Court has observed that :-

"The significance and sweep of Article 21 of the Constitution make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good, and State necessity spelt out in Article 19. The considerations set out as criteria are germane to the above constitutional proposition. Reasonableness postulates intelligent care and prejudicate that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected."

6. In view of this observation the case diary has been neatly perused.

7. In the matter of Bhagirathsingh Judeja v. State of Gujarat (supra) the Supreme Court has observed that :-

"It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether the accused is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

8. Provisions of Section 439 of Code of Criminal Procedure (hereinafter referred to as Code for short) are applicable to FERA cases and in view of provisions of

Section 439 of the Code wider discretion is given to the court while dealing with bail applications made by the accused. The court can release the accused on bail though he has been charged for committing an offence which is punishable u/s 302 IPC.

9. The trial is yet to start. The investigation is in progress. Therefore, it would not be proper to mention anything more in detail so far the part which has been alleged to have been played by the accused and its impact on the investigation or trial. Suffice it to say that keeping in view the material which has been collected by the investigating agency against this applicant and the impact created by it in context with trial which is yet to go to the court, I come to the conclusion that the applicant deserves to be bailed out. It is pertinent to note here that he is a bank employee and nothing has been brought to the notice of this court by the prosecution that he has a criminal history.

10. While granting bail to this applicant necessary care should be taken that he does not tamper with the prosecution evidence or create obstacles in the course of investigation. It is also necessary to ensure that he is available for the purpose of interrogation and trial. Therefore, some conditions need to be imposed on him and bail should be adequately sufficient to ensure his presence in the trial.

11. The bail application is allowed. The applicant is hereby released on bail on furnishing security to the extent of Rs. 25,000/- (twenty five thousand) with one surety and PR bond with one or two sureties before the Additional Chief Judicial Magistrate (Economic Offence), Indore in respect of Crime No. 1/95. He shall not threaten, contact or induce any of the prosecution witnesses and shall not create any obstacles in the course of investigation. He shall attend office of Central Excise & Customs, Indore whenever he is called. He shall not leave India without prior written permission of A.C.J.M. (E.O.), Indore. C.C. to both to applicant and to Shri A.H. Khan, counsel for non-applicant.

