
(1997) 09 MAD CK 0040

In the Madras High Court

Case No : Criminal O.P. No. 12354 of 1997

Veeraraghavan I.P.S

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Citation : (1997) 3 CTC 188

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The petitioner who is the accused No. 2 has filed the above Crl.O.P. praying to enlarge him on bail, pending

investigation in Crl .No. 34 of 1996, on the file of the Additional Superintendent of Police, C.B., C.I.D., head quarters, Chennai.

2. A case was registered against him on the complaint given by the Home Secretary, Government of Tamil Nadu, to the Director General of

Police, which was registered on 16.9.1996 for the alleged offences under Sections 120-B, 109 read with Section 409 of the Indian Penal Code

and Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

3. The petitioner took charge as Director of Fire Service on 21.7.1990 from one E. Hariharane and he has been shown as A - 1 in this case.

According to the prosecution, the petitioner in pursuance of criminal conspiracy has selected A-3 company to purchase on emergency rescue

tender and thus abused his office and obtained pecuniary advantage to A-3 to the tune of Rs. 14,56,100. It is the further case of the prosecution

that in purchasing 60 numbers of high capacity portable fire pumps the petitioner, in pursuance of the criminal conspiracy to aid A-3 accepted his

tender, though he quoted the specification against IS 12717 of 1989 and thus abused his office and obtained business deal to the tune of Rs.

1,77,22,320 to A-3 which involved a huge pecuniary benefit to him resulting in loss to the Tamil Nadu Fire Service Department.

4. The specific allegations against the petitioner, made by the prosecution, in placing orders for purchase of one emergency rescue tender and high

capacity portable fire pumps, are as follows:-

A Tr. G. Veeraraghavan, IPS., in pursuance of the criminal conspiracy, intentionally aided A3's company M/s. Nizarzs & Co., by exempting

them from the payment of Security Deposit on the basis of irrelevant NSIC Certificate of M/s. Nizarzs & Co., the tendered and that of M/s.

Wadia Body Builders, Ahmedabad who are not a tender of this transaction.

A2 Tr. G. Veeraraghavan, IPS., in pursuance of the criminal conspiracy, to favour A3 Tr. Md. Ziauddin, ordered for the payment of 50% advance

to A3 Tr. Md. Ziauddin, on 14.12.90 and paid Rs. 15,78,000 being the 50% advance on 27.12.90 which is against G.O. Ms. No.1124

Transport Department dated 15.10.85.

A2 Tr. G. Veeraraghavan, IPS., in pursuance of the criminal conspiracy, illegally omitted to reject the tender submitted by A3 Tr. Md. Ziauddin,

when he quoted for both petrol driven portable Fire Pumps and diesel driven portable Fire Pumps against IS: 12717/89 which stipulates petrol

driven portable fire pumps only.

A2 Tr.G.Veeraraghavan, IPS, in pursuant of the criminal conspiracy, to aid A3 Md. Ziauddin, illegally omitted to reject the tender documents of

A3 Tr. Md. Ziauddin, that was sent without any illustrated pamphlets of portable fire pumps.

A2 Tr.G.Veeraraghavan, IPS, in pursuance of the criminal conspiracy, gave direction to the Technical Committee consisting of A4 Tr. V.

Jayaperumal, A5 Tr. V. Ananthasekar and A6 Tr. N. Namasivam, all Deputy Directors of Fire Service, to submit a joint inspection report after

fruitful discussion and thereby indicating that there should not be any dissenting note.

A2 Tr. G. Verraraghavan, IPS., in pursuant of the criminal conspiracy, pretending

to go by the unanimous opinion of the Technical Committee and

quoting inapplicable rules of Tamil Nadu Financial Code, Vol-II, selected 60 No. of Wadia pumps with Diesel Engines offered by A3 Tr. Md.

Ziauddin, representing M/s. Nizarzs & Co., against IS specification No. 12717/89 thus abusing his official position obtained a business deal to

the tune of Rs. 1,77,22,320 to Tr. Md. Ziauddin, which involved a huge pecuniary benefit to A3 Tr. Md. Ziauddin resulting also in a loss to Tamil

Nadu Fire Service Department, in view of the fact that the tender should have been totally rejected.

5. After registering the First Information Report on 16.9.1996, the petitioner was arrested on 27.8.1997. The petitioner filed an application before

the Special Court in Crl. M.P. No.118 of 1997. The learned Sessions Judge has dismissed the petition on 9.9.1997 on the ground that ""the matter

is under investigation and so I am not inclined to express any opinion or go deep into the matter, suffice to say that investigation has to go a long

way and hence sufficient time is required for investigating agency to complete the investigation. The release of the petitioner on bail at this crucial

stage may frustrate the efforts of the investigating agency in collecting the evidence. Hence I find this point against the petitioner."" After disposal of

the said application, the petitioner has filed the above Crl.O.P. with a request to enlarge him on bail.

6. According to the learned counsel appearing for the petitioner, the petitioner while discharging the ministerial duty approved the tender after

following all the procedures contemplated for the same and after getting opinion from the technical team. A - 1 was arrested in January, 1997 and

A-3 was arrested in March, 1997. Both of them were enlarged on bail. The petitioner is alleged to have continued in service till 27.8.1997 on

which date he was arrested. According to the learned counsel the petitioner was interrogated by the officials of the Vigilance and Anti-corruption.

Though the respondent arrested the accused A - 1 and A - 3, the respondent felt that the arrest of the petitioner was not necessary till 27.8.1997.

Admittedly, the other accused have not been arrested, and they are attending the office. On that basis the learned Senior Counsel has submitted

that the arrest of the petitioner is not a bona fide one, that too after a long time. According to him, the petitioner was interrogated fully by the

officials of the Vigilance and Anti-corruption and they can proceed with the investigation even without the arrest of the petitioner, as the petitioner has been co-operating with the prosecution. The fact that immediately on arrest, the respondent has not asked for any custody for interrogation itself, will show that the petitioner is not arrested for custodial interrogation. Only after taking such objection, the respondent filed a petition before the lower court in CrI.M.P. No.118 of 1997 to permit the respondent to question and interrogate the petitioner herein on 8th and 9th September, 1997. That was ordered on 8.9.1997. The learned Senior Counsel has also explained in detail as to how the petitioner is justified in accepting the tender of A-3.

7. On the other hand, the learned Public Prosecutor while opposing the bail application has submitted that the investigation conducted would reveal that the third accused was selected by the petitioner contrary to all norms, procedures and specifications and there is a pecuniary loss in purchasing one Emergency Rescue Tender. According to the learned Public Prosecutor, the third accused is only a supplier of uniform and without following any procedure he was paid 50% advance and was exempted from paying Earnest Money Deposit, etc., for which he is not entitled. On the interrogation of the other accused and on further investigation, the prosecution was able to get more materials, involving the petitioner in the said offence, and, at this stage, if the petitioner is released on bail, according to the learned Public Prosecutor, he will tamper with the witnesses, utilising his official position. On the basis of the above submissions, the learned Public Prosecutor has submitted that this CrI.O.P. has to be dismissed.

8. I have perused the case diary. At this stage it is not proper on my part to express any opinion on the merits of the case. The Apex Court in the decision reported in Kashi Nath Roy Vs. State of Bihar, has held as follows:-
The courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized; and the structural principle of "not guilty till proved guilty" gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter.

The materials available in the case diary disclose that in view of the acceptance of the tender of the third accused there is a financial loss to the State and the said tender had been accepted contrary to the procedures and specifications. Further, the payment of 50% of advance amount cannot be said to be in accordance with the Government Orders. The acceptance of the tender to purchase portable fire pumps also cannot be said to be in accordance with the specifications. The statement given by the supplier of the said Emergency Rescue Tender and as also the other materials, would establish a prima facie case against the petitioner. The respondent, after the arrest of the petitioner, had interrogated the other officers also. The statements given by those officers also prima facie establish the offence against the petitioner. On the basis of those statements, the respondent has to proceed with the investigation further to find out the aspect of conveyance and conspiracy, the participation of the petitioner in the said conveyance and conspiracy, and it has to be probed by the respondent as to who are all the persons benefited by such issue of contract. The learned Special Judge has dismissed the petition on 9.9.1997 for the reasons set out earlier. I do not find any change of circumstances. Further, in view of the position that the petitioner is occupying, there is every likelihood of the petitioner putting obstacles to the investigation.

9. While dealing with similar matter C. Shivappa, J., in CrI. O.P. Nos. 6608 and 6818 of 1996 by an order dated 24.9.1996 has held that ""in a case of alleged corruption by persons in high office, grant of anticipatory bail is likely to cover the tracks and make it impossible for police to unearth the entire gamut of shady transaction. In that way, there may be likelihood of tampering with the witnesses and also putting obstacles and consequently there may be delay in investigation."" The said observation of the learned Judge will squarely apply to the facts of the present case.

10. The learned counsel appearing for the petitioner has submitted that though the First Information Report was filed as early as on 16.9.1996, he was arrested only on 27.8.1997, and it is not the case of the prosecution that the petitioner had tried to tamper with the witnesses and hamper the evidence when he was in the office. According to the prosecution, the investigation and interrogation about the involvement of the petitioner have

been proceeded further effectively only after the arrest of the petitioner. So, the abovesaid submission of the learned Senior Counsel cannot be

accepted, especially when the actual interrogation of the other accused is going on. As a matter of fact, the case diary goes to show that after the

arrest of the petitioner, the prosecution was able to get statements from the other officials, and on the basis of those statements, the prosecution has

to proceed further. So, at this stage the petitioner cannot be enlarged on bail.

11. The learned Senior Counsel appearing for the petitioner has also relied on the decision reported in Joginder Kumar v. State of U.P. 1994

SCC(Crl.) 1172 wherein it has been held as follows:-

No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a

police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made

without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both

as to the person's complicity and even so as to the need to the effect arrest. Denying a person of his liberty is a serious matter. The

recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom.

A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the

officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues

notice to person to attend the Station House and not to leave the Station without permission would do.

On the basis of the abovesaid decision, the learned Senior counsel has represented that the arrest of the petitioner is unwarranted. Even according

to the abovesaid decision, if the officials had come to the conclusion on the basis of some materials that persons have to be arrested for

interrogation, it can be done. The Apex Court has only stated to effect that no arrest can be made in a routine manner. The fact that the

prosecution had waited till 27.8.1997, though the First Information Report was filed as early as on 16.9.1997, will show that they thought over

about the arrest of the petitioner during that time and the petitioner was

arrested by the prosecution on 27.8.1997, So, the abovesaid decision will not render any help to the petitioner.

12. The Apex Court in the decision reported in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, has stated thus:-

A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of

judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercise, has to be used with due care and

caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of

its use. In the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear if the power to grant anticipatory bail.

13. So, in view of the abovesaid discussion, it cannot be said that the detention of the petitioner in jail is not warranted, at this stage. Moreover, I

decline to exercise my discretion in favour of the petitioner. Accordingly, this petition is dismissed.