

(2010) 09 GUJ CK 0154
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 10365 of 2010

Yashpal Jitubha Chudasama

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 436, 438, 439

Penal Code, 1860 (IPC) — Section 120B, 201, 302, 341, 342

Citation : (2010) 09 GUJ CK 0154

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Uday Lalit, J.M. Panchal and K.J. Panchal, for the Appellant; Y.N. Ravani, for Respondent 1 and P.K. Jani, Public Prosecutor for Respondent 2, for the Respondent

Judgement

Rajesh H. Shukla, J.—The present application has been filed by the applicant-original accused No. 18 for grant of anticipatory bail u/s 438 of Criminal Procedure Code in connection with CBI Case No. RCBS1/2010/S/0004-MUM registered with C.B.I., Mumbai for the alleged offences under Sections 120(B), 364, 365, 368, 341, 342, 302, 384 and 201 of IPC.

2. Sr. Counsel Mr. Uday Lalit appearing with learned Counsel Mr. J.M. Panchal for the applicant submitted that the charge sheet has been filed by the respondent No. 1-CBI, which is at page 50, and the applicant has been shown as "not arrested". Learned Sr. Counsel Mr. Lalit submitted that the applicant is the Director of the Co-operative Bank and the gravamen of the charges levelled against the present applicant-accused may be considered, which have not been appreciated by the trial court.

3. Learned Sr. Counsel Mr. Lalit referred to the charge sheet and pointedly referred to Para 37, 38, 42, 46 and 48 and submitted that, as stated in Para 46 referring to the present applicant, the offence alleged is u/s 201 of IPC. However,

Learned Sr. Counsel Mr. Lalit submitted that even in Para 37 and 38, what has been attributed is influencing the witnesses to conceal from CBI, though Para 38 refers to his involvement in the conspiracy.

4. Learned Sr. Counsel Mr. Lalit submitted that the incident of fake encounter has taken place in the year 2005 and the case has been investigated by CBI, as per the direction of the Hon'ble Apex Court, in 2010, after the Hon'ble Apex Court passed the order dated 10.1.2010. Learned Sr. Counsel Mr. Lalit, therefore, submitted that the person could not be a part of the conspiracy after years of the incident having taken place.

5. He emphasised and submitted that the conspiracy could be attributed before or during the pendency or immediately thereafter regarding the involvement or the role played by the accused. Learned Sr. Counsel Mr. Lalit submitted that there is no role attributed to the present applicant-accused except what is referred to hereinabove. However, he emphasised that in Para 38 of the charge sheet only one line, which he pointedly referred and emphasised, has been added, viz. "The audio-visual records also indicate that these two accused viz. Ajay Patel (A-17) and Shri Yashpal Chudasama (A-18) had actively participated in the main conspiracy and the crime committed in furtherance to the conspiracy."

6. Learned Sr. Counsel Mr. Lalit, therefore, submitted that from the material and evidence, which has been submitted with the charge sheet, by no stretch of imagination it could be said that there is any kind of participation or involvement of the present applicant in the main conspiracy with regard to the fake encounter, much less any active participation. Therefore, Learned Sr. Counsel Mr. Lalit submitted that, on the one hand, the respondent CBI has filed a charge sheet accusing the present applicant of conspiracy and active participation in the main conspiracy and, on the other, except the statement of two brothers and the transcript, there is nothing to substantiate the allegation except bare words. He emphasised and submitted that on the one hand it is claimed that the applicant has actively participated in the main conspiracy for which the aforesaid offences are registered, whereas the material do not indicate any role, except, at the most, for offence u/s 201 of IPC. He, therefore, strenuously submitted that on the one hand the accusations are made for involvement in the conspiracy without any material to substantiate it and on the other hand it is submitted that the investigation is going on and which is not over and therefore this application may not be entertained.

7. Learned Sr. Counsel Mr. Lalit, therefore, submitted that taking the case of CBI regarding the accusations or charges levelled against the present accused on demurrer - at the face value - at the highest the accused could be attributed with the role for offence u/s 201 of IPC and by no stretch of imagination he could be said to have been involved or participated in the incident of 2005 for which there is no material at all. Learned Sr. Counsel Mr. Lalit submitted that even for this accusation of involvement, there are only statements of two witnesses which are recorded u/s 161 as well as u/s 164 of CrPC which may be accepted at the face

value, and still, the case of the prosecution cannot go beyond the charges for offence u/s 201 of IPC.

8. Learned Sr. Counsel Mr. Lalit emphasised and submitted that the offence u/s 201 of IPC is a bailable offence and, therefore, the accused has a right to protect his liberty and in order to get out of this, the present applicant accused is sought to be roped in for the alleged offence of conspiracy, which relates back to 2005 when the fake encounter took place. Learned Sr. Counsel Mr. Lalit emphasised and submitted that there is not an iota of evidence with regard to any kind of involvement suggesting any role or involvement of the applicant in the entire charge sheet and the applicant accused has come in the picture in 2010 with regard to persuading the witnesses.

9. Learned Sr. Counsel Mr. Lalit has, therefore, referred to the statement of both the witnesses, Ramanbhai Patel and Dashratbai Patel, and also the statement of one Gurudayal Singh and Sharad Apte.

10. Learned Sr. Counsel Mr. Lalit, submitted that there is nothing with regard to attributing any role in the main conspiracy and yet as per the charge sheet, para 38, one line is added to implicate the applicant-accused without any supporting material or evidence by which it could be said to have been substantiated.

11. Learned Sr. Counsel Mr. Lalit also referred to the affidavit-in-reply filed on behalf of the CBI and submitted that there is a reference to the statement of one Murtuza Khan Pathan, which has also not supported the prosecution case.

12. Learned Sr. Counsel Mr. Lalit submitted that the unfairness of the investigating agency is also required to be appreciated and considered that the applicant was interrogated in June 2010 at Mumbai and thereafter the charge sheet is filed on 23.7.2010 and without any service of the summons or intimation, non-bailable warrant u/s 70 was applied for which has been granted by the court below. Learned Sr. Counsel Mr. Lalit submitted that the applicant has been pursuing his remedy and therefore such a non-bailable warrant could not have been issued, particularly when no summons or intimation has been served or any endorsement of the family members is there to suggest about an attempt to serve any such summons or intimation. Learned Sr. Counsel Mr. Lalit, therefore, submitted that the prosecution-CBI has, by one line added in para 38, sought to implicate the present applicant-accused for the conspiracy or the alleged main conspiracy for which the incident has occurred in 2005, but has not referred to any kind of material or has not shown as to the kind of involvement or any role and therefore the present application may be entertained.

13. Learned Sr. Counsel Mr. Lalit has submitted that the liberty of the person is required to be protected and has submitted that the manner of investigation is also not fair, and on top of that, when the offence alleged is bailable, he is sought to be implicated by adding one line in the charge sheet without any material even when the charge sheet is filed. He, therefore submitted that the present application may be allowed.

14. Mr. Y.N. Ravani, learned Counsel appearing for the CBI-the investigating agency, submitted that the Hon''ble Apex Court has handed over the investigation to the CBI vide order dated 10.1.2010 and he referred to the directions, which have been referred to in the order passed by the learned Special Judge, CBI, that a larger conspiracy is required to be investigated and extension has also been granted. Learned Counsel Mr. Ravani submitted that, therefore, considering the limited scope of exercise of discretion u/s 438 of CrPC, the court may not entertain this application when the investigation is in progress.

15. Learned Counsel Mr. Ravani for the CBI emphasized, referring to the provisions of Section 438, that the word "accusation" is required to be considered and it is different from Section 439 and submitted that the court has to consider only the accusation at this stage and prima face case is not to be examined. He has, referring to the statements of other witnesses including of one Noor Mohamed Goghari and Mahendrasinh Zala. emphasized that there is involvement of the applicant accused and therefore the present application may not be entertained.

16. Learned Counsel Mr. Ravani referred to the charge sheet and submitted that the two witnesses, Ramanbhai Patel and Dashratbhai Patel, had a meeting with another accused Mr. Ajay Patel, which is recorded. He referred to the three meetings dated 29.3.2010, 10.4.2010 and 3.3.2010. Learned Counsel Mr. Ravani also submitted that the extortion racket in connivance with the police and politicians is a matter of investigation and this extortion was from the marble traders which is required to be investigated. He also stated that the investigation is going on. Learned Counsel Mr. Ravani submitted that though the incident of fake encounter and the extortion may relate back to 2005, the charges are also for offence u/s 120B (conspiracy) and therefore the court may not entertain the present application for anticipatory bail.

17. Learned Counsel Mr. Ravani also referred to the provisions of Section 438 and strenuously submitted that the word used is "accusation" and submitted that the court has to only consider the "accusation" levelled against the applicant-accused and no further material is required to be considered. He also submitted that the statement of both the witnesses, Ramanbhai Patel and Dashratbhai Patel, have been recorded and there is a transcript as to what transpired in the meeting, which would suggest the involvement of the applicant prima facie and therefore the application may not be entertained.

18. Learned Counsel Mr. Ravani also referred to the judgments of the Hon''ble Apex Court to emphasise about the exercise of discretion with care and circumspection. He has referred to and relied upon the judgment reported in State Rep. by the C.B.I. Vs. Anil Sharma, in the case of State (represented by the CBI) v. Anil Sharma and referred to the observations made in Para 4 and 6. He submitted that it has also been observed that "effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information"s and also materials which would have been concealed. Success in

such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated."

19. Learned Counsel Mr. Ravani also referred to and relied upon the judgment reported in 2001(4) SC 224 in the case of State of Maharashtra v. Ritesh S/o Vasudeo Wanjari.

20. Similarly, he has also referred to and relied upon the judgment reported in Adri Dharan Das Vs. State of West Bengal, in the case of Adri Dharan Das v. State of W.B. and submitted that the power is extra-ordinary and has to be exercised only in limited cases.

21. Learned Counsel Mr. Ravani also referred to and relied upon the judgment in the case of State of Gujarat v. Narendra K. Amin, reported in (2008) 13 SCC 594, and submitted that it is a matter of one officer involved in fake encounter where the observations have been made for exercise of discretion u/s 438 and he emphasized that there also it was considered with regard to the aspect of custodial interrogation which is required to be considered.

22. Learned Counsel Mr. Ravani submitted that an attempt is made to bifurcate the role on the ground that the applicant could not be part of the main conspiracy in the incident of fake encounter committed in 2005 which may not be considered at this stage. Learned Counsel Mr. Ravani therefore submitted that at this stage only the nature of accusation may be considered and the discretion u/s 438 may not be exercised in favour of the applicant. He also submitted that when the allegations are for conspiracy u/s 120B, the individual role may not be considered and he has also referred to the orders refusing bail by the court earlier for the other accused. He, therefore, submitted that the present application may be rejected.

23. In rejoinder, learned Sr. Counsel Mr. Lalit submitted that there is no allegation with regard to any meeting in 2006. He submitted that some of the arguments are made for the first time before this Court which have not been even made when this very application for anticipatory bail has been considered by the learned Special Judge, CBI. He referred to the affidavit-in-reply filed by the respondent-CBI and submitted that the judgments referred to by the learned Counsel for CBI are given in the facts of the case, where there was actual involvement or participation in the fake encounter or conspiracy which has taken place in 2005, which is not the case here even after accepting the charge sheet and the statements and the material referred to by the prosecuting agency, CBI, at the face value.

24. Learned Sr. Counsel Mr. Lalit again referred to the charge sheet and particularly Para 38 and submitted that on the one hand it refers to the applicant as an accused with active involvement in the so-called larger conspiracy without any material, and on the other, even after the charge sheet is filed, when there is no material to point out before this Court, it is stated that the investigation is in

progress, meaning thereby there is no material to support and substantiate the charges for the involvement in the conspiracy even after the charge sheet is filed.

25. Learned Sr. Counsel Mr. Lalit strenuously submitted that the court may consider the situation and the unfair stand adopted by the respondent-CBI that on the one hand the charges are leveled for a serious offence of participation in the main conspiracy for the incident occurred in 2005, the applicant is interrogated for the first time in 2010 and the material referred in the charge sheet is the statement of two witnesses stated above which may be accepted at the face value along with the transcript of the conversation. It requires examination as to whether, by any stretch of imagination, the applicant could be connected with the alleged offences and/or the main conspiracy. He submitted that the respondents are taking a convenient stand by taking contradictory stand. On the one hand, the charge sheet in Para 38 refers to involvement and active participation of the accused in the conspiracy for which even after the charge sheet is filed there is no material and the applicant is stated to be an accused. On the other hand, for the purpose of opposing this application, it is submitted that the investigation is in progress.

26. Further, Learned Sr. Counsel Mr. Lalit submitted that when the submission has been made referring to the language of Section 438 of CrPC, what is to be considered is whether "any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence...." Learned Sr. Counsel Mr. Lalit, therefore, submitted that as can be seen from the order passed by the learned Special Judge, CBI, submissions were made that only the accusation levelled against the accused has to be seen without considering even the material or prima facie material connecting the accused or suggesting prima facie involvement of the accused.

27. Learned Sr. Counsel Mr. Lalit, therefore, submitted that on the one hand the provisions of Section 438 is referred to with regard to the language emphasizing that he is a suspect, meaning thereby he is not an accused, whereas in the facts of the present case, he is already made an accused and the charge sheet is filed. Learned Sr. Counsel Mr. Lalit therefore submitted that considering the settled principles of law with regard to exercise of discretion, considering the nature of accusation and at the same time the prima facie material and also considering the right of liberty under Article 21 of the Constitution of India has to be examined particularly when the offence u/s 201 is a bailable offence for which, at best, the applicant could be said to have been involved.

28. In view of rival submissions, it is required to be considered whether the present application can be entertained or not.

29. Though the Court is not required to discuss in detail at this stage the various aspects while deciding the present application since submissions have been made at length as recorded hereinabove, some of the relevant aspects are required to be focused. The court is conscious of the fact that further investigation has been

handed over to the CBI in view of directions of the Hon''ble apex Court in January 2010.

30. It is well settled by catena of judicial pronouncements that the discretion u/s 438 of CrPC has to be exercised with care and circumspection. Though much emphasis has been made by learned Counsel Mr. Ravani for the CBI on this aspect, particularly referring to the provisions of Section 438 that the words used are "when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence" and emphasis on "accusation" is required to be considered.

31. As it is revealed from the papers including the charge sheet submitted by the CBI, the applicant has been shown as an accused. Further, there is a distinction between the suspect and the accused. It is also required to be considered in light of the submissions canvassed referring to the charge sheet as well as the statement of the witnesses and even the transcript that the court is only required to consider mere accusation made or whether the court has also to consider the material suggesting the prima facie involvement. Therefore, the submission made by learned Counsel Mr. Ravani that only the nature of accusation has to be seen, and not even the prima facie case or the material, is misconceived and cannot be accepted.

32. It is required to be noted that even while considering the exercise of powers under the preventive detention laws, when such powers are conferred in public interest, a judicial scrutiny is permitted to examine whether it satisfies the test of "subjective satisfaction based on objective material."

33. Therefore, while considering the present application, the court is required to consider the well accepted guidelines laid down by the Hon''ble apex Court in catena of judicial pronouncements. The Hon''ble Apex Court in a judgment in reported in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, in the case of Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab has considered at length the legislative intent and the scope of exercise of such discretion and the restraint on such discretion and it has considered the judgment of the Full Bench of the Punjab & Haryana High Court referring to the various factors for exercise of such discretion as well as the provisions of Section 438 of CrPC. It has been observed specifically in Para 15 and again in Para 26:

We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over generous infusion of constraints and conditions which are not to be found in

Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi*, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable.

34. Further, it has been laid down in this very judgment that such a discretion has to be exercised on careful consideration of the facts and material as it is a "device to secure individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations." It has also been observed that no hard and fast rule and no inflexible principle governing the exercise of discretion can be laid down as it will depend upon the facts and circumstances.

35. Therefore, a balance has to be maintained between the rival claims of the accused as well as the investigating agency depending upon the facts and circumstances and the material suggesting prima face case.

36. The same view has been reiterated from time to time in various judgments including the judgment of the Hon''ble Apex Court in the case of *Pravinbhai Kashirambhai Patel v. State of Gujarat and Ors.*, reported in (2010) 7 SCC 598 . Considering the same judgment as well as the judgment of the Hon''ble Apex Court reported in *State Vs. Amarmani Tripathi*, in the case of *State of U.P. Through CBI v. Amarmani Tripathi* as well as the judgment cited by learned Counsel Mr. Ravani, the Hon''ble Apex Court has observed that "except for indicating the broad outlines for grant of bail and/or anticipatory bail, no straitjacket formula can be prescribed for universal application, as each case for grant of bail has to be considered on its own merits and in the facts and nuances of each case."

37. It is in this background, therefore, the facts of the present case are required to be considered in light of the rival submissions made at length.

38. Without much elaboration on this aspect, the following aspects are required to be noted that further investigation has been ordered to be carried out in view of the directions of the Hon''ble Apex Court to the CBI. The applicant accused has been interrogated in 2010. The charge sheet has been filed and Para 37, 38, 42, 46 & 48 are relevant and in Para 38 of the charge sheet, as rightly emphasized by learned Sr. Counsel Mr. Lalit, one line has been added accusing the applicant of involvement in the main conspiracy, whereas Para 46 refers specifically to the charge of tampering with the evidence and for offence u/s 201 of IPC.

39. It is in light of this the submissions have been canvassed that even if the accusation made by the prosecuting agency, CBI, is accepted at the face value and the statements of the two witnesses along with the transcript is read as it is, at best it would attribute the applicant with the role and offence u/s 201 of IPC

and there is no evidence to connect or suggest the involvement of the applicant accused for conspiracy.

40. Therefore, when the charge sheet has been filed accusing the applicant accused for involvement and active participation in the main conspiracy and the incident of fake encounter or the extortion, no material has been placed except this. Even if the submission made by learned Counsel Mr. Ravani referring to the statements and the transcript are accepted, it refers to the meeting which prima facie suggests about the talk for settlement of the cases of the two witnesses about the default in repayment of the huge loan amount and PASA. Moreover, it will not be advisable to discuss the statement and the transcript at this stage and therefore only for considering the prima facie case for deciding the alleged persuasion of the witnesses for concealment of the facts to the CBI in course of the talk by the present applicant has to be considered.

41. Therefore, without any further elaboration, the aspect which is required to be considered is with regard to charge of conspiracy and also the prima facie case suggesting involvement of the applicant accused in a larger or the main conspiracy and active participation. The material, as discussed above, in the opinion of this Court, do not support the submissions made by learned Counsel Mr. Ravani for the CBI. The accusation may be serious, but there has to be a prima facie case suggesting the involvement, which, as discussed above, cannot be said to have been substantiated prima facie.

42. Further, the law as regards conspiracy for offence u/s 120B is well settled with regard to the meeting of mind and even if the person may not be present or may not be involved, it could be at any stage prior to the incident, at the time of the incident or immediately thereafter. However, even considering these principles with regard to the aspect of conspiracy, it is not required to be discussed in detail at this stage. It would be sufficient to observe that when the person is accused in the charge sheet about active participation, it has to be substantiated by some material suggesting the prima facie involvement. On the other hand, it is argued that the investigation is in progress, which itself reflects out the manner of investigation.

43. The observations made by the Hon'ble Apex Court in a judgment reported in State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, in the case of State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru on the aspect of the genesis of the crime and the complicity of the accused is required to be considered and for complicity of the accused in the conspiracy, the prima facie material suggesting the involvement is required to be considered.

44. Further, this aspect is also required to be considered in light of the fact that if the applicant is charged or suggested prima facie involvement for offence u/s 201, which is a bailable offence, the same is required to be considered in light of the judgment of the Hon'ble Apex Court in the case of Rasiklal Vs. Kisore Wadhvani, wherein it has been observed:

The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative.

45. It is also required to be mentioned that one of the relevant considerations is the character of evidence which is required to be appreciated, particularly when the two witnesses are alleged to have been involved in many cases and they have themselves stated regarding settlement of the cases as it is revealed from their statements.

46. One more aspect is required to be considered with regard to the process and warrant u/s 70. It may be noted that admittedly before the issuance of warrant, no summons has been served, no intimation has been given and any endorsement for any such attempt to serve the summons or intimation to the accused persons at their residence or office is not there.

47. The judgments referred to by learned Counsel Mr. Ravani were in the facts of the case as in the case of State (represented by the CBI v. Anil Sharma (supra) it was a case regarding disproportionate assets, whereas in the judgment in the case of State of Gujarat v. Narendra K. Amin (supra) the facts were totally different as the concerned police officer was found to have been directly involved in the main conspiracy/encounter.

48. It is in these circumstances, while maintaining the balance between the right of the accused and the investigating agency-CBI, the court is of the opinion that the present application deserves to be allowed. It is required to be mentioned that the apprehension that it may hamper the investigation will also not be sustainable as this aspect has also been considered in the aforesaid judgment in the case of Shri Gurubakh Singh Sibia and Ors. (supra) and usual conditions are there for co-operating with the investigating agency.

49. In the result, the present application stands allowed. The applicant-accused Yashpal Jitubha Chudasama is ordered to be released on bail in the event of his arrest in connection with C.B.I. Case No. RCBS1/2010/S/0004-MUM in respect of the offence alleged against him on his executing a personal bond of Rs. 1,00,000/- (Rupees One Lakh only) each with one solvent surety for the like amount and on further conditions that he shall:

(a) remain present before the trial court regularly as and when directed on the dates fixed; (b) make himself available for interrogation by the I.O. whenever and wherever required.

(c) not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the I.O.;

(d) not to obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the CBI;

(e) at the time of executing the bond, furnish his address to the I.O. and the courts concerned, and shall not change his residence till the final disposal of the case or till further orders; (f) not to leave India without the permission of the court and if having a passport, shall deposit the same before the trial court within a week;

50. It would be open to the I.O. to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits.

51. This order will hold good if the applicant is arrested at any time within 90 days from today. The order for release on bail will remain operative only for a period of 10 days from the date of his arrest during which it will be open to the applicant to make a fresh application for being enlarged on bail in usual course which, when it comes before the competent court, will be disposed of in accordance with law having regard to all the attending circumstances and the materials available at the relevant time uninfluenced by the act that anticipatory bail was granted.

52. When the order was pronounced, learned Counsel Mr. Ravani was asked as to where he would like the applicant-accused to remain present as per the usual conditions. However, learned Counsel Mr. Ravani has stated that his client would like to take the matter before the Hon''ble Apex Court and therefore no date or place for remaining present is required to be stated and, therefore, it is not specifically observed as to when and where the applicant-accused should remain present. However, it goes without saying that the applicant-accused shall make himself available for interrogation and co-operate with the investigating agency.

Rule is made absolute. D.S. permitted.