

(2012) 07 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5211 of 2012

Y.S. Jagan Mohan Reddy

APPELLANT

Vs

Central Bureau of Investigation, Hyderabad

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 164, 170, 170(1), 173(8), 41
Penal Code, 1860 (IPC) — Section 120B, 420, 471
Prevention of Corruption Act, 1988 — Section 11, 12, 13(1)(c), 13(2), 9

Citation : (2012) 3 ALT(Cri) 1

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The petitioner namely Y.S. Jagan Mohan Reddy is accused of several offences in C.C. Nos. 8 of 2012, 9 of 2012 and 10 of 2012 on the file of Principal Special Judge for C.B.I. Cases, Hyderabad. In C.C. No. 8 of 2012 he is accused of offences punishable u/s 12/11 of the Prevention of Corruption Act and Sections 120-B/420 I.P.C. After taking the case on file on 15.05.2012, the lower Court issued summons to the petitioner/A-1 along with others for appearance on 28.05.2012. In C.C. No. 9 of 2012 the petitioner/A-1 is accused of offences punishable u/s 120-B/ 420, 420, 471 I.P.C. After taking it on file on 30.05.2012 the lower Court issued P.T. warrant against the petitioner/A-1 for his production on 11.06.2012. In C.C. No. 10 of 2012 the petitioner/A-1 is accused of offences punishable under Sections 120-B, 420, 471 I.P.C. and Sections 9 and 12 of the Prevention of Corruption Act. After taking the said case on file on 30.05.2012 the lower Court issued P.T. warrant against A-1 for his production on 11.06.2012. All these three charge sheets were filed by Central Bureau of Investigation (C.B.I.) in Rc. No. 19(A)/2011-CBI/HYD. In the said crime, the petitioner was arrested on 27.05.2012 and was produced before the lower Court on 28.05.2012, on which date the lower Court sent him to judicial

custody. When the lower Court refused to send the petitioner to C.B.I. custody for interrogation, C.B.I. approached this Court and this Court by order dated 02.06.2012 permitted the investigating agency to have custody of the petitioner for interrogation for 5 days initially and thereafter for another two days. As on today, the petitioner is in judicial custody. He seeks bail under Sections 437 and 439 Cr.P.C. herein. The petitioner/A-1 is an elected Member of Parliament (Lok Sabha) from Kadapa Constituency of the State. He is also heading a regional party in the State under the name of Yuvajana Sramika Rythu Congress Party. It is brought to the notice of this Court that in the recent by-elections held for 18 assembly constituencies, his party candidates won 15 seats and that for one by-election to Lok Sabha from the State, one candidate was elected from his party. The said by-elections to the State assembly and to Lok Sabha were held on 12.06.2012. It is sought to be attacked that arrest of the petitioner on 27.05.2012 when election process was going on in the State and in the midst of the petitioner's election campaign, was for political reasons. At the outset it may be noted that the fact that the petitioner's party won 15 out of 18 M.L.A. seats in the recent by-elections and also won one out of one M.P. seat in the same by-elections, are irrelevant factors in a criminal case and for granting or rejecting his bail plea.

2. The registration of the case by C.B.I. in this matter is under special circumstances. Division Bench of this Court by order dated 10.08.2011 in W.P.Nos. 794 and 6604 of 2011 filed by P. Sankara Rao, M.L.A., Secunderabad Contonment constituency and Erran Naidu, Former M.P., directed C.B.I. for registration of the case and for thorough investigation in all aspects into misdeeds involving huge magnitude of Government largesse, corporate dealings including huge investment as part of quid-pro-quo arrangement for largesse and the benefit obtained by the investors from the State of Andhra Pradesh and also in all other aspects. Thereupon, C.B.I., A.C.B Hyderabad branch registered crime in Rc. No. 19(A)/2011-CBI/ HYD on 17.08.2011 for the offences under Sections 120-B/420, 419, 477-A I.P.C. and Section 13(2)/13(1) (c)&(d) of the Prevention of Corruption Act against the petitioner/ A-1 and 73 others. The petitioner is son of late Y.S. Rajasekhara Reddy who died in helicopter crash on 02.09.2009 while in office as Chief Minister of the State of Andhra Pradesh. It is alleged that the petitioner had quid-pro-quo arrangement with several industrial houses and business houses for large investments in his corporate concerns like Jagati Publications Private Limited etc., and concerns relating to the petitioner's family members after making arrangements to extend Governmental benefits to those industrial and business concerns. Virtually gist of the charge against the petitioner/A-1 is that using his father's office as Chief Minister of the State, the petitioner amassed huge fortune running to several thousands of crores of rupees.

3. Briefly stated, charge sheet in C.C. No. 8 of 2012 pertains to (a) allotment of Ac.150.00 of land to M/s. Aurobindo Group and M/s. Hetero Group of companies by Andhra Pradesh Industrial Infrastructure Corporation (APIIC) at Special

Economic Zone (SEZ) Jedcherla. (b) Transfer of Ac.30.33 cents of land from M/s. Aurobindo Pharma Limited to M/s. Trident Life Sciences Limited by APIIC at Export Promotion Industrial Park (EPIP), Pashamylaram, Medak District.(c) Quid-pro-quo investments made by M/s. Aurobindo Group and M/s. Hetero Group of companies and individuals in A-1's companies for allocation of lands in SEZ, Jedcherla and EPIP, Pashamylaram.

Charge sheets in C.C. Nos. 9 and 10 of 2012 relate to the alleged corporate fraud of Jagati Publications Private Limited, practised on individual investors and obtaining anti-dated valuation report of Jagati Publications with exaggerated value of the company and its creditworthiness by furnishing false information and projections, from M/s. Deloitte Touche Tohmatsu India Private Limited. The said charge sheet also alleges inflation of Jagati Publication value and fixing premium of Rs. 350/- per share of Rs. 10/-. They also relate to quid-pro-quo benefits received by A-1's companies for the benefits extended by the State Government and its organisations and corporations to the investors in A-1's companies.

4. Senior counsel appearing for the petitioner/A-1 fairly stated that it cannot be said that there is no triable case for the prosecution against A-1 in these matters and that he is not going to submit that the prosecution has no case at all. At the same time, he submitted that there are several lacunae in the prosecution case and in the evidence collected by the prosecution and that the said lacunae will naturally lead to acquittal of the petitioner/A-1 in all these cases. He maintained cautious approach by stating that he does not intend to reveal those lacunae now in order to prevent the prosecution to fill up the gaps during further investigation and that he would attack the said lacunae in the prosecution case during trial. In view of the said submission of the senior counsel for the petitioner, this Court need not go in detail into the prosecution case and its prima facie nature.

5. The petitioner's senior counsel raised contentions on the method of arrest of the accused by C.B.I. and contended that it amounts to fraud on law as well as constitution and also amounts to fraud played on the lower Court which even leads to contempt of Court.

6. Even though Division Bench of this Court ordered investigation on 10.08.2011 by order in W.P. Nos. 794 and 6604 of 2011 and even though C.B.I. registered the crime on 17.08.2011 in Rc. No. 19(A)/2011-CBI-HYD and proceeded with investigation thereafter and ultimately filed first charge sheet on 31.03.2012, the investigating officer did not chose to take the petitioner/A-1 into custody and filed the first charge sheet in the lower Court. The lower Court after taking the said charge sheet on file issued summons to A-1 on 15.05.2012. The 2nd and 3rd charge sheets were filed on 23.04.2012. Even till then the investigating officer did not choose to effect arrest of A-1. Instead, A-1 was arrested on 27.05.2012 after by-election process in the State commenced. C.B.I. did not comply with requirement of Section 170 Cr.P.C. before filing three final reports/charge sheets against A-1. Section 170(1) Cr.P.C. reads as follows:

170. Cases to be sent to Magistrate when evidence is sufficient: (1) If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

The above provision contemplates forwarding the accused under custody to the Court empowered to take cognizance of the offence upon a police report. Without following the procedure prescribed by Section 170(1) Cr.P.C., the lower Court should not have received final report/charge sheet and should not have taken cognizance of the offences mentioned therein. Instead, the lower Court took cognizance of the offences mentioned in the charge sheet against the petitioner/A-1 and issued summons to him. Be that as it may, timing of arrest of the petitioner on 27.05.2012 after by-election process commenced and during the course of election campaign, certainly sent wrong signals to the public on the arrest. It is contended by the Special senior standing counsel to C.B.I. that A-1 was summoned by C.B.I. for cross-checking certain information obtained during investigation from Nimmagadda Prasad and K.V. Brahmananda Reddy who were taken into custody and that A-1 was arrested during the said questioning inter alia when A-1 did not give proper answers and at times evaded to give answers. On the other hand, senior counsel for the petitioner asserted that the petitioner and also even accused person has got constitutional right to maintain silence during investigation and trial and that no authority including C.B.I. can invade into the said constitutional right of an accused person to maintain silence during investigation and that C.B.I. cannot expect that the petitioner should give a clean disclosure statement admitting his guilt as proposed by C.B.I.

7. Instead of taking A.1 into custody u/s 170(1) Cr.P.C. either at the time of filing 1st charge sheet on 31.03.2012 or at the time of filing 2nd and 3rd charge sheets on 23.04.2012 and obtaining summons on 15.05.2012 for A.1's presence in Court in the case relating to 1st charge sheet and also without taking A.1 into custody at any time after registration of the case on 17.08.2011, C.B.I. had chosen to give notice to A.1 on 12.05.2012 u/s 41A (1) Cr.P.C. to appear before Chief Investigation Officer at 10:30 hours on 25.05.2012 at C.B.I. Camp Office, Hyderabad on the ground that there are reasonable grounds to question A.1 to ascertain facts and circumstances from him, which facts were revealed during investigation of the case. Even after filing charge sheet Nos. 1, 2 and 3 which are registered as C.C. Nos. 8, 9 and 10 of 2012 in the lower Court C.B.I. is continuing investigation on other aspects of the same crime though not relating to the subject matters in C.C. Nos. 8, 9 and 10 of 2012. C.B.I. also filed memo before the lower Court under Sections 173(8) Cr.P.C. intimating the Court that further allegations in this crime are to be investigated and supplementary charge

sheets will be filed as and when investigation is completed on other allegations. The said memo was filed on 02.04.2012. This case relates to floating of several companies by A.1 and his family members under several names and selling of shares of the said companies to several individuals at allegedly bloated prices, which price represented the alleged Quid-pro-quo for the benefits those investors obtained from the State Government and State Government undertakings/Corporations during the period of office of A.1's father late Y.S. Rajasekhara Reddy as Chief Minister of this State. It is contended by the Special Senior Standing Counsel for C.B.I. that A.1 had amassed wealth to the tune of at least Rs. 43,000 crores by adopting the said modus operandi. He contended that there are several other major aspects of the case which are under investigation. He give some of the said aspects which are under investigation as 1) Vanpic land deal, 2) Investment of a French Company in Bharathi Cements in which A.1's wife is the Managing Director, 3) Transactions of several Suit-case Companies from Kolkata, 4) Sandur Power Transactions and 5) Supply of water to ACC Cements of Srinivasan etc. Therefore, it is not as if investigation in this crime came to an end either by filing the 1st charge sheet or by filing charge sheet Nos. 2 and 3. According to the Investigating Agency, major portion of investigation of the case is yet to be completed. But, C.B.I. could not make out any grounds for not arresting A.1 prior to 27.05.2012 even though the Investigating Agency was under legal obligation to take him into custody as indicated above.

8. After receiving notice u/s 41A (1) Cr.P.C., the petitioner approached this Court by way of W.P.No. 15751 of 2012 for quashing the said notice on the ground that it is arbitrary, illegal, unreasonable, offending Articles 14 and 21 of the Constitution of India and for consequential direction to C.B.I. not to interfere with his fundamental right under Article 21 of Constitution of India. The said writ petition was disposed of by this Court by order dated 23.05.2012 directing C.B.I. to strictly comply with all provisions of Section 41A Cr.P.C. and to make fair investigation in the matter. Apprehending his arrest by C.B.I., the petitioner also filed anticipatory bail application before the lower Court and also prayed for interim anticipatory bail to him. The said application for interim anticipatory bail was dismissed by the lower Court by order dated 24.05.2012. It is pointed out that the lower Court dismissed the said application for interim anticipatory bail on the ground that the petitioner cannot have reasonable apprehension of his arrest as it was only a notice issued u/s 41A Cr.P.C. which was issued not for the purpose of securing presence of the petitioner for arrest, but for questioning him to ascertain facts and circumstances of the case. It is contended by Senior Counsel for the petitioner that having given impression to the lower Court that the accused is not going to be arrested, as notice was given only u/s 41A (1) Cr.P.C., C.B.I. has chosen to effect his arrest on 27.05.2012 and it amounts to fraud played on the Court, which act may lead the Investigating Agency to face charge of contempt of Court. In the interim anticipatory bail application, only A.1's counsel made his submissions before the lower Court and Special Public

Prosecutor, C.B.I. neither appeared in the lower Court nor contested the said application either by filing any counter or by addressing any arguments opposing interim anticipatory bail. The view taken by the lower Court in order dated 24.05.2012 rejecting prayer for interim anticipatory bail to A.1, was independent of any submissions of C.B.I. therein.

9. Language of Section 41-A Cr.P.C. is as follows:

41A. Notice of appearance before police officer:-1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

Initially notice thereunder is issued by the Police Officer where arrest of the person is not required u/s 41(1) Cr.P.C. But, during the period of compliance of the said notice, in case the Police Officer is of the opinion that the said person has to be arrested, then the Police Officer can do so for reasons to be recorded. The pre-condition of the person is not required to be arrested, is not absolute. Sub-section (3) thereof is exception to sub-section (1) thereof.

10. It is contended for the petitioner that except giving a finding of requiring need of A.1's arrest, the Investigating Officer in this case did not give reasons therefor and that in sub-section (3) of Section 41A Cr.P.C. emphasis is on recording reasons and not on finding of the Investigating Officer for arrest of the person to whom notice was issued. It is pointed out that in grounds of arrest, no such reasons are given. It was mentioned in grounds of arrest attached to arrest memo that Chief Investigating Officer has reasonable grounds to believe that A.1 wields enormous influence by virtue of his status as a Member of Parliament and Chief of Y.S.R. Congress Party and as such in a position to influence witnesses and tamper with the evidence and that therefore A.1 is placed under arrest on that day i.e. on 27.05.2012 at 19:15 hours for conducting proper investigation of the offence and to prevent him from causing evidence of the offence to disappear or tampering such evidence and to prevent him from making any inducement,

threat or promise to the witnesses and persons acquainted with facts and circumstances of the case and dissuading them from disclosing such facts. It is contended by the Senior Special Counsel for C.B.I. that they are valid reasons contemplated u/s 41A (3) Cr.P.C. It is further contended for C.B.I. that this issue was raised by A.1 before this Court already and this Court by a common order dated 02.06.2012 in CrI.P.Nos. 4593, 4594, 4742, 4743, 4744, 4768, 4769, 4770, 4771, 4772, 4773 of 2012 and W.P.No. 16128 of 2012 considered the issue whether arrest of the petitioner was illegal and gave a finding in favour of the State holding that the arresting Officer is justified in arresting the accused. Senior Counsel for the petitioner ruled out binding nature of the said common order dated 02.06.2012 on the ground that it is only an order on interim proceedings. In my opinion, the said order is not an interim order, but is a final order in relation to validity of arrest of the accused. W.P.No. 16128 of 2012 was filed challenging arrest of the accused on 27.05.2012. The said writ petition was filed by A.1's wife on behalf of A.1, as A.1 was in judicial custody by then. At best, it can be said that the said common order relating to W.P.No. 16128 of 2012 has not become final, as time for filing Writ Appeal against that order is still available. Therefore, it may not be open for the petitioner to again question legality of his arrest on 27.05.2012 in this bail petition. In any event, grant or rejection of bail to an accused person either u/s 437 or u/s 439 Cr.P.C. will not depend on legality or otherwise of arrest of that accused person.

11. No doubt this case in which C.B.I. filed three charge sheets and is making investigation into several other individual items of the case, involves economic offences of large magnitude. According to the Senior Special Counsel for C.B.I., the subject matter pertains to the total volume of Rs. 43,000 crores of rupees amassed by the petitioner using his late father's official position as Chief Minister of the State of Andhra Pradesh. I agree with senior counsel for the petitioner that comparison of an economic offence of large magnitude with grave offence like murder and finding the economic offence graver than a case of murder, may be inappropriate. But this economic offence of such magnitude as projected by C.B.I., is certainly grave offence which requires the Court to be more attentive and not to be very complacent towards it as an offence triable by a Magistrate only. While considering bail plea of an accused person like the petitioner against whom grave allegations of several economic offences are made, gravity of the case cannot be lost sight of by winking at it.

12. It is pointed out on behalf of the petitioner that in 2G spectrum scam case the Supreme Court granted bail to all the accused, in spite of the fact that the said case is of larger magnitude than the present case in terms of the loss occasioned due to the said scam to the nation. At the same time, it is pointed out on behalf of C.B.I. that in 2G Spectrum scam case the Supreme Court did not grant or permit to grant bail to the accused until framing of charges against the accused in that case. The Supreme Court in Sanjay Chandra Vs. CBI, while reiterating that grant or refusal to grant bail lies within the discretion of the Court, further held that grant or denial is regulated to a large extent by the facts

and circumstances of each particular case. From Gurcharan Singh and Others Vs. State (Delhi Administration), to Susanta Ghosh Vs. State of West Bengal, the Supreme Court laid emphasis on two parameters for considering grant of bail to an accused. They are likelihood of his absconding and tampering with the evidence or the witnesses or even investigation. In the present case, the ground relating to absconding of the accused may not be relevant because he is sitting Member of Parliament and also heading a local political party which has got considerable representatives in the State Assembly. It is contended for the petitioner that mere allegation of the prosecution/investigating agency of interference with investigation or witnesses is not enough and material has to be placed to establish the said allegation. This is not a case where bail already granted to the accused is being considered for cancellation. While granting bail to an accused person, it should be taken into account whether there is any possibility or likelihood of the petitioner interfering with evidence or witnesses or investigation in case he is granted bail. No doubt, C.B.I. recorded statement of Eram Reddy Suryanarayana Reddy @ Sureedu during investigation; but the same witness refused to give statement u/s 164 Cr.P.C. before the Magistrate on the same aspects in spite of he allegedly promising the investigating agency to give such statement before the Magistrate. After issue of summons by the Magistrate initially to the said witness for his appearance on 27.04.2012, the said date was postponed to 17.05.2012 and to 19.05.2012. But C.B.I. could not serve summons on him. Finally C.B.I. filed memo before the Magistrate on 31.05.2012 reporting that summons could not be served on the said witness Sureedu as he refused to receive the same stating that he is not in a position to give his statement before the Court. It is pointed out that the memo dated 30.05.2012 filed by C.B.I. into Court is not relevant herein as by then the petitioner was already arrested on 27.05.2012. Summons for appearance of the witness by name Sureedu was taken by C.B.I. for service on 25.05.2012 itself and it was returned to the Magistrate on 30.05.2012. From the said dates it cannot be concluded that Sureedu refused to receive summons on 30.05.2012 only. Even prior to 25.05.2012 the said witness could not be served with summons on several dates. It is submitted on behalf of the respondent that the said incident is only an example of preventing witnesses from giving statements during the course of investigation and it amounts to tampering of witnesses, tampering of evidence and tampering with the process of investigation. Having regard to huge finances at the disposal of the petitioner and position in public life, it is contended that the possibility of the petitioner interfering with the process of investigation of several aspects of the case left out and tampering of witnesses and evidence cannot be ruled out. In my considered opinion there is every likelihood of the said possibility. Apart from investigation into several items of the case left out, it is contended for the respondent that Hawala aspect under the Money Laundering Act in transferring foreign funds into Companies of the petitioner and his family members is to be investigated into. The Enforcement Directorate (E.D.) also is taking steps to examine/question the accused on this particular aspect under the Money Laundering Act. It is contended for the

petitioner that there is no basis for this aspect as F.I.R. did not contain any allegation in this regard. It is well settled principle of law that F.I.R. is not encyclopaedia of a criminal case and is not "be all and end all" of the criminal case. It only ignites and sets criminal law machinery into motion and does not prevent investigation into related matters though not stated therein.

13. Senior Counsel for the petitioner laid emphasis on oft quoted view of Justice V.R. Krishnaiah that bail is a rule and jail is an exception to it. Reliance is also placed on the following observations of the same illustrious judge of the Supreme Court in Babu Singh and Others Vs. State of U.P., .

16. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

At the same time, the Supreme Court further observed therein as follows:

Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice to the individual involved and society affected.

All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised.

14. If this case is viewed in bifocal manner, this Court is of the opinion that individual right of the petitioner for bail cannot have precedence over larger interests of the society which is stated to have sustained wrongful loss by way of deprivation of public money of larger magnitude for development and welfare of the people of the State. Hence, this Court is of the considered opinion that the petitioner may not be entitled for bail during pendency of investigation of the entire aspects relating to the case. In the result, the petition is dismissed.