(AFR)
Reserved on 6.4.2022
Delivered on 29.4.2022

<u>Court No. - 28</u>

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4319 of 2021

Applicant :- Rajkumar Yadav
Opposite Party :- State Thru C.B.I./ACB Lucknow
Counsel for Applicant :- Pranjal Krishna
Counsel for Opposite Party :- Anurag Kumar Singh

<u>Hon'ble Krishan Pahal,J.</u>

1. Heard Sri Nandit Kumar Srivastava, learned Senior Counsel assisted by Sri Pranjal Krishna, Sri Prashan Ranjan and Sri Aviraj Raj Singh, learned counsels for the applicant and Sri Anurag Kumar Singh, learned counsel for the Central Bureau of Investigation (CBI).

2. By means of the present application, the applicant seeks bail in Criminal Misc. Case No.2079 of 2021 (CBI Vs. Roop Singh Yadav & Others), under Sections 120-B r/w 420, 467, 468, 471 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 with substantive offences thereof arisen out of Crime No. RC0062017A0026, registered with CBI, Anti Corruption Branch, Lucknow and pending before the learned Special Judge, Anti Corruption CBI, West, Lucknow.

<u>PROSECUTION STORY</u>

3. In the instant case, the FIR was registered by the CBI on the basis of order dated 17.7.2017 of the Government of U.P. pertaining to the financial irregularities committed with criminal intent in the work of "Gomti River Channelization Project" and "Gomti River Front Development" by the Irrigation Department. The State Government asked for further investigation by the CBI in Case Crime No.831 of 2017, u/s 409, 420, 467, 468, 471, 34 IPC and Sections 7 & 13 of Prevention of Corruption Act, 1988 (PC Act) against the accused persons. It has also been alleged that on the written complaint of one

Ambuj Dwivedi, an FIR was registered by the local police and later on a Judicial Commission headed by Hon'ble Mr. (Retd.) Justice Alok Kumar Singh was ordered to conduct an enquiry under the Commission of Inquiry Act. A comprehensive enquiry report has been submitted to the State Government on 16.5.2017 leading to the present FIR.

4. After investigation, charge-sheet was filed by the CBI on 16.02.2021, u/s 120-B read with 420, 467, 468, 471 IPC and Section 13(2) read with 13(1)(d) of PC Act against the applicant and other co-accused persons and further investigation is still pending pertaining to other development works in the aforesaid project.

RIVAL CONTENTIONS

5. Sri Nandit Srivastava, learned Senior Counsel appearing on behalf of the applicant has submitted that the applicant is the junior most employee in the chain and had simply followed the orders of higher authorities. He was only the Junior Assistant/Clerk in the Irrigation Department. He was arrested on 19.11.2020 and the charge-sheet has been filed on 16.2.2021. Till date cognizance has not been taken in the matter. Learned Senior Counsel has further submitted that charge-sheet was filed without obtaining sanction for prosecution of the applicant as he is a government servant. Compliance of mandatory provisions of Section 17A of the PC Act has not been carried out by the CBI before initiating the criminal prosecution against the applicant in the present case. Sanction for prosecution has been filed in the Court on 15.7.2021 which is after a delay of about five months from the filing of the charge-sheet. There is no allegation of tampering with the evidence against the applicant. The alleged charge-sheet has been filed only to deprive the applicant statutory rights of default bail provided u/s 167 Cr.P.C.. There is no prima-facie offence made out against him of being a party in the criminal conspiracy with the main accused, Roop Singh Yadav. The applicant is not named in the FIR.

6. Learned Senior Counsel has relied upon the judgement of Apex Court in the case of ***Yashwant Sinha & Others v. Central Bureau of Investigation***[1], wherein it has been held that no Police Officer is permitted to conduct any enquiry or investigation into any offence committed by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, *inter alia*, of the authority competent to remove the public servant from his Office at the time when the offence was alleged to have been committed.

7. Learned Senior Counsel for the applicant has also submitted that the applicant was not in a position to do any favour or any dis-favour to any of the Contractor as he was only the Junior Assistant having no authority to do anything worthwhile. He has also placed much reliance on the judgement of Apex Court passed in ***Sanjay Chandra Vs. CBI***[2]**,** wherein it has been opined that the object of bail is neither punitive nor preventative. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

8. Learned Senior Counsel for the applicant has also submitted that the eligibility and non-eligibility of the firms/companies in the tender process was to be decided at a later stage by the concerned authorities and the applicant had no role in it. He has then placed much reliance upon the judgement of Apex Court in ***Dataram Singh Vs. State of U.P. and another***[3]**.** Learned Senior Counsel has further stated that there is no likelihood of the applicant for tampering with the evidence or influencing any witnesses who are all public servant.

---

1 2020 (2) SCC 338
2 (2012) 1 SCC 40
3 (2018) 3 SCC 22

9. Per contra, Sri Anurag Kumar Singh, learned counsel for the CBI has vehemently opposed the bail prayer of the applicant by contending that the work of "Intercepting Trunk Drain" was awarded to M/s K K Spun Pipe Pvt. Ltd., New Delhi despite not meeting out the technical qualification criteria of annual turnover and also did not submit the mandatory certificates on financial fitness to be issued by the District Collector. The bank guarantee used by the L-2 firm M/s Brand Eagles Longian JV was made from the account of L-1 firm M/s K K Spun Pipe Pvt. Ltd.. The third party M/s Patel Engineering has categorically denied to have taken part in the tender process. The L-2 firm has entered into agreement with M/s K K Spun Pipe Pvt. Ltd. for participating in tender procedure as such bank guarantee was prepared from the account of M/s K K Spun Pipe Pvt. Ltd. but later on when the manufacturers unauthorizedly allowed taking part in the tender procedure had submitted its separate bid without informing M/s Brand Eagles Longian JV. As such there was a cartel between M/s K K Spun Pipe Pvt. Ltd. and M/s Brand Eagle Longian JV in pursuance of which the bank guarantee of Rs.4.6 crores of the L-2 firm M/s Brand Eagle Longian JV was made from the bank account of L-1 firm M/s K K Spun Pipe Pvt. Ltd. The using of bank guarantee of one firm by another proves that the entire Tender process was a sham.

10. Sri Singh has further stated that after investigation, charge-sheet has been filed against the main accused Roop Singh Yadav, Executive Engineer, Raj Kumar Yadav, Junior Assistant (present applicant), Himanshu Gupta, Director of M/s K K Spun Pipe Pvt. Ltd., Kavish Gupta, Director of M/s K K Spun Pipe Pvt. Ltd. and Badri Shrestha, Senior Advisor of M/s Brand Eagles Longjian JV. Further investigation is also going on in respect to other allegations in the instant matter coupled with 11 remaining works.

11. Sri Singh has also submitted that the applicant had involved in the said corruption and he had exclusive knowledge of the offence.

His name has come up during the course of investigation as he was involved in criminal conspiracy with other co-accused persons. The applicant himself has written under his signature that tender documents have been sold by him to M/s Patel Engineering Limited. However, M/s Patel Engineering Limited denied to have purchased the said tender documents. M/s Patel Engineering Limited had not deposited any earnest money which further confirmed the fact that the company had not submitted the tender documents and its forged documents were used by the applicant in the criminal conspiracy with co-accused Roop Singh Yadav with an intention to pool the tender in favour of the co-accused private persons. The applicant has wrongly shown the sale of tender documents to M/s Patel Engineering Limited and had arranged the photocopy of the documents of M/s Patel Engineering Limited which was submitted for the work of Diaphragm Wall. He has further stated that in the present case, tender of Rs.258.69 crore has been given to ineligible company/person which was later on extended to Rs.333 crores.

12. Sri Singh has also placed much reliance on the judgement of Apex Court in ***Y.S. Jagan Mohan Reddy Vs. CBI***[4], wherein it has been held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

13. So far as the non-compliance of Section 17A of the PC Act is concerned, Sri Singh has stated that though the applicant was not named in the FIR but his role has surfaced on 10.1.2018 before the amendment made in the PC Act, 1988 in the year 2018 which is effective from 26.7.2018. Investigation against the applicant started

---

4 (2013) 7 SCC 439

well before the said amendment in the PC Act. The said amendment do not have retrospective effect as such there is no need of permission u/s 17A of PC Act (as amended in 2018) against the applicant. In support of his contention, he has placed reliance upon the judgement of Delhi High Court in the case of ***Central Bureau of Investigation Vs. A. Raja & Others***[5] wherein it has been observed as under:-

> *"61. In view of the Hon'ble Apex Court decision in State of Telangana (supra) and decision of Coordinate Bench of this Court in Madhu Koda (Supra), this Court is of the opinion that amending Act does not apply to the offences which have already taken place under the PC Act, 1988 and moreover, Prevention of Corruption (Amendment) Act, 2018 does not reveal any intention of destroying the earlier provisions and there is no intention to obliterate the earlier law, therefore, this Court is of the opinion that there is no impediment in hearing the criminal leave to appeal, since the offences in question are alleged to have been committed prior to the coming into force of Prevention of Corruption (Amendment) Act, 2018."*

14. Sri Singh has also relied upon the jugement of Apex Court in the case of ***State of Bihar Vs. Amit Kumar***[6]**,** wherein it has been held that while considering the bail involving socio-economic offences stringent parameters should be applied.

<u>CONCLUSION</u>

15. The matter pertains to a large scam of Rs.1500/- crores. During the relevant period, the applicant was the Junior Assistant/Clerk of the department and prima-facie, it is found that he was also the part and parcel of the chain of corruption having been committed causing a heavy loss to the State Exchequer.

16. Considering the facts and circumstances of the case, the nature of offence, embezzlement of huge amount, complicity of accused as well as the rival submissions advanced by the learned counsel for the

---

5 2021(2) RCR (Criminal) 692

6 (2017) 13 SCC 751

parties and without expressing any opinion on the merits of the case, I am not inclined to release the applicant on bail.

17. Accordingly, the bail application of the applicant is **rejected**.

18. However, it is directed that every endeavor shall be made by the trial court to conclude the trial expeditiously, if there is no other legal impediment, within a period of one year from the date of production of a certified copy of this order.

19. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 29.4.2022
Siddhant

(Justice Krishan Pahal)