

Court No. - 87

Case :- Criminal Misc. Anticipatory Bail Application U/S 438
CR.P.C. No.9763 of 2020

Applicant :- Devendra Kumar Gangal

Opposite Party :- C.B.I.

Counsel for Applicant :- Chandan Sharma, Ankur Singh Kushwaha,
Piyush Sinha

Counsel for Opposite Party :- Sanjay Kumar Yadav

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Anurag Khanna, learned Senior Advocate assisted by Sri Ankur Singh Kushwaha, learned counsel for the accused-applicant and Sri Gyan Prakash, learned Senior Advocate and Deputy Solicitor General of India, assisted by Sri Sanjay Kumar Yadav, for the CBI.

2. The present application under Section 438 Cr.P.C. has been filed by the accused-applicant seeking anticipatory bail apprehending his arrest in RC No.RC/DST/2015/A/0004/CBI/SFT/DLI, under Sections 120-B read with 409, 420, 466, 467, 469 and 471 IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, Police Station CBI/STF, New Delhi.

3. FIR No.371 of 2012, under Sections 409, 420, 466, 467, 469 and 471 IPC and 120-B IPC and Section 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 was registered on 13.1.2012 at Police Station Sector-39, Noida, Gautam Budh Nagar, U.P. for alleged corrupt practices while executing engineering work between 14.12.2011 and 23.12.2011, in which agreement bonds for Rs.954.38 Crores were executed by the Engineering Department of Noida Authority. The investigation of this case was transferred to CBI as per the order dated 16.7.2015 passed by this Court at Lucknow in Misc. Bench No.12396 of 2014. This Court directed to conduct an investigation into all allegations of corruption and amassing of

unaccounted money by infamous accused Yadav Singh and in regard to all transactions, persons and entities connected thereto.

4. In pursuance to the said direction by this Court, STB Branch of CBI, Delhi registered a case No.RC DST/2015/A/0004 on 30.7.2015 against Yadav Singh, the then Chief Engineer, Noida and Yamuna Expressway Authorities and other unknown persons under Section 120-B read with 409, 420, 466, 467, 469 and 471 IPC and Section 13(2) read with 13(1) (d) of Prevention of Corruption Act. The CBI had investigated the investigation thoroughly and filed supplementary charge sheet in other instances of this case. It is said that the trial is in progress.

5. The present case relates to one of the 1280 contracts of Rs.954.38 Crores regarding construction of Cricket Stadium with Pavilion Building at Integrated Sports Complex, Sector-21A, Noida.

6. The investigation would reveal that M/s STUP Consultant Private Limited was appointed as consultant for the construction of Integrated Spots Complex including the construction of the Cricket Stadium Project at Noida. Accused N.U. Khan, the then Senior Consultant of M/s STUP Consultant Private Limited had accordingly submitted a detailed estimate for the construction of the cricket stadium project on 23.10.2010 and 4.11.2020 to Noida Authority and had placed the rates of the 57 non-scheduled items by taking quotation from the single party in each case. No competitive rates from the market were obtained. It is alleged that the rates taken from single party in respect of 57 non-schedule items were quite high and one of the quotations dated 22.10.2010 taken from M/s United Engineering Works was found forged. Further, the quotation of M/s Sukri Paint and Chemicals for the work to be held at Hyderabad was used for this work, which could have been lower for Delhi/NCR work.

7. It is further alleged that accused N.U. Khan, the then Senior Consultant of M/s STUP Consultant Private Limited entered into a criminal conspiracy during the year 2010-11 with the officers of the

Noida Authority including Yadav Singh, CME (Jal)/Chief Engineer (Grade-II)/Engineer-in-Chief, Santosh Kumar Srivastava, the then CPE, Deepak Kumar, the then Junior Engineer, R.K. Johri, the then JE(T), Anil Sharma, the then JE(Contract), R.K. Jain, the then APE, S.K. Gupta, the then PE, Sant Ram, the then CPE, A.C. Sigh, the then Finance Controller and the present accused-applicant, who was Director of M/s Anand Buildtech Private Limited/JV to facilitate allotment of tender in favour of M/s Anand Buildtech Private Limited/JV on inflated estimate by corrupt and illegal means.

8. The investigation would reveal that in pursuance of the said conspiracy, the members of the Estimate Committee of Noida Authority including S.K. Srivastava, CPE and A.C. Singh, Finance Controller did not raise any query on inflated rate, forged quotation, single quotation, relevancy etc. and recommended the vetted estimate as it was received from IIT, for administrative and financial approval by the CEO, without weighing the technical specification rates etc., which was finally approved by the competent authority.

9. It is further said that in furtherance of criminal conspiracy, Anil Kumar Shurma, JE(Contract), Deepak Kumar, JE, R.K. Jain, APE and Sant Ram, CPE prepared the favourable tender documents to qualify M/s Anand Buildtech Private Limited/JV, lead partner of which is the present accused-applicant. The pre-qualification criteria fixed in bid documents were made contradictory to each other in order to favour M/s Anand Buildtech Private Limited/JV.

10. It is further alleged that in furtherance of criminal conspiracy, M/s Anand Buildtech Private Limited/JV was sold tender document and allowed it to participate in the tender proceedings against the CPWD Work Manual. In pursuance of the criminal conspiracy, only three bidders were allowed to participate by the office of Sant Ram, CPE. The investigation would disclose that M/s Anand Buildtech Private Limited/JV and another participating bidder namely M/s Jyoti Buildtech formed cartel as the FDR of M/s Jyoti Buildtech was prepared from the

amount transferred by M/s Anand Buildtech Private Limited/JV. M/s Jyoti Buildtech received Rs.25 Lakhs on 27.9.2011 in its account from the account of M/s Anand Buildtech Private Limited/JV. This transaction would reveal that a cartel was formed between these two contractors. The investigation also revealed that the whole tendering process was farce. M/s Anand Buildtech Private Limited/JV was already chosen/pre-decided for allotment of work.

11. Sant Ram, Chief Project Officer and Yadav Singh, Chief Mechanical Engineer and A.C. Singh, Finance Controller were the members of the tender committee and declared the three participating contractors as qualified in technical bid. However, none of the contractors was eligible in terms of experience and turnover. M/s Anand Buildtech Private Limited/JV was not meeting any of the qualifying criteria. However, instead of rejecting their technical bid, their bid was accepted. The members of the tender committee without examining the tender with respect to the justified market rate and without comparing the tender rates with the rate accepted for other works in the past and without seeing the eligibility in terms of experience and turnover and without satisfying about entry of joint venture etc. recommended M/s Anand Buildtech Private Limited/JV for allotment of work as L-1, which was finally accepted by the CEO on 23.12.2011.

12. The investigation further disclosed that the present accused-applicant, who was the Director of M/s Anand Buildtech Private Limited/JV, had good relations with accused Yadav Singh. He had constructed the two houses of Yadav Singh during 2009-2010 and Smt. Vidya Devi, sister-in-law of Yadav Singh was a Founder Director and major shareholder of Ms/ Golflink Hospitality Private Limited owned by the accused-applicant.

13. In pursuance of the criminal conspiracy, M/s Anand Buildtech Private Limited/JV was given huge benefit as the difference in the estimated price and the price on which the material was actually purchased by the contractor was found too wide. The total loss of

Rs.86,81,267.48/- was assessed and the actual payment of Rs.11,06,35,905/- was made to M/s Anand Buildtech Private Limited/JV.

14. Thus, from the allegations, it is evident that the last date for submission of the bid was extended thrice to accommodate the pre-determined bidder i.e. M/s Anand Buildtech Private Limited/JV, which was allotted work at exorbitant rates as the other companies, which participated in the tendering process, were participated for the name sack and they formed cartel with the connivance of the other accused. The allegations and the investigation report would suggest deep-rooted conspiracy to defraud the public fund by the present accused-applicant and other co-accused in execution of the work of Cricket Stadium by M/s Anand Buildtech Private Limited/JV.

15. From the reading of the charge sheet, it would be evident that since the accused-applicant had constructed two houses for the accused Yadav Singh and Smt. Vidya Devi, the tender committee was under an obligation to see that the firm of the accused-applicant may get qualified and the tender to be given to it at exorbitant rates without there being any competition.

16. Considering the above facts and also taking note of the fact that the firm of the accused-applicant was not eligible to be allotted the work and the work was allotted by adopting a farce tender process, which has resulted into huge loss to the Noida authority, this Court finds a little substance in the submission of learned counsel for the accused-applicant that some of the co-accused have been granted anticipatory bail by a coordinate Bench of this Court, therefore, this Court may also enlarge the accused-applicant, who is one of the real beneficiary of the scam/corruption, on anticipatory bail.

17. Large scale economic crimes are craftily planned and executed. It is well settled that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting

bail, the Court has to keep in mind the nature of accusations, magnitude and gravity of offence and nature of evidence in support of accusations.

18. The Supreme Court in the case of ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation***, (2013) 7 SCC 439 has opined in paragraphs 34 and 35 as under:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

19. The Supreme Court in the case of ***State of Bihar and another Vs. Amit Kumar alias Bachcha Rai***, (2017) 13 SCC 751 in paragraphs 9 and 13, while considering the bail application of an accused involved in economic offence of huge magnitude, has held as under:-

"9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations

against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.

13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] . Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously."

20. In the case of ***Rohit Tandon Vs. Directorate of Enforcement***, (2018) 11 SCC 46, the Supreme Court has again reiterated the consistent view that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences, affecting the economy of the country as a whole. Paragraphs 21 and 22, which are relevant, are extracted hereunder:-

"21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.

*22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in *Ranjitsing Brahmajeetsing Sharma v. State of**

Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : (2005) SCC (Cri) 1057] and State of Maharashtra v. Vishwanath Maranna Shetty [State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 : (2013) 1 SCC (Cri) 105] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail."

21. Again, in the case of ***Serious Fraud Investigation Office Vs. Nittin Johari and another***, (2019) 9 SCC 165, the Supreme Court has held that stringent view should be taken by the Court towards grant of bail with respect to economic offences. Paragraphs 24, 25, 26 and 27 of the aforesaid case are extracted hereunder:-

"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect to economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] : (SCC p. 449, paras 34-35) "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need 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. 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." This Court has adopted this position in several decisions, including Gautam Kundu v. Directorate of Enforcement [Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1 : (2016) 3 SCC (Cri) 603] and State of Bihar v. Amit Kumar [State of Bihar v. Amit Kumar, (2017) 13 SCC 751 : (2017) 4 SCC (Cri) 771] . Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences.

25. As already discussed supra, it is apparent that the Special Court, while considering the bail applications filed by Respondent 1 both prior and subsequent to the filing of the investigation report and complaint, has attempted to account not only for the conditions laid down in Section 212(6) of the Companies Act, but also of the general principles governing the grant of bail.

26. In our considered opinion, the High Court in the impugned order has failed to apply even these general principles. The High Court, after referring to certain portions of the complaint to ascertain the alleged role of Respondent 1, came to the conclusion that the role attributed to him was merely that of colluding with the co-accused promoters in the commission of the offence in question. The Court referred to the principles governing the grant of bail as laid down by this Court in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , which discusses the effect of the twin mandatory conditions pertaining to the grant of bail for offences under the Maharashtra Control of Organised Crime Act, 1999 as laid down in Section 21(4) thereof, similar to the conditions embodied in Section 212(6)(ii) of the Companies Act. However, the High Court went on to grant bail to Respondent 1 by observing that bail was justified on the "broad probabilities" of the case.

27. In our considered opinion, this vague observation demonstrates non-application of mind on the part of the Court even under Section 439 CrPC, even if we keep aside the question of satisfaction of the mandatory requirements under Section 212(6)(ii) of the Companies Act."

22. The Court has to take into consideration while considering the anticipatory/regular bail application, nature of offence and the Court should refuse the bail if the offence is serious and is of huge magnitude, particularly, in economic offences. Corruption is a menace which is eating the vitals of economy of this country.

23. Considering the facts and circumstances of the case and the allegation that the accused-applicant in criminal conspiracy with the officers of the Noida Development Authority defraud the public fund of several crores of rupees, this Court is of the view that he is not entitled to be enlarged on anticipatory bail.

24. Anticipatory bail application is accordingly *rejected*.

(Dinesh Kumar Singh, J.)

Order Date :- 25.1.2023
Rao/-